

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 724

Short Title: Omnibus Energy Bill. (Public)

Sponsors: Representatives Harrison, Luebke, and Fisher (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development, if favorable, Environment.

April 7, 2011

A BILL TO BE ENTITLED

1 AN ACT TO (1) AMEND THE DEFINITION OF "RENEWABLE ENERGY RESOURCE"
2 THAT PERTAINS TO THE RENEWABLE ENERGY AND ENERGY EFFICIENCY
3 PORTFOLIO STANDARD (REPS) TO CLARIFY THAT PLANTATION-GROWN
4 WOOD IS A RENEWABLE ENERGY RESOURCE; (2) REPEAL REPS
5 REQUIREMENT FOR POULTRY WASTE RESOURCES; AND (3) CLARIFY
6 CURRENT LIMITATIONS ON CITY ORDINANCES AND COUNTY ORDINANCES
7 THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR
8 RESIDENTIAL PROPERTY AND THE CURRENT LIMITATIONS ON DEED
9 RESTRICTIONS THAT REGULATE THE INSTALLATION OF SOLAR
10 COLLECTORS FOR RESIDENTIAL PROPERTY.
11

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.** G.S. 62-133.8(a) reads as rewritten:

14 "(a) Definitions. – As used in this section:

15 ...

16 (5a) "Plantation-grown wood" means wood, forest residuals, and other woody
17 material derived from a forest stand in existence on January 1, 2011, that has
18 been artificially planted and harvested in accordance with Forest Practice
19 Guidelines Related to Water Quality, the best management practices adopted
20 by the Technical Advisory Committee as required under G.S. 113A-52.1(c).

21 ...

22 (8) "Renewable energy resource" means a solar electric, solar thermal, wind,
23 hydropower, geothermal, or ocean current or wave energy resource; a
24 biomass resource, including agricultural waste, animal waste, wood waste,
25 plantation-grown wood, spent pulping liquors, combustible residues,
26 combustible liquids, combustible gases, energy crops, or landfill methane;
27 waste heat derived from a renewable energy resource and used to produce
28 electricity or useful, measurable thermal energy at a retail electric customer's
29 facility; or hydrogen derived from a renewable energy resource. "Renewable
30 energy resource" does not include peat, whole trees from natural forests or
31 other nonplanted forests, fossil fuel, or nuclear energy resource."

32 **SECTION 2.** G.S. 62-133.8(f) is repealed.

33 **SECTION 3.** G.S. 160A-201 reads as rewritten:

34 **"§ 160A-201. Limitations on regulating solar collectors.**



1 (a) Except as provided in subsection ~~(e)~~(b) of this section, no city 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 residential property, and no person shall
5 be denied permission by a city to install a solar collector that gathers solar radiation as a
6 substitute for traditional energy for water heating, active space heating and cooling, passive
7 heating, or generating electricity for a residential property. As used in this section, the term
8 "residential property" means property where the predominant use is for residential purposes.

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~~unreasonably restrict installation or use of a solar
12 collector for a residential property. For the purposes of this section, a restriction that renders the
13 device more than twenty-five percent (25%) less efficient or increases the cost of the device by
14 more than fifteen percent (15%) of the amount that was originally specified for the system,
15 shall be deemed to be unreasonable.

16 ~~(e) 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 4.** G.S. 153A-144 reads as rewritten:

29 **"§ 153A-144. Limitations on regulating solar collectors.**

30 (a) Except as provided in subsection ~~(e)~~(b) of this section, no county ordinance shall
31 prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar
32 radiation as a substitute for traditional energy for water heating, active space heating and
33 cooling, passive heating, or generating electricity for a residential property. No person shall be
34 denied permission by a county to install 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 residential property. As used in this section, the term
37 "residential property" means property where the predominant use is for residential purposes.

38 (b) This section does not prohibit an ordinance regulating the location or screening of
39 solar collectors as described in subsection (a) of this section, provided the ordinance does not
40 ~~have the effect of preventing the reasonable~~unreasonably restrict installation or use of a solar
41 collector for a residential property. For the purposes of this section, a restriction that renders the
42 device more than twenty-five percent (25%) less efficient or increases the cost of the device by
43 more than fifteen percent (15%) of the amount that was originally specified for the system,
44 shall be deemed to be unreasonable.

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

- 48 (1) ~~On the facade of a structure that faces areas open to common or public~~
49 ~~access;~~
50 (2) ~~On a roof surface that slopes downward toward the same areas open to~~
51 ~~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 facade of the structure~~
2 ~~extending to the property boundaries on either side of the facade, and those~~
3 ~~areas of common or public access faced by the structure.~~

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

6 **SECTION 5.** G.S. 22B-20 reads as rewritten:

7 **"§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

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

13 (b) Except as provided in subsection ~~(d)~~(c) of this section, any deed restriction,
14 covenant, or similar binding agreement that runs with the land that would prohibit, or have the
15 effect of prohibiting, the installation of a solar collector that gathers solar radiation as a
16 substitute for traditional energy for water heating, active space heating and cooling, passive
17 heating, or generating electricity for a residential property on land subject to the deed
18 restriction, covenant, or agreement is void and unenforceable. As used in this section, the term
19 "residential property" means property where the predominant use is for residential purposes.
20 The term "residential property" does not include any condominium created under Chapter 47A
21 or 47C of the General Statutes located in a multi-story building containing units having
22 horizontal boundaries described in the declaration. As used in this section, the term
23 "declaration" has the same meaning as in G.S. 47A-3 or G.S. 47C-1-103, depending on the
24 chapter of the General Statutes under which the condominium was created.

25 (c) This section does not prohibit a deed restriction, covenant, or similar binding
26 agreement that runs with the land that would regulate the location or screening of solar
27 collectors as described in subsection (b) of this section, provided the deed restriction, covenant,
28 or similar binding agreement does not unreasonably restrict installation or use of a solar
29 collector for a residential property. For the purposes of this section, a restriction that renders the
30 device more than twenty-five percent (25%) less efficient or increases the cost of the device by
31 more than fifteen percent (15%) of the amount that was originally specified for the system,
32 shall be deemed to be unreasonable.~~have the effect of preventing the reasonable use of a solar~~
33 ~~collector for a residential property.~~ If an owners' association is responsible for exterior
34 maintenance of a structure containing individual residences, a deed restriction, covenant, or
35 similar binding agreement that runs with the land may provide that (i) the title owner of the
36 residence shall be responsible for all damages caused by the installation, existence, or removal
37 of solar collectors; (ii) the title owner of the residence shall hold harmless and indemnify the
38 owners' association for any damages caused by the installation, existence, or removal of solar
39 collectors; and (iii) the owners' association shall not be responsible for maintenance, repair,
40 replacement, or removal of solar collectors unless expressly agreed in a written agreement that
41 is recorded in the office of the register of deeds in the county or counties in which the property
42 is situated. As used in this section, "owners' association" has the same meaning as in
43 G.S. 47F-1-103.

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

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

49 (2) ~~On a roof surface that slopes downward toward the same areas open to~~
50 ~~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."

6 **SECTION 6.** Section 3 through Section 5 of this act becomes effective October 1,
7 2011. The remaining sections of this act are effective when the act becomes law.