



Hindman Sanchez

Energy Bill Going to Governor for Signature

In our February and March editions of Community E-ssentials, we informed you of House Bill 1270 – a bill aimed at addressing energy conservation in homeowners associations. Today HB 1270 cleared the final hurdle in the Colorado General Assembly and has been sent to Governor Ritter who is expected to sign the bill into law. HB 1270 requires associations to allow residents to install "Renewable Energy Generation Devices" and "Energy Efficiency Measures", subject to the following conditions:

1. The device must fall within the statutory definition of "Renewable Energy Generation Device" or "Energy Efficiency Measure";
2. Unless otherwise approved by the association, the installation can only be made on property owned by the resident; and
3. The association may place reasonable aesthetic restrictions on dimensions, placement and external appearance of the devices.

A "Renewable Energy Generation Device" is defined as either: (i) a solar energy device as clarified in C.R.S. 38-32.5-100.3, or (ii) a wind-electric generator (i.e., wind mills) that meets certain standards established under C.R.S. 40-2-124.

An "Energy Efficiency Measure" is defined 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." The devices/structures are limited to the following:

An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

- A garage or attic fan and any associated vents or louvers;
- An evaporative cooler;
- An energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device; and
- A retractable clothesline.

The Bill only applies to property owned solely by the resident. Therefore, an association may still prohibit or limit installation and use of the foregoing devices on the common elements and limited common elements as they are not owned solely by the resident, subject to the requirements of its governing documents.

When creating reasonable aesthetic restrictions on dimensions, placement and external appearance of the device, associations must take into consideration certain standards, depending on the device.

If the device is a Renewable Energy Generation Device then the aesthetic standards must not: (i) significantly increase the cost of the device OR (ii) significantly decrease its performance or efficiency.

If the device is an Energy Efficiency Measures then the aesthetic standards must consider: (i) the impact on the purchase price and operating costs of the energy efficiency measure; (ii) the impact on the performance of the energy efficiency measure; AND (iii) the criteria contained in the governing documents of the association. Note that the association must consider ALL of the foregoing criteria. There is no hierarchy among the standards (i.e., no standard is required to be weighed more heavily than the other).

In addition, the Bill allows an association to place reasonable noise restrictions on the installation of wind-electric generators, pursuant to the association's architectural review process.



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HindmanSanchez P.C. Attorneys at Law • Denver & Fort Collins

5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 Tel 303.432.9999 Free 800.809.5242 Fax 303.432.0999 www.hindmansanchez.com

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Although the Bill will not take effect until early to mid August, 2008, here are five things an association should do to prepare itself for handling requests for installation of the foregoing devices:

1. **Review your Declaration.** If your declaration contains provisions that are contrary to the Bill, you cannot enforce such provisions. In that case, we recommend the Association record a one-page Notice Regarding the Unenforceability in the and Recorder's Office. The purpose of the Notice is to put all current and future owners on notice that HB1270 supersedes contrary provisions of the declaration. If you would like our assistance in reviewing your declaration and, if applicable, drafting and recording this Notice, we will charge a flat fee of \$75.00.
2. **Review your Rules, Regulations, and Guidelines.** If your rules, regulations or guidelines contain provisions that are contrary to the Bill, you cannot enforce such provisions. In that case, we recommend the Board amend the rules, regulations or guidelines to eliminate contrary provisions.
3. **Adopt Reasonable Aesthetic Restrictions.** If your association is regularly reviewing any devices or structures that fall within the application of this Bill, we recommend the Board adopt reasonable aesthetic provisions that are consistent with the standards of the Bill.

Remember, however, that the standards are different depending on the device:

- Aesthetic provisions for Renewable Energy Generation Devices **must not** significantly increase the cost of the device OR its performance or efficiency,
 - Aesthetic provisions for Energy Efficiency Measures **must consider** the impact on the purchase price, operating costs, and performance of the energy efficiency measure AND the criteria contained in the governing documents of the association.
4. **Review your Architectural Application and Approval Process.** Make sure your architectural review process and application forms are consistent with the Bill, which requires a standard of review that is *particular* to the foregoing devices. For example, if the association is reviewing an application to install solar panels, the association must know the purchase price of the solar panels to determine whether its aesthetic provisions "significantly increase the cost of the device."

