

State Legislative Update: Energy Efficiency

Prepared by:

Martha Rowley, Manager, Regulatory Analysis, 202-508-5251, mrowley@eei.org

Retail Energy Services Department

Diane Munns, Executive Director

Michael Oldak, Sr. Director

Rick Tempchin, Director

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State legislatures this year are tackling high electricity costs, climate issues, and concerns about energy supply risk through a broad array of measures designed to reduce energy consumption.

Primary among these initiatives are measures aimed at increasing energy efficiency. Many such bills have been considered, or are being debated, in tandem with renewable energy and greenhouse gas emission reduction initiatives, as in **Colorado, Iowa, Maryland, and Virginia.**

These four states enacted legislation in 2008 that launched comprehensive energy initiatives or followed on clean energy initiatives started earlier via legislation or executive order.

Highlighted in this update are 37 energy efficiency measures enacted, or approved and awaiting signature, in 23 states in the first five months of 2008.

In addition, while many legislative sessions have ended for the year, at least a dozen are still underway. Energy efficiency legislation is in play in several of those states, including **Massachusetts, Michigan, and Pennsylvania.**

Main Drivers

Lawmakers in many states are seeking to lower consumption by promoting more efficient use of energy in products and processes, thereby helping ratepayers reduce costs and utilities meet energy resource needs using cleaner alternatives to traditional fossil fuels.

Managing and optimizing energy resource development by including energy efficiency, along with renewables and other forms of clean energy, in the mix also results in environmental benefits. Such benefits are a key driver of energy efficiency legislation in a growing number of states where climate change is a top concern, such as **Florida, Maryland, New Hampshire, and Vermont.**

Governors Take Initiative

Many legislative energy initiatives under consideration this year came from governors, e.g., from **Colorado, Delaware, Hawaii, Maryland, Minnesota, Ohio, and Pennsylvania.**

The National Governors' Association this year identified promotion of clean energy, including energy efficiency, as a top priority of 90 percent of the nation's governors in their 2008 State of the State addresses—an increase over previous years.

A concomitant uptick in legislative activity on energy efficiency comes at a time of tightening state fiscal budgets, which means many bills have not or will not meet with success due to cost.

For example, **California** Gov. Arnold Schwarzenegger vetoed AB 527, a bill requiring development of a state plan to make state-owned buildings more energy efficient, because he said it was too expensive.

Moreover, energy efficiency is not yet treated by some states, e.g., **Indiana** and **West Virginia**, as a high-priority energy resource. Nevertheless, debate is taking place in such states about the need to include sustainability measures in any future state energy policy.

For example, Indiana lawmakers considered a bill (SB 287) that would require public buildings built after 2008 to obtain a green rating. This bill failed upon adjournment. West Virginia Gov. Joe Manchin III (D) in his 2008 State of the State address strongly urged promotion of energy efficiency as the state seeks ways to optimize its resources.

Highlights of Pending Bills

In **Massachusetts**, HB 3965 has a favorable outlook for action this year. The bill would create a new executive office of energy affairs, partially funded by a tax on energy companies, to oversee competitive bidding for energy efficiency and other clean electricity measures. The bill also would promote development of green buildings by municipalities.

In **Michigan**, there is a strong bipartisan drive to pass a package of energy bills, including HB 5525, which would require utilities to develop energy efficiency programs subject to minimum performance standards. Utilities would be allowed to recover implementation costs up to approved levels, and would have an opportunity to capitalize approved programs and receive other performance-based incentives.

In **Pennsylvania**, Gov. Edward Rendell is pushing for final action on a legislative package he initiated, including HB 2200, which would require utilities to reduce overall energy output by 2.5 percent and customer peak demand by 4 percent by May 31, 2013.

States LEED by Example

By far the greatest area of 2008 legislative activity, when viewed in terms of bill enactments and approvals, is energy standards for government buildings.

There is an increasingly strong push in the states, many of which have been getting green for years, to have government-owned buildings comply with high energy performance rating systems such as the Leadership in Energy and Environmental Design (LEED) standards.

A primary driver of this trend is data from the U.S. Green Building Council, which found LEED-certified buildings use 32 percent less electricity than non-certified buildings and save 305 metric tons of CO₂ emissions every year.

There are new laws in 11 states so far this year pushing state and local government building owners and builders toward higher, greener performance standards. These actions continue a trend begun in previous years in the states.

Utility Incentives and Requirements

States are not as far along in 2008 legislative activity supporting incentives to electric utilities to invest in energy efficiency, or removing disincentives to such investment.

New Mexico made headlines in this area. HB 305, which took effect in mid-May, requires utilities to provide customers with cost-effective energy efficiency resources while at the same time allowing them to earn a profit.

Maryland enacted a law (SB 374) imposing a similar requirement on utilities to procure energy efficiency resources for customers, but without the range of incentives approved in New Mexico.

In addition to Maryland and New Mexico, **Ohio** (SB 221) adopted an energy efficiency resource standard (EERS) in 2008 under which savings goals are specified over certain timeframes. This continues a trend begun in other states in previous years. Other states with completed EERS are **California, Colorado, Connecticut, Illinois, Minnesota, Nevada, New Hampshire, North Carolina, Oregon, Pennsylvania, Texas,** and **Virginia**. EERS also are pending in **New Jersey** and **New York**.

Virginia (SB 718) and **Maryland** (SB 417) enacted laws imposing energy efficiency reporting and/or notification requirements on utilities.

Third-party Administrators

Lawmakers in **Hawaii** and **New Mexico** addressed one implementation aspect of energy efficiency programs: use of third-party administrators to develop and manage programs versus use of utility providers.

