

HOUSE AMENDMENTS TO HOUSE BILL 3090

By COMMITTEE ON ENVIRONMENT AND WATER

May 1

1 On page 1 of the printed bill, line 2, delete “93.270” and insert “93.272 and 105.880”.

2 Delete lines 4 through 30 and delete page 2 and insert:

3 “**SECTION 1.** ORS 105.880 is amended to read:

4 “105.880. *[(1) No person conveying or contracting to convey fee title to real property shall include*
5 *in an instrument for such purpose a provision prohibiting the use of solar energy systems by any per-*
6 *son on that property.]*

7 “*[(2) Any provision executed in violation of subsection (1) of this section after October 3, 1979, is*
8 *void and unenforceable.]*

9 “*[(3) For the purposes of this section, ‘solar energy system’ means any device, structure, mechanism*
10 *or series of mechanisms which uses solar radiation as a source for heating, cooling or electrical*
11 *energy.]*

12 “(1) **As used in this section, ‘solar energy system’ means a device, structure, mechanism**
13 **or series of mechanisms that uses solar radiation as a source for heating, cooling or elec-**
14 **trical energy, including a device, structure or mechanism for radiant drying of clothing in**
15 **open air.**

16 “(2) **A person may not include in an instrument conveying or contracting to convey fee**
17 **title to real property a provision:**

18 “(a) **Prohibiting the use of a solar energy system on the property; or**

19 “(b) **Restricting the orientation or use of a solar energy system on the property in a**
20 **manner that impairs the effective operation of the solar energy system.**

21 “(3) **A provision in an instrument is void and unenforceable if the provision violates:**

22 “(a) **Subsection (2)(a) of this section and the instrument was executed after October 3,**
23 **1979.**

24 “(b) **Subsection (2)(b) of this section and the instrument was executed after the effective**
25 **date of this 2009 Act.**

26 “(4) **An owner of record of real property subject to an instrument containing a provision**
27 **described in this section may file a petition to remove the provision in the manner provided**
28 **in ORS 93.272 for removal of a similar provision from an instrument conveying or contract-**
29 **ing to convey fee title to real property.**

30 “**SECTION 2.** Section 3 of this 2009 Act is added to and made a part of ORS 94.550 to
31 **94.783.**

32 “**SECTION 3.** (1) **A provision in a declaration or bylaws of a planned community is void**
33 **and unenforceable as a violation of the public policy to protect the public health, safety and**
34 **welfare if the provision:**

35 “(a) **Prohibits the use of a solar energy system, as defined in ORS 105.880, on a lot; or**

1 “(b) Restricts the orientation or use of a solar energy system on a lot in a manner that
2 impairs the effective operation of the solar energy system.

3 “(2) An owner of record of a lot that is subject to an instrument containing a provision
4 described in this section may file a petition to remove the provision in the manner provided
5 in ORS 93.272 for removal of a similar provision from an instrument conveying or contract-
6 ing to convey fee title to real property.

7 “(3) This section does not:

8 “(a) Authorize an owner of record to install a solar energy system in or on common
9 property or property maintained by the homeowners association.

10 “(b) Prohibit inclusion in a declaration, bylaws, rules or regulations of a provision that
11 establishes reasonable restrictions on size, appearance or location of a solar energy system
12 without impairing effective operation of the solar energy system.

13 “SECTION 4. Section 5 of this 2009 Act is added to and made a part of ORS chapter 100.

14 “SECTION 5. (1) A provision in a declaration or bylaws of a condominium is void and
15 unenforceable as a violation of the public policy to protect the public health, safety and
16 welfare if the provision:

17 “(a) Prohibits the use of a solar energy system in or on a unit or limited common ele-
18 ments reserved to the unit; or

19 “(b) Restricts the orientation or use of a solar energy system in or on a unit or limited
20 common elements reserved to the unit in a manner that impairs the effective operation of
21 the solar energy system.

22 “(2) A unit owner of a condominium unit that is subject to an instrument containing a
23 provision described in this section may file a petition to remove the provision in the manner
24 provided in ORS 93.272 for removal of a similar provision from an instrument conveying or
25 contracting to convey fee title to real property.

26 “(3) This section does not:

27 “(a) Authorize a unit owner to install a solar energy system in or on a general common
28 element or property maintained by the association of unit owners.

