

HOUSE BILL NO. 650

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns

on _____)

(Patron Prior to Substitute--Delegate Coyner)

A BILL to amend and reenact §§ 15.2-2209.1:2 and 15.2-2286 of the Code of Virginia, relating to zoning; solar photovoltaic and energy storage projects; period of validity for certain projects.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2209.1:2 and 15.2-2286 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2209.1:2. Extension of land use approvals for solar photovoltaic projects.

A. An initial approval of a special exception, special use permit, or conditional use permit for a solar photovoltaic or energy storage project shall provide the landowner or developer a minimum of three years to commence the project.

For so long as the special exception, special use permit, or conditional use permit remains valid, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy, or plan adopted subsequent to the date of approval of the special exception, special use permit, or conditional use permit shall adversely affect the right of the developer or his successor in interest to commence and complete an approved development in accordance with the lawful terms of the special exception, special use permit, or conditional use permit unless the change or amendment is required to comply with state law or there has been a mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

Application for minor modifications to special exceptions, special use permits, or conditional use permits made during the period of validity shall not constitute a waiver of the provisions hereof nor shall the approval of minor modifications extend the period of validity of such plats or plans.

26 B. Notwithstanding any other provision of this chapter, for any valid special exception, special use
27 permit, or conditional use permit, or any modifications thereto, for a solar photovoltaic or energy storage
28 project outstanding as of July 1, 2023, any deadline in the exception permit, or in the local zoning
29 ordinance that requires the landowner or developer to commence the project within a certain time, may be
30 extended by a resolution of the governing body until July 1, 2026, or such longer period as may be agreed
31 to by the locality.

32 **§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay**
33 **delinquent taxes; penalties.**

34 A. A zoning ordinance may include, among other things, reasonable regulations and provisions as
35 to any or all of the following matters:

36 1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any
37 district.

38 2. For the temporary application of the ordinance to any property coming into the territorial
39 jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning
40 ordinance, and pending the orderly amendment of the ordinance.

41 3. For the granting of special exceptions under suitable regulations and safeguards;
42 notwithstanding any other provisions of this article, the governing body of any locality may reserve unto
43 itself the right to issue such special exceptions. Conditions imposed in connection with residential special
44 use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of
45 providing affordable housing. When imposing conditions on residential projects specifying materials and
46 methods of construction or specific design features, the approving body shall consider the impact of the
47 conditions upon the affordability of housing. Conditions may include the period of validity for a special
48 exception or special use permit; however, in the case of a special exception or special use permit for
49 residential projects, the period of validity shall be no less than three years.

50 The governing body or the board of zoning appeals of the Cities of Hampton and Norfolk may
51 impose a condition upon any special exception or use permit relating to retail alcoholic beverage control
52 licensees which provides that such special exception or use permit will automatically expire upon a change

53 of ownership of the property, a change in possession, a change in the operation or management of a facility,
54 or the passage of a specific period of time.

55 The governing body of the City of Richmond may impose a condition upon any special use permit
56 issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special
57 use permit shall be subject to an automatic review by the governing body upon a change in possession, a
58 change in the owner of the business, or a transfer of majority control of the business entity. Upon review
59 by the governing body, it may either amend or revoke the special use permit after notice and a public
60 hearing as required by § 15.2-2206.

61 4. For the administration and enforcement of the ordinance including the appointment or
62 designation of a zoning administrator who may also hold another office in the locality. The zoning
63 administrator shall have all necessary authority on behalf of the governing body to administer and enforce
64 the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition
65 found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action,
66 including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to §
67 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the
68 governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or
69 subsection C of § 15.2-2311.

70 Whenever the zoning administrator has reasonable cause to believe that any person has engaged
71 in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling
72 unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-
73 2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to
74 determine whether a violation has occurred, has been unable to obtain such information, he may request
75 that the attorney for the locality petition the judge of the general district court for his jurisdiction for a
76 subpoena duces tecum against any such person refusing to produce such data or information. The judge
77 of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply
78 with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any
79 person so subpoenaed may apply to the judge who issued the subpoena to quash it.

80 Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period
81 of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal
82 commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy
83 limitations of a residential dwelling unit, or similar short-term, recurring violations.

84 Where provided by ordinance, the zoning administrator may be authorized to grant a modification
85 from any provision contained in the zoning ordinance with respect to physical requirements on a lot or
86 parcel of land, including but not limited to size, height, location or features of or related to any building,
87 structure, or improvements, if the administrator finds in writing that: (i) the strict application of the
88 ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in
89 the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be
90 of substantial detriment to adjacent property and the character of the zoning district will not be changed
91 by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall
92 give, or require the applicant to give, all adjoining property owners written notice of the request for
93 modification, and an opportunity to respond to the request within 21 days of the date of the notice. The
94 zoning administrator shall make a decision on the application for modification and issue a written decision
95 with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice
96 sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within
97 the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that
98 section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by §
99 15.2-2314.

