

Initial Summary of House Bill 08-1270
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INTRODUCTION

House Bill 08-1270 was signed into law by Governor Ritter on April 24, 2008. The bill's prime sponsors were Representative Kerr and Senator Tupa. The bill passed in the House of Representative Committee 8-5 and passed in the Senate Committee 8-5. This bill governs the installation of renewable energy generation devices on residential and commercial buildings as well as energy efficiency measures in homeowners associations (common interest communities). The law should go into affect sometime in August of 2008. The effect of HB 08-1270 is to strengthen existing legislation concerning covenants and deed restrictions that potentially limit or prohibit not only the use of solar energy generating devices, but also wind energy devices on residential and commercial property and energy efficiency measures (use of garage or attic fans; evaporative coolers; energy-efficient outdoor lighting; and retractable clotheslines) within residential HOA communities.

STRUCTURE

HB 08-1270 contains four (4) sections which amend Colorado Revised Statute 38-30-168, CRS part 1 of 38-33.3-106.7, CRS 38-33.3-106.5, and give an applicability date respectively.

SECTION 1:

Article 30: Titles and Interests, affects titles and interests in real property which includes both residential and commercial properties. CRS 38-30-168 originally protected solar energy devices from unreasonable restrictions on real property based solely on aesthetic provisions as

long as they did not significantly increase the cost of the device. Section 1 amends CRS 38-30-168 by broadening the scope of which renewable energy devices are now protected from unreasonable restrictions on deeds, contracts, security instruments or other instruments affecting the transfer, sale or any interest in real property. The new amendment now protects “renewable energy generation devices” and defines them as either: a solar energy device or a wind-electric generator that meets the interconnection standards of the Colorado Public Utilities Commission. This amendment does *not* apply to reasonable aesthetic provisions which cover the dimensions, placement or external appearance of solar or wind energy generation devices as long as these aesthetic restrictions do *not* significantly increase either the cost or decrease the performance or efficiency of the device. Both solar and wind energy generation devices must also meet bona fide safety requirements required by building codes and electrical safety standards. Wind energy devices are subject to additional restrictions protecting the interference and enjoyment of nearby residents. The section does not allow a renewable generation device to be placed on property owned by another person, leased (unless permission is given by the lessor), collateral for a commercial loan (unless given permission by the secured party) or a common element of a common interest property.

SECTION 2:

Article 33.3: Common Interest Ownership Act (CCIOA) applies to common interest residential property but does not apply to commercial property. It can, if specifically declared, apply to mixed communities. Section 2 adds a new definition section to part 1 of CRS 38-33.3-106.7. This new section defines “Energy Efficiency Measures” as: “a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or

business located on the real property.” It is important to note that the definition applies to both residential and commercial property. The definition is comprehensive and includes only: awnings; shutters; trellis; armadas; or other shade structures; garage or attic fans and associated vents or louvers; evaporative coolers; energy efficient lighting devices not limited to coiled or straight fluorescent light bulbs, solar recharging panels, motion detectors, and other connected equipment; and retractable clotheslines. This additional section does *not* apply to reasonable aesthetic provisions covering the dimensions, placement or external appearance of solar or wind energy generation devices as long as these aesthetic restrictions consider the impact on the purchase price, operating costs, performance of the energy efficient measure and the criteria of the governing documents of the common interest community. Energy efficient measures must also meet bona fide safety requirements required by building codes or safety standards protecting people and property. The section does not allow any property owner to place energy efficient measures on property owned by another person, leased (unless given permission by the lessor), collateral for a commercial loan (unless given permission by the secured party) or a common element of a common interest community.

