

SENATE BILL NO. 114—SENATOR SCHNEIDER

FEBRUARY 3, 2009

Referred to Committee on Energy, Infrastructure and Transportation

SUMMARY—Makes various changes relating to systems for obtaining and using solar energy and other renewable energy resources. (BDR 58-380)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to energy; requiring the Director of the Office of Energy to make certain determinations relating to systems for obtaining solar energy; prohibiting certain restrictions on the use of systems for obtaining solar energy or wind energy; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law sets forth a prohibition against covenants, restrictions or
2 conditions contained in deeds, contracts or other legal documents which prohibit or
3 unreasonably restrict an owner of property from using a system for obtaining solar
4 energy on his property. (NRS 111.239, 278.0208) **Sections 2 and 3** of this bill
5 include within the prohibition any such covenant, restriction or condition which has
6 the effect of prohibiting or unreasonably restricting the property owner from using
7 a solar energy system. **Sections 2 and 3** also describe an unreasonable restriction
8 on the use of a system for obtaining solar energy as including: (1) the placing of a
9 restriction or requirement that decreases the efficiency or performance of a system
10 for obtaining solar energy by more than 10 percent of the amount that was
11 originally specified for the system, as determined by the Director of the Office of
12 Energy; and (2) the prohibition of a system for obtaining solar energy that uses
13 components painted with black solar glazing.

14 **Section 1** of this bill requires the Director, if requested to make a determination
15 concerning the efficiency or performance of a system for obtaining solar energy
16 pursuant to **section 2 or 3**, to make the determination within 30 days after receiving
17 the request. If the Director needs additional information to make the determination,
18 **section 1** authorizes the Director to request that information from the person
19 requesting the determination and requires the Director to make the determination
20 within 15 days after receiving the additional information.

21 **Sections 1.5 and 2.5** of this bill set forth a prohibition against covenants,
22 restrictions or conditions contained in deeds, contracts or other legal documents,



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23 and against local ordinances, regulations or plans, which prohibit or unreasonably
24 restrict an owner of property from using a system for obtaining wind energy on his
25 property. **Sections 1.5 and 2.5** describe an unreasonable restriction on the use of a
26 system for obtaining wind energy as the placing of a restriction or requirement on
27 the use of a system for obtaining wind energy which significantly decreases the
28 efficiency or performance of the system and which does not allow for the use of an
29 alternative system at a substantially comparable cost and with substantially
30 comparable efficiency and performance. **Sections 1.5 and 2.5** do not prohibit
31 reasonable restrictions: (1) imposed pursuant to a determination by the Federal
32 Aviation Administration that the installation of the system for obtaining wind
33 energy would create a hazard to air navigation; or (2) relating to the height, noise or
34 safety of a system for obtaining wind energy.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 701.180 is hereby amended to read as follows:
2 701.180 The Director shall:
- 3 1. Acquire and analyze information relating to energy and to
4 the supply, demand and conservation of its sources.
 - 5 2. Utilize all available public and private means to provide
6 information to the public about problems relating to energy and to
7 explain how conservation of energy and its sources may be
8 accomplished.
 - 9 3. Review and evaluate information which identifies trends and
10 permits forecasting of the energy available to the State. Such
11 forecasts must include estimates on:
 - 12 (a) The level of demand for energy in the State for 5-, 10- and
13 20-year periods;
 - 14 (b) The amount of energy available to meet each level of
15 demand;
 - 16 (c) The probable implications of the forecast on the demand and
17 supply of energy; and
 - 18 (d) The sources of renewable energy and other alternative
19 sources of energy which are available and their possible effects.
 - 20 4. Study means of reducing wasteful, inefficient, unnecessary
21 or uneconomical uses of energy and encourage the maximum
22 utilization of existing sources of energy in the State.
 - 23 5. Encourage the development of:
 - 24 (a) Any sources of renewable energy and any other energy
25 projects which will benefit the State; and
 - 26 (b) Any measures which conserve or reduce the demand for
27 energy or which result in more efficient use of energy.
 - 28 6. In conjunction with the Desert Research Institute, review
29 policies relating to the research and development of the State's
30 geothermal resources and make recommendations to the appropriate



1 state and federal agencies for establishing methods of developing
2 the geothermal resources within the State.

3 7. Solicit and serve as the point of contact for grants and other
4 money from the Federal Government and other sources to promote:

5 (a) Energy projects that enhance the economic development of
6 the State;

7 (b) The use of renewable energy; and

8 (c) The use of measures which conserve or reduce the demand
9 for energy or which result in more efficient use of energy.

10 8. Coordinate the activities and programs of the Office of
11 Energy with the activities and programs of the Task Force, the
12 Consumer's Advocate and the Public Utilities Commission of
13 Nevada and other federal, state and local officers and agencies that
14 promote, fund, administer or operate activities and programs related
15 to the use of renewable energy and the use of measures which
16 conserve or reduce the demand for energy or which result in more
17 efficient use of energy.

18 9. *If requested to make a determination pursuant to NRS*
19 *111.239 or 278.0208, make the determination within 30 days after*
20 *receiving the request. If the Director needs additional information*
21 *to make the determination, he may request the information from*
22 *the person making the request for a determination. Within 15 days*
23 *after receiving the additional information, the Director shall make*
24 *a determination on the request.*

25 10. Carry out all other directives concerning energy that are
26 prescribed by the Governor.

27 **Sec. 1.5.** Chapter 111 of NRS is hereby amended by adding
28 thereto a new section to read as follows:

29 1. *Except as otherwise provided in subsection 2, any*
30 *covenant, restriction or condition contained in a deed, contract or*
31 *other legal instrument which affects the transfer or sale of, or any*
32 *other interest in, real property and which prohibits or*
33 *unreasonably restricts the owner of the property from using a*
34 *system for obtaining wind energy on his property is void and*
35 *unenforceable.*

36 2. *The provisions of subsection 1 do not prohibit a reasonable*
37 *restriction or requirement:*

38 (a) *Imposed pursuant to a determination by the Federal*
39 *Aviation Administration that the installation of the system for*
40 *obtaining wind energy would create a hazard to air navigation; or*

41 (b) *Relating to the height, noise or safety of a system for*
42 *obtaining wind energy.*

43 3. *For the purposes of this section, "unreasonably restricts*
44 *the owner of the property from using a system for obtaining wind*
45 *energy" includes the placing of a restriction or requirement on the*



1 *use of a system for obtaining wind energy which significantly*
2 *decreases the efficiency or performance of the system and which*
3 *does not allow for the use of an alternative system at a*
4 *substantially comparable cost and with substantially comparable*
5 *efficiency and performance.*

6 **Sec. 2.** NRS 111.239 is hereby amended to read as follows:

7 111.239 1. Any covenant, restriction or condition contained
8 in a deed, contract or other legal instrument which affects the
9 transfer ~~[]~~ or sale of, or any other interest in , real property ~~[that]~~
10 *and which* prohibits or unreasonably restricts *or has the effect of*
11 *prohibiting or unreasonably restricting* the owner of the property
12 from using a system for obtaining solar ~~[or wind]~~ energy on his
13 property is void and unenforceable.

14 2. For the purposes of this section, ~~["unreasonably restricts the~~
15 ~~use of a system for obtaining solar or wind energy"] means~~ *the*
16 *following shall be deemed to be unreasonable restrictions:*

17 (a) *The* placing of a restriction or requirement on the use of
18 ~~[such]~~ a system *for obtaining solar energy* which ~~[significantly]~~
19 decreases the efficiency or performance of the system *by more than*
20 *10 percent of the amount that was originally specified for the*
21 *system, as determined by the Director of the Office of Energy,* and
22 *which* does not allow for the use of an alternative system at a
23 *substantially* comparable cost and with *substantially* comparable
24 efficiency and performance.

25 (b) *The prohibition of a system for obtaining solar energy that*
26 *uses components painted with black solar glazing.*

27 **Sec. 2.5.** Chapter 278 of NRS is hereby amended by adding
28 thereto a new section to read as follows:

29 1. *Except as otherwise provided in subsection 2:*

30 (a) *A governing body shall not adopt an ordinance, regulation*
31 *or plan or take any other action that prohibits or unreasonably*
32 *restricts the owner of real property from using a system for*
33 *obtaining wind energy on his property.*

34 (b) *Any covenant, restriction or condition contained in a deed,*
35 *contract or other legal instrument which affects the transfer or*
36 *sale of, or any other interest in, real property and which prohibits*
37 *or unreasonably restricts the owner of the property from using a*
38 *system for obtaining wind energy on his property is void and*
39 *unenforceable.*

40 2. *The provisions of subsection 1 do not prohibit a reasonable*
41 *restriction or requirement:*

42 (a) *Imposed pursuant to a determination by the Federal*
43 *Aviation Administration that the installation of the system for*
44 *obtaining wind energy would create a hazard to air navigation; or*



1 (b) *Relating to the height, noise or safety of a system for*
2 *obtaining wind energy.*

3 3. *For the purposes of this section, “unreasonably restricts*
4 *the owner of the property from using a system for obtaining wind*
5 *energy” includes the placing of a restriction or requirement on the*
6 *use of a system for obtaining wind energy which significantly*
7 *decreases the efficiency or performance of the system and which*
8 *does not allow for the use of an alternative system at a*
9 *substantially comparable cost and with substantially comparable*
10 *efficiency and performance.*

11 **Sec. 3.** NRS 278.0208 is hereby amended to read as follows:

12 278.0208 1. A governing body shall not adopt an ordinance,
13 regulation or plan or take any other action that prohibits or
14 unreasonably restricts *or has the effect of prohibiting or*
15 *unreasonably restricting* the owner of real property from using a
16 system for obtaining solar ~~for wind~~ energy on his property.

17 2. Any covenant, restriction or condition contained in a deed,
18 contract or other legal instrument which affects the transfer ~~[.]~~ *or*
19 *sale of*, or any other interest in , real property ~~[that]~~ *and which*
20 *prohibits or unreasonably restricts or has the effect of prohibiting*
21 *or unreasonably restricting* the owner of the property from using a
22 system for obtaining solar ~~for wind~~ energy on his property is void
23 and unenforceable.

24 3. For the purposes of this section, ~~["unreasonably restricting~~
25 ~~the use of a system for obtaining solar or wind energy" means]~~ *the*
26 *following shall be deemed to be unreasonable restrictions:*

27 (a) *The placing of a restriction or requirement on the use of*
28 ~~[such]~~ *a system for obtaining solar energy* which ~~[significantly]~~
29 *decreases the efficiency or performance of the system by more than*
30 *10 percent of the amount that was originally specified for the*
31 *system, as determined by the Director of the Office of Energy, and*
32 *which* does not allow for the use of an alternative system at a
33 *substantially* comparable cost and with *substantially* comparable
34 efficiency and performance.

35 (b) *The prohibition of a system for obtaining solar energy that*
36 *uses components painted with black solar glazing.*

37 **Sec. 4.** This act becomes effective upon passage and approval.

