

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1387

Committee Substitute Favorable 5/7/09

Senate Select Committee on Economic Recovery Committee Substitute Adopted 8/5/09

Short Title: Solar Collectors on Residential Properties.

(Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE THE CURRENT LIMITATIONS ON CITY ORDINANCES AND COUNTY ORDINANCES THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL RESIDENTIAL PROPERTY AND THE CURRENT LIMITATIONS ON DEED RESTRICTIONS THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL RESIDENTIAL PROPERTY EXCEPT CERTAIN MULTI-STORY CONDOMINIUMS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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



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

2 "**§ 153A-144. Limitations on regulating solar collectors.**

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

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

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

- 19 (1) On the facade 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 facade of the structure faces; or
- 23 (3) Within the area set off by a line running across the facade of the structure
24 extending to the property boundaries on either side of the facade, and those
25 areas of common or public access faced by the structure.

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

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

29 "**§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

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

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

47 (c) This section does not prohibit a deed restriction, covenant, or similar binding
48 agreement that runs with the land that would regulate the location or screening of solar
49 collectors as described in subsection (b) of this section, provided the deed restriction, covenant,
50 or similar binding agreement does not have the effect of preventing the reasonable use of a
51 solar collector for a ~~detached—single-family residence-residential property~~. If an owners'

1 association is responsible for exterior maintenance of a structure containing individual
2 residences, a deed restriction, covenant, or similar binding agreement that runs with the land
3 may provide that (i) the title owner of the residence shall be responsible for all damages caused
4 by the installation, existence, or removal of solar collectors; (ii) the title owner of the
5 residence shall hold harmless and indemnify the owners' association for any damages caused by
6 the installation, existence, or removal of solar collectors; and (iii) the owners' association shall
7 not be responsible for maintenance, repair, replacement, or removal of solar collectors unless
8 expressly agreed in a written agreement that is recorded in the office of the register of deeds in
9 the county or counties in which the property is situated. As used in this section, "owners'
10 association" has the same meaning as in G.S. 47F-1-103.

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

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

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

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

24 **"§ 160A-400.4. Designation of historic districts.**

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

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

- 35 (1) An investigation and report describing the significance of the buildings,
36 structures, features, sites or surroundings included in any such proposed
37 district, and a description of the boundaries of such district has been
38 prepared, and
- 39 (2) The Department of Cultural Resources, acting through the State Historic
40 Preservation Officer or his or her designee, shall have made an analysis of
41 and recommendations concerning such report and description of proposed
42 boundaries. Failure of the department to submit its written analysis and
43 recommendations to the municipal governing board within 30 calendar days
44 after a written request for such analysis has been received by the Department
45 of Cultural Resources shall relieve the municipality of any responsibility for
46 awaiting such analysis, and said board may at any time thereafter take any
47 necessary action to adopt or amend its zoning ordinance.

48 (c) The municipal governing board may also, in its discretion, refer the report and
49 proposed boundaries under subsection (b) of this section to any local preservation commission
50 or other interested body for its recommendations prior to taking action to amend the zoning
51 ordinance. With respect to any changes in the boundaries of such district subsequent to its

1 initial establishment, or the creation of additional districts within the jurisdiction, the
2 investigative studies and reports required by subdivision (1) of subsection (b) of this section
3 shall be prepared by the preservation commission, and shall be referred to the local planning
4 agency for its review and comment according to procedures set forth in the zoning ordinance.
5 Changes in the boundaries of an initial district or proposal for additional districts shall also be
6 submitted to the Department of Cultural Resources in accordance with the provisions of
7 subdivision (2) of subsection (b) of this section.

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

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

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