

Solar Rights Act

From the Statutory Chapters in New Mexico Statutes

47-3-1. Short title.

Sections 47-3-1 through 47-3-5 NMSA 1978 may be cited as the "Solar Rights Act".

47-3-2. Declaration and findings.

The legislature declares that the state of New Mexico recognizes that economic benefits can be derived for the people of the state from the use of solar energy. Operations, research, experimentation and development in the field of solar energy use shall therefore be encouraged. While recognizing the value of research and development of solar energy use techniques and devices by governmental agencies, the legislature finds and declares that the actual construction and use of solar devices, whether at public or private expense, is properly a commercial activity which the law should encourage to be carried out, whenever practicable, by private enterprise.

47-3-3. Definitions.

As used in the Solar Rights Act:

A. "solar collector" means a device, substance or element, or a combination of devices, substances or elements, that relies upon sunshine as an energy source and that is capable of collecting not less than twenty-five thousand British thermal units on a clear winter solstice day or that is used for the conveyance of light to the interior of a building. The term also includes any device, substance or element that collects solar energy for use in:

- (1) the heating or cooling of a structure or building;
- (2) the heating or pumping of water;
- (3) industrial, commercial or agricultural processes; or
- (4) the generation of electricity. A solar collector may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

B. "solar right" means a right to an unobstructed line-of-sight path from a solar collector to the sun, which permits radiation from the sun to impinge directly on the solar collector.

47-3-4. Declaration of solar rights.

A. The legislature declares that the right to use the natural resource of solar energy is a property right, the exercise of which is to be encouraged and regulated by the laws of this state. Such property right shall be known as a solar right.

B. The following concepts shall be applicable to the regulation of disputes over the use of solar energy where practicable:

(1) "beneficial use." Beneficial use shall be the basis, the measure and the limit of the solar right, except as otherwise provided by written contract. If the amount of solar energy which a solar collector user can beneficially use varies with the season of the year, then the extent of the solar right shall vary likewise;

(2) "prior appropriation." In disputes involving solar rights, priority in time shall have the better right except that the state and its political subdivisions may legislate, or ordain that a solar collector user has a solar right even though a structure or building located on neighborhood property blocks the sunshine from the proposed solar collector site. Nothing in this paragraph shall be construed to diminish in any way the right of eminent domain of the state or any of its political subdivisions or any other entity that currently has such a right; and

(3) "transferability." Solar rights shall be freely transferable within the bounds of such regulation as the legislature may impose. The transfer of a solar right shall be recorded in accordance with Chapter 14, Article 9 NMSA 1978.

C. Unless a singular overriding state concerns occur which significantly affect the health and welfare of the citizens of this state, permit systems for the use and application of solar energy shall reside with county and municipal zoning authorities.

47-3-5. Prior rights unaffected.

Nothing in the Solar Rights Act shall be construed to alter, amend, deny, impair or modify any solar right, lease, easement or contract right which has vested prior to the effective date of the Solar Rights Act.

47-3-6. Short title.

This act [47-3-6 to 47-3-12 NMSA 1978] may be cited as the "Solar Recordation Act".

47-3-7. Legislative findings and declaration.

The legislature finds that in view of the present energy crisis, all renewable energy sources must be encouraged for the benefit of the state as a whole. The legislature further finds that solar energy is a viable energy source in New Mexico, and as such, its development should be encouraged. Since solar energy may be used in small-scale installations and one of the ways to accomplish such encouragement is by protection of rights necessary for small-scale installations, the legislature declares such protection to be the purpose of the Solar Recordation Act and necessary to the public interest.

47-3-8. Method of claiming; effect; limitations.

A solar right may be claimed by an owner of real property upon which a solar collector, as defined in Subsection A of Section 47-3-3 NMSA 1978, has been placed. Once vested, the right shall be enforceable against any person who constructs or plans to construct any structure, in violation of the terms of the Solar Rights Act [47-3-1 to 47-3-5 NMSA 1978] or the Solar Recordation Act [47-3-6 to 47-3-12 NMSA 1978]. A solar right shall be considered an easement appurtenant, and a suit to enforce a solar right may be brought at law or in equity. The solar right shall be subject to the provisions of the Solar Recordation Act and the Solar Rights Act.

47-3-9. Recordation; effect of failure to record; contest.

A. Any person claiming a solar right shall record that right by filing a declaration in substantially the following form with the county clerk of each county in which is located any portion of the properties burdened by a solar right or any portion of the properties on which a solar right is claimed:

SOLAR RIGHT DECLARATION

..., owner of the real property described below, claims a solar right in favor of the following described real estate in county, New Mexico:

(Description either by metes and bounds, if in a platted subdivision, by lot and block subdivision name, by middle Rio Grande conservancy district tract number or other adequate legal description.)

The following named persons have each received notification by certified mail evidenced by a return receipt signed by the named person, or if the address of any person was not known and could not be ascertained by reasonable diligence, or if a return receipt signed by the named person could not be obtained, then notification to that person shall be made by publication of a copy of this declaration, with the intended date of filing, at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the property for which the solar right is being claimed is located, the last publication of which was no less than ten days prior to the filing of this declaration:

(A listing of the names of the holders as shown in the records of the county clerk of any interest in property burdened by a claimed solar right, including owners, mortgagors, mortgagees, lessors, lessees, contract purchasers and contract owners or sellers, and a description, either by metes and bounds if in a platted subdivision, by lot and block and subdivision name, by middle Rio Grande conservancy district tract number or other adequate legal description, of that burdened property.)

