

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1132 (Friedman) – As Introduced February 15, 2023

**SUBJECT:** Solar energy systems: permit fees.

**SUMMARY:** Extends the sunset date on provisions of law that limit the permit fees a city or county can charge for solar energy systems, from January 1, 2025, to January 1, 2034.

**FISCAL EFFECT:** This bill is fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **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.

- 2) **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 requirements 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.

- 3) **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:

- 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.
- 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.”

- 4) **Solar Energy System Permit Fees.** The Legislature has approved a series of bills limiting the fees that a city or county can charge for solar energy systems:
  - a) **SB 1222 (Leno), Chapter 614, Statutes of 2012.** SB 1222 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 photovoltaic (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. SB 1222 contained a sunset date of January 1, 2018.
  - b) **AB 1414 (Friedman), Chapter 849, Statues of 2017.** AB 1414 made a number of additional 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 also added an explicit cross-reference to this amended definition (which is contained in Civil Code § 801.5) to the code section containing the permit fee caps (Government Code § 66015), thereby explicitly applying the permit fee caps to this expanded definition of “solar energy system.”

AB 1414 extended the sunset date in SB 1222, from January 1, 2018, to January 1, 2025.

- c) **AB 1124 (Friedman), Chapter 235, Statutes of 2021.** Among other provisions, this bill again revised the definition of “solar energy system” to additionally include any structural design feature by eliminating the provision that the structural design feature be a feature of a building. The bill added the following structural design features in the definition of “solar energy system,” regardless of whether the feature is on the ground or on a building:
- i) Solar racking.
  - ii) Solar mounting.
  - iii) Elevated solar support structures, including, but not limited to, solar carports, shade structures, awnings, canopies, and patio covers. This includes both the aboveground superstructure and associated foundation elements that support solar energy devices or collectors.

The bill specified that a solar energy system must be designed to serve one utility retail customer on the same property, more than one utility retail customer on the same property, one utility retail customer on the same, adjacent, or contiguous properties, or more than one utility retail customer on the same, adjacent or contiguous properties. The solar energy system must not be designed for procurement of electricity by an electric utility.

The bill also revised several additional definitions, including:

- i) “Commercial permit fee” to mean the sum of all charges levied by a city or county in connection with the application for a commercial solar energy system, including, but not limited to, a solar energy system that is installed on the property of multifamily housing that has more than two family dwellings.

- ii) “Residential permit fee” to mean the sum of all charges levied by a city or county in connection with the application for a solar energy system that is installed on the property of a single- or two-family dwelling.

- 5) **Author’s Statement and Bill Summary.** According to the author, “AB 1132 will extend efforts to 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 could charge to issue solar permits until 2025. AB 1124 expanded this progress, and expanded the definition of solar energy systems to include all forms of solar (including carports, shade structures, etc.) whether mounted on a roof or directly to the ground. This bill also defined commercial permit fees to include the sum of all fees charged by the jurisdiction, to ensure fees are reasonable and within reach for homes and businesses.

“However, the initial price cap on permit fees set by AB 1414 is set to expire on January 1, 2025. It is vital that we extend this date since only 10 percent of properties in California have solar—a figure that needs to grow further to ensure clean energy goals are met. If the state does not extend the deadline, homeowners and business owners will fall under the risk of having to pay excessive fees that are outside their reach. This bill, AB 1132, is crucial, in ensuring that solar is accessible across all communities and income levels, which would ensure California reaches its clean energy goals. Given the sunset date of AB 1414, there is a clear urgency to pass AB 1132.”

This bill extends the sunset date on provisions of law that limit the permit fees a city or county can charge for solar energy systems, from January 1, 2025, to January 1, 2034. This bill is sponsored by the California Solar and Storage Association.

- 6) **Policy Consideration.** The Committee may wish to consider the following: the existing sunset date in provisions of law that limit the permit fees a city or county can charge for solar energy systems is January 1, 2025. The Committee may wish to consider whether this bill’s sunset extension is premature.
- 7) **Previous Legislation.** AB 1124 (Friedman), Chapter 235, Statutes of 2021, revised 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 clarified the permit fees local agencies may charge for commercial and residential solar energy systems.

AB 2700 (Friedman) of 2020 was substantially similar to AB 1124. 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.

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.

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 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.

- 8) **Arguments in Support.** According to the California Solar and Storage Association, sponsor of this bill, “Before a property can install solar panels, the local building department must provide the property with a permit. Building departments generally charge fees to provide the permit. In 2012, SB 1222 capped the fees building departments can charge for a permit for five years. The caps were based on the size of the solar system, and building departments could exceed the caps by passing an ordinance justifying the high fees. In 2017, AB 1414 extended the cap another seven years. This bill, AB 1132, would extend the cap another nine years.

“Currently, only 10 percent of properties in California have solar, a figure that needs to grow rapidly for the state to meet its clean energy goals. While many homes, businesses, non-profits, schools, churches, and other buildings install solar for environmental reasons, the price tag must also be reasonable. Prior to SB 1222, high permitting fees were pushing solar outside the budgets for many homeowners and other property owners. Since SB 1222 established the caps on solar permitting fees, solar has become attainable for more Californians. AB 1132 is needed to keep solar permitting fees reasonable and keep solar growing.”

- 9) **Arguments in Opposition.** None on file.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Solar and Storage Association

##### **Opposition**

None on file

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958