

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 117

(Delegate Hecht, *et al.*)

Environmental Matters

Judicial Proceedings

Real Property - Solar Collector Systems - Restriction on Use and Solar Easement

This bill makes several definitional and substantive changes to the laws governing private restriction of solar collection system usage. The bill permits the creation of a solar easement.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: A “restriction on use” regarding land use may not impose or act to impose unreasonable limitation on the installation of a “solar collector system” on the roof or exterior walls of improvements, provided that the property owner owns or has the right to exclusive use of the roof or exterior walls. Such a restriction includes any covenant, restriction, or condition contained in • a deed; • a declaration; • a contract; • the bylaws or rules of a condominium or homeowners association; • a security instrument; or • any other instrument that affects the transfer or sale of real property, or any other interest in real property.

An unreasonable limitation is a limitation that significantly increases the cost of the system or significantly decreases the efficiency of the system. The bill defines a “solar

collector system” as a solar collector or device with the primary purpose of providing for the collection, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating.

The bill allows property owners who have installed or intend to install solar collector systems to negotiate to obtain a solar easement that must be recorded in writing. The bill requires that any written instrument creating a solar easement include • a description of the dimensions of the easement expressed in measurable terms, including vertical or horizontal angles measured in degrees, or the hours of the day on specified dates, when direct sunlight to a specified surface of a solar collection system may not be obstructed; • the restriction placed on vegetation, structures, and other objects that would impair the passage of sunlight through the easement; and • the terms under which the easement may be revised or terminated.

The bill does not apply to a restriction on use on historic property that is in, or determined by the Director of the Maryland Historical Trust to be eligible for inclusion in, the Maryland Register of Historical Properties.

Current Law: Under the Real Property Article rules of construction, the State currently prohibits restrictive covenants that impose unreasonable limitations on the installation of solar panels of real property improvements.

Background: In real property law, an easement can generally be described as the right to use or prevent the use of another person’s real property for a specific purpose. An easement holder does not have the right to possess the property affected by the easement, but the easement can be transferred to another holder and generally cannot be terminated unilaterally by the owner of the affected property. Easements can be created in a number of different ways, but the most common and easily recognized easements are expressly created in officially recorded documents, such as deeds, subdivision plans, and restrictive covenants in owners’ association agreements.

The General Assembly has enacted statutory language stating that it is in the public interest to promote solar energy projects by providing State grants, loans, and other financial assistance. Currently, a number of State programs provide grants, credits and incentives to encourage solar energy production and consumption. For example, the Department of Housing and Community Development is mandated by statute to provide grants and loans for the use of solar energy in commercial and residential buildings. The Maryland Energy Administration also provides grants to defray the cost of qualifying solar energy system installations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division);
Department of Legislative Services

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