The claimant has placed improvements on the land in the form of a solar collector, as shown by the attached survey or plot plan setting forth distances from lot lines and height from ground level of all solar collectors entitled to be recorded under the provisions of the Solar Recordation Act, Chapter ..., Article .. NMSA 1978 and setting forth the maximum height of a theoretical fence located at the property lines of the property on which the solar collector is located which will not interfere with the solar easement.

Notice is hereby given that by virtue of the Solar Recordation Act, Chapter ..., Article ... NMSA 1978, the holders of any interest in property described above as having been mailed notice must record a declaration, with the county clerk in each county in which solar right recordation has been filed, contesting the claimed solar right within sixty days, or the solar right shall be fully vested.

Witness hand and seal this ... day of, 19 ...

.....

(here add acknowledgment).

B. Any person desiring to claim a solar right must record that right and give notice to affected property owners as provided in the Solar Recordation Act as a necessary condition precedent to enforcing a solar right. Failure to so record and give notice shall constitute a jurisdictional defect and deprive any court of subject matter jurisdiction to enforce the solar right. However, nothing in this subsection shall apply to any solar right, lease, easement or contract right which has vested prior to the effective date of this subsection.

C. Any person who receives notice of the recordation may, within sixty days after receiving notice, file a declaration contesting the right, in the same manner and at the same place as the recordation was filed. If a declaration is filed contesting the claimed solar right, then the solar right shall not be enforceable against the property covered by the declaration unless agreed to by contract or ordered by a court of competent jurisdiction, and any claim of a solar right shall expire one year from the date of declaration unless the parties agree by contract to settle the solar rights dispute or unless court action has commenced by that date to establish the claim of the solar right.

47-3-10. Transfer.

Unless the document of conveyance otherwise specifies, upon the transfer of any realty on which a solar right exists or upon the transfer of any realty benefited by a filed declaration contesting a solar right, that solar right or declaration contesting the solar right shall be transferred with the realty and shall be enforceable by the vendee in the same manner and to the same extent to which it was

enforceable by the vendor. A solar right is appurtenant to the real property upon which the solar collector is situated. Nothing in this section shall be construed to prevent a person from agreeing to relinquish a solar right or a potential solar right. Nothing in this section shall affect any transfer of solar rights made prior to the effective date of the Solar Recordation Act pursuant to Paragraph (3) of Subsection B of Section 47-3-4 NMSA 1978 or any local solar rights ordinance.

47-3-11. Local authority.

A. Notwithstanding any other provisions of the Solar Recordation Act [47-3-6 to 47-3-12 NMSA 1978] or the Solar Rights Act [47-3-1 to 47-3-5 NMSA 1978], the governing body of a county or municipality may by ordinance regulate in whole or in part the claiming of solar rights in accordance with its powers to regulate zoning, planning and platting, and subdivisions; except that any solar right claimed pursuant to such local ordinance shall vest with respect to any property benefited or burdened by the solar right only after recordation as provided in Section 4 [47-3-9 NMSA 1978] of the Solar Recordation Act. Such local regulation shall not affect any solar right vested before the effective date of such ordinance, nor shall the local regulation affect any solar rights transfer which vested prior to the effective date of such ordinance. In the absence of the local regulation of solar rights, the following principles shall apply in addition to those set forth in the Solar Rights Act. If the property burdened by a solar right has or could have improvements constructed to a maximum height of twenty-four feet, then the solar right shall be limited, as to that burdened property, to protecting an unobstructed line-of-sight path from the solar collector to the sun only as to obstructions located on the burdened property which cast a shadow greater than the shadow cast by a hypothetical fence ten feet in height located on the property line of the property on which the solar collector is located. If the property burdened by a solar right has or could have improvements constructed in excess of twenty-four feet in height, but no greater than thirty-six feet, then the solar right shall be limited, as to that burdened property, to protecting an unobstructed line-of-sight path from the solar collector to the sun only as to obstructions located on the burdened property which cast a shadow greater than the shadow cast by a hypothetical fence fifteen feet in height located on the property line of the property on which the solar collector is located. No solar right shall be obtained against property which has or could have improvements constructed in excess of thirty-six feet in height unless so provided in a local ordinance or agreed to by contract. Unless otherwise provided by contract or local ordinance, a person may allow vegetation to grow or construct or plan to construct any improvement which obstructs the protected solar right so long as such obstruction does not block more than ten percent of the collectible solar energy between the hours of 9:00 a.m. and 3:00 p.m. Unless otherwise provided by contract or local ordinance, solar rights shall be protected between 9:00 a.m. and 3:00 p.m.

B. Nothing in the Solar Recordation Act shall be construed to limit any county or municipal ordinances concerning solar rights in effect prior to the effective date of this section.

47-3-12. Indexing.

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A declaration filed pursuant to Section 4 [47-3-9 NMSA 1978] of the Solar Recordation Act shall be indexed by the county clerk in the grantees index under the names of the persons receiving notice in the declaration and in the grantors index under the name of the person filing the declaration.