
CHAPTER 1154

An act to amend Section 801 of, and to add Sections 714 and 801.5 to, the Civil Code, to add Sections 65850.5, 66473.1, and 66475.3 to the Government Code, to add Section 17959.1 to the Health and Safety Code, and to amend and repeal Section 17052.5 of the Revenue and Taxation Code, relating to solar easements.

[Approved by Governor September 25, 1978. Filed with
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The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the California Solar Rights Act of 1978.

SEC. 2. The Legislature hereby finds and declares that:

(a) Solar energy is a renewable, nonpolluting energy source.

(b) The use of solar energy systems will reduce the state's dependence on nonrenewable fossil fuels, supplement existing energy sources, and decrease the air and water pollution which

results from the use of conventional energy sources. It is, therefore, the policy of the state to encourage the use of solar energy systems. In order to insure uniform application of this policy in all parts of California, the provisions of this act shall be applicable to charter cities.

(c) The purpose of this act is to promote and encourage the widespread use of solar energy systems and to protect and facilitate adequate access to the sunlight which is necessary to operate solar energy systems.

SEC. 3. Section 714 is added to the Civil Code, to read:

714. Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property which effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

This section shall not apply to provisions which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency.

For the purposes of this section, "solar energy system" shall be defined as set forth in Section 801.5.

SEC. 4. Section 801 of the Civil Code is amended to read:

801. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right-of-way;
5. The right of taking water, wood, minerals, and other things;
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping

the same on land;

16. The right of a seat in church;

17. The right of burial;

18. The right of receiving sunlight upon or over land as specified in Section 801.5.

SEC. 5. Section 801.5 is added to the Civil Code, to read:

801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, or for water heating; or

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects which would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

SEC. 6. Section 65850.5 is added to the Government Code, to read:

65850.5. The legislative body of any city or county shall not enact an ordinance which has the effect of prohibiting or of unreasonably restricting the use of solar energy systems other than for the preservation or protection of the public health or safety. This prohibition shall be applicable to charter cities since the promotion of the use of nonfossil fuel sources of energy, such as solar energy and energy conservation measures, is a matter of statewide concern.

This section shall not apply to ordinances which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency.

For the purposes of this section, "solar energy system" shall have the same meaning as set forth in Section 801.5 of the Civil Code.

SEC. 7. Section 17959.1 is added to the Health and Safety Code, to read:

17959.1. No local ordinance enacted pursuant to this chapter shall have the effect of prohibiting or of unreasonably restricting the use of solar energy systems, other than for the preservation of the public health and safety. The provisions of this section shall apply to charter cities.

This section shall not apply to ordinances which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency.

As used in this section, "solar energy system" shall be defined as set forth in Section 801.5 of the Civil Code.

SEC. 8. Section 66473.1 is added to the Government Code, to read:

66473.1. The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and such provision shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure under applicable planning and zoning in force at the time the tentative map is filed.

The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

SEC. 9. Section 66475.3 is added to the Government Code, to

read:

66475.3. For divisions of land for which a tentative map is required pursuant to Section 66426, the legislative body of a city or county may by ordinance require, as a condition of the approval of a tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided that such ordinance contains all of the following:

(1) Specifies the standards for determining the exact dimensions and locations of such easements.

(2) Specifies any restrictions on vegetation, buildings and other objects which would obstruct the passage of sunlight through the easement.

(3) Specifies the terms or conditions, if any, under which an easement may be revised or terminated.

(4) Specifies that in establishing such easements consideration shall be given to feasibility, contour, configuration of the parcel to be divided, and cost, and that such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.

(5) Specifies that the ordinance is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

For the purposes of this section, "solar energy systems" shall be defined as set forth in Section 801.5 of the Civil Code.

For purposes of this section, "feasibility" shall have the same meaning as set forth in Section 66473.1 for the term "feasible".

SEC. 10. Section 17052.5 of the Revenue and Taxation Code is amended to read:

17052.5. (a) (1) There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (e)), an amount equal to the amount determined in paragraph (2) or (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges and costs associated with the acquisition of a solar easement as specified in paragraph (6), but excluding interest charges) incurred by the taxpayer of any solar energy systems on premises in California which are owned and controlled by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars (\$3,000).

(3) With regard to premises in California which are owned and controlled by the taxpayer, other than single-family dwellings, on which the cost (including installation charges, but excluding interest charges and costs associated with the acquisition of a solar easement) exceeds six thousand dollars (\$6,000), the amount of the credit allowed by this section shall be the greater amount of three thousand

dollars (\$3,000) or 25 percent of the cost of the solar energy system.

(4) Condominium owners, who install solar energy systems on such California premises which is owned cooperatively by them, shall be eligible to receive the credit provided by this section, in proportion to the number of households served by the systems.

(5) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems shall be considered part of the systems, and shall be eligible for the tax credit. Eligible conservation measures applied in conjunction with solar space heating shall include, but not be limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating shall include, but not be limited to, water heater insulation jackets, and shower and faucet flow-reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(6) The compensation paid to the owner of burdened property in connection with the acquisition of a solar easement as defined in Section 801.5 of the Civil Code, and the fees for the recording of such an easement shall be considered part of solar energy systems, and shall be eligible for the tax credit.

(b) The credit for such cost shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled, if any.

(c) The basis of any system for which a credit is allowed shall either be reduced to its salvage value at the end of its useful life, or reduced by the amount of the credit, whichever results in the lesser basis.

(d) In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) For the purposes of this section, the term "net tax" means the tax imposed under either Section 17041 or 17048 minus the credit for dependent care services provided for in Section 17052.6, the credits for personal exemption provided for in Section 17054, and the credits for taxes paid other states provided for in Chapter 12 (commencing with Section 18001).

(f) The tax credit provided by this section shall not apply to trusts or estates subject to tax under this part.

(g) The term "solar energy system" means equipment—

(1) Which uses solar energy to heat or cool or produce electricity; and

(2) Which has a useful life of at least three years.

(h) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds such "net tax" may be carried over to the "net tax" in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until

such credit is used. The credit shall be applied first to the earliest years possible.

(i) On or before January 1, 1978, the Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(j) Subject to the dollar limitations provided in paragraphs (2) and (3) of subdivision (a), if a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided by this section shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (f).

SEC. 10.5. Section 17052.5 of the Revenue and Taxation Code is amended to read:

17052.5. (a) (1) There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (e)), an amount equal to the amount determined in paragraphs (2) and (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges and costs associated with the acquisition of a solar easement as specified in paragraph (6), but excluding interest charges) incurred by the taxpayer of any solar energy systems on premises in California which are owned by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars (\$3,000). The owner of the premises on which the solar energy system is installed may claim the tax credit for costs incurred; however, an owner-builder or owner-developer of new homes may elect not to claim the solar energy tax credit for any or all systems installed on new homes. If an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit provided that the purchaser can confirm the election, if necessary, by a written document signed by the owner-builder or owner-developer.

The solar energy tax credit shall be claimed in the state income tax return for the taxable year in which the solar energy system was installed; however, if an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit for the taxable year during which the purchaser's escrow closed or the taxable year during which the purchaser acquired legal title to the home.

(3) With regard to premises in California which are owned by the taxpayer, other than single-family dwellings, on which the cost (including installation charges but excluding interest charges and

costs associated with the acquisition of an easement) exceeds twelve thousand dollars (\$12,000), the amount of the credit allowed by this section shall be 25 percent of the cost of the solar energy system.

(4) If a solar energy system serves two or more single-family dwellings, the owners of the dwellings shall be eligible to receive the credit in proportion to the number of single-family dwellings served. The amount of the credit shall be determined by dividing the cost (including installation charges but excluding interest charges) of the solar energy system by the number of single-family dwellings served by the system, and applying the formula described in either paragraph (2) or (3) to the per dwelling cost.

(5) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems shall be considered part of the systems, and shall be eligible for the tax credit. Qualified energy conservation measures installed within six months of the solar energy system are considered to be installed "in conjunction with" the solar energy system, even if the period spans two taxable years. In cases involving more than six months between the installations of the energy conservation measures and the solar energy system, the taxpayer must be able to provide persuasive evidence that the energy conservation measures were in fact installed in conjunction with a solar energy system. Eligible conservation measures applied in conjunction with solar space heating shall include, but not be limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating shall include, but not be limited to, water heater insulation jackets, and shower and faucet flow-reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(6) The compensation paid to the owner of burdened property in connection with the acquisition of a solar easement as defined in Section 801.5 of the Civil Code, and the fees for the recording of such an easement shall be considered part of solar energy systems, and shall be eligible for the tax credit.

(7) The basis amount of any solar energy system eligible for the credit provided under this section shall be reduced by any grant provided by a public entity for such system.

(b) The credit for such cost shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled, if any.

(c) The basis of any system for which a credit is allowed shall either be reduced to its salvage value at the end of its useful life, or reduced by the amount of the credit, whichever results in the lesser basis. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(d) With the exception of a husband and wife, if there is more than

one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) The tax credit provided by this section shall not apply to trusts or estates subject to tax under this part.

(f) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds such "net tax" may be carried over to the "net tax" in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until such credit is used. The credit shall be applied first to the earliest years possible.

(g) The Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. Such guidelines and criteria may include, but shall not be limited to, minimum requirements for safety, reliability and durability of solar energy systems. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(h) (1) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (2) of subdivision (a) shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (f).

(2) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (3) of subdivision (a) shall be reduced by the amount of such federal credit.

(i) For purposes of this section:

(1) "Installed" means placed in position in a functionally operative state.

(2) "Net tax" means the tax imposed under either Section 17041 or 17048 minus all credits except the credits provided by Section 17061, (relating to excess state disability insurance withheld), Section 18555.1, (relating to excess income tax withheld), Section 17053.5, (relating to the renters' credit).

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises.

(4) "Premises" means land, buildings, or mobilehomes.

(5) "Single-family dwelling" means a building used for residential

purposes, and includes individual units of a condominium, cooperative or other multiple dwelling unit.

(6) (A) "Solar energy system" means the use of solar devices for the individual function of:

- (i) Domestic, recreational, therapeutic, or service water heating;
- (ii) Space conditioning;
- (iii) Production of electricity;
- (iv) Process heat;
- (v) Solar mechanical energy; and
- (vi) Wind energy for the production of electricity or mechanical work.

The term "solar energy system" shall include, but is not limited to, passive thermal systems, semipassive thermal systems, active thermal systems, photovoltaic systems and wind-driven systems.

(B) Eligible solar energy systems shall have a useful life of not less than three years.

(7) "Solar device" means the equipment associated with the collection, transfer, distribution, storage and control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(8) "Passive thermal system" means a system which utilizes the structural elements of the building, and is not augmented by mechanical components, to provide for collection, storage, and distribution of solar energy for heating or cooling.

(9) "Active thermal system" means a system which utilizes solar devices thermally isolated from the living space to provide for collection, storage, and distribution of solar energy for heating or cooling.

(10) "Semipassive thermal system" means a system which utilizes the structure of a building and is augmented by mechanical components to provide for collection, storage, and distribution of solar energy for heating or cooling.

SEC. 10.7. The provisions of Sections 10 and 10.5, as the case may be under Section 11.5, of this act shall have no force or effect in the computation of taxes for taxable years and income years which begin after December 31, 1980; provided, however, that any unused credit may be used beyond that date on the same basis and to the same extent as permitted under the law immediately prior to January 1, 1981.

Sections 10 and 10.5, as the case may be under Section 11.5, of this act shall remain in effect only until January 1, 1981, and as of such date are repealed, unless a later enacted statute, which is chaptered before such date, deletes or extends such date.

SEC. 11. The provisions of Section 66473.1 of the Government Code shall not apply to any tentative subdivision map which has been received and accepted as complete for processing prior to the effective date of this act.

SEC. 11.5. It is the intent of the Legislature, if this bill and

Assembly Bill No. 3623 are both chaptered and amend Section 17052.5 of the Revenue and Taxation Code, and this bill is chaptered after Assembly Bill No. 3623, that Section 17052.5 of the Revenue and Taxation Code, as amended by Section 1 of Assembly Bill No. 3623 be further amended on the operative date of this act in the form set forth in Section 10.5 of this act to incorporate the changes in Section 17052.5 proposed by this bill. Therefore, Section 10.5 of this act shall become operative only if Assembly Bill No. 3623 is chaptered before this bill and amends Section 17052.5, and in such case Section 10.5 of this act shall become operative on the operative date of this act and Section 10 of this act shall not become operative.

SEC. 12. If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, the remaining provisions shall not be affected but shall remain in full force and effect. To this end, the provisions of this act are severable.
