

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1124 (Friedman) – As Amended April 27, 2021

**SUBJECT:** Solar energy systems.

**SUMMARY:** Revises the definition of “solar energy system” as that term is used for the purpose of local permitting of such systems, including the allowable fees a local agency may charge, and clarifies the permit fees local agencies may charge for commercial solar energy systems. Specifically, **this bill:**

- 1) Adds to the definition of “solar energy system” a structural design feature that includes solar racking, solar mounting, solar carports, solar shade structures, solar awnings, solar canopies, and solar patio covers, regardless of whether the feature is on the ground or on a structure.
- 2) Defines “commercial permit fee” to mean the sum of all charges levied by a city, county, city and county, or charter city in connection with the application for a commercial solar energy system.
- 3) Makes conforming and technical changes.

**EXISTING LAW:**

- 1) Enacts the Solar Rights Act and declares that it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles to their installation.
- 2) Defines, pursuant to Civil Code 801.5 governing solar easements, “solar energy system” to mean either of the following:
  - a) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating; or,
  - b) A structural design feature of a building, including either of the following:
    - i) Any design feature whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating; or,
    - ii) Any photovoltaic (PV) device or technology that is integrated into a building, including, but not limited to, PV windows, siding, and roofing shingles or tiles.
- 3) Provides for the adoption and administration of zoning laws, ordinances, rules, and regulations by counties and cities.
- 4) Provides that, notwithstanding any other provision of law, when a local agency charges fees for zoning variances, zoning changes, use permits, building inspections, building permits, and other specified fees, those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of

the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

- 5) Specifies that the fees listed in 4), above, may include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations.
- 6) Requires a city or county to administratively approve applications to install solar energy systems through the issuance of a building permit or a similar nondiscretionary permit.
- 7) Limits review of an application to install solar energy system to the building official's review of whether it meets all health and safety requirement of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- 8) Prohibits a city or county from denying an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- 9) Limits permit fees that local agencies can charge for permits to install solar energy systems.
- 10) Defines "residential permit fee" as the sum of all charges levied by a city, county, city and county, or charter city in connection with the application for a solar energy system.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Bill Summary.** This bill revises the definition of "solar energy system" as that term is used for the purpose of local permitting of such systems, including the allowable permit fees a local agency may charge for installations of solar energy systems, and clarifies the permit fees local agencies may charge for commercial solar energy systems.

The bill adds to the definition of "solar energy system" a structural design feature that includes solar racking, solar mounting, solar carports, solar shade structures, solar awnings, solar canopies, and solar patio covers, regardless of whether the feature is on the ground or on a structure.

This bill also clarifies that commercial permit fees means the sums of all charges levied by a city, county, city and county, or charter city in connection with a permit application for a commercial solar energy system.

This bill is sponsored by the California Solar and Storage Association.

- 2) **Author's Statement.** According to the author, "AB 1124 will increase the development of solar needed for the state to meet its greenhouse gas reduction goals and build a reliable electric grid. In 2017, I authored AB 1414, which extended the cap on the fees local building departments can charge to issue solar permits. AB 1414 also adopted a definition of "solar energy system" so that the fee caps would include all forms of solar, whether mounted to a roof or directly onto the ground.

"Since AB 1414 went into effect, some building departments have circumvented the intent of the law by claiming the bill does not pertain to solar energy systems built above parking lots and patios. As a result, the permit fees for solar energy systems charged by some building departments can balloon project costs by thousands and tens of thousands of dollars. AB 1124 is a simple bill that makes clear that the cap on permitting fees in AB 1414 pertains to all solar energy systems."

- 3) **Background.** The California Legislature enacted the Solar Rights Act in 1978 to protect a homeowner's right to install a solar energy system by limiting a homeowner association's ability to object to such installations through its covenants, conditions and restrictions (CC&Rs). The Solar Rights Act allows CC&Rs to include provisions that impose reasonable restrictions on solar energy systems. Reasonable restrictions include those that: do not significantly increase the cost of the solar system; do not significantly decrease the system's efficiency or specified performance; and, allow for an alternative system of comparable cost, efficiency and benefits. "Significant" is further defined as those restrictions that increase the system's cost by more than 20% or decrease the system's efficiency by more than 20%.

