

**First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 09-0474.01 Duane Gall

**HOUSE BILL 09-1107**

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**HOUSE SPONSORSHIP**

**Kerr A.**, Benefield, Court, Ferrandino, Merrifield, Peniston, Solano

**SENATE SPONSORSHIP**

**Gibbs,**

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**House Committees**

Transportation & Energy

**Senate Committees**

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**A BILL FOR AN ACT**

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

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**Bill Summary**

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

Prohibits regulations of unit owner associations (HOAs), covenants, or deed restrictions that increase the cost of renewable energy generation devices (such as solar panels) by more than 10% or \$500, whichever is less, or reduce their efficiency by more than 10%. Prohibits HOAs from effectively prohibiting the installation of energy efficiency measures (such as awnings, evaporative coolers, or outdoor solar lights) by increasing their cost by more than 10% or \$200, whichever is less, or

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.*

reducing their efficiency by more than 10%.

In any litigation over the increase in cost or decrease in efficiency of an energy efficiency measure or a renewable energy generation device, awards attorney fees to the prevailing party.

Requires applications for the installation of renewable energy generation devices and energy efficiency measures to be acted upon within sixty days, regardless of whether the HOA has a generally applicable standard, guideline, or policy in place when the application is made.

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

2 **SECTION 1.** 38-30-168 (2) (a) and (4), Colorado Revised  
3 Statutes, are amended to read:

4 **38-30-168. Unreasonable restrictions on renewable energy**  
5 **generation devices - definitions.** (2) Subsection (1) of this section shall  
6 not apply to:

7 (a) Aesthetic provisions that impose reasonable restrictions on the  
8 dimensions, placement, or external appearance of a renewable energy  
9 generation device and that do not:

10 (I) ~~Significantly~~ Increase the cost of the device BY MORE THAN  
11 TEN PERCENT OR FIVE HUNDRED DOLLARS, WHICHEVER IS LESS; or

12 (II) ~~Significantly~~ Decrease its performance or efficiency BY MORE  
13 THAN TEN PERCENT;

14 (4) In any litigation involving ~~the significance of~~ an increase in  
15 cost OR DECREASE IN EFFICIENCY of a renewable energy generation  
16 device, for purposes of ~~subparagraph (I) of~~ paragraph (a) of subsection  
17 (2) of this section, the party that prevails on the issue of the ~~significance~~  
18 AMOUNT of the increase IN COST OR DECREASE IN EFFICIENCY shall be  
19 entitled to its reasonable attorney fees and costs incurred in litigating that  
20 issue. This subsection (4) shall not be construed to limit or prohibit an

1 award of attorney fees or costs on other grounds or in connection with  
2 other issues.

3 **SECTION 2.** 38-33.3-106.5 (1.5), Colorado Revised Statutes, is  
4 amended to read:

5 **38-33.3-106.5. Prohibitions contrary to public policy -**  
6 **patriotic and political expression - emergency vehicles - fire**  
7 **prevention - renewable energy generation devices - definitions.**

8 (1.5) Notwithstanding any provision in the declaration, bylaws, or rules  
9 and regulations of the association to the contrary, an association shall not  
10 effectively prohibit OR RESTRICT renewable energy generation devices, as  
11 defined in section 38-30-168. A UNIT OWNER'S APPLICATION FOR  
12 APPROVAL OF THE INSTALLATION OF A RENEWABLE ENERGY GENERATION  
13 DEVICE SHALL BE DEEMED GRANTED IF NOT ACTED UPON WITHIN SIXTY  
14 DAYS. THE FACT THAT THE ASSOCIATION DOES NOT YET HAVE A  
15 GENERALLY APPLICABLE STANDARD, GUIDELINE, OR POLICY FOR THE  
16 CONSIDERATION OF SUCH APPLICATIONS SHALL NOT BE GROUNDS FOR THE  
17 DENIAL OF AN APPLICATION.

18 **SECTION 3.** 38-33.3-106.7 (1) (a) and (2) (a), Colorado Revised  
19 Statutes, are amended, and the said 38-33.3-106.7 is further amended BY  
20 THE ADDITION OF A NEW SUBSECTION, to read:

21 **38-33.3-106.7. Unreasonable restrictions on energy efficiency**  
22 **measures - definitions.** (1) (a) Notwithstanding any provision in the  
23 declaration, bylaws, or rules and regulations of the association to the  
24 contrary, an association shall not effectively prohibit OR RESTRICT the  
25 installation or use of an energy efficiency measure. A UNIT OWNER'S  
26 APPLICATION FOR APPROVAL OF THE INSTALLATION OF AN ENERGY  
27 EFFICIENCY MEASURE SHALL BE DEEMED GRANTED IF NOT ACTED UPON

1        WITHIN SIXTY DAYS. THE FACT THAT THE ASSOCIATION DOES NOT YET  
2        HAVE A GENERALLY APPLICABLE STANDARD, GUIDELINE, OR POLICY FOR  
3        THE CONSIDERATION OF SUCH APPLICATIONS SHALL NOT BE GROUNDS FOR  
4        THE DENIAL OF AN APPLICATION.

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

6                (a) Reasonable aesthetic provisions that govern the dimensions,  
7        placement, or external appearance of an energy efficiency measure ~~In~~  
8        ~~creating reasonable aesthetic provisions, common interest communities~~  
9        ~~shall consider~~ AND THAT DO NOT:

10              (I) ~~The impact on the purchase price and operating costs of the~~  
11        ~~energy efficiency measure~~ INCREASE ITS COST BY MORE THAN TEN  
12        PERCENT OR TWO HUNDRED DOLLARS, WHICHEVER IS LESS; OR

13              (II) ~~The impact on the performance of the energy efficiency~~  
14        ~~measure; and~~ DECREASE ITS PERFORMANCE OR EFFICIENCY BY MORE THAN  
15        TEN PERCENT.

16              (III) ~~The criteria contained in the governing documents of the~~  
17        ~~common interest community.~~

18              (2.5) IN ANY LITIGATION INVOLVING AN INCREASE IN COST OR  
19        DECREASE IN EFFICIENCY OF AN ENERGY EFFICIENCY MEASURE, FOR  
20        PURPOSES OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, THE  
21        PARTY THAT PREVAILS ON THE ISSUE OF THE AMOUNT OF THE INCREASE IN  
22        COST OR DECREASE IN EFFICIENCY SHALL BE ENTITLED TO ITS REASONABLE  
23        ATTORNEY FEES AND COSTS INCURRED IN LITIGATING THAT ISSUE. THIS  
24        SUBSECTION (2.5) SHALL NOT BE CONSTRUED TO LIMIT OR PROHIBIT AN  
25        AWARD OF ATTORNEY FEES OR COSTS ON OTHER GROUNDS OR IN  
26        CONNECTION WITH OTHER ISSUES.

27              **SECTION 4. Effective date.** This act shall take effect July 1,

1 2009.

2           **SECTION 5. Safety clause.** The general assembly hereby finds,  
3 determines, and declares that this act is necessary for the immediate  
4 preservation of the public peace, health, and safety.