S T A T E O F N E W Y O R K

5248--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

Introduced by M. of A. MENG, DelMONTE -- Multi-Sponsored by -- M. of A. PHEFFER, WEISENBERG -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to prohibiting the shading of solar devices on adjacent property by landscaping

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The real property law is amended by adding a new article 15 to read as follows:

ARTICLE 15

SOLAR SHADE CONTROL LAW

SECTION 470. SHORT TITLE.
471. DEFINITIONS.
472. INTERFERENCE WITH SOLAR DEVICE.
473. VIOLATIONS AND PENALTIES.
474. APPLICABILITY.
475. EXEMPTION.

S 470. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "SOLAR SHADE CONTROL LAW".

S 471. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "SOLAR COLLECTOR" MEANS A FIXED DEVICE, STRUCTURE, OR PART OF A DEVICE OR STRUCTURE, WHICH IS USED PRIMARILY TO TRANSFORM SOLAR ENERGY INTO THERMAL, CHEMICAL, OR ELECTRICAL ENERGY, AND WHICH IS USED AS PART OF A SYSTEM WHICH MAKES USE OF SOLAR ENERGY FOR ANY OR ALL OF THE FOLLOWING PURPOSES:

A. WATER HEATING,

B. SPACE HEATING OR COOLING, OR

C. POWER GENERATION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. "CHAIR" MEANS THE CHAIR OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

S 472. INTERFERENCE WITH SOLAR DEVICE. 1. AFTER JANUARY FIRST, TWO THOUSAND TEN, NO PERSON OWNING, OR IN CONTROL OF A PROPERTY SHALL ALLOW A TREE OR SHRUB TO BE PLACED, OR, IF PLACED, TO GROW ON SUCH PROPERTY, SUBSEQUENT TO THE INSTALLATION OF A SOLAR COLLECTOR ON THE PROPERTY OF ANOTHER SO AS TO CAST A SHADOW GREATER THAN TEN PERCENT OF THE COLLECTOR ABSORPTION AREA UPON THAT SOLAR COLLECTOR SURFACE ON THE PROPERTY OF ANOTHER AT ANY ONE TIME BETWEEN THE HOURS OF TEN O'CLOCK A.M. AND TWO O'CLOCK P.M., LOCAL STANDARD TIME; PROVIDED, THAT THIS SECTION SHALL NOT APPLY TO SPECIFIC TREES AND SHRUBS WHICH ARE IN EXISTENCE AT THE TIME OF INSTALLATION OF A SOLAR COLLECTOR OR DURING THE REMAINDER OF THAT ANNUAL SOLAR CYCLE CAST A SHADOW UPON THAT SOLAR COLLECTOR.

2. IN RECOGNITION OF ONGOING RESEARCH INTO AND DEVELOPMENT OF NEW TECHNOLOGIES IN ENERGY COLLECTION, THE CHAIR IN CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, SHALL, WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS ARTICLE, PROMULGATE RULES AND REGULATIONS GOVERNING THE PLACEMENT AND OPERATIONS OF SOLAR DEVICES AND REGULATIONS REGARDING POTENTIAL CONFLICTS BETWEEN ADJACENT PASSIVE AND ACTIVE SOLAR TECHNOLOGIES.

3. THE CHAIR, IN CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, SHALL PREPARE, OR CAUSE TO BE PREPARED AND DISTRIBUTED TO CITIES, TOWNS AND VILLAGES A MODEL COMPREHENSIVE SOLAR SHADE ORDINANCE FOR THE PURPOSE OF SAVING ENERGY.

4. THE CHAIR, IN CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, SHALL PREPARE, OR CAUSE TO BE PREPARED AND DISTRIBUTED TO CITIES, TOWNS AND VILLAGES A PAMPHLET CONTAINING INFORMATION REGARDING THE SOLAR SHADE CONTROL LAW.

S 473. VIOLATIONS AND PENALTIES. 1. NOT LESS THAN THIRTY DAYS BEFORE COMMENCING AN ACTION ALLEGING VIOLATION OF SUBDIVISION ONE OF SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE, WRITTEN NOTICE OF INTENTION TO COMMENCE SUCH ACTION MUST BE GIVEN BY PERSONAL SERVICE OR CERTIFIED MAIL TO THE OWNER, LESSEE OR LAWFUL OCCUPANT OF THE PROPERTY WHERE THE TREE OR SHRUB CAUSING SUCH VIOLATION IS LOCATED TO PROVIDE AN OPPORTUNITY TO CURE THE VIOLATION.

2. UPON A FINDING OF VIOLATION OF SUCH SUBDIVISION, THE COURT MAY ORDER THE PERSON FOUND TO HAVE COMMITTED SUCH VIOLATION TO CURE THE VIOLATION AND IF THE VIOLATION IS NOT CURED IN A TIMELY MANNER, THE COURT MAY IMPOSE DAMAGES, NOT TO EXCEED ONE THOUSAND DOLLARS.

S 474. APPLICABILITY. 1. NOTHING IN THIS ARTICLE SHALL APPLY TO TREES PLANTED, GROWN, OR HARVESTED ON LANDS AND IN FORESTS AS PROVIDED IN ARTICLE NINE OF THE ENVIRONMENTAL CONSERVATION LAW OR ON LAND DEVOTED TO THE PRODUCTION OF COMMERCIAL AGRICULTURAL CROPS.

2. NOTHING IN THIS ARTICLE SHALL APPLY TO THE REPLACEMENT OF A TREE OR SHRUB WHICH HAD BEEN GROWING PRIOR TO THE INSTALLATION OF A SOLAR COLLECTOR AND WHICH, SUBSEQUENT TO THE INSTALLATION OF SUCH SOLAR COLLECTOR, DIES.

S 475. EXEMPTION. ANY COUNTY, CITY, TOWN OR VILLAGE MAY ADOPT, BY MAJORITY VOTE OF ITS GOVERNING BODY, AN ORDINANCE EXEMPTING SUCH MUNICIPALITY FROM THE PROVISIONS OF THIS ARTICLE.

S 2. This act shall take effect immediately.