
Judiciary Committee

HB 2546

Title: An act relating to solar easements.

Brief Description: Addressing solar easements.

Sponsors: Representatives Dunshee, McIntire, Lantz, Hudgins and Simpson.

Brief Summary of Bill

- Provides that a solar easement is implied for any solar energy system erected and operating on or after January 1, 2009.
- Removes the requirement that a solar easement must be written or recorded when used for a solar energy system erected and operating on or after January 1, 2009.
- Requires the owner to document the existence and operation of a solar energy system in a recorded instrument filed with a local auditor or recording office before an action for interference may be commenced.

Hearing Date: 1/22/08

Staff: Sean Gamble (786-5792) and Lara Zarowsky (786-7123).

Background:

Easements

An easement is an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose. A dominant estate is an estate that benefits from an easement. A servient estate is an estate burdened by the easement. Common examples of easements are a right of way through property, and a right to place or keep something on the servient estate.

Easements are generally recognized in a writing that is signed by the grantor. However, an implied easement may be created by law and arises by necessity, for example when a landowner can access his "land-locked" property only by passing through a neighbor's property. Washington

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courts have used a "reasonable necessity" standard for determining the validity of implied easements.

Solar Easements

A solar easement is an easement to protect the dominant estate's exposure to the direct rays of the sun, often created to prevent the owner of the servient estate from constructing any structure that would cause shadows on the dominant estate, thus interfering with the use of a solar energy system.

A solar energy system is a device that uses direct sunlight as an energy source, including devices used for heating, cooling, or for generating electricity.

Following the energy crisis of the early 1970s, Washington and 30 other states enacted solar energy legislation that included recognition of solar easements.

Creation of a Solar Easement

A solar easement must be written and recorded.

The writing **must** include:

- a description of the properties benefitted and burdened by the easement; and
- a description of the vertical and horizontal angles of the easement.

The writing **may** include:

- terms and conditions for the grant and duration of the easement; and
- provisions for compensating the burdened property owner for maintaining the easement, or for compensating the benefitted property owner from any loss of enjoyment in the event of interference.

Litigation addressing solar easements has generally involved homeowners wishing to use solar energy units in violation of homeowner association rules, and homeowners who are unable to use solar energy units due to neighbors who create shade.

Summary of Bill:

For any solar energy system erected and operating on or after January 1, 2009, a solar easement is implied and need not be written or recorded.

In any action for interference with an implied solar easement, the owner must document its existence and operation in a recorded instrument filed with the appropriate county auditor or recording officer before the action may commence.

A court may grant the interferee 180 days to remedy the interference.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.