



## **Bills S.2596 and HD4607: Acts Allowing Municipalities to Reasonably Regulate Solar Siting**

Senate Sponsor: Senator Joanne Comerford (*co-sponsor as of 1/12/2022: Sen. Hinds*)

House Sponsor: Representative Jacob Oliveira (*co-sponsors as of 1/1, 2022: Reps. Blais, Domb, Sabadosa*)

### **Why These Bills?**

Large industrial solar installations are complex. Like all large, industrial installations, industrial solar needs to be sited, installed and operated in an appropriate and responsible manner to avoid problems, consistent with the zoning guidelines for the host municipality. Large ground-mounted solar arrays span acres, require special high voltage electric lines, earth moving and storm water management; they often involve extensive tree cutting, and if receiving state subsidies must include trailer size batteries that can be a fire hazard.

Traditionally, Massachusetts zoning enables municipalities to regulate the siting and design of these kinds of industrial projects. However, state law, MGL Ch40A, Sec. 3, specifically limits the ability of municipalities to regulate solar projects. Established in 1985, the law had the intent of assisting residential and small scale solar; this was just a few years after Jimmy Carter put solar panels on the White House and then Ronald Reagan removed them. The statute is worded in a prohibitive manner towards municipalities, limiting their ability to regulate solar. It is important to note that in 1985, large scale industrial photovoltaic installations were not yet a reality.

### **What These Bills Address**

These bills do not deal with the substance of solar siting. Because each town and city in Massachusetts is different in regards to zoning and planning policy, physical attributes, social priorities, etc. the substance of solar zoning is best debated at the local level; this is where most zoning takes place. This bill is intended to ensure that towns and cities have the affirmative right to reasonably regulate large scale solar.

### **Background**

Since 2010 when Massachusetts developed a solar subsidy program, now called SMART, the prospect of profitable investment has drawn national and international developers to the Commonwealth to install large scale solar. These projects can be found in many parts of the state. According to Clark University research, 703 solar installations have been built in Massachusetts between 2001 and 2019, totaling 6,850 acres. Forty-four of these are large-scale industrial installations over 24 acres in size.

In the past 5-7 years, municipalities have increasingly begun to pass local solar bylaws in order to reasonably regulate these industrial installations in their communities. The Attorney General has, as a matter of course, reviewed these solar bylaws and found them constitutional but has consistently warned in their approvals that

municipalities could face legal challenges due to the constraints of Ch. 40A Sec.3. Similarly the courts have inconsistently, upholding both municipalities and developers in Land Court, depending on the interpretation of statute. Based on a review of available zoning bylaws online, approximately 206 municipalities have mention of solar in their zoning regulations (there are 351 municipalities in Massachusetts). The current situation means that municipal regulation of solar is unclear and is often threatened by developers in court.

An upgrade to statute is urgently needed now because in October 2021, the Massachusetts Supreme Judicial Court (SJC) took over a solar bylaw case involving Waltham from the Appeals Court – this is an unusual, proactive action by the SJC. The oral arguments are set for March 7, 2022 with a decision likely soon afterward. While the outcome cannot be known, advocates on both sides - for the solar industry and for solar regulation advocates - expect the ruling to codify a narrow reading of the law – essentially limiting municipalities from regulating solar, including industrial solar. Such a determination would severely limit reasonable regulation of large scale solar projects.

### **The Bills and What's In Them**

Recently legislators have taken action to address this situation, filing two identical bills in the Massachusetts Senate and House; S.2596 and HD4607 - Acts Allowing Municipalities to Reasonably Regulate Solar Siting. The bills would differentiate between residential solar and large scale industrial. They would revise the law to continue to allow residential solar to be minimally regulated, as was the original legislative intent. But to adapt to the complexity of large scale industrial solar, the bill affirmatively establishes that municipalities may reasonably regulate commercial, governmental, and non-resident large scale solar. Importantly, the bills also expand the basis for regulation beyond public health and safety to include protection of forests, active agriculture and wetlands – all issues crucial issues in correctly siting and installing large scale industrial solar.

### **The Wording of the Bill**

This bill updates and upgrades MGL Ch. 40A, Sec. 3 as follows:

#### Current version

*No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.*

#### Proposed language for 21<sup>st</sup> century solar development (**bold** indicates new language)

*No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy **for residential purposes** except where necessary to protect the public health, safety or welfare. **Commercial, governmental, and non-residential solar energy structures and systems may be reasonably regulated for purposes of protecting public health, safety and welfare; preserving forested lands, active agriculture, or wetlands; or to ensure compatibility with municipal zoning.***

### **Questions?**

Inquiries for more information can be sent to Smart Solar Western Massachusetts at: [smartsolarwm@gmail.com](mailto:smartsolarwm@gmail.com)  
For more information, visit at [www.SmartSolarWMass.com](http://www.SmartSolarWMass.com)