



MEMORANDUM

TO: Jennifer McGinnis, House Select Committee on Homeowners Associations
CC: Rita Harris, Ward Lenz, John Morrison, Larry Shirley, Richard Self
FROM: Bob Leker, Program Manager, State Energy Office, NC Department of Commerce
DATE: March 31, 2010
SUBJECT: Background and Options to address issues related to Solar Access Law – Senate Bill 670, Session Law 2007-279

Issue. Issues related to the above reference NC Law that attempts to prohibit ordinances, regulations, covenants, and other restrictions to the placement of solar technology. Identify possible changes to modify legislation giving residents more ability to install solar technology.

Need/Background. A range of new and/or modified government incentives and local programs have increased demand for installing solar technology. Specific examples include:

- A federal tax credit of 30% with no capped maximum for solar water heating or solar electric systems
- A state tax credit of 35% for renewable technologies including solar (caps depend on technology)
- Senate Bill 3 established a set aside program requiring NC utilities to generate a small portion of their portfolio from solar electric generation. In addition, NC offers property tax reductions for solar equipment.
- Local utilities including Progress Energy, Blue Ridge EMC, Brunswick EMC, Piedmont EMC, South River EMC, and City of High Point Electric offer incentives for solar energy.

Solar water heating systems can commonly supply 60 – 80% of the hot water needs in a home. Solar electric systems can typically supply 25% of homes' electricity needs. A comprehensive listing of the various renewable energy and energy efficiency incentives and policies can be found at the following website <http://www.dsireusa.org/incentives/index.cfm?CurrentPageID=1&State=NC&RE=1&EE=1>. It should also be noted that there is significant interest from the commercial sector and new businesses are being established to sell, install, and service solar energy system. NC is now ranked 12th in the nation in solar installations as listed in the DOE Energy Information Administration website.

Session Law 2007-279 Concerns. This solar access legislation was intended to prevent HOAs and local governments from prohibiting solar installations. However sections of the legislation allow HOAs (as well as local governments) to prohibit solar energy systems if they are visible. Specifically, Article 3 of the legislation allows solar restrictions in deeds if the solar energy system is visible from a roof slope, from a facade, or from the side of a property facing a public access way. Because of these provisions regarding visibility from a public access, it is conceivable that most solar installations could very easily be prohibited. (It is interesting to note that I have not heard any instances of problems with siting solar energy systems from the perspective of a local government). In many cases solar energy systems look similar to skylights and integrate well with roof areas. Another point of concern is that

the current NC solar access law does not affect any restrictions that may have been enacted prior to July 2007 when the first version was passed. The 2007 legislation can be found at <http://www.ncga.state.nc.us/Sessions/2007/Bills/Senate/HTML/S670v5.html>

Possible Solutions. One recommendation is to remove the visibility clause that the current NC uses that allows HOAs to restrict or refuse installation of solar collector systems. Other points that have been suggested or that are contained in existing solar access legislation from other states include: making the solar access law effective back to a certain date so more people are covered; limiting HOAs ability to require modifications to a solar energy system (for aesthetics) that exceed a certain cost; and limiting required modifications (for aesthetics) that reduce the operating efficiency of the system. Additional information about solar access laws around the country can be found at the following website. <http://www.dsireusa.org/solar/solarpolicyguide/?id=19>

The following are excerpts of solar access legislation from states that have addressed solar access with success.

Hawaii

§196-7 Placement of solar energy devices.

(a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, however worded, from installing a solar energy device on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void and unenforceable.

(b) Every private entity shall adopt rules by December 31, 2006, that provide for the placement of solar energy devices. The rules shall facilitate the placement of solar energy devices and shall not unduly or unreasonably restrict that placement so as to render the device more than twenty-five per cent less efficient or to increase the cost of the device by more than fifteen per cent. No private entity shall assess or charge any homeowner any fees for the placement of any solar energy device.

http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0196/HRS_0196-0007.htm

Nevada

NRS 111.239 Prohibition or restriction on use of system for obtaining solar energy on property.

1. Any covenant, restriction or condition contained in a deed, contract or other legal instrument which affects the transfer or sale of, or any other interest in, real property and which prohibits or unreasonably restricts or has the effect of prohibiting or unreasonably restricting the owner of the property from using a system for obtaining solar energy on his or her property is void and unenforceable.

2. For the purposes of this section, the following shall be deemed to be unreasonable restrictions:

(a) The placing of a restriction or requirement on the use of a system for obtaining solar energy which decreases the efficiency or performance of the system by more than 10 percent of the amount that was originally specified for the system, as determined by the Director of the

Office of Energy, and which does not allow for the use of an alternative system at a substantially comparable cost and with substantially comparable efficiency and performance.

(b) The prohibition of a system for obtaining solar energy that uses components painted with black solar glazing.

<http://www.leg.state.nv.us/NRS/NRS-111.html#NRS111Sec239>

Arizona

33-1816. Solar energy devices; reasonable restrictions; fees and costs

A. Notwithstanding any provision in the community documents, an association shall not prohibit the installation or use of a solar energy device as defined in section 44-1761.

B. An association may adopt reasonable rules regarding the placement of a solar energy device if those rules do not prevent the installation, impair the functioning of the device or restrict its use or adversely affect the cost or efficiency of the device.

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/33/01816.htm&Title=33&DocType=AR>

In addition, a guide has been published entitled "A Comprehensive Review of Solar Access Law in the United States (Oct 2008)". This complete guide can be found at

<http://www.solarabcs.org/solaraccess/> The review has a nice discussion of various approaches to solar access and does include a model state level statute encouraging solar access. Below is an excerpt from the model ordinance section on Solar Rights. There is another section that deals with Solar Easements (rules that provide for a property to maintain access to sunlight).

Section 3. Solar Rights

(Massachusetts model, others to consider: Hawaii and Wisconsin)

Solar energy systems; installation or use; restrictive provisions. Any provision in an instrument relative to the ownership or use of real property which purports to forbid or unreasonably restrict the installation or use of a solar energy system or the building of structures that facilitate the collection of solar energy shall be void. A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with a rule or rules would increase the solar collectors' installation or maintenance costs by an amount which is estimated to be greater than 10 percent of the total cost of the initial installation of the solar collectors, including the costs of labor and equipment. A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with such rules inhibits the solar collectors from functioning at their intended maximum efficiency. The [Agency] shall enforce the provisions of this law in accordance with the authority granted under [section x].

Research note: Staff at the NC Solar Center that work on the DSIRE program (database of state incentives for renewables and efficiency) including Brian Lips – maintain an excellent reference website useful for understanding and researching various incentives at the state, federal, and local level.