

ACT 157

H.B. NO. 1017

A Bill for an Act Relating to Solar Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that section 196-7, Hawaii Revised Statutes, allows the installation of a solar energy device on any single-family residential dwelling or townhouse by its owner, regardless of any covenant, term, provision, condition, codicil, or contract to the contrary. The legislature finds that corresponding amendments should now be made to section 514A-89, Hawaii Revised Statutes.

The purpose of this Act is to, among other things:

- (1) Allow owners of single-family residential dwellings and townhouses to install solar energy devices without board approval, provided that the devices are registered with the appropriate homeowner, community or condominium association, or cooperative, if any; and
- (2) Require “private entities” such as homeowners, community and condominium associations, and cooperatives to adopt rules regarding the placement of solar energy devices.

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

“~~[E]§196-7[E]~~ **Placement of solar energy devices.** (a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, [or] contract, or similar binding agreement, however worded, from installing a solar energy device on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void~~[-]~~ and unenforceable.

~~[(b) For the purposes of this section, “solar energy device” means any identifiable facility, equipment, apparatus, or the like, including a photovoltaic cell application, that is applicable to a single-family residential dwelling or townhouse and makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for generation.]~~

(b) Every private entity shall adopt rules by December 31, 2006, that provide for the placement of solar energy devices. The rules shall facilitate the placement of solar energy devices and shall not unduly or unreasonably restrict that placement so as to render the device more than twenty-five per cent less efficient or to increase the cost of the device by more than fifteen per cent. No private entity shall assess or charge any homeowner any fees for the placement of any solar energy device.

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

- (1) The device is in compliance with the rules and specifications adopted pursuant to subsection (b);
- (2) The device is registered with the private entity of record within thirty days of installation; and
- (3) If the device is placed on a common element or limited common element as defined by a project’s declaration, the homeowner shall first obtain the consent of the private entity; provided further that such consent shall be given if the homeowner agrees in writing to:
 - (A) Comply with the private entity’s design specification for the installation of the device;
 - (B) Engage a duly licensed contractor to install the device; and
 - (C) Within fourteen days of approval of the solar device by the private entity, provide a certificate of insurance naming the private entity as an additional insured on the homeowner’s insurance policy.

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

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

responsible for removing the solar energy device if reasonably necessary or convenient for the repair, maintenance, or replacement of the common elements or limited common elements.

(e) If a material or labor roof warranty exists at the time a solar energy device is installed on a roof that is a common element or limited common element, the homeowner shall obtain confirmation in writing from the company that issued the warranty that the installation of the solar energy device will not void the roof warranty. The homeowner shall provide the private entity with a copy of the confirmation.

(f) For the purposes of this section:

“Private entity” means any association of homeowners, community association, condominium association, cooperative, or any other non-governmental entity with covenants, bylaws, and administrative provisions with which the homeowner’s compliance is required.

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

SECTION 3. Section 514A-89, Hawaii Revised Statutes, is amended to read as follows:

“§514A-89 Certain work prohibited. (a) No apartment owner shall do any work [~~which~~] that could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament[~~, nor may any~~].

(b) No apartment owner shall add any material structure or excavate any additional basement or cellar, without first obtaining in every such case the consent of seventy-five per cent of the apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected[~~, being first obtained; provided that nonmaterial~~].

(c) Nonmaterial structural additions to the common elements, including, without limitation, [the installation of solar energy devices, or] additions to or alterations of an apartment made within [such] the apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the board of directors of the association of apartment owners and such percentage, number, or group of apartment owners as may be required by the declaration or bylaws[-]; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this section:

“Nonmaterial structural additions to the common elements”, [as used in this section,] means a structural addition to the common elements [which] that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

[For purposes of this section, “solar energy device”] “Solar energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it must be installed in place and ready to be made operational in order to qualify as a

“solar energy device”[-]; and provided further that “solar energy device” shall not include skylights or windows.

“Townhouse” means a series of individual houses having architectural unity and a common wall between each unit; provided that each unit extends from the ground to the roof.”

SECTION 4. Act 164, Session Laws of Hawaii 2004, is amended by amending part VI, section -140 of the new chapter to read as follows:

“§ -140 Additions to and alterations of condominium. (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.

(b) Subject to the provisions of the declaration, no unit owner may make or allow any material addition or alteration, or excavate an additional basement or cellar, without first obtaining the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval. The declaration may limit the board’s ability to approve or condition a proposed addition or alteration; provided that the board shall always have the right to disapprove a proposed addition or alteration that the board reasonably determines could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.

(c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, [~~the installation of solar energy devices, or~~] additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold [~~such~~] the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws[-]; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this subsection:

“Nonmaterial additions and alterations”, [~~as used in this subsection,~~] means an addition to or alteration of the common elements or a unit that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

“Solar energy device” [~~for purposes of this subsection,~~] means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and be ready to be made operational in order to qualify as a “solar energy device”[-]; provided further that “solar energy device” shall not include skylights or windows.

“Townhouse” means a series of individual houses, having architectural unity and a common wall between each unit, provided that each unit extends from the ground to the roof.

(d) Notwithstanding any other provisions to the contrary in this chapter or in any declaration or bylaws:

(1) Regarding the installment of telecommunications equipment:

- (A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and
 - (B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections -33 and -34; provided that no such installation shall directly affect any nonconsenting unit owner; and
- (2) Regarding the abandonment of telecommunications equipment:
- (A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and
 - (B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections -33 and -34.

As used in this subsection:

“Directly affect” means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect a unit owner in a manner not common to the unit owners as a whole.

“Television signal distribution” and “telecommunications equipment” shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology.”

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

SECTION 6. This Act shall take effect on September 1, 2005.

(Approved June 24, 2005.)