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BILL ANALYSIS

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House Bill 5028 (Substitute H-3 as passed by the House)

Sponsor: Representative Ranjeev Puri

House Committee: Natural Resources, Environment, Tourism and Outdoor Recreation

Senate Committee: Housing and Human Services

Date Completed: 2-12-24

INTRODUCTION

The bill would prohibit a Homeowners' Association (HOA) from banning an owner of a home or unit within the HOA's jurisdiction (member) from installing energy-saving improvements or modifications such as heat pumps, reflective roofing, efficient appliances, solar water heaters, and electric vehicle equipment, among others. It also would prohibit a local unit of government from requiring that a member receive HOA approval for the installation or modification.

Additionally, each HOA would have to create a written solar energy policy with provisions specified in the bill within one year of the bill's enactment; a policy could not prohibit a solar energy system's installation. Subject to the policy, a member would have to apply to the HOA to install a solar energy system and the HOA would have to approve the application so long as the installation met certain construction stipulations. The bill would not apply to the installation of a solar energy system or an energy-saving improvement on a shared roof or in a common area.

The bill would take effect 90 days after its enactment.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill would not have a direct fiscal impact on the State or local courts systems. An increase in homeowner complaints against HOAs is possible, which would increase court dockets, but this impact is indeterminate and expected to be minor.

Fiscal Analyst: Bobby Canell
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CONTENT

The bill would create the "Homeowners' Energy Policy Act" to do the following:

- Prohibit an HOA from requiring approval for or prohibiting a member from installing or maintaining an energy-saving improvement or modification.
- Prohibit a local unit of government from requiring a member to obtain HOA approval for installing or modifying an energy-saving system.
- Require each HOA to adopt a written solar energy policy within one year of the bill's enactment and specify that the policy would have to enforce the Act's standards, among other requirements of the policy.
- Prescribe the process for a member to apply to an HOA for the installation or modification of a solar energy system.
- Specify that if an HOA failed to adopt a policy within one year of the Act's effective date or failed to approve or deny a member's request within a certain time the member could proceed with the installation of the solar energy system.
- Allow an HOA to deny an application for a solar energy system under specified circumstances, including if the system violated a law.
- Prohibit an HOA from imposing a fine or penalizing a member that complied with the Act.
- Require an HOA to approve a member's application within 30 days of receipt unless certain conditions applied.
- Allow a member to resubmit an application that was denied prior to the HOA writing its solar energy policy.
- Allow a member to bring a civil action against an HOA for damages in the case of violations of the Act.
- Specify that the Act's provisions would not apply to common areas or shared roofs.

The bill states that, "the legislature recognizes that the replacement, maintenance, installation, or operation of an energy-saving improvement or modification or the installation of a solar energy system is an effective means for a member of a homeowners' association to manage the member's energy budget and increase energy resiliency".

Definitions

"Energy-saving improvement or modification" would include, but is not limited to,: a) a clothesline; b) air source heat pumps; c) ground source heat pumps; d) insulation; e) rain barrels; d) reflective roofing; f) energy efficient appliances; g) solar water heaters; h) electric vehicle supply equipment; i) energy-efficient windows; or j) energy-efficient insulation materials.

"Solar energy system" would mean a complete assembly, structure, or design of a solar collector, or a solar storage mechanism that uses solar energy for generating electricity or heating or cooling gases, solids, liquids, or other materials. The term would include the design, materials, or elements of a solar energy system and its maintenance, operation, labor components, and the necessary components, if any, of supplemental conventional energy systems designed or constructed to interface with a solar energy system.

"Solar energy" would mean radiant energy received from the sun at a wavelength that is suitable for heat transfer, photosynthetic use, or photovoltaic use.

"Solar collector" would mean any of the following:

- An assembly, a structure, or a design, including passive elements, used for gathering, concentrating, or absorbing direct and indirect solar energy, or specially designed for holding a substantial amount of useful thermal energy, that transfers that energy to gas, solid, or liquid or uses that energy directly.
- A mechanism that absorbs solar energy and converts it into electricity.
- A mechanism or process used for gathering solar energy through wind or thermal gradients.
- A component used to transfer thermal energy to a gas, solid, or liquid or convert thermal energy into electricity.

"Solar storage mechanism" would mean equipment or elements including, but not limited to, piping and transfer mechanisms, containers, heat exchangers, batteries, or gases, solids, or liquids, or a combination of gases, solids, and liquids, that are used for storing solar energy gathered by a solar collector for subsequent use.

"Electric vehicle supply equipment" would mean a machine or other device located within the State that is supplied with electricity and designed or used for placing or delivering electricity into the battery storage system of a motor vehicle.

HOA Agreement

Any of the following in a HOA's agreement would be invalid and unenforceable as contrary to public policy:

- A provision that prohibited or required HOA approval for a member to replace, maintain, install, or operate an energy-saving improvement or modification.
- A provision that compelled or required HOA approval for a member to make auxiliary changes needed for the installation of an energy-saving improvement or modification.

A local unit of government could not require a member to obtain HOA approval to do any of the following:

- Replace, maintain, install, or operate an energy-saving improvement or modification.
- Make auxiliary changes needed for the installation of an energy-saving improvement or modification.

Subject to the provision described above, the Act would not prohibit a local unit of government from imposing requirements that could prohibit or limit the replacement, maintenance, installation, or operation of an energy-saving improvement or modification or making of auxiliary changes needed for the installation of an energy-saving improvement or modification by a member.