To that end, we recommend the association add a supplemental form that is only used for reviewing applications to install Renewable Energy Generation Devices and Energy Efficiency Measures. We can assist you in drafting this form if desired.

5. **Educate Homeowners.** The best way to ensure understanding of this Bill is through education. We recommend the association include an article in its next newsletter that explains the Bill in detail. In the near future we will be providing a general article for inclusion in your newsletter.

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 08-1270

BY REPRESENTATIVE(S) Kerr A., Carroll M., Carroll T., Ferrandino, Fischer, Frangas, Green, Labuda, Madden, Marshall, McGihon, Merrifield, Middleton, Peniston, Primavera, Romanoff, Solano, Soper, Stafford, Todd, Weissmann, Kefalas, Levy, and Summers;
also SENATOR(S) Tupa, Boyd, Gibbs, Groff, Hagedorn, Keller, Schwartz, Shaffer, and Tochtrop.

CONCERNING THE REMOVAL OF RESTRICTIONS ON THE USE OF ENERGY EFFICIENCY MEASURES IN CONNECTION WITH REAL PROPERTY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 38-30-168, Colorado Revised Statutes, is amended to read:

38-30-168. Unreasonable restrictions on renewable energy generation devices - definitions. (1) (a) ~~After May 25, 1979, any A covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property solely on the basis of aesthetic considerations which~~ THAT effectively prohibits or restricts the installation or use of a solar energy device, as defined in section ~~38-32.5-100.3~~, RENEWABLE ENERGY GENERATION DEVICE is void and unenforceable.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) AS USED IN THIS SECTION, "RENEWABLE ENERGY GENERATION DEVICE" MEANS EITHER:

(I) A SOLAR ENERGY DEVICE, AS DEFINED IN SECTION 38-32.5-100.3;
OR

(II) A WIND-ELECTRIC GENERATOR THAT MEETS THE INTERCONNECTION STANDARDS ESTABLISHED IN RULES PROMULGATED BY THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTION 40-2-124, C.R.S.

(2) Subsection (1) of this section shall not apply to:

(a) Aesthetic provisions ~~which~~ THAT impose reasonable restrictions on ~~solar energy devices~~ THE DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF A RENEWABLE ENERGY GENERATION DEVICE and ~~which~~ THAT do not:

(I) Significantly increase the cost of the device; OR

(II) SIGNIFICANTLY DECREASE ITS PERFORMANCE OR EFFICIENCY;

(b) BONA FIDE SAFETY REQUIREMENTS, REQUIRED BY AN APPLICABLE BUILDING CODE OR RECOGNIZED ELECTRICAL SAFETY STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY; OR

(c) REASONABLE RESTRICTIONS ON THE INSTALLATION AND USE OF WIND-ELECTRIC GENERATORS TO REDUCE INTERFERENCE WITH THE USE AND ENJOYMENT BY RESIDENTS OF PROPERTY SITUATED NEAR WIND-ELECTRIC GENERATORS AS A RESULT OF THE SOUND ASSOCIATED WITH THE WIND-ELECTRIC GENERATORS. INTERFERENCE WITH THE USE AND ENJOYMENT OF PROPERTY BY RESIDENTS FOR THE PURPOSE OF DETERMINING WHETHER A RESTRICTION IS REASONABLE SHALL BE DETERMINED AS A PART OF THE ARCHITECTURAL REVIEW PROCESS AS REQUIRED BY THE GOVERNING DOCUMENTS OF THE COMMON INTEREST COMMUNITY AND SHALL INCLUDE CONSIDERATION OF INPUT BY THE INDIVIDUALS REQUESTING APPROVAL FROM THE COMMON INTEREST COMMUNITY TO INSTALL A WIND-ELECTRIC GENERATOR.

(3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY

PROPERTY OWNER THE RIGHT TO PLACE A RENEWABLE ENERGY GENERATION DEVICE ON PROPERTY THAT IS:

- (a) OWNED BY ANOTHER PERSON;
- (b) LEASED, EXCEPT WITH PERMISSION OF THE LESSOR;
- (c) COLLATERAL FOR A COMMERCIAL LOAN, EXCEPT WITH PERMISSION OF THE SECURED PARTY; OR
- (d) A LIMITED COMMON ELEMENT OR GENERAL COMMON ELEMENT OF A COMMON INTEREST COMMUNITY.