SECTION 3:

This section is also part of Article 33.3: CCIOA and applies to common interest residential communities. A new subsection has been added to CRS 38-33.3-106.5. CRS 38-33.3-106.5 deals with prohibitions which are considered contrary to public policy. These originally included prohibitions on: patriotic and political expression, emergency vehicles and fire prevention. Section 3 amends this list and protects renewable energy generation devices from prohibitions as well. Section 3 also adds a subsection which specifically forbids any

association from prohibiting renewable energy generation devices. A renewable energy generation device is defined in CRS 38-30-168 as a solar energy device or a wind-electric generator that meets the interconnection standards of the Colorado Public Utilities Commission. This section overrides any provisions in the declaration, bylaws, or rules and regulations of an association.

SECTION 4:

Section 4 specifies when the act will take effect. The act takes effect on August 6, 2008. The provisions of the act apply to actions that are pending or which commenced on or after August 6, 2008.

IMPLICATIONS

SECTION 1:

Section 1 applies to both residential and commercial properties. The inclusion of wind-electric generators to this sections will not carry much weight since wind-electric generators are subject to a number of other rules and safety regulations.. What section 1 does do, is clarify what sort of restrictions can be placed upon solar energy devices. Aesthetic provisions affecting the dimensions, placement and external appearance of solar energy devices can be enforced *but* only if they do not significantly increase the cost of the device or significantly decrease its performance or efficiency. What is important is that aesthetic provisions cannot prohibit the placement of renewable energy generating devices, they can only restrict their size and placement providing they do not drastically increase the cost or reduce their effectiveness. It is important to note of course, that all renewable energy generating devices must meet all bona fide safety requirements (building code and electrical safety standards). It is also no surprise that the

section does not give the anyone the right to place a renewable energy device on property owned by another person. Lastly, section 1 allows for the full recovery of litigation costs to the party that prevails in litigation involving the significance of an increase in cost of a renewable energy device caused by a restrictive aesthetic provision. If for example a home owner is able to successfully prove in court that his HOA's aesthetic provisions increased the cost of his/her renewable energy device, then the HOA would be legally required to pay for all of his/her reasonable attorney fees and court costs.

SECTION 2:

The addition of a new section into CRS 38-33.3-106.7 applies to common interest residential property but does not apply to commercial property. This new section helps to protect homeowners who make considerable energy efficiency improvements to their homes. The section is explicit and comprehensive in its definition of what improvements are protected. A homeowner can add these to his home: (I) awnings, shutters, trellis, armadas, or other shade structures that are marketed for reducing energy consumption; (II) garage or attic fans and their associated vents or louvers; (III) evaporative coolers; (IV) energy-efficient outdoor lighting devices, which includes but is not limited to include, florescent bulbs, solar recharging panels and motion detectors; (V) retractable clotheslines. The specificity of this definition works to the benefit of homeowners, offering considerable clarity as to what measures are protected. Some "reasonable" HOA aesthetic provisions can govern and restrict the dimensions, placement, or external appearance of energy efficient measures. But, these provisions must consider the impact they have on the cost and performance of the energy efficient measures and also the criteria contained within the HOA's governing documents. Of course all energy efficient measures must meet all safety and code requirements. Aesthetic provisions can regulate energy efficient

measures but it seems that they cannot ban them outright. A person must also own their property before they add any energy efficient measures to it. Similarly, a resident cannot put up an energy efficient measure on a common element without permission from the HOA.

SECTION 3:

Section 3 is also part of the CCIOA and applies to common interest residential communities. Newly added section 1.5, as a matter of public policy, makes it illegal for an HOA to prohibit renewable energy generation devices (solar or wind). This is perhaps the strongest language of HB 08-1270. It classifies the use of renewable energy generation devices as a matter public policy, along side the rights to display the American or military service flag, political signs, and fire prevention. This section specifically overrides any provisions within the declaration, bylaws, or rules and regulations of and HOA to the contrary. What an HOA can do is limit the size and location of these renewable energy generators. This makes logical sense, as it would prohibit someone from putting up huge solar panels all the way across the front of their house. Most importantly, this section seems to indicate a strong governmental stance in favor of renewable energy generation devices.

SECTION 4:

Starting at 12:01 a.m. on August 1, 2008 all provisions and amendments of HB 08-1270 become law.