

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

HOUSE
3rd Reading Unamended
February 27, 2008

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

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

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

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

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

25 (a) Aesthetic provisions ~~which~~ THAT impose reasonable
26 restrictions on ~~solar energy devices~~ THE DIMENSIONS, PLACEMENT, OR

1 EXTERNAL APPEARANCE OF AN ENERGY GENERATION DEVICE and which
2 THAT do not:

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

5 (II) SIGNIFICANTLY DECREASE ITS PERFORMANCE OR EFFICIENCY;

6 (b) BONA FIDE SAFETY REQUIREMENTS, REQUIRED BY AN
7 APPLICABLE BUILDING CODE OR RECOGNIZED ELECTRICAL SAFETY
8 STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY; OR

9 (c) MUTUALLY ENFORCEABLE COVENANTS OR RULES OF A
10 COMMON INTEREST COMMUNITY, ADOPTED IN ACCORDANCE WITH SECTION
11 38-33.3-106.5 (1) (g), GOVERNING THE PLACEMENT OF ENERGY
12 GENERATION DEVICES.

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

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

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

26 (b) AS USED IN THIS SECTION, "ENERGY EFFICIENCY MEASURE"
27 MEANS A DEVICE OR STRUCTURE THAT REDUCES THE AMOUNT OF ENERGY

1 DERIVED FROM FOSSIL FUELS THAT IS CONSUMED BY A RESIDENCE OR
2 BUSINESS LOCATED ON THE REAL PROPERTY. "ENERGY EFFICIENCY
3 MEASURE" IS FURTHER LIMITED TO INCLUDE ONLY THE FOLLOWING TYPES
4 OF DEVICES OR STRUCTURES:

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

8 (II) A GARAGE OR ATTIC FAN AND ANY ASSOCIATED VENTS OR
9 LOUVERS;

10 (III) AN EVAPORATIVE COOLER;

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

16 (V) A RETRACTABLE CLOTHESLINE.

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

18 (a) REASONABLE AESTHETIC PROVISIONS THAT GOVERN THE
19 DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF AN ENERGY
20 EFFICIENCY MEASURE. IN CREATING REASONABLE AESTHETIC PROVISIONS,
21 COMMON INTEREST COMMUNITIES SHALL CONSIDER:

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

24 (II) THE IMPACT ON THE PERFORMANCE OF THE ENERGY
25 EFFICIENCY MEASURE; AND

26 (III) THE CRITERIA CONTAINED IN THE GOVERNING DOCUMENTS OF
27 THE COMMON INTEREST COMMUNITY.

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

4 (3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY
5 PROPERTY OWNER THE RIGHT TO PLACE AN ENERGY GENERATION DEVICE
6 ON PROPERTY OF ANOTHER OR UPON COMMON PROPERTY OF A COMMON
7 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 - 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 ENERGY GENERATION
16 DEVICES, AS DEFINED IN SECTION 38-30-168; EXCEPT THAT THE
17 ASSOCIATION MAY REQUIRE UNIT OWNERS TO PARTICIPATE IN A
18 COMMONLY-OWNED SYSTEM INSTALLED ON COMMON PROPERTY RATHER
19 THAN INSTALL INDIVIDUAL SYSTEMS OF THE SAME KIND ON THEIR OWN
20 PROPERTY, BUT ONLY IF THE BENEFIT TO A UNIT OWNER FROM
21 PARTICIPATING IN THE COMMONLY-OWNED SYSTEM EQUALS OR EXCEEDS
22 THE BENEFIT THAT THE UNIT OWNER WOULD REALIZE FROM INSTALLING A
23 SYSTEM OF THE SAME KIND ON HIS OR HER OWN PROPERTY.

24 **SECTION 4. Effective date - applicability.** (1) This act shall
25 take effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly that is
27 allowed for submitting a referendum petition pursuant to article V,

1 section 1 (3) of the state constitution, (August 6, 2008, if adjournment
2 sine die is on May 7, 2008); except that, if a referendum petition is filed
3 against this act or an item, section, or part of this act within such period,
4 then the act, item, section, or part, if approved by the people, shall take
5 effect on the date of the official declaration of the vote thereon by
6 proclamation of the governor.

7 (2) The provisions of this act shall apply to enforcement actions
8 that are pending or commenced on or after the applicable effective date
9 of this act.