

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1387  
Committee Substitute Favorable 5/7/09  
PROPOSED SENATE COMMITTEE SUBSTITUTE H1387-PCS50790-RL-65

Short Title: Solar Collectors on Residential Properties.

(Public)

Sponsors:

Referred to:

April 13, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE THE CURRENT LIMITATIONS ON CITY ORDINANCES AND  
3 COUNTY ORDINANCES THAT REGULATE THE INSTALLATION OF SOLAR  
4 COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL  
5 RESIDENTIAL PROPERTY AND THE CURRENT LIMITATIONS ON DEED  
6 RESTRICTIONS THAT REGULATE THE INSTALLATION OF SOLAR  
7 COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL  
8 RESIDENTIAL PROPERTY EXCEPT CERTAIN MULTI-STORY CONDOMINIUMS.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. G.S. 160A-201 reads as rewritten:

11 "§ 160A-201. Limitations on regulating solar collectors.

12 (a) Except as provided in subsection (c) of this section, no city ordinance shall prohibit,  
13 or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation  
14 as a substitute for traditional energy for water heating, active space heating and cooling, passive  
15 heating, or generating electricity for a ~~detached single family residence~~, residential property,  
16 and no person shall be denied permission by a city to install a solar collector that gathers solar  
17 radiation as a substitute for traditional energy for water heating, active space heating and  
18 cooling, passive heating, or generating electricity for a ~~detached single family~~  
19 ~~residence~~, residential property. As used in this section, the term "residential property" means  
20 property where the predominant use is for residential purposes.

21 (b) This section does not prohibit an ordinance regulating the location or screening of  
22 solar collectors as described in subsection (a) of this section, provided the ordinance does not  
23 have the effect of preventing the reasonable use of a solar collector for a ~~detached single family~~  
24 ~~residence~~, residential property.

25 (c) This section does not prohibit an ordinance that would prohibit the location of solar  
26 collectors as described in subsection (a) of this section that are visible by a person on the  
27 ground:

- 28 (1) On the facade of a structure that faces areas open to common or public  
29 access;
- 30 (2) On a roof surface that slopes downward toward the same areas open to  
31 common or public access that the facade of the structure faces; or



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1 (3) Within the area set off by a line running across the facade of the structure  
2 extending to the property boundaries on either side of the facade, and those  
3 areas of common or public access faced by the structure.

4 (d) In any civil action arising under this section, the court may award costs and  
5 reasonable attorneys' fees to the prevailing party."

6 **SECTION 2.** G.S. 153A-144 reads as rewritten:

7 "**§ 153A-144. Limitations on regulating solar collectors.**

8 (a) Except as provided in subsection (c) of this section, no county ordinance shall  
9 prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar  
10 radiation as a substitute for traditional energy for water heating, active space heating and  
11 cooling, passive heating, or generating electricity for a ~~detached single family~~  
12 ~~residence-residential property~~. No person shall be denied permission by a county to install a  
13 solar collector that gathers solar radiation as a substitute for traditional energy for water  
14 heating, active space heating and cooling, passive heating, or generating electricity for a  
15 ~~detached single family residence-residential property~~. As used in this section, the term  
16 "residential property" means property where the predominant use is for residential purposes.

17 (b) This section does not prohibit an ordinance regulating the location or screening of  
18 solar collectors as described in subsection (a) of this section, provided the ordinance does not  
19 have the effect of preventing the reasonable use of a solar collector for a ~~detached single family~~  
20 ~~residence-residential property~~.

21 (c) This section does not prohibit an ordinance that would prohibit the location of solar  
22 collectors as described in subsection (a) of this section that are visible by a person on the  
23 ground:

24 (1) On the facade of a structure that faces areas open to common or public  
25 access;

26 (2) On a roof surface that slopes downward toward the same areas open to  
27 common or public access that the facade of the structure faces; or

28 (3) Within the area set off by a line running across the facade of the structure  
29 extending to the property boundaries on either side of the facade, and those  
30 areas of common or public access faced by the structure.

31 (d) In any civil action arising under this section, the court may award costs and  
32 reasonable attorneys' fees to the prevailing party."

33 **SECTION 3.** G.S. 22B-20 reads as rewritten:

34 "**§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

35 (a) The intent of the General Assembly is to protect the public health, safety, and  
36 welfare by encouraging the development and use of solar resources and by prohibiting deed  
37 restrictions, covenants, and other similar agreements that could have the ultimate effect of  
38 driving the costs of owning and maintaining a residence beyond the financial means of most  
39 owners.

40 (b) Except as provided in subsection (d) of this section, any deed restriction, covenant,  
41 or similar binding agreement that runs with the land that would prohibit, or have the effect of  
42 prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for  
43 traditional energy for water heating, active space heating and cooling, passive heating, or  
44 generating electricity for a ~~detached single family residence~~residential property on land subject  
45 to the deed restriction, covenant, or agreement is void and unenforceable. As used in this  
46 section, the term "residential property" means property where the predominant use is for  
47 residential purposes. The term "residential property" does not include any condominium  
48 created under Chapter 47A or 47C of the General Statutes located in a multi-story building  
49 containing units having horizontal boundaries described in the declaration. As used in this  
50 section, the term "declaration" has the same meaning as in G.S. 47A-3 or G.S. 47C-1-103,  
51 depending on the chapter of the General Statutes under which the condominium was created.

1 (c) This section does not prohibit a deed restriction, covenant, or similar binding  
2 agreement that runs with the land that would regulate the location or screening of solar  
3 collectors as described in subsection (b) of this section, provided the deed restriction, covenant,  
4 or similar binding agreement does not have the effect of preventing the reasonable use of a  
5 solar collector for a ~~detached single-family residence~~residential property. If an owners'  
6 association is responsible for exterior maintenance of a structure containing individual  
7 residences, a deed restriction, covenant, or similar binding agreement that runs with the land  
8 may provide that (i) the title owner of the residence shall be responsible for all damages caused  
9 by the installation, existence, or removal of solar collectors; (ii) the title owner of the  
10 residence shall hold harmless and indemnify the owners' association for any damages caused by  
11 the installation, existence, or removal of solar collectors; and (iii) the owners' association shall  
12 not be responsible for maintenance, repair, replacement, or removal of solar collectors unless  
13 expressly agreed in a written agreement that is recorded in the office of the register of deeds in  
14 the county or counties in which the property is situated. As used in this section, "owners'  
15 association" has the same meaning as in G.S. 47F-1-103.

16 (d) This section does not prohibit a deed restriction, covenant, or similar binding  
17 agreement that runs with the land that would prohibit the location of solar collectors as  
18 described in subsection (b) of this section that are visible by a person on the ground:

- 19 (1) On the façade of a structure that faces areas open to common or public  
20 access;
- 21 (2) On a roof surface that slopes downward toward the same areas open to  
22 common or public access that the façade of the structure faces; or
- 23 (3) Within the area set off by a line running across the façade of the structure  
24 extending to the property boundaries on either side of the façade, and those  
25 areas of common or public access faced by the structure.

26 (e) In any civil action arising under this section, the court may award costs and  
27 reasonable attorneys' fees to the prevailing party."

28 **SECTION 4.** G.S. 160A-400.4 reads as rewritten:

29 **"§ 160A-400.4. Designation of historic districts.**

30 (a) Any municipal governing board may, as part of a zoning or other ordinance enacted  
31 or amended pursuant to this Article, designate and from time to time amend one or more  
32 historic districts within the area subject to the ordinance. Such ordinance may treat historic  
33 districts either as a separate use district classification or as districts which overlay other zoning  
34 districts. Where historic districts are designated as separate use districts, the zoning ordinance  
35 may include as uses by right or as conditional uses those uses found by the Preservation  
36 Commission to have existed during the period sought to be restored or preserved, or to be  
37 compatible with the restoration or preservation of the district.

38 (b) No historic district or districts shall be designated under subsection (a) of this  
39 section until:

- 40 (1) An investigation and report describing the significance of the buildings,  
41 structures, features, sites or surroundings included in any such proposed  
42 district, and a description of the boundaries of such district has been  
43 prepared, and
- 44 (2) The Department of Cultural Resources, acting through the State Historic  
45 Preservation Officer or his or her designee, shall have made an analysis of  
46 and recommendations concerning such report and description of proposed  
47 boundaries. Failure of the department to submit its written analysis and  
48 recommendations to the municipal governing board within 30 calendar days  
49 after a written request for such analysis has been received by the Department  
50 of Cultural Resources shall relieve the municipality of any responsibility for

1                   awaiting such analysis, and said board may at any time thereafter take any  
2                   necessary action to adopt or amend its zoning ordinance.

3           (c)       The municipal governing board may also, in its discretion, refer the report and  
4 proposed boundaries under subsection (b) of this section to any local preservation commission  
5 or other interested body for its recommendations prior to taking action to amend the zoning  
6 ordinance. With respect to any changes in the boundaries of such district subsequent to its  
7 initial establishment, or the creation of additional districts within the jurisdiction, the  
8 investigative studies and reports required by subdivision (1) of subsection (b) of this section  
9 shall be prepared by the preservation commission, and shall be referred to the local planning  
10 agency for its review and comment according to procedures set forth in the zoning ordinance.  
11 Changes in the boundaries of an initial district or proposal for additional districts shall also be  
12 submitted to the Department of Cultural Resources in accordance with the provisions of  
13 subdivision (2) of subsection (b) of this section.

14           On receipt of these reports and recommendations, the municipality may proceed in the same  
15 manner as would otherwise be required for the adoption or amendment of any appropriate  
16 zoning ordinance provisions.

17           (d)       The provisions of G.S. 160A-201 apply to zoning or other ordinances pertaining to  
18 historic districts, and the authority under G.S. 160A-201(b) for the ordinance to regulate the  
19 location or screening of solar collectors may encompass requiring the use of plantings or other  
20 measures to ensure that the use of solar collectors is not incongruous with the special character  
21 of the district."

22           **SECTION 5.** This act becomes effective December 1, 2009. Section 3 of this act  
23 applies to deed restrictions, covenants, or similar binding agreements that run with the land and  
24 that are recorded on or after that date.