29 “(b) Prohibit inclusion in a declaration, bylaws, rules or regulations of a provision that
30 establishes reasonable restrictions on size, appearance or location of a solar energy system
31 without impairing effective operation of the solar energy system.

32 “SECTION 6. ORS 93.272 is amended to read:

33 “93.272. (1) Any owner of record of real property that is subject to an instrument conveying or
34 contracting to convey fee title to the property that contains a provision that is in violation of ORS
35 93.270 or 105.880 or section 3 or 5 of this 2009 Act may file a petition to remove that provision
36 from the title to the property. The petition [*shall*] **must** be filed in the circuit court for the county
37 in which the property is located. [*No fee shall be charged*] **The circuit court may not charge a fee**
38 for the filing of the petition. The petition [*shall*] **must** contain:

39 “(a) The name and mailing address of the person filing the petition;

40 “(b) The name and mailing address of all owners of record of the property;

41 “(c) The legal description of the property subject to the provision in violation of ORS 93.270 or
42 **105.880 or section 3 or 5 of this 2009 Act**; and

43 “(d) A clear reference to the provision claimed to be in violation of ORS 93.270 or **105.880 or**
44 **section 3 or 5 of this 2009 Act**.

45 “(2) **The petitioner shall serve** notice and a copy of the petition [*shall be served*] on all owners

1 of record in any manner provided for in ORCP 7. The notice *[shall]* **must** inform the owners of re-
2 cord that:

3 “(a) The petition seeks the removal of a provision that is in violation of ORS 93.270 **or 105.880**
4 **or section 3 or 5 of this 2009 Act** from the title to the property;

5 “(b) The person served may request a hearing within 10 days after service of the petition; and

6 “(c) The court *[is authorized to]* **may** enter a default judgment removing the provision if *[no]* **the**
7 **owners of record do not request a hearing** *[is requested by the owners of record]*.

8 “(3) The petitioner shall file with the court proof of service in the manner provided in ORCP 7
9 F. If *[no]* **a** request for hearing is **not** made by any person served within 10 days after service on
10 that person, the court shall enter a judgment removing the provision from the title to the property
11 if the court determines that the provision is in violation of ORS 93.270 **or 105.880 or section 3 or**
12 **5 of this 2009 Act.**

13 “(4) If a hearing is requested by any person served under subsection (2) of this section, the clerk
14 of the court shall schedule a hearing within 20 days after the filing of the request for a hearing.
15 The clerk of the court shall mail notification of the hearing date to the petitioner and to all owners
16 of record listed in the petition.

17 “(5) At any hearing under the provisions of this section, the sole issue *[that shall]* **to** be decided
18 by the court is whether the provision that is the subject of the petition is in violation of ORS 93.270
19 **or 105.880 or section 3 or 5 of this 2009 Act.** The **court shall try the** matter *[shall be tried to the*
20 *court sitting]* without **a** jury. If the court finds that the provision is not in violation of ORS 93.270
21 **or 105.880 or section 3 or 5 of this 2009 Act,** the court shall dismiss the petition. If the court finds
22 that the provision is in violation of ORS 93.270 **or 105.880 or section 3 or 5 of this 2009 Act,** the
23 court shall enter a judgment removing the provision from the title to the property.

24 “(6) If a court finds only part of a provision to be in violation of ORS 93.270 **or 105.880 or**
25 **section 3 or 5 of this 2009 Act** under this section, the court shall enter a judgment removing only
26 that part of the provision that is in violation.

27 “(7) For the purposes of this section[,]:

28 “(a) **‘Instrument conveying or contracting to convey fee title’ includes a declaration and**
29 **bylaws of a planned community established pursuant to ORS 94.550 to 94.783 or by contract**
30 **and a declaration and bylaws of a condominium established pursuant to ORS chapter 100.**

31 “(b) ‘Owner of record’ means a person having any legal or equitable interest in property, in-
32 cluding, but not limited to, a purchaser, lienholder or holder of any security interest in *[such]* **the**
33 property whose interest is recorded in the public records provided for by Oregon statutes where the
34 owner’s interest must be recorded to perfect a lien or security interest or provide constructive no-
35 tice of the owner’s interest.”.