(4) IN ANY LITIGATION INVOLVING THE SIGNIFICANCE OF AN INCREASE IN COST OF A RENEWABLE ENERGY GENERATION DEVICE, FOR PURPOSES OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, THE PARTY THAT PREVAILS ON THE ISSUE OF THE SIGNIFICANCE OF THE INCREASE SHALL BE ENTITLED TO ITS REASONABLE ATTORNEY FEES AND COSTS INCURRED IN LITIGATING THAT ISSUE. THIS SUBSECTION (4) SHALL NOT BE CONSTRUED TO LIMIT OR PROHIBIT AN AWARD OF ATTORNEY FEES OR COSTS ON OTHER GROUNDS OR IN CONNECTION WITH OTHER ISSUES.

SECTION 2. Part 1 of article 33.3 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-33.3-106.7. Unreasonable restrictions on energy efficiency measures - definitions. (1) (a) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, AN ASSOCIATION SHALL NOT EFFECTIVELY PROHIBIT THE INSTALLATION OR USE OF AN ENERGY EFFICIENCY MEASURE.

(b) AS USED IN THIS SECTION, "ENERGY EFFICIENCY MEASURE" MEANS 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. "ENERGY EFFICIENCY MEASURE" IS FURTHER LIMITED TO INCLUDE ONLY THE FOLLOWING TYPES OF DEVICES OR STRUCTURES:

- (I) AN AWNING, SHUTTER, TRELIS, RAMADA, OR OTHER SHADE

STRUCTURE THAT IS MARKETED FOR THE PURPOSE OF REDUCING ENERGY CONSUMPTION;

(II) A GARAGE OR ATTIC FAN AND ANY ASSOCIATED VENTS OR LOUVERS;

(III) AN EVAPORATIVE COOLER;

(IV) AN ENERGY-EFFICIENT OUTDOOR LIGHTING DEVICE, INCLUDING WITHOUT LIMITATION A LIGHT FIXTURE CONTAINING A COILED OR STRAIGHT FLUORESCENT LIGHT BULB, AND ANY SOLAR RECHARGING PANEL, MOTION DETECTOR, OR OTHER EQUIPMENT CONNECTED TO THE LIGHTING DEVICE; AND

(V) A RETRACTABLE CLOTHESLINE.

(2) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO:

(a) REASONABLE AESTHETIC PROVISIONS THAT GOVERN THE DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF AN ENERGY EFFICIENCY MEASURE. IN CREATING REASONABLE AESTHETIC PROVISIONS, COMMON INTEREST COMMUNITIES SHALL CONSIDER:

(I) THE IMPACT ON THE PURCHASE PRICE AND OPERATING COSTS OF THE ENERGY EFFICIENCY MEASURE;

(II) THE IMPACT ON THE PERFORMANCE OF THE ENERGY EFFICIENCY MEASURE; AND

(III) THE CRITERIA CONTAINED IN THE GOVERNING DOCUMENTS OF THE COMMON INTEREST COMMUNITY.

(b) BONA FIDE SAFETY REQUIREMENTS, CONSISTENT WITH AN APPLICABLE BUILDING CODE OR RECOGNIZED SAFETY STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY.

(3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY PROPERTY OWNER THE RIGHT TO PLACE AN ENERGY EFFICIENCY MEASURE ON PROPERTY THAT IS:

- (a) OWNED BY ANOTHER PERSON;
- (b) LEASED, EXCEPT WITH PERMISSION OF THE LESSOR;
- (c) COLLATERAL FOR A COMMERCIAL LOAN, EXCEPT WITH PERMISSION OF THE SECURED PARTY; OR
- (d) A LIMITED COMMON ELEMENT OR GENERAL COMMON ELEMENT OF A COMMON INTEREST COMMUNITY.

SECTION 3. 38-33.3-106.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

38-33.3-106.5. Prohibitions contrary to public policy - patriotic and political expression - emergency vehicles - fire prevention - renewable energy generation devices - definitions.
(1.5) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, AN ASSOCIATION SHALL NOT EFFECTIVELY PROHIBIT RENEWABLE ENERGY GENERATION DEVICES, AS DEFINED IN SECTION 38-30-168.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to enforcement actions that are pending or commenced on or after the applicable effective date of this act.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO