

LEGISLATIVE BILL 353

Approved by the Governor April 27, 1979

Introduced by Hoagland, 6; Rumery, 42; Cope, 36

AN ACT relating to solar energy; to declare policy; to define terms; to provide for the creation of a solar easement; to provide zoning powers; and to provide for severability.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature hereby finds and declares that the use of solar energy in Nebraska: (1) Can help reduce the nation's reliance upon irreplaceable domestic and imported fossil fuels; (2) can reduce air and water pollution resulting from the use of conventional energy sources; (3) requires effective legislation and efficient administration of state and local programs to be of greatest value to its citizens; and (4) is of such importance to the public health, safety, and welfare that the state should take appropriate action to encourage its use.

As the use of solar energy devices increases, the possibility of future shading of such devices by structures or vegetation will also increase. The Legislature therefore declares that the purpose of this act is to promote the public health, safety, and welfare by protecting access to solar skyspace as provided in this act.

Sec. 2. As used in this act, unless the context otherwise requires, the definitions found in sections 3 to 9 of this act shall be used.

Sec. 3. Solar energy shall mean radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy.

Sec. 4. Solar energy collector shall mean a device, structure, or part of a device or structure which is used primarily to transform solar energy into thermal, chemical, or electrical energy. It includes any space of structural components specifically designed to retain heat derived from solar energy, any mechanism that converts wind energy into electrical energy, and any photosynthetic process specifically maintained to produce photosynthetic products.

Sec. 5. Solar energy system shall mean a complete design or assembly consisting of a solar energy

collector, an energy storage facility when used, and components for the distribution of transformed energy to the extent that they cannot be used jointly with a conventional energy system. Passive solar energy systems are included in this definition but not to the extent that they fulfill other functions, such as structural or recreational.

Sec. 6. Passive solar energy system shall mean any space or structural components that are specifically designed to retain heat derived from solar energy, including ponds for evaporative cooling, and any moving parts that increase heat retention by the system.

Sec. 7. Solar skyspace shall mean the space between a solar energy collector and the sun which must remain unobstructed in order to assure reasonable operation of the solar energy system.

Sec. 8. Structure shall mean anything constructed, installed, or portable that requires for normal use a location on a parcel of land. This includes any movable structure located on land which can be used either temporarily or permanently for housing, business, commercial, agricultural, or office purposes. It also includes fences, billboards, poles, pipelines, transmission lines, and advertising signs.

Sec. 9. Solar skyspace easement shall mean a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by any person for the purpose of insuring adequate access of a solar energy system to solar energy.

Sec. 10. Any property owner may grant a solar skyspace easement in the same manner and with the same effect as a conveyance of any other interest in real property. The easement shall be created in writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the solar skyspace easement is located. No duly recorded solar skyspace easement shall be unenforceable on account of lack of privity of estate or privity of contract. Such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that a solar skyspace easement may terminate upon the conditions stated therein.

Sec. 11. Any deed, will, or other instrument that creates a solar skyspace easement may include, but the contents are not limited to:

(1) A description of the real property subject to the solar skyspace easement and a description of the real property benefiting from the solar skyspace easement;

(2) A description of the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar skyspace easement extends over the real property subject to the solar skyspace easement, or any other description which defines the three dimensional space, or the place and times of day in which an obstruction to solar energy is prohibited or limited;

(3) Any terms or conditions under which the solar skyspace easement is granted or may be terminated;

(4) Any provisions for compensation of the owner of the real property benefiting from the solar skyspace easement in the event of interference with the enjoyment of the solar skyspace easement, or compensation of the owner of the real property subject to the solar skyspace easement for maintaining the solar skyspace easement; and

(5) Any other provisions necessary or desirable to effect the purpose of the instrument.

Sec. 12. A solar skyspace easement may be enforced by injunction or proceedings in equity or other civil action.

Sec. 13. All counties or municipalities having zoning or subdivision jurisdiction are hereby authorized to include considerations for the encouragement of solar energy use and the protection of access to solar energy in all applicable zoning regulations or ordinances and comprehensive development plans. Such considerations may include, but not be limited to, regulation of height, location, setback, and use of structures, the height and location of vegetation with respect to property boundary lines, the type and location of energy systems or their components, and the use of districts to encourage the use of solar energy systems and protect access to solar energy. Comprehensive development plans may contain an element for protection and development of solar energy access which will promote energy conservation and ensure coordination of solar energy use with conventional energy use.

Sec. 14. When the application of any zoning or subdivision regulation or ordinance would prevent or unduly restrict the use of solar energy systems, the governing body of the county or municipality having zoning or subdivision jurisdiction is authorized to grant

a variance or exception from the strict application thereof so as to relieve such restriction and protect access to solar energy if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of such regulation or ordinance.

Sec. 15. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.