100 The zoning administrator shall respond within 90 days of a request for a decision or determination
101 on zoning matters within the scope of his authority unless the requester has agreed to a longer period. If
102 the decision or determination by the zoning administrator could impair the ability of an adjacent property
103 owner to satisfy the minimum storage capacity and yield requirements for a residential drinking well
104 pursuant to § 32.1-176.4 or any regulation adopted thereunder, the zoning administrator shall provide a
105 copy of such decision or determination to such adjacent property owner so affected.

106 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any
107 such violation shall be a misdemeanor punishable by a fine of not more than \$1,000. If the violation is
108 uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation
109 in compliance with the zoning ordinance, within a time period established by the court. Failure to remove
110 or abate a zoning violation within the specified time period shall constitute a separate misdemeanor
111 offense punishable by a fine of not more than \$1,000; any such failure during a succeeding 10-day period
112 shall constitute a separate misdemeanor offense punishable by a fine of not more than \$1,500; and any
113 such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each
114 10-day period punishable by a fine of not more than \$2,000.

115 However, any conviction resulting from a violation of provisions regulating the number of
116 unrelated persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000.
117 Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$5,000,
118 and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense
119 for each 10-day period punishable by a fine of up to \$7,500. However, no such fine shall accrue against
120 an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal
121 action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate
122 an overcrowding condition in accordance with the Virginia Residential Landlord and Tenant Act (§ 55.1-
123 1200 et seq.). A conviction resulting from a violation of provisions regulating the number of unrelated
124 persons in single-family residential dwellings shall not be punishable by a jail term.

125 6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising
126 of notices and other expenses incident to the administration of a zoning ordinance or to the filing or
127 processing of any appeal or amendment thereto.

128 7. For the amendment of the regulations or district maps from time to time, or for their repeal.
129 Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the
130 governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or
131 classifications of property. Any such amendment may be initiated (i) by resolution of the governing body;
132 (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with

133 the owner's written consent, or the owner's agent therefor, of the property which is the subject of the
134 proposed zoning map amendment, addressed to the governing body or the local planning commission,
135 who shall forward such petition to the governing body; however, the ordinance may provide for the
136 consideration of proposed amendments only at specified intervals of time, and may further provide that
137 substantially the same petition will not be reconsidered within a specific period, not exceeding one year.
138 Any such resolution or motion by such governing body or commission proposing the rezoning shall state
139 the above public purposes therefor.

140 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for
141 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such
142 reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or
143 consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition
144 for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal,
145 processing of the motion, resolution or petition shall cease without further action as otherwise would be
146 required by this subdivision.

147 8. For the submission and approval of a plan of development prior to the issuance of building
148 permits to assure compliance with regulations contained in such zoning ordinance.

149 9. For areas and districts designated for mixed use developments or planned unit developments as
150 defined in § 15.2-2201.

151 10. For the administration of incentive zoning as defined in § 15.2-2201.

152 11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that
153 would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange
154 for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher
155 zoning classification. The locality may establish reasonable guidelines for determining the amount of
156 excess real estate tax collected and the method and duration for applying the tax credit. For purposes of
157 this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly
158 permitted land use intensity or density.

159 12. Provisions for requiring and considering Phase I environmental site assessments based on the
160 anticipated use of the property proposed for the subdivision or development that meet generally accepted
161 national standards for such assessments, such as those developed by the American Society for Testing and
162 Materials, and Phase II environmental site assessments, that also meet accepted national standards, such
163 as, but not limited to, those developed by the American Society for Testing and Materials, if the locality
164 deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance
165 with regulations of the United States Environmental Protection Agency and the American Society for
166 Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments.
167 Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration
168 the time, skill, and administrative expense involved in such review.

169 13. Provisions to incorporate generally accepted national environmental protection and product
170 safety standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy)
171 projects, such as those developed for existing product certifications and standards including the National
172 Sanitation Foundation/American National Standards Institute No. 457, International Electrotechnical
173 Commission No. 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and
174 Underwriters Laboratories No. 61730-2.

175 14. Provisions for requiring disclosure and remediation of contamination and other adverse
176 environmental conditions of the property prior to approval of subdivision and development plans.

177 15. For the enforcement of provisions of the zoning ordinance that regulate the number of persons
178 permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance
179 with applicable local, state and federal fair housing laws.

180 16. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The
181 zoning administrator or his agent may make an affidavit under oath before a magistrate or court of
182 competent jurisdiction and, if such affidavit establishes probable cause that a zoning ordinance violation
183 has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection
184 warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of
185 determining whether violations of the zoning ordinance exist. After issuing a warrant under this section,

186 the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the
187 warrant, the zoning administrator or his agents shall return the warrant to the clerk of the circuit court of
188 the city or county wherein the inspection was made. The zoning administrator or his agent shall make a
189 reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the
190 issuance of an inspection warrant under this section.

191 B. Prior to the initiation of an application by the owner of the subject property, the owner's agent,
192 or any entity in which the owner holds an ownership interest greater than 50 percent, for a special
193 exception, special use permit, variance, rezoning or other land disturbing permit, including building
194 permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing
195 body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes,
196 nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the
197 subject property, that are owed to the locality and have been properly assessed against the subject property,
198 have been paid, unless otherwise authorized by the treasurer.

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