

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 08-0242.01 Duane Gall

HOUSE BILL 08-1270

HOUSE SPONSORSHIP

Kerr A.,

SENATE SPONSORSHIP

Tupa,

House Committees
Transportation & Energy

Senate Committees
Local Government

A BILL FOR AN ACT

101 CONCERNING THE REMOVAL OF RESTRICTIONS ON THE USE OF ENERGY
102 EFFICIENCY MEASURES IN CONNECTION WITH REAL PROPERTY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Extends an existing prohibition on covenants and deed restrictions that limit the use of solar energy devices to include other energy efficiency measures, defined to include wind-electric generators, shade structures, shutters, attic fans, evaporative coolers, energy-efficient outdoor lighting devices, and retractable clotheslines. Adds a conforming amendment to the "Colorado Common Interest Ownership Act".

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Am ended 2nd Reading
March 28, 2008

HOUSE
3rd Reading Unam ended
February 27, 2008

HOUSE
Am ended 2nd Reading
February 25, 2008

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 38-30-168, Colorado Revised Statutes, is amended
3 to read:

4 **38-30-168. Unreasonable restrictions on renewable energy**
5 **generation devices - definitions.** (1) (a) ~~After May 25, 1979, any A~~
6 ~~covenant, restriction, or condition contained in any deed, contract,~~
7 ~~security instrument, or other instrument affecting the transfer or sale of,~~
8 ~~or any interest in, real property solely on the basis of aesthetic~~
9 ~~considerations which~~ THAT effectively prohibits or restricts the
10 installation or use of ~~a solar energy device, as defined in section~~
11 ~~38-32.5-100.3,~~ RENEWABLE ENERGY GENERATION DEVICE is void and
12 unenforceable.

13 (b) AS USED IN THIS SECTION, "RENEWABLE ENERGY GENERATION
14 DEVICE" MEANS EITHER:

15 (I) A SOLAR ENERGY DEVICE, AS DEFINED IN SECTION
16 38-32.5-100.3; OR

17 (II) A WIND-ELECTRIC GENERATOR THAT MEETS THE
18 INTERCONNECTION STANDARDS ESTABLISHED IN RULES PROMULGATED BY
19 THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTION 40-2-124,
20 C.R.S.

21 (2) Subsection (1) of this section shall not apply to:

22 (a) Aesthetic provisions ~~which~~ THAT impose reasonable
23 restrictions on ~~solar energy devices~~ THE DIMENSIONS, PLACEMENT, OR
24 EXTERNAL APPEARANCE OF A RENEWABLE ENERGY GENERATION DEVICE
25 and ~~which~~ THAT do not:

26 (I) Significantly increase the cost of the device; OR

1 (II) SIGNIFICANTLY DECREASE ITS PERFORMANCE OR EFFICIENCY;

2 (b) BONA FIDE SAFETY REQUIREMENTS, REQUIRED BY AN
3 APPLICABLE BUILDING CODE OR RECOGNIZED ELECTRICAL SAFETY
4 STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY; ==

5 (c) MUTUALLY ENFORCEABLE COVENANTS OR RULES OF A
6 COMMON INTEREST COMMUNITY, ADOPTED IN ACCORDANCE WITH SECTION
7 38-33.3-106.5 (1.5), GOVERNING THE PLACEMENT OF RENEWABLE ENERGY
8 GENERATION DEVICES; OR

9 (d) REASONABLE RESTRICTIONS ON THE INSTALLATION AND USE OF
10 WIND-ELECTRIC GENERATORS TO REDUCE INTERFERENCE WITH THE USE
11 AND ENJOYMENT BY RESIDENTS OF PROPERTY SITUATED NEAR
12 WIND-ELECTRIC GENERATORS AS A RESULT OF THE SOUND ASSOCIATED
13 WITH THE WIND-ELECTRIC GENERATORS. INTERFERENCE WITH THE USE
14 AND ENJOYMENT OF PROPERTY BY RESIDENTS FOR THE PURPOSE OF
15 DETERMINING WHETHER A RESTRICTION IS REASONABLE SHALL BE
16 DETERMINED AS A PART OF THE ARCHITECTURAL REVIEW PROCESS AS
17 REQUIRED BY THE GOVERNING DOCUMENTS OF THE COMMON INTEREST
18 COMMUNITY AND SHALL INCLUDE CONSIDERATION OF INPUT BY THE
19 INDIVIDUALS REQUESTING APPROVAL FROM THE COMMON INTEREST
20 COMMUNITY TO INSTALL A WIND-ELECTRIC GENERATOR.

21 (3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY
22 PROPERTY OWNER THE RIGHT TO PLACE A RENEWABLE ENERGY
23 GENERATION DEVICE ON PROPERTY THAT IS:

24 (a) OWNED BY ANOTHER PERSON;

25 (b) LEASED, EXCEPT WITH PERMISSION OF THE LESSOR;

26 (c) COLLATERAL FOR A COMMERCIAL LOAN, EXCEPT WITH
27 PERMISSION OF THE SECURED PARTY; OR

1 (d) A LIMITED COMMON ELEMENT OR GENERAL COMMON ELEMENT
2 OF A COMMON INTEREST COMMUNITY.

3 (4) IN ANY LITIGATION INVOLVING THE SIGNIFICANCE OF AN
4 INCREASE IN COST OF A RENEWABLE ENERGY GENERATION DEVICE, FOR
5 PURPOSES OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (2) OF
6 THIS SECTION, THE PARTY THAT PREVAILS ON THE ISSUE OF THE
7 SIGNIFICANCE OF THE INCREASE SHALL BE ENTITLED TO ITS REASONABLE
8 ATTORNEY FEES AND COSTS INCURRED IN LITIGATING THAT ISSUE. THIS
9 SUBSECTION (4) SHALL NOT BE CONSTRUED TO LIMIT OR PROHIBIT AN
10 AWARD OF ATTORNEY FEES OR COSTS ON OTHER GROUNDS OR IN
11 CONNECTION WITH OTHER ISSUES.

