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SENATE BILL NO. 1207

Offered January 13, 2021

Prefiled January 11, 2021

A *BILL to amend and reenact §§ 15.2-2316.6 through 15.2-2316.9 of the Code of Virginia, relating to solar projects and energy storage projects; siting agreements throughout the Commonwealth.*

Patrons—Barker and McClellan

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2316.6 through 15.2-2316.9 of the Code of Virginia are amended and reenacted as follows:

Siting of Solar Energy Facilities Projects and Energy Storage Projects.

§ 15.2-2316.6. Definitions.

A. As used in this article, unless the context requires a different meaning:

"Energy storage facilities" means the energy storage equipment and technology within an energy storage project that is capable of absorbing energy, storing such energy for a period of time, and redelivering such energy after it has been stored.

"Energy storage project" means the energy storage facilities within the project site.

"Host locality" means any locality within the jurisdictional boundaries of which construction of a commercial solar facility project or an energy storage project is proposed.

"Opportunity zone" means a census tract in an area of the host locality meeting the eligibility requirements for designation as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Solar facility facilities" means a commercial solar photovoltaic (electric energy) generation or storage facility, or any portion thereof facilities. "Solar facility facilities" does not include any solar project that is (i) described in § 56-594, 56-594.01, or 56-594.2 or Chapters 358 and 382 of the Acts of Assembly of 2013, as amended, or (ii) five megawatts or less.

"Solar project" means the solar facilities, subject to this chapter, that are within the project site.

B. This article applies only to a solar facility located in an opportunity zone.

§ 15.2-2316.7. Negotiations; siting agreement.

A. Any applicant for a solar facility project or an energy storage project shall give to the host locality written notice of the applicant's intent to locate a solar facility in an opportunity zone in such locality and request a meeting. Such applicant shall meet, discuss, and negotiate a siting agreement with such locality.

B. The siting agreement may include terms and conditions, including (i) mitigation of any impacts of such solar facility project or energy storage project; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the applicant in the deployment of broadband, as defined in § 56-585.1:9, in such locality.

§ 15.2-2316.8. Powers of host localities.

A. The governing body of a host locality shall have the power to:

1. Hire and pay consultants and other experts on behalf of the host locality in matters pertaining to the siting of a solar facility project or energy storage project;

2. Meet, discuss, and negotiate a siting agreement with an applicant; and

3. Enter into a siting agreement with an applicant that is binding upon the governing body of the host locality and enforceable against it and future governing bodies of the host locality in any court of competent jurisdiction by signing a siting agreement pursuant to this article. Such contract may be assignable at the parties' option.

B. If the parties to the siting agreement agree upon the terms and conditions of a siting agreement, the host locality shall schedule a public hearing, pursuant to subdivision A of § 15.2-2204, for the purpose of consideration of such siting agreement. If a majority of a quorum of the members of the governing body present at such public hearing approve of such siting agreement, the siting agreement shall be executed by the signatures of (i) the chief executive officer of the host locality and (ii) the applicant or the applicant's authorized agent. The siting agreement shall continue in effect until it is amended, revoked, or suspended.

§ 15.2-2316.9. Effect of executed siting agreement; land use approval.

A. Nothing in this article shall be construed to exempt an applicant from any other applicable requirements to obtain approvals and permits under federal, state, or local ordinances and regulations.

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SB1207

59 An applicant may file for appropriate land use approvals for the solar ~~facility project or energy storage~~
60 *project, as applicable*, under the regulations and ordinances of the host locality at or after the time the
61 applicant submits its notice of intent to site a solar ~~facility project or energy storage project~~ as set forth
62 in subdivision A of § 15.2-2316.7.

63 B. Nothing in this article shall affect the authority of the host locality to enforce its ordinances and
64 regulations to the extent that they are not inconsistent with the terms and conditions of the siting
65 agreement.

66 C. Approval of a siting agreement by the local governing body in accordance with subdivision B of
67 § 15.2-2316.8 shall deem the solar ~~facility project or energy storage project~~ to be substantially in accord
68 with the comprehensive plan of the host locality, thereby satisfying the requirements of § 15.2-2232.

69 D. The failure of an applicant and the governing body to enter into a siting agreement may be a
70 factor in the decision of the governing body in the consideration of any land use approvals for a solar
71 ~~facility project or energy storage project~~, but shall not be the sole reason for a denial of such land use
72 approvals.

73 **2. That the provisions of this act shall not apply to any energy storage project that has received**
74 **zoning and site plan approval, preliminary or otherwise, from the host locality before January 1,**
75 **2021.**

76 **3. That the provisions of this act shall not become effective with respect to energy storage projects**
77 **unless the General Assembly approves legislation that authorizes localities to adopt an ordinance**
78 **for taxation of energy storage projects such as solar projects with a local option for machinery**
79 **and tools tax or solar revenue share.**