

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 49

Introduced by Dungan, 26.

Read first time January 05, 2023

Committee: Judiciary

1 A BILL FOR AN ACT relating to solar energy; to amend sections 66-901,
2 66-913, and 66-914, Reissue Revised Statutes of Nebraska; to restate
3 legislative findings; to change provisions relating to
4 considerations for zoning regulations, ordinances, and comprehensive
5 development plans; to prohibit certain restrictions relating to
6 solar energy collection and use; to provide a cause of action; to
7 harmonize provisions; to provide severability; and to repeal the
8 original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-901, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 66-901 The Legislature hereby finds and declares that:

4 (1) The use of solar energy and wind energy in Nebraska; ~~(a) can~~
5 ~~(1) Can help reduce the nation's reliance upon irreplaceable domestic and~~
6 ~~imported fossil fuels,~~ (b) ; ~~(2) can reduce air and water pollution~~
7 ~~resulting from the use of conventional energy sources,~~ (c) ; ~~(3) requires~~
8 ~~effective legislation and efficient administration of state and local~~
9 ~~programs to be of greatest value to its residents, citizens;~~ and (d) (4)
10 is of such importance to the public health, safety, and welfare that the
11 state should take appropriate action to encourage its use. Such policy is
12 of utmost importance to the state and the use of solar energy and wind
13 energy generation sources in a distributed manner is inherent within the
14 police power of the state and its municipalities to safeguard the
15 interests of residents.

16 (2) There is an increasing need for the use of solar energy and wind
17 energy devices as an alternative to domestic and imported fossil fuels.
18 Distributed generation is one form of solar energy generation that
19 contributes positively to future energy production. The ~~As the use of~~
20 ~~solar energy and wind energy devices increases, the possibility of future~~
21 ~~shading and obstruction of such devices by structures or vegetation will~~
22 ~~also increase. The Legislature therefor declares that the purpose of~~
23 ~~sections 66-901 to 66-914 is to promote the public health, safety, and~~
24 ~~welfare by protecting access to solar energy and wind energy as provided~~
25 ~~in sections 66-901 to 66-914.~~

26 Sec. 2. Section 66-913, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 66-913 (1) All counties or municipalities having zoning or
29 subdivision jurisdiction are hereby authorized to include considerations
30 for the encouragement of solar energy and wind energy use and the
31 protection of access to solar energy and wind energy in all applicable

1 zoning regulations or ordinances and comprehensive development plans.
2 Such considerations may include, but not be limited to, (a) regulation of
3 height, location, setback, and use of structures, (b) regulation of the
4 height and location of vegetation with respect to property boundary lines
5 and the right to direct sunlight, (c) the type and location of energy
6 systems or their components, and (d) the use of districts to encourage
7 the use of solar energy systems and wind energy conversion systems and to
8 protect access to solar energy and wind energy, and (e) the use of a
9 solar access permit to regulate an impermissible interference with the
10 right to direct sunlight.

11 (2) Comprehensive development plans may contain an element for
12 protection and development of solar energy and wind energy access which
13 will promote energy conservation and ensure coordination of solar energy
14 and wind energy use with conventional energy use.

15 Sec. 3. Section 66-914, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 66-914 (1) When the application of any zoning or subdivision
18 regulation or ordinance would prevent or unduly restrict the use of solar
19 energy systems or wind energy conversion systems, the governing body of
20 the county or municipality having zoning or subdivision jurisdiction is
21 authorized to grant a variance or exception from the strict application
22 of such regulation or ordinance thereof so as to relieve the such
23 restriction and protect access to solar energy or wind energy if such
24 relief may be granted without substantial detriment to the public good
25 and without substantially impairing the intent and purpose of such
26 regulation or ordinance.

27 (2) Any instrument governing or regulating the ownership or use of
28 real property which purports to prohibit or outright restrict the
29 installation or use of a solar energy collector or solar energy system or
30 the building of structures that facilitate the collection of solar energy
31 in any form, including, but not limited to, any covenant, declaration,

1 bylaw, deed, lease, contract or other agreement, term, provision, or
2 condition, shall be void and unenforceable.

3 (3) No homeowners association as defined in section 18-3102 or
4 similar mutual benefit association or corporation organized for the
5 purpose of enforcing restrictive covenants established on real property
6 shall adopt or enforce any rule, covenant, condition, restriction, or
7 other regulation that violates subsection (2) of this section.

8 (4) No homeowners association as defined in section 18-3102 or
9 similar mutual benefit association or corporation organized for the
10 purpose of enforcing restrictive covenants established on real property
11 shall assess or charge a homeowner any fee for the placement of any solar
12 energy collector or solar energy system.

13 (5) Any existing covenant, declaration, bylaw, deed, lease, contract
14 or other agreement, term, provision, or condition that violates
15 subsection (2) of this section is void and unenforceable.

16 (6) A homeowner or tenant shall have a civil cause of action against
17 any landlord, any homeowners association or similar mutual benefit
18 association or corporation described in subsections (3) and (4) of this
19 section, or other person for a violation of this section.

20 Sec. 4. If any section in this act or any part of any section is
21 declared invalid or unconstitutional, the declaration shall not affect
22 the validity or constitutionality of the remaining portions.

23 Sec. 5. Original sections 66-901, 66-913, and 66-914, Reissue
24 Revised Statutes of Nebraska, are repealed.