AB 2473 (Wolk), Chapter 789, Statutes of 2004, updated the Solar Rights Act by specifying standards for what constitutes "significant" increases in solar energy system costs or decreases in those systems' efficiency. The bill also made changes to the permitting process for solar energy systems.

- 4) **Permitting Process.** Existing law limits review of an application to install solar energy system to the building official's review of whether it meets all health and safety requirement of local, state, and federal law. The requirements of local law are limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

A city or county cannot deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings must include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

- 5) **Local Permit Fees.** Current law prohibits local agencies from charging fees for permit processing and inspection that exceed the reasonable cost of providing the service for which the fee is charged. Fee revenue must only be used to defray the cost of permit processing and enforcement and cannot be used for general revenue purposes.

Proposition 26 amended Article XIII C of the California Constitution to broaden the definition of what constitutes a tax to include many payments previously considered fees or charges. The language of Proposition 26 lists seven exceptions to what constitutes a local tax, including three that are relevant to this bill. Article XIII C excludes from the new definition of "tax":

- a) A charge imposed for a specific benefit conferred or privilege granted directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege;
- b) A charge imposed for a specific government service or product provided directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product; and,
- c) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

Proposition 26 also added the following language regarding the burden of proof: "The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is not more than necessary to cover the reasonable costs of governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from the governmental activity."

- 6) **Solar Energy System Permit Fees.** SB 1222 (Leno), Chapter 614, Statutes of 2012, placed caps on the amount of permit fees a city or county can charge for residential or commercial rooftop solar energy systems. For a residential rooftop solar energy system, a city or county was precluded from charging a permit fee that exceeded \$500 (plus \$15 per kW for each kW above 15kW). SB 1222 bill also prohibited, for a commercial rooftop solar energy system, a city or county from charging a permit fee that exceeded \$1,000 for systems up to 50kW (plus \$7 kW for each kW between 51kW and 250 kW, and \$5 per kW for each kW above 250 kW). These caps were limited specifically to rooftop PV systems, and did not apply to PV systems installed elsewhere on a building, or to solar thermal systems.

SB 1222 allowed a city or county to charge permit fees exceeding these caps, provided the city or county made a written finding and adopted a resolution or ordinance showing substantial evidence of the reasonable cost to issue the permit.

AB 1414 (Friedman), Chapter 849, Statutes of 2017, made a number of changes to these permit fee caps. It reduced the fee cap to \$450 and applied the cap beyond rooftop solar PV installations only, to include any PV systems and solar thermal systems, with specified size limitations. The bill maintained the permit fee cap of \$1,000 on commercial rooftop solar

energy systems, but applied the cap beyond rooftop solar PV installations to include PV systems generally and solar thermal systems, also with specified size limitations.

AB 1414 continued to allow a city or a county to charge a permit fee that exceeds the specified caps if the city or county makes a written finding and adopts a resolution or ordinance that provides substantial evidence of the reasonable cost to issue the permit. However, this bill required additional elements in the written finding.

AB 1414 also amended the meaning of “solar energy system” to specify that a solar energy system includes any PV device or technology that is integrated into a building, including, but not limited to, PV windows, siding, and roofing shingles or tiles. The bill added a cross-reference to this amended definition, to apply to the permit fee caps.

7) **Policy Consideration.** The Committee may wish to consider the following:

The definition of “solar energy system” that this bill revises is contained in Civil Code Section 801.5. This section is cross-referenced in several other code sections, beyond the code section that governs permit fee caps for solar energy systems. The Committee may wish to consider whether the definition of “solar energy system” that governs permit fee caps should be delineated in that code section, rather than expanding the definition in the Civil Code and, consequently, all the other code sections that reference the Civil Code definition.

8) **Previous Legislation.** AB 2700 (Friedman) of 2020 was substantially similar to this bill. AB 2700 was held in this Committee.

AB 1414 (Friedman), Chapter 849, Statutes of 2017, reduced the maximum permit fee a city or a county may charge for residential rooftop solar energy systems, applied these caps and commercial permit fee caps to a broader range of solar energy systems, and made additional changes to existing law governing permit fees for rooftop solar energy systems.

