

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 19, 2008
Date

Committee on Transportation & Energy.

After consideration on the merits, the Committee recommends the following:

HB08-1270 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute the following:

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

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

13 (b) AS USED IN THIS SECTION, "ENERGY GENERATION DEVICE"
14 MEANS A DEVICE OR STRUCTURE THAT PRODUCES ENERGY TO OFFSET OR
15 ELIMINATE THE CONSUMPTION OF ENERGY DERIVED FROM FOSSIL FUELS BY
16 A RESIDENCE OR BUSINESS LOCATED ON THE REAL PROPERTY. "ENERGY
17 GENERATION DEVICE" IS FURTHER LIMITED TO INCLUDE ONLY THE
18 FOLLOWING TYPES OF DEVICES OR STRUCTURES:

19 (I) A SOLAR ENERGY DEVICE, AS DEFINED IN SECTION
20 38-32.5-100.3; AND

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

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

6 (a) Aesthetic provisions ~~which~~ THAT impose reasonable
7 restrictions on ~~solar energy devices~~ THE DIMENSIONS, PLACEMENT, OR
8 EXTERNAL APPEARANCE OF AN ENERGY GENERATION DEVICE and ~~which~~
9 THAT do not:

10 (I) Significantly increase ~~the cost of the device~~ ITS PURCHASE
11 PRICE OR OPERATING COSTS; OR

12 (II) SIGNIFICANTLY DECREASE ITS PERFORMANCE OR EFFICIENCY;

13 (b) BONA FIDE SAFETY REQUIREMENTS, CONSISTENT WITH AN
14 APPLICABLE BUILDING CODE OR RECOGNIZED ELECTRICAL SAFETY
15 STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY; OR

16 (c) MUTUALLY ENFORCEABLE COVENANTS OR RULES OF A
17 COMMON INTEREST COMMUNITY, ADOPTED IN ACCORDANCE WITH SECTION
18 38-33.3-106.5 (1) (g), GOVERNING THE PLACEMENT OF ENERGY
19 GENERATION DEVICES.

20 (3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY
21 PROPERTY OWNER THE RIGHT TO PLACE AN ENERGY GENERATION DEVICE
22 ON PROPERTY OF ANOTHER OR UPON COMMON PROPERTY OF A COMMON
23 INTEREST COMMUNITY.

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

26 **38-30-168.5. Unreasonable restrictions on energy efficiency**
27 **measures - definitions.** (1) (a) A COVENANT, RESTRICTION, OR
28 CONDITION CONTAINED IN ANY DEED, CONTRACT, SECURITY INSTRUMENT,
29 OR OTHER INSTRUMENT AFFECTING THE TRANSFER OR SALE OF, OR ANY
30 INTEREST IN, REAL PROPERTY THAT EFFECTIVELY PROHIBITS THE
31 INSTALLATION OR USE OF AN ENERGY EFFICIENCY MEASURE IS VOID AND

1 UNENFORCEABLE.

2 (b) AS USED IN THIS SECTION, "ENERGY EFFICIENCY MEASURE"
3 MEANS A DEVICE OR STRUCTURE THAT REDUCES THE AMOUNT OF ENERGY
4 DERIVED FROM FOSSIL FUELS THAT IS CONSUMED BY A RESIDENCE OR
5 BUSINESS LOCATED ON THE REAL PROPERTY. "ENERGY EFFICIENCY
6 MEASURE" IS FURTHER LIMITED TO INCLUDE ONLY THE FOLLOWING TYPES
7 OF DEVICES OR STRUCTURES:

8 (I) AN AWNING, SHUTTER, TRELIS, RAMADA, OR OTHER SHADE
9 STRUCTURE THAT IS MARKETED FOR THE PURPOSE OF REDUCING ENERGY
10 CONSUMPTION;

11 (II) A GARAGE OR ATTIC FAN AND ANY ASSOCIATED VENTS OR
12 LOUVERS;

13 (III) AN EVAPORATIVE COOLER;

14 (IV) AN ENERGY-EFFICIENT OUTDOOR LIGHTING DEVICE,
15 INCLUDING WITHOUT LIMITATION A LIGHT FIXTURE CONTAINING A COILED
16 OR STRAIGHT FLUORESCENT LIGHT BULB, AND ANY SOLAR RECHARGING
17 PANEL, MOTION DETECTOR, OR OTHER EQUIPMENT CONNECTED TO THE
18 LIGHTING DEVICE; AND

19 (V) A RETRACTABLE CLOTHESLINE.

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

21 (a) REASONABLE AESTHETIC PROVISIONS THAT GOVERN THE
22 DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF AN ENERGY
23 EFFICIENCY MEASURE AND THAT DO NOT:

24 (I) SIGNIFICANTLY INCREASE ITS PURCHASE PRICE OR OPERATING
25 COSTS; OR

26 (II) SIGNIFICANTLY DECREASE ITS PERFORMANCE OR EFFICIENCY;

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

1 (3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY
2 PROPERTY OWNER THE RIGHT TO PLACE AN ENERGY GENERATION DEVICE
3 ON PROPERTY OF ANOTHER OR UPON COMMON PROPERTY OF A COMMON
4 INTEREST COMMUNITY.

5 **SECTION 3.** 38-33.3-106.5 (1), Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

7 **38-33.3-106.5. Prohibitions contrary to public policy -**
8 **patriotic and political expression - emergency vehicles - fire**
9 **prevention - energy generation devices - definitions.**
10 (1) Notwithstanding any provision in the declaration, bylaws, or rules
11 and regulations of the association to the contrary, an association shall not
12 prohibit any of the following:

13 (g) ENERGY GENERATION DEVICES, AS DEFINED IN SECTION
14 38-30-168; EXCEPT THAT THE ASSOCIATION MAY REQUIRE UNIT OWNERS
15 TO PARTICIPATE IN A COMMONLY-OWNED SYSTEM INSTALLED ON COMMON
16 PROPERTY RATHER THAN INSTALL INDIVIDUAL SYSTEMS OF THE SAME KIND
17 ON THEIR OWN PROPERTY, BUT ONLY IF THE BENEFIT TO A UNIT OWNER
18 FROM PARTICIPATING IN THE COMMONLY-OWNED SYSTEM EQUALS OR
19 EXCEEDS THE BENEFIT THAT THE UNIT OWNER WOULD REALIZE FROM
20 INSTALLING A SYSTEM OF THE SAME KIND ON HIS OR HER OWN PROPERTY.

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

31 (2) The provisions of this act shall apply to enforcement actions
32 that are pending or commenced on or after the applicable effective date
33 of this act."

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