

JAN 21 2022

A BILL FOR AN ACT

RELATING TO SOLAR ENERGY DEVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that section 196-7,
2 Hawaii Revised Statutes, prohibits homeowners' associations and
3 other private entities from imposing undue restrictions on
4 homeowners seeking to install solar energy devices. However,
5 the statute does not specify a means for enforcement, nor does
6 it penalize homeowners' associations that effectively prohibit
7 the installation of otherwise permissible solar energy devices.
8 This leaves homeowners with the daunting and often
9 cost-prohibitive course to retain an attorney and seek relief in
10 a court of law. However, homeowners rarely attempt to enforce
11 their rights because the legal costs often exceed any potential
12 savings generated by the solar energy devices.

13 The purpose of this Act is to increase compliance with the
14 law by establishing a fine for homeowners' associations that act
15 improperly and to require those entities to pay the attorney's
16 fees and costs of homeowners who prevail in exercising their
17 legal rights. Allowing a prevailing homeowner to be awarded



1 attorney's fees and costs will also help to align potential
2 remedies with those allowed by California law.

3 SECTION 2. Section 196-7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§196-7 Placement of solar energy devices.**

6 (a) Notwithstanding any law to the contrary, no person shall be
7 prevented by any covenant, declaration, bylaws, restriction,
8 deed, lease, term, provision, condition, codicil, contract, or
9 similar binding agreement, however worded, from installing a
10 solar energy device on any single-family residential dwelling or
11 townhouse that the person owns. Any provision in any lease,
12 instrument, or contract contrary to the intent of this section
13 shall be void and unenforceable.

14 (b) Every private entity shall adopt rules by December 31,
15 2006, that provide for the placement of solar energy devices,
16 and revise those rules as necessary by July 1, 2011. The rules
17 shall facilitate the placement of solar energy devices and shall
18 not impose conditions or restrictions that render the device
19 more than twenty-five per cent less efficient or increase the
20 cost of installation, maintenance, and removal of the device by
21 more than fifteen per cent. No private entity shall assess or



1 charge any homeowner any fees for the placement of any solar
2 energy device.

3 (c) Any person may place a solar energy device on any
4 single-family residential dwelling or townhouse unit owned by
5 that person, provided that:

6 (1) The device is in compliance with the rules and
7 specifications adopted pursuant to subsection (b);

8 (2) The device is registered with the private entity of
9 record within thirty days of installation; and

10 (3) If the device is placed on a common element or limited
11 common element as defined by a project's declaration,
12 the homeowner shall first obtain the consent of the
13 private entity; provided further that such consent
14 shall be given if the homeowner agrees in writing to:

15 (A) Comply with the private entity's design
16 specification for the installation of the device;

17 (B) Engage a duly licensed contractor to install the
18 device; and

19 (C) Within fourteen days of approval of the solar
20 device by the private entity, provide a
21 certificate of insurance naming the private



1 entity as an additional insured on the
2 homeowner's insurance policy.

3 (d) If a solar energy device is placed on a common element
4 or limited common element:

5 (1) The owner and each successive owner of the
6 single-family residential dwelling or townhouse unit
7 on which the device is placed shall be responsible for
8 any costs for damages to the device, the common
9 elements, limited common elements, and any adjacent
10 units, arising or resulting from the installation,
11 maintenance, repair, removal, or replacement of the
12 device. The repair, maintenance, removal, and
13 replacement responsibilities shall be assumed by each
14 successive owner until the solar energy device has
15 been removed from the common elements or limited
16 common elements. The owner and each successive owner
17 shall at all times have and maintain a policy of
18 insurance covering the obligations of the owner under
19 this paragraph and shall name the private entity as an
20 additional insured under said policy; and



1 (2) The owner and any successive owner of the
2 single-family residential dwelling or townhouse unit
3 on which the device is placed shall be responsible for
4 removing the solar energy device if reasonably
5 necessary or convenient for the repair, maintenance,
6 or replacement of the common elements or limited
7 common elements.

8 (e) If there is an existing contractor's guarantee or
9 manufacturer's labor or material warranty on the roof, roofing
10 membrane, or roofing material on a roof that is a common element
11 or limited common element, the contractor that installs a solar
12 energy device on the roof shall notify the private entity in
13 writing that the installation of a solar energy device may
14 affect or void the roofing guarantees or warranties. If the
15 private entity chooses to forgo the roofing guarantee or
16 warranty, the contractor that installs a solar energy device
17 shall obtain that decision in writing. Otherwise, the
18 contractor that installs a solar energy device shall obtain the
19 roofing manufacturer's written approval for that project and
20 follow the roofing manufacturer's written instructions for
21 waterproofing roof penetrations for the specific roofing



1 material or coordinate the waterproofing with the contractor
2 that issued the guarantee or warranty. If the penetrations for
3 the installation of a solar energy device are waterproofed by
4 the roofing contractor that provided the existing guarantee or
5 warranty, the roofing contractor shall maintain the existing
6 guarantee or warranty; provided that if either the roofing
7 contractor's guaranty or the roofing manufacturer's warranty is
8 no longer in effect, the contractor who installs the solar
9 energy device and waterproofs the penetrations in accordance
10 with this section shall apply the contractor's or lessor's
11 standard labor and workmanship warranty. The homeowner shall
12 provide the private entity with a copy of the applicable
13 guarantee or warranty.

14 (f) If a homeowner prevails in an action brought under
15 this section, the court shall assess against the private entity:

16 (1) Reasonable attorney's fees and all other expenses
17 reasonably incurred in the litigation by the
18 homeowner; and

19 (2) A fine, not to exceed \$, which shall be
20 deposited in the energy security special fund
21 established pursuant to section 201-12.8.



1 ~~{(f)}~~ (g) For the purposes of this section:

2 "Private entity" means any association of homeowners,
3 community association, condominium association, cooperative, or
4 any other non-governmental entity with covenants, bylaws, and
5 administrative provisions with which the homeowner's compliance
6 is required.

7 "Solar energy device" means any identifiable facility,
8 equipment, apparatus, or the like, including a photovoltaic cell
9 application, that is applicable to a single-family residential
10 dwelling or townhouse and makes use of solar energy for heating,
11 cooling, or reducing the use of other types of energy dependent
12 upon fossil fuel for generation; provided that "solar energy
13 device" shall not include skylights or windows."

14 SECTION 3. Section 201-12.8, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) There is created within the state treasury an energy
17 security special fund, which shall consist of:

18 (1) The portion of the environmental response, energy, and
19 food security tax specified under section 243-3.5;

20 (2) Moneys appropriated to the fund by the legislature;



1 (3) All interest attributable to investment of money
2 deposited in the fund; and

3 (4) Moneys allotted to or deposited in the fund from other
4 sources, including under section 196-6.5."

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 2022.

11
INTRODUCED BY:

Lara Acasio



S.B. NO. 2412

Report Title:

Solar Energy Devices; Solar Panels; Homeowners' Associations;
Fine; Penalty; Attorney's Fees and Costs

Description:

Requires homeowners' associations and other private entities to pay the attorney's fees and costs of any homeowner who prevails in a lawsuit to allow the installation of a solar energy device by the homeowner. Also imposes a fine on the homeowners' associations or other private entity for wrongfully denying the installation of a solar energy device to be paid into the energy security special fund.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