SB 1222 (Leno), Chapter 614, Statutes of 2012, limited the fees that cities and counties charge for permits related to the installation of rooftop solar energy systems.

AB 546 (Chiu), Chapter 380, Statutes of 2017, required cities and counties to accept electronic submissions of permit applications for advanced energy storage installations, and required the creation of a California Energy Storage Permitting Guidebook.

AB 2188 (Muratsuchi), Chapter 521, Statutes of 2014, required every city and county to adopt an ordinance that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems.

AB 2473 (Wolk), Chapter 789, Statutes of 2004, required cities and counties to permit the installation of solar energy systems by right if the system meets specified requirements, and redefined the term “significantly” in regard to restrictions on solar systems that raise costs or decrease efficiency.

- 9) **Arguments in Support.** According to the California Solar and Storage Association, sponsor of this bill, “While some Californians install solar to protect the environment, most homeowners install solar because it is financially viable. There are many components to the cost of going solar in California, not the least of which are the so-called ‘soft costs’ including permitting department fees. Solar permit fees vary widely across California’s 530 cities and county building departments. In some cases, fees can balloon project costs by thousands or tens of thousands of dollars, pushing the price tag of installing solar beyond the reach of many homes and businesses.

“To enable Californians to go solar, the legislature passed AB 1414 in 2017, which placed modest caps on solar permit fees. AB 1414 did not prevent cities and counties from recuperating the costs to issuing permits. Rather AB 1414 prevented jurisdictions from profiting from solar permit fees. Since AB 1414 was signed into law, some cities and counties have exploited loopholes in the language to charge permit fees for solar that exceed the caps – most commonly for systems installed over parking lots. Since the caps apply when the ‘primary purpose is to provide for the collection... of solar energy,’ these jurisdictions claim that the primary purpose of parking lot solar systems is shade for cars and that the caps do not apply. While this claim is extortionary, would-be solar homes or businesses have little choice but to pay the fees or not install solar. In many cases, solar permits that should cost between \$1,000 and \$2,000 end up costing between \$5,000 and \$15,000.

“We support AB 1124 because the bill closes the loopholes in AB 1414. Among other measures, AB 1124 would ensure that the permit fee caps apply to parking lot solar systems. With AB 1124, more homes and businesses will have the opportunity to install solar, and Californians will have more money in their pockets after the making the investment.”

- 10) **Arguments in Opposition.** According to the Rural County Representatives of California, the California Building Officials, the California State Association of Counties, and the Urban Counties of California, “The Legislature has enacted significant changes over the years to make installation of residential solar more accessible and less burdensome for California residents. Current law prohibits homeowner associations and other organizations from restricting the installation of solar energy systems and requires local jurisdictions to streamline the permitting process for small residential rooftop solar energy systems. Further, local governments must approve a ‘solar energy system’ through an administrative process, with fees statutorily limited for both residential and commercial projects. AB 1124 will expand the types of projects that are subject to these current provisions, though it is unclear to what degree.

“Specifically, AB 1124 expands the definition of ‘solar energy system’ to include facilities not installed on a building or structure, thereby arguably making commercial or utility grade solar projects subject to only a ministerial review process by the local jurisdiction. The environmental and community impacts from a large-scale solar project are significant and should be thoroughly evaluated through a process that provides safeguards for local residents.

“Additionally, we have significant concerns with the economic impact of AB 1124 on local building departments and local jurisdictions. By expanding the definition of ‘solar energy system,’ the types of solar projects subject to the fee cap is greatly expanded, creating cost pressures for building departments that will have increased duties for reviewing these new projects.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Solar and Storage Association [SPONSOR]  
California Business Properties Association  
California Hotel and Lodging Association  
Coalition for Clean Air  
ENGIE North America Inc.  
Environment California  
JKB Energy  
Sierra Club California  
Solar Energy Industries Association  
Sun Light & Power  
Sunpower

**Opposition**

California Building Officials  
California State Association of Counties  
Rural County Representatives of California  
Urban Counties of California

**Analysis Prepared by:** Brooke Pritchard / L. GOV. / (916) 319-3958