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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - SOLAR ENERGY PERMITTING

Introduced By: Senators Gallo, Sosnowski, Miller, and P Fogarty

Date Introduced: June 08, 2017

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 39 of the General Laws entitled "PUBLIC UTILITIES AND
2 CARRIERS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 26.8

4 SOLAR ENERGY PERMITTING

5 **39-26.8-1. Short title.**

6 This chapter shall be known and may be cited as the "Solar Energy Permitting Act".

7 **39-26.8-2. Restrictions on solar energy void and unenforceable.**

8 (a) Any covenant, restriction, or condition contained in any deed, contract, security
9 instrument, or other instrument affecting the transfer or sale of, or any interest in, real property,
10 and any provision of a governing document, including, but not limited to, any agreement or
11 power of attorney, that effectively prohibits or restricts the installation or use of a solar energy
12 system is void and unenforceable.

13 (b) This chapter does not apply to provisions that impose reasonable restrictions on solar
14 energy systems. However, it is the policy of the state to promote and encourage the use of solar
15 energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar
16 energy system are those restrictions that do not significantly increase the cost of the system or
17 significantly decrease its efficiency or specified performance, or that allow for an alternative
18 system of comparable cost, efficiency, and energy conservation benefits.

19 (c)(1) A solar energy system shall meet applicable health and safety standards and

1 requirements imposed by the state and local permitting authorities, consistent with the intent to
2 promote the use of solar energy without unreasonable restrictions.

3 (2) A solar energy system used for heating water in single family residences and solar
4 collectors used for heating water in commercial or swimming pool applications shall be certified
5 by an accredited listing agency as defined in the state building code, chapter 27.3 of title 23.

6 (3) A solar energy system for producing electricity shall also meet all applicable safety
7 and performance standards established pursuant to any general law or rule or regulation of the
8 public utilities commission regarding safety and reliability.

9 (d) For the purposes of this section:

10 (1)(i) For solar domestic water heating systems or solar swimming pool heating systems
11 that comply with state and federal law, "significantly" means an amount exceeding ten percent
12 (10%) of the cost of the system, but in no case more than one thousand dollars (\$1,000), or
13 decreasing the efficiency of the solar energy system by an amount exceeding ten percent (10%),
14 as originally specified and proposed.

15 (ii) For photovoltaic systems that comply with state and federal law, "significantly"
16 means an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally
17 specified and proposed, or a decrease in system efficiency by an amount exceeding ten percent
18 (10%) as originally specified and proposed.

19 (2) "Solar energy system" means:

20 (i) Any solar collector or other solar energy device the primary purpose of which is to
21 provide for the collection, storage, and distribution of solar energy for space heating, space
22 cooling, electric generation, or water heating.

23 (ii) Any structural design feature of a building, the primary purpose of which is to
24 provide for the collection, storage, and distribution of solar energy for electricity generation,
25 space heating or cooling, or for water heating.

26 (e)(1) Whenever approval is required for the installation or use of a solar energy system,
27 the application for approval shall be processed and approved by the appropriate approving entity
28 in the same manner as an application for approval of an architectural modification to the property,
29 and shall not be willfully avoided or delayed.

30 (2) For an approving entity that is an association, including, but not limited to, any
31 nonprofit association or unincorporated association created for the purpose of managing a
32 common interest, and that is not a public entity, both of the following shall apply:

33 (i) The approval or denial of an application shall be in writing.

34 (ii) If an application is not denied in writing within forty-five (45) days from the date of

1 receipt of the application, the application shall be deemed approved, unless that delay is the result
2 of a reasonable request for additional information.

3 (f) Any entity, other than a public entity, that willfully violates the provisions of this
4 section shall be liable to the applicant or other party for actual damages occasioned thereby, and
5 shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand
6 dollars (\$1,000).

7 (g) In any action to enforce compliance with this section, the prevailing party shall be
8 awarded reasonable attorneys' fees.

9 (h)(1) A public entity that fails to comply with this section may not receive funds from a
10 state-sponsored grant or loan program for solar energy. A public entity shall certify its
11 compliance with the requirements of this section when applying for funds from a state-sponsored
12 grant or loan program.

13 (2) A local public entity may not exempt residents in its jurisdiction from the
14 requirements of this section.

15 **39-26.8-3. Implementation.**

16 (a) The implementation of consistent statewide standards to achieve the timely and cost-
17 effective installation of solar energy systems is not a municipal affair but is instead a matter of
18 statewide concern. It is the intent of the general assembly that local agencies shall not adopt
19 ordinances that create unreasonable barriers to the installation of solar energy systems, including,
20 but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability
21 of homeowners and agricultural and business concerns to install solar energy systems. It is the
22 policy of the state to promote and encourage the use of solar energy systems and to limit
23 obstacles to their use. It is the intent of the general assembly that local agencies comply not only
24 with the language of this chapter, but also the legislative intent which is to encourage the
25 installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting
26 for such systems.

27 (b) A city or town shall administratively approve applications to install solar energy
28 systems through the issuance of a building permit or similar nondiscretionary permit. Review of
29 the application to install a solar energy system shall be limited to the building inspector's review
30 of whether the application meets all health and safety requirements of federal, state and municipal
31 law. The requirements of a municipal ordinance or rule shall be limited to those standards and
32 regulations necessary to ensure that the solar energy system will not have a specific, adverse
33 impact upon the public health or safety. However, if the building inspector of the city or town
34 makes a finding, based on substantial evidence, that the solar energy system could have a

1 specific, adverse impact upon the public health and safety, the city or town may require the
2 applicant to apply for a use permit as required by any city or town.

3 (c) A city or town, may not deny an application for a use permit to install a solar energy
4 system unless it makes written findings based upon substantial evidence in the record that the
5 proposed installation would have a specific, adverse impact upon the public health or safety, and
6 there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The
7 findings shall include the basis for the rejection of potential feasible alternatives of preventing the
8 adverse impact.

9 (d) The decision of the building inspector pursuant to subsections (b) and (c) of this
10 section may be appealed to the planning board or commission of the city or town.

11 (e) Any conditions imposed on an application to install a solar energy system shall be
12 designed to mitigate the specific, adverse impact upon the public health and safety at the lowest
13 cost possible.

14 (f)(1) A solar energy system shall meet applicable health and safety standards and
15 requirements imposed by state and local permitting authorities.

16 (2) A solar energy system for heating water in single-family residences and solar
17 collectors used for heating water in commercial or swimming pool applications shall be certified
18 by applicable building code officials.

19 (3) A solar energy system for producing electricity shall meet all applicable safety and
20 performance standards established by rule or regulation of the public utilities commission
21 regarding safety and reliability.

22 (g)(1) On or before January 1, 2018, every city and town, in consultation with the local
23 fire department or district, if the city or town operates a utility, shall adopt an ordinance,
24 consistent with the goals and intent of subsection (a) of this section, that creates an expedited,
25 streamlined permitting process for small residential rooftop solar energy systems. In developing
26 an expedited permitting process, the city or town shall adopt a checklist of all requirements with
27 which small rooftop solar energy systems shall comply to be eligible for expedited review. An
28 application that satisfies the information requirements in the checklist, as determined by the city
29 or town, shall be deemed complete. Upon confirmation by the city or town of the application and
30 supporting documents being complete and meeting the requirements of the checklist and
31 consistent with the ordinance, the city or town shall, consistent with subsection (b) of this section,
32 approve the application and issue all required permits or authorizations. Upon receipt of an
33 incomplete application, the city or town shall issue a written correction notice detailing all
34 deficiencies in the application, and any additional information required to be eligible for

1 expedited permit issuance.

2 (2) The checklist and required permitting documentation shall be published on a
3 publically accessible Internet website, if the city or town has an Internet website, and the city or
4 town shall allow for electronic submittal of a permit application and associated documentation,
5 and shall authorize the electronic signature on all forms, applications, and other documentation in
6 lieu of a wet signature by an applicant. In developing the ordinance, the city or town shall
7 substantially conform its expedited, streamlined permitting process with the recommendations for
8 expedited permitting, including any checklists and standard plans contained in the general laws or
9 any public utility guidebook relied upon by the general assembly regarding solar energy systems.
10 A city or town may adopt an ordinance that modifies the checklists and standards found in the
11 guidebook due to unique climactic, geological, seismological, or topographical conditions. If a
12 city or town determines that it is unable to authorize the acceptance of an electronic signature on
13 all forms, applications, and other documents in lieu of a wet signature by an applicant, the city or
14 town shall state, in the ordinance required under this subsection, the reasons for its inability to
15 accept electronic signatures and acceptance of an electronic signature shall not be required.

16 (h) For a small residential rooftop solar energy system eligible for expedited review, only
17 one inspection shall be required, which shall be done in a timely manner, and may include a
18 consolidated inspection, except that a separate fire safety inspection may be performed in a city or
19 town that does not have an agreement with a local fire authority to conduct a fire safety
20 inspection on behalf of the fire authority. If a small residential rooftop solar energy system fails
21 inspection, a subsequent inspection is authorized; however, the subsequent inspection need not
22 conform to the requirements of this subsection.

23 (i) A city or town shall not condition approval for any solar energy system permit on the
24 approval of a solar energy system by an association, nonprofit corporation or unincorporated
25 association created for the purpose of managing a common interest development.

26 (j) The following definitions apply to this section:

27 (1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact"
28 means and includes, but is not limited to, any cost-effective method, condition, or mitigation
29 imposed by a city or town on another similarly situated application in a prior successful
30 application for a permit. A city or town shall use its best efforts to ensure that the selected
31 method, condition, or mitigation meets the conditions as follows:

32 (i) For solar domestic water heating systems or solar swimming pool heating systems that
33 comply with state and federal law, "significantly" means an amount exceeding twenty percent
34 (20%) of the cost of the system or decreasing the efficiency of the solar energy system by an

1 amount exceeding twenty percent (20%), as originally specified and proposed.

2 (ii) For photovoltaic systems that comply with state and federal law, "significantly"
3 means an amount not to exceed two thousand dollars (\$2,000) over the system cost as originally
4 specified and proposed, or a decrease in system efficiency of an amount exceeding twenty percent
5 (20%) as originally specified and proposed.

6 (2) "Electronic submittal" means the utilization of one or more of the following:

7 (i) Email; or

8 (ii) The Internet; or

9 (iii) Facsimile.

10 (3) "Small residential rooftop solar energy system" means all of the following:

11 (i) A solar energy system that is no more powerful than ten kilowatts (10kw) alternating
12 current nameplate rating, or thirty kilowatts (30kw) thermal.

13 (ii) A solar energy system that conforms to all applicable state fire, structural, electrical,
14 and other building codes as adopted or amended by the city or town and; provided, that a solar
15 energy system for producing electricity shall also meet all applicable safety and performance
16 standards established by the National Electrical Code, the Institute of Electrical and Electronics
17 Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where
18 applicable, rules of the public utilities commission regarding safety and reliability.

19 (iii) A solar energy system that is installed on a single or duplex family dwelling.

20 (iv) A solar panel or module array that does not exceed the maximum legal building
21 height as defined by the authority having jurisdiction.

22 (4) "Solar energy system" means:

23 (i) Any solar collector or other solar energy device whose primary purpose is to provide
24 for the collection, storage, and distribution of solar energy for space heating, space cooling,
25 electric generation, or water heating; and

26 (ii) Any structural design feature of a building, the primary purpose or which is to
27 provide for the collection, storage, and distribution of solar energy for electricity generation,
28 space heating or cooling, or for water heating.

29 (5) "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable
30 impact, based on objective, identified, and written public health or safety standards, policies, or
31 conditions as they existed on the date the application was deemed complete.

32 **39-26.8-4. Severability.**

33 If any provision of this chapter, or the application thereof to any person or circumstance,
34 is held invalid, such determination shall not affect the provisions or applications of this chapter

1 [which can be given effect without the invalid provision or application, and to that end the](#)
2 [provisions of this chapter are severable.](#)

3 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC UTILITIES AND CARRIERS - SOLAR ENERGY PERMITTING

1 This act would promote the development and utilization of solar energy systems by
2 reducing local burdens on the development process thereto.

3 This act would take effect upon passage.

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