HOA Solar Energy Policy

Within one year of the Act's effective date, each HOA in the State would have to adopt a written solar energy policy statement. The policy could not conflict with an existing local, State, or Federal law. All the following would have to apply to an HOA's solar energy policy:

- The policy would have to include the Act's standards to be enforced by the HOA.
- The policy could not prohibit elements of a solar energy system from being installed on a roof face.
- The policy could not require that a specific technology be utilized for the installation of a solar energy system, including, solar shingles rather than traditional solar panels.

- Any standards enforced under the policy could not result in a reduction in the production¹ of electricity by the solar energy system by more than 10% or increase the total cost of the installation of the solar energy system to the member by more than \$1,000.
- The policy could not include a provision that contradicted the Act.
- The policy could impose reasonable conditions concerning the maintenance, repair, replacement, or removal of a damaged or inoperable solar energy system provided that the conditions are not more burdensome than the conditions imposed on non-solar energy projects.

The policy would have to include the following statements:

- That the approval of an adjacent home or unit owner would not be required to approve a member's application to install a solar energy system on the member's home or unit.
- That the HOA would not deny a member's application to install a solar energy system because of the identity of the entity that owned the solar energy system or financing method chosen by the member.
- That an HOA could deny an application to install a solar energy system or require the removal of a solar energy system if certain conditions described below applied (see Member Installation of Solar Energy System).
- That a member would have to comply with State and local building codes and permit requirements in the replacement, maintenance, installation, or operation of an energy-saving improvement or modification or the installation of a solar energy system.
- That a member who wanted to install a solar energy system in the member's home or unit would have to comply with certain application requirements described below.
- That a member could resubmit a written installation application as described below.

Additionally, the policy would have to include a statement that the HOA would not do any of the following:

- Inquire into a member's energy usage.
- Impose conditions that impaired the operation of a solar energy system.
- Impose conditions that negatively affected any component industry standard warranty.
- Require post-installation reporting.
- Require an application fee to install a solar energy system above that which it assessed for other applications related to a change to the property.
- Prohibit a member from resubmitting a written application to install a solar energy system after an application had been previously denied following the bill's effective date.

Under the Act, an HOA would have to make a copy of the policy available to a member within 30 days of adopting the policy and post a copy of the policy on the HOA's website, if applicable.

A provision in an HOA agreement or policy that prohibited or had the effect of prohibiting the installation of a solar energy system would be invalid and unenforceable as contrary to public policy. Any policy provision that conflicted with the Act's provisions would be void and unenforceable.

Member Installation of Solar Energy System

Beginning on Act's effective date, a member who wanted to install a solar energy system in the member's home or unit would have to submit a written application to the HOA. The application would have to include all the following information:

¹ "Production" would mean the estimated annual electrical production of the solar energy system.

- The member's name.
- The street address of the location where the solar energy system would be installed.
- The name and contact information of the person that would be installing the solar energy system.
- An image that showed the layout of the solar energy system on the member's home or unit.
- A description of the solar energy system to be installed.

If the written application were submitted before an HOA adopted a solar energy policy, the HOA would have to approve or deny the member's request to install the solar energy system within 120 days after receiving the application.

In accordance with its policy, an HOA would have to approve or deny the member's request to install a solar energy system within 30 days of receiving the application.

An HOA could deny an application to install a solar energy system or require the removal of a solar energy system if at least one of the following applied:

- A court had found that the installation of the solar energy system violated a law.
- The installed solar energy system did not substantially conform with the member's application to install the system as approved by the HOA.
- The HOA determined that the solar energy system would be installed in a fenced yard or patio rather than on the roof of a home or unit and that the system would be taller than the fence line.

Additionally, an HOA could deny an application or require the removal of a system that would be installed on the members roof if at least one of the following applied:

- The solar energy system would extend above or beyond the roof of that home or unit by more than six inches.
- The solar energy system did not conform to the slope of the roof and had a top edge that was not parallel to the roof line.
- The solar energy system had a frame, support bracket, or visible conduit or wiring that was not silver, bronze, or black tone that was commonly available in the marketplace.

If an HOA failed to adopt a policy within one year of the Act's effective date or failed to approve or deny a member's request within the required time described above, a member could proceed with the installation of the solar energy system. If the member proceeded with the installation, the HOA could not impose fines or otherwise penalize the member for complying with the Act.

A member could resubmit a written application to install a solar energy system that was submitted to and denied by the HOA before the Act's effective date. On receipt of the resubmitted written application, the HOA would have to reevaluate the application under the Act.

Common Space Systems

The Act would not apply to the installation of a solar energy system or the replacement, maintenance, installation, or operation of an energy-saving improvement or modification in a common area or on a shared roof.

"Common area" would mean a portion of a building, land, or amenities owned or managed by the homeowners' association that is generally accessible to all members of the association.

Common area would include a hallway, a stairway, an elevator, a lobby, a laundry and recreational room, a playground, a community center, a garage, a public green space, a park, or a fitness room.

"Shared roof" would mean a roof that serves more than one home or unit, including a contiguous roof that serves adjacent homes or units.

HOA Noncompliance

If an HOA violated the Act, a member could bring a civil action against the HOA for damages. If the member prevailed, the court could award reasonable attorney fees and the costs incurred in bringing the action.

The Act would specify that if any provision of the Act or its application to any person or circumstances were held invalid, the invalidity would not affect other provisions or applications of the Act that could be given effect without the invalid provision or application, and, to this end, the provisions of the Act would be severable.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.