Hawaii (SB 3001) requires transfer of ratepayer funds collected through a demand-side management (DSM) surcharge to a third-party administrator contracted by the state Public Utilities Commission.

New Mexico (HB 305) directed state regulators to consider whether third-party administrators can more cheaply and effectively deliver mandated energy efficiency programs.

Legislation (SB 228) is pending in **Delaware** that would establish the board for the Delaware Sustainability Utility (SEU) created under a 2007 law. The SEU is a third-party entity intended to help homeowners insulate homes, buy energy efficiency appliances or install solar panels, and its scope may grow in the future.

Metering Issues

Legislative activity on two metering issues, smart meters and net metering, also has been seen in 2008 bill enactments.

Ohio lawmakers acted positively for utilities when they allowed cost recovery related to early retirement of legacy meters that are replaced by advanced meters (SB 221).

Vermont authorized and encouraged continued study by regulators of smart meter issues (SB 209). **Maryland** lawmakers agreed to authorize regulatory approval of utility implementation of smart meters and smart grid technology based on cost-effectiveness findings (HB 374).

In the same new laws, **Ohio** and **Vermont** fine-tuned existing laws to expand net metering. **South Carolina** (HB 3395) directed a report to the legislature as a first step toward creating a net metering program through electric utilities.

New York also is expected to act on legislation (AB 9902) that would expand the state's net metering law, e.g., by raising technology limits and adding fuel cells to eligible technologies.

Energy Financing and Tax Policies

States that are adopting greenhouse gas emission cap and trade programs are increasingly considering using revenue from allowance trading to fund energy efficiency programs.

New Hampshire enacted a law (HB 1434) implementing its participation in the Regional Greenhouse Gas Initiative (RGGI) that would do just that.

Maryland (HB 368/SB 268) directed that funds from sale of carbon allowances under RGGI, along with other funding sources such as revenue from utility fines for non-compliance with the state renewable portfolio standard, be used for energy efficiency programs.

New York is considering a similar approach in a measure (AB 7366) that would require deposit of revenues from the auction of any emissions allowance into a new energy efficiency account of the state's Climate Change Solution Fund. The outlook for final action on this bill is uncertain.

Several legislatures have acted this year to expand funding sources for energy efficiency initiatives in which state and local governments are directly involved or for which they provide funding assistance.

Alaska (SB 289) beefed up funding of energy and weatherization programs administered by the state housing finance public corporation, while **Colorado** (HB 1350) gave new authority to local governments to lend money to homeowners for energy efficiency projects.

Similarly, **Oklahoma** (SB 1451), **Utah** (HB 198), and **Virginia** (HB 171/SB 242) approved or enacted legislation creating new grant, loan, and/or bond financing sources for local governmental (and nongovernmental in Oklahoma) energy efficiency projects.

On the tax side, a couple of states have acted in 2008 to encourage energy efficiency through tax policy or incentives.

Virginia used tax policy to encourage green buildings by enabling them to be classified as a separate class of property for more favorable tax rate purposes (SB 174/HB 239). Virginia also encouraged purchase of energy efficient appliances that use water, e.g., dishwashers, by adding them to its annual four-day sales tax holiday (HB 1229).

Washington also provided tax incentives to businesses to encourage purchase of energy efficient appliances and equipment (HB 3362), and it exempted certified construction from sales and use taxes (HB 3120).

Other funding sources also are subject to debate. A bill (HB 4039) failed in **Tennessee** that would have made schools more energy efficient through use of lottery proceeds.

A New Siting Issue

Colorado prohibited homeowner associations (HOAs) from banning clotheslines, although HOAs retain control over aspects like line siting and appearance on member properties (HB 1270).

Vermont and **Connecticut** in previous years also sought unsuccessfully to overturn HOA bans on clotheslines.

Effects of Recession

Legislative activity in 2008 began with a widely held expectation of a continued surge in electricity demand. However, in the face of a recession in the United States, demand forecasts are being ratcheted back. It is too soon to tell what effect this will have on state energy efficiency legislation.

Whether such legislation will drive up costs for consumers or provide an economic stimulus remains a matter of debate. Legislative proponents of energy efficiency argue that costs of designing and constructing greener buildings, for example, are minimal and more than paid back by energy savings.

There is also growing evidence, e.g., through participation in green pricing programs in states such as **Indiana**, that many consumers are willing to pay a premium for clean energy. Consumers also appear increasingly willing to pay for higher quality, more durable products that are energy- and cost-efficient.

However, evidence also is growing that consumers are finding it increasingly difficult to pay their utility bills in the current economy. This has lawmakers and regulators concerned, especially in states such as **Pennsylvania** and **Illinois**, where generation rate caps are set to expire or have already expired, triggering significant price increases. Low-income energy assistance is expected to garner more state legislative attention in the coming months.

An economic downturn also may seriously affect business and governmental willingness to make energy efficiency investments in the near term, despite the prospect of long-term payoffs.

EEI Reference Resources

To obtain copies of the following materials, please visit the EEI website at: www.eei.org/state-policy-research

- *Quantifying the Benefits of Dynamic Pricing in the Mass Market*, The Brattle Group, January 2008, lays out methodology for quantifying the benefits to customers and utilities of dynamic pricing programs.
- *Making a Business of Energy Efficiency: Sustainable Business Models for Utilities*, August 2007, NERA Economic Consulting, identifies and discusses sustainable utility business models for energy efficiency as well as enabling regulatory and business circumstances.
- *Retail Electricity Pricing and Rate Design in Evolving Markets*, Christensen Associates, July 2007