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

6081--A

2015-2016 Regular Sessions

I N A S S E M B L Y

March 13, 2015

Introduced by M. of A. GALEF -- read once and referred to the Committee on Housing -- 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 condominium associations from banning the installation of solar arrays in their by-laws or rules and regulations

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

Section 1. Legislative intent. The governor and legislature have embarked upon a multi-year, multi-pronged initiative to promote solar investment and use. In order to meet those goals, solar power opportunities must be expanded to those, who for a variety of reasons, have been prevented from installing solar power systems, particularly solar arrays, on their homes. Most condominium associations, for example, have not adapted their by-laws to provide unit owners with that option. States such as Arizona, California, Florida and Massachusetts have remedied this problem by enacting laws to prohibit condominium associations from banning or curtailing the installation of solar arrays on a unit owner's roof.

Compounding the problem is the lack of consistency regarding condominium association by-laws. There is no common standard governing the installation and most, if not all, condominium associations reject such installation without citing reasons. Frequently, litigation results with dissimilar outcomes. This legislation would permit unit owners to install solar arrays in consultation with their condominium association. It would thus expand the use of solar power systems for unit owners, while granting a role in the decision-making process to the condominium associations.

S 2. The real property law is amended by adding a new section 339-ll to read as follows:

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

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S 339-LL. BY-LAWS AND RULES AND REGULATIONS; CERTAIN PROVISIONS PROHIBITED. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "SOLAR POWER SYSTEM" MEANS THE USE OF SOLAR PHOTOVOLTAIC (PV) TECHNOLOGY THROUGH THE INSTALLATION OF MULTIPLE PANELS.

(B) "SOLAR ARRAYS" MEAN THE MULTIPLE PANELS PLACED ON ROOFS AND AS FREE-STANDING INSTALLATIONS ALONG WITH THE SUPPORT STRUCTURES AND FIXTURES SUCH AS METERS AND PIPING.

(C) "ROOF" MEANS OF A SINGLE FAMILY DWELLING UNIT WHICH IS SOLELY OWNED BY AN INDIVIDUAL OR INDIVIDUALS, AND WHICH IS NOT DESIGNATED AS A COMMON ELEMENT OR COMMON PROPERTY IN THE GOVERNING DOCUMENTS OF A CONDOMINIUM ASSOCIATION.

(D) "CONDOMINIUM ASSOCIATION BOARD OF MANAGERS" OR "BOARD OF MANAGERS" MEANS AN ASSOCIATION OR A GROUP OF PERSONS AUTHORIZED TO GOVERN A PRIVATE COMMUNITY WHOSE MEMBERS OWN THE IMPROVED LOTS OR UNITS OR BOTH SUCH LOTS AND UNITS OF WHICH THE COMMUNITY IS COMPOSED. MEMBERSHIP IN THE ASSOCIATION IS MANDATORY FOR OWNERS OF A LOT OR UNIT IN THE COMMUNITY.

2. NO CONDOMINIUM ASSOCIATION SHALL BAN IN ITS BY-LAWS OR BY RULES OR REGULATIONS ADOPTED PURSUANT THERETO, ANY SOLAR PANEL ARRAYS, THE INSTALLATION OF ROOFTOP SOLAR PANELS OR THE CLEARING AND TRIMMING OF VEGETATION ON UNIT OWNERS' PROPERTIES THAT OBSCURE SUCH SOLAR PANEL ARRAYS OR ROOFTOP SOLAR PANELS.

3. ANY COVENANT, RESTRICTION OR CONDITION CONTAINED IN ANY DEED, CONTRACT, SECURITY AGREEMENT, OR OTHER INSTRUMENT AFFECTING TRANSFER OR SALE OF, OR ANY INTEREST IN, REAL PROPERTY WHICH EFFECTIVELY PROHIBITS THE INSTALLATION OR USE OF A SOLAR ENERGY DEVICE IS VOID AND UNENFORCEABLE.

4. A CONDOMINIUM ASSOCIATION MAY ADOPT RULES OR REGULATIONS TO REGULATE THE INSTALLATION AND MAINTENANCE OF SOLAR ARRAYS ON ROOFS AS FOLLOWS:

(A) QUALIFICATIONS, CERTIFICATION AND INSURANCE REQUIREMENTS OF PERSONNEL OR CONTRACTORS WHO MAY INSTALL THE SOLAR SYSTEM;

(B) THE LOCATION OF SOLAR ARRAYS ON ROOFS;

(C) CONCEALMENT OF SOLAR ARRAYS' SUPPORT STRUCTURES, FIXTURES AND PIPING;

(D) COLOR HARMONIZATION OF SOLAR ARRAYS WITH THE COLORS OF STRUCTURES OR LANDSCAPING IN THE DEVELOPMENT;

(E) AGGREGATE SIZE, COVERAGE OR TOTAL NUMBER OF SOLAR ARRAY PANELS PROVIDED THAT THE PROVISIONS OF THIS SECTION ARE MET.

SUCH RULES OR REGULATIONS MUST BE CODIFIED IN THE CONDOMINIUM ASSOCIATION BY-LAWS.

5. A CONDOMINIUM ASSOCIATION SHALL NOT ADOPT OR ENFORCE ANY RULE OR REGULATION RELATED TO INSTALLATION OR MAINTENANCE OF SOLAR ARRAY PANELS IF COMPLIANCE WITH A RULE OR REGULATION WOULD INCREASE THE SOLAR POWER SYSTEM'S INSTALLATION OR MAINTENANCE COSTS BY AN AMOUNT WHICH IS ESTIMATED TO BE GREATER THAN TEN PERCENT OF THE TOTAL COSTS OF THE INITIAL INSTALLATION OF THE SOLAR POWER SYSTEM, INCLUDING THE COSTS OF LABOR AND EQUIPMENT.

6. A CONDOMINIUM ASSOCIATION SHALL NOT ADOPT OR ENFORCE ANY RULE OR REGULATION RELATED TO THE INSTALLATION OR MAINTENANCE OF A SOLAR POWER SYSTEM IF COMPLIANCE WITH SUCH RULE OR REGULATION INHIBITS THE SOLAR POWER SYSTEM FROM FUNCTIONING AT ITS INTENDED MAXIMUM EFFICIENCY.

7. A CONDOMINIUM ASSOCIATION MAY NOT DENY A UNIT OWNER'S INSTALLATION OF A SOLAR POWER SYSTEM UNLESS IT MAKES WRITTEN FINDINGS BASED UPON SUBSTANTIAL EVIDENCE IN THE RECORD THAT THE PROPOSED INSTALLATION WOULD

HAVE A SPECIFIC, ADVERSE IMPACT UPON THE PUBLIC HEALTH OR SAFETY, AND THERE IS NO FEASIBLE METHOD TO SATISFACTORILY MITIGATE OR AVOID THE SPECIFIC, ADVERSE IMPACT. SUCH FINDINGS SHALL INCLUDE THE BASIS FOR THE REJECTION OF POTENTIAL FEASIBLE ALTERNATIVES FOR PREVENTING THE ADVERSE IMPACT.

8. UNIT OWNERS WHO HAVE SUBMITTED SOLAR INSTALLATION DESIGNS PRIOR TO THE EFFECTIVE DATE OF THIS SECTION MAY RESUBMIT THE SAME DESIGN DRAWINGS AND ACCOMPANYING MATERIALS TO THE CONDOMINIUM ASSOCIATION UNLESS THERE HAS BEEN SUBSTANTIVE AND SIGNIFICANT CHANGES TO THE UNIT STRUCTURE AND PROPERTY.

9. ALL PROPOSED SOLAR POWER SYSTEMS MUST MEET THE REQUIREMENTS ESTABLISHED BY ANY LOCAL, STATE OR FEDERAL LAW, RULE OR REGULATION ON HEALTH AND SAFETY STANDARDS AND THOSE REQUIREMENTS IMPOSED BY STATE AND LOCAL PERMITTING AUTHORITIES.

10. A PERSON CLAIMING TO BE AGGRIEVED BY ANY VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION. IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION, THE COURT MAY AWARD COSTS OF LITIGATION, INCLUDING REASONABLE ATTORNEYS' FEES, TO THE PREVAILING PARTY.

11. NOTHING IN THIS SECTION SHALL PROHIBIT THE OWNERS OF MULTIPLE DWELLING UNITS FROM INSTALLING SUCH SOLAR POWER SYSTEMS AS A GROUP WITH INDIVIDUAL OWNERS RETAINING RESPONSIBILITY OF EACH UNIT.

S 3. This act shall take effect immediately.