

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1387

Short Title: Solar Collectors on Residential Properties. (Public)

Sponsors: Representatives Fisher, Harrison (Primary Sponsors); K. Alexander, Faison, Insko, and Jones.

Referred to: Energy and Energy Efficiency, if favorable, Judiciary III.

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE CURRENT LIMITATIONS ON CITY ORDINANCES,
3 COUNTY ORDINANCES, DEED RESTRICTIONS, COVENANTS, AND OTHER
4 SIMILAR AGREEMENTS THAT REGULATE THE INSTALLATION OF SOLAR
5 COLLECTORS FOR RESIDENCES AND TO CHANGE THE AUTHORITY TO
6 AWARD ATTORNEYS' FEES TO ONLY THE PREVAILING PROPERTY OWNER.

7 The General Assembly of North Carolina enacts:

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

9 **"§ 160A-201. Limitations on regulating solar collectors.**

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

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

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

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

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

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

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

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

35 **"§ 153A-144. Limitations on regulating solar collectors.**



1 (a) ~~Except as provided in subsection (c) of this section, no~~No county ordinance shall
2 prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar
3 radiation as a substitute for traditional energy for water heating, active space heating and
4 cooling, passive heating, or generating electricity for a ~~detached single family~~
5 ~~residence~~residential property. No person shall be denied permission by a county to install a
6 solar collector that gathers solar radiation as a substitute for traditional energy for water
7 heating, active space heating and cooling, passive heating, or generating electricity for a
8 ~~detached single family residence~~residential property.

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

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

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

23 (d) In any civil action arising under this section, the court may award costs and
24 reasonable attorneys' fees to the prevailing ~~party~~property owner."

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

26 "**§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

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

32 (b) ~~Except as provided in subsection (d) of this section, any~~Any deed restriction,
33 covenant, or similar binding agreement that runs with the land that would prohibit, or have the
34 effect of prohibiting, the installation of a solar collector that gathers solar radiation as a
35 substitute for traditional energy for water heating, active space heating and cooling, passive
36 heating, or generating electricity for a ~~detached single family residence~~residential property on
37 land subject to the deed restriction, covenant, or agreement is void and unenforceable.

38 (c) This section does not prohibit a deed restriction, covenant, or similar binding
39 agreement that runs with the land that would regulate the location or screening of solar
40 collectors as described in subsection (b) of this section, provided the deed restriction, covenant,
41 or similar binding agreement does not have the effect of preventing the reasonable use of a
42 solar collector for a ~~detached single family residence~~residential property.

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

- 46 (1) ~~On the facade of a structure that faces areas open to common or public~~
47 ~~access;~~
48 (2) ~~On a roof surface that slopes downward toward the same areas open to~~
49 ~~common or public access that the facade of the structure faces; or~~

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

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

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

7 "**§ 160A-400.4. Designation of historic districts.**

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

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

18 (1) An investigation and report describing the significance of the buildings,
19 structures, features, sites or surroundings included in any such proposed
20 district, and a description of the boundaries of such district has been
21 prepared, and

22 (2) The Department of Cultural Resources, acting through the State Historic
23 Preservation Officer or his or her designee, shall have made an analysis of
24 and recommendations concerning such report and description of proposed
25 boundaries. Failure of the department to submit its written analysis and
26 recommendations to the municipal governing board within 30 calendar days
27 after a written request for such analysis has been received by the Department
28 of Cultural Resources shall relieve the municipality of any responsibility for
29 awaiting such analysis, and said board may at any time thereafter take any
30 necessary action to adopt or amend its zoning ordinance.

31 (c) The municipal governing board may also, in its discretion, refer the report and
32 proposed boundaries under subsection (b) of this section to any local preservation commission
33 or other interested body for its recommendations prior to taking action to amend the zoning
34 ordinance. With respect to any changes in the boundaries of such district subsequent to its
35 initial establishment, or the creation of additional districts within the jurisdiction, the
36 investigative studies and reports required by subdivision (1) of subsection (b) of this section
37 shall be prepared by the preservation commission, and shall be referred to the local planning
38 agency for its review and comment according to procedures set forth in the zoning ordinance.
39 Changes in the boundaries of an initial district or proposal for additional districts shall also be
40 submitted to the Department of Cultural Resources in accordance with the provisions of
41 subdivision (2) of subsection (b) of this section.

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

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

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