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SENATE BILL DRS35381-MQf-155

Short Title: Homeowner Solar Expansion Act.

(Public)

Sponsors: Senators Batch, Fitch, and Garrett (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE LAW GOVERNING DEED RESTRICTIONS ON SOLAR
3 COLLECTORS AND TO ALLOW FOR CERTAIN THIRD-PARTY SALES OF
4 RENEWABLE ENERGY.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. SOLAR POWER DEED RESTRICTIONS**

8 **SECTION 1.1.** G.S. 22B-20 reads as rewritten:

9 **"§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

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

14 (b) ~~Except as provided in subsection (d) of this section, any~~ Any deed restriction,
15 covenant, or similar binding agreement that runs with the land that would prohibit, or have the
16 effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute
17 for traditional energy for water heating, active space heating and cooling, passive heating, or
18 generating electricity for a residential property on land subject to the deed restriction, covenant,
19 or agreement is void and unenforceable. As used in this section, the term "residential property"
20 means property where the predominant use is for residential purposes. The term "residential
21 property" does not include any condominium created under Chapter 47A or 47C of the General
22 Statutes located in a multi-story building containing units having horizontal boundaries described
23 in the declaration. As used in this section, the term "declaration" has the same meaning as in
24 G.S. 47A-3 or G.S. 47C-1-103, depending on the chapter of the General Statutes under which
25 the condominium was created.

26 (c) This section does not prohibit a deed restriction, covenant, or similar binding
27 agreement that runs with the land that would regulate the location or screening of solar collectors
28 as described in subsection (b) of this section, provided the deed restriction, covenant, or similar
29 binding agreement does not have the effect of ~~preventing the reasonable use~~ reducing the
30 operating efficiency of a solar collector for a residential property. If an owners' association is
31 responsible for exterior maintenance of a structure containing individual residences, a deed
32 restriction, covenant, or similar binding agreement that runs with the land may provide that (i)
33 the title owner of the residence shall be responsible for all damages caused by the installation,
34 existence, or removal of solar collectors; (ii) the title owner of the residence shall hold harmless
35 and indemnify the owners' association for any damages caused by the installation, existence, or
36 removal of solar collectors; and (iii) the owners' association shall not be responsible for



1 maintenance, repair, replacement, or removal of solar collectors unless expressly agreed in a
 2 written agreement that is recorded in the office of the register of deeds in the county or counties
 3 in which the property is situated. As used in this section, "owners' association" has the same
 4 meaning as in G.S. 47F-1-103. As used in this section, the term "reducing the operating efficiency
 5 of a solar collector" means the regulation of the location or screening of the solar collector would
 6 decrease the efficiency or performance of the solar collector by more than ten percent (10%) of
 7 the amount that was originally specified for the solar collector.

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

- 11 (1) ~~On the facade of a structure that faces areas open to common or public access;~~
 12 (2) ~~On a roof surface that slopes downward toward the same areas open to~~
 13 ~~common or public access that the facade of the structure faces; or~~
 14 (3) ~~Within the area set off by a line running across the facade of the structure~~
 15 ~~extending to the property boundaries on either side of the facade, and those~~
 16 ~~areas of common or public access faced by the structure.~~

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

19 **SECTION 1.2.** This Part is effective when it becomes law and applies to deed
 20 restrictions, covenants, or similar binding agreements that run with the land recorded on or after
 21 that date.

22

23 **PART II. THIRD-PARTY SALES**

24 **SECTION 2.1.** G.S. 62-3(23) reads as rewritten:

25 **"§ 62-3. Definitions.**

26 As used in this Chapter, unless the context otherwise requires, the term:

27 ...

- 28 (23) a. "Public utility" means a person, whether organized under the laws of
 29 this State or under the laws of any other state or country, now or
 30 hereafter owning or operating in this State equipment or facilities for:
 31 1. Producing, generating, transmitting, delivering or furnishing
 32 electricity, piped gas, steam or any other like agency for the
 33 production of light, heat or power to or for the public for
 34 compensation; provided, however, that the term "public
 35 utility" shall not include persons who construct or operate an
 36 electric generating facility, the primary purpose of which
 37 facility is ~~either~~ for (i) a person's own use and not for the
 38 primary purpose of producing electricity, heat, or steam for
 39 sale to or for the public for ~~compensation or compensation,~~ (ii)
 40 a person who constructs or operates an eligible solar energy
 41 facility on the site of a customer's property and leases such
 42 facility to that customer, as provided by and subject to the
 43 limitations of Article 6B of this ~~Chapter;~~Chapter, or (iii) a
 44 person who constructs or operates a renewable energy facility
 45 on the site of a customer's property and sells the electricity
 46 produced by such facility to that customer, as provided by and
 47 subject to the limitations of G.S. 62-353;

48"

49 **SECTION 2.2.** Article 17 of Chapter 62 of the General Statutes is amended by
 50 adding a new section to read:

51 **"§ 62-353. Third-party sales of electricity from on-site renewable energy facilities.**

1 (a) The sale of electricity to a customer from a renewable energy facility, as defined in
2 G.S. 62-133.8, owned and operated by a third party and located on the customer's property where
3 such electricity will be consumed, shall not subject the third-party owner or operator of the on-site
4 generating equipment to any restrictions on such sales under G.S. 62-110.2 or to regulation as a
5 public utility under this Chapter so long as (i) the facility is sized to supply no more than one
6 hundred twenty-five percent (125%) of the average annual consumption of electricity by the
7 customer at that site and (ii) the third-party owner reports to the Utilities Commission the
8 proposed construction of such a facility prior to the beginning of construction.

9 (b) For purposes of this section, the customer's site includes all contiguous property
10 owned or leased by the customer, without regard to easements, public thoroughfares,
11 transportation or utility rights-of-way, or other similar interruptions that may divide parcels of
12 property under common ownership.

13 (c) For purposes of net metering as regulated by the Commission, renewable energy
14 facilities owned or operated by a third party under this section shall be eligible to participate in
15 net metering arrangements with applicable public utilities.

16 (d) The Commission may approve a new schedule of fees or credits for customers who
17 choose to use distributed energy resources, whether through ownership, lease, or through power
18 purchase agreement, with a utility or nonutility provider. Such fees and credits shall be
19 nondiscriminatory and applied only after an investigation of the costs and benefits of
20 customer-sited generation."

21 **SECTION 2.3.** G.S. 62-300(a) is amended by adding a new subdivision to read:

22 "(18) Twenty-five dollars (\$25.00) for each report of proposed construction filed by
23 a person who constructs or operates a renewable energy facility on the site of
24 a customer's property and sells the electricity produced by such facility to such
25 customer, as provided by and subject to the limitations of G.S. 62-353."

26 **SECTION 2.4.** This Part becomes effective July 1, 2022.

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28 **PART III. EFFECTIVE DATE**

29 **SECTION 3.1.** Except as otherwise provided, this act is effective when it becomes
30 law.