12 **SECTION 2.** Article 30 of title 38, Colorado Revised Statutes, is
13 amended BY THE ADDITION OF A NEW SECTION to read:

14 **38-30-168.5. Unreasonable restrictions on energy efficiency**
15 **measures - definitions.** (1) (a) A COVENANT, RESTRICTION, OR
16 CONDITION CONTAINED IN ANY DEED, CONTRACT, SECURITY INSTRUMENT,
17 OR OTHER INSTRUMENT AFFECTING THE TRANSFER OR SALE OF, OR ANY
18 INTEREST IN, REAL PROPERTY THAT EFFECTIVELY PROHIBITS THE
19 INSTALLATION OR USE OF AN ENERGY EFFICIENCY MEASURE IS VOID AND
20 UNENFORCEABLE.

21 (b) AS USED IN THIS SECTION, "ENERGY EFFICIENCY MEASURE"
22 MEANS A DEVICE OR STRUCTURE THAT REDUCES THE AMOUNT OF ENERGY
23 DERIVED FROM FOSSIL FUELS THAT IS CONSUMED BY A RESIDENCE OR
24 BUSINESS LOCATED ON THE REAL PROPERTY. "ENERGY EFFICIENCY
25 MEASURE" IS FURTHER LIMITED TO INCLUDE ONLY THE FOLLOWING TYPES
26 OF DEVICES OR STRUCTURES:

27 (I) AN AWNING, SHUTTER, TRELIS, RAMADA, OR OTHER SHADE

1 STRUCTURE THAT IS MARKETED FOR THE PURPOSE OF REDUCING ENERGY
2 CONSUMPTION;

3 (II) A GARAGE OR ATTIC FAN AND ANY ASSOCIATED VENTS OR
4 LOUVERS;

5 (III) AN EVAPORATIVE COOLER;

6 (IV) AN ENERGY-EFFICIENT OUTDOOR LIGHTING DEVICE,
7 INCLUDING WITHOUT LIMITATION A LIGHT FIXTURE CONTAINING A COILED
8 OR STRAIGHT FLUORESCENT LIGHT BULB, AND ANY SOLAR RECHARGING
9 PANEL, MOTION DETECTOR, OR OTHER EQUIPMENT CONNECTED TO THE
10 LIGHTING DEVICE; AND

11 (V) A RETRACTABLE CLOTHESLINE.

12 (2) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO:

13 (a) REASONABLE AESTHETIC PROVISIONS THAT GOVERN THE
14 DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF AN ENERGY
15 EFFICIENCY MEASURE. IN CREATING REASONABLE AESTHETIC PROVISIONS,
16 COMMON INTEREST COMMUNITIES SHALL CONSIDER:

17 (I) THE IMPACT ON THE PURCHASE PRICE AND OPERATING COSTS OF
18 THE ENERGY EFFICIENCY MEASURE;

19 (II) THE IMPACT ON THE PERFORMANCE OF THE ENERGY
20 EFFICIENCY MEASURE; AND

21 (III) THE CRITERIA CONTAINED IN THE GOVERNING DOCUMENTS OF
22 THE COMMON INTEREST COMMUNITY.

23 (b) BONA FIDE SAFETY REQUIREMENTS, CONSISTENT WITH AN
24 APPLICABLE BUILDING CODE OR RECOGNIZED SAFETY STANDARD, FOR THE
25 PROTECTION OF PERSONS AND PROPERTY.

26 (3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY
27 PROPERTY OWNER THE RIGHT TO PLACE AN ENERGY EFFICIENCY MEASURE

1 ON PROPERTY THAT IS:

2 (a) OWNED BY ANOTHER PERSON;

3 (b) LEASED, EXCEPT WITH PERMISSION OF THE LESSOR;

4 (c) COLLATERAL FOR A COMMERCIAL LOAN, EXCEPT WITH
5 PERMISSION OF THE SECURED PARTY; OR

6 (d) A LIMITED COMMON ELEMENT OR GENERAL COMMON ELEMENT
7 OF A COMMON INTEREST COMMUNITY.

8 **SECTION 3.** 38-33.3-106.5, Colorado Revised Statutes, is
9 amended BY THE ADDITION OF A NEW SUBSECTION to read:

10 **38-33.3-106.5. Prohibitions contrary to public policy -**
11 **patriotic and political expression - emergency vehicles - fire**
12 **prevention - renewable energy generation devices - definitions.**

13 (1.5) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS,
14 OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, AN
15 ASSOCIATION SHALL NOT EFFECTIVELY PROHIBIT RENEWABLE ENERGY
16 GENERATION DEVICES, AS DEFINED IN SECTION 38-30-168.

17 **SECTION 4. Effective date - applicability.** (1) This act shall
18 take effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly that is
20 allowed for submitting a referendum petition pursuant to article V,
21 section 1 (3) of the state constitution, (August 6, 2008, if adjournment
22 sine die is on May 7, 2008); except that, if a referendum petition is filed
23 against this act or an item, section, or part of this act within such period,
24 then the act, item, section, or part, if approved by the people, shall take
25 effect on the date of the official declaration of the vote thereon by
26 proclamation of the governor.

27 (2) The provisions of this act shall apply to enforcement actions

- 1 that are pending or commenced on or after the applicable effective date
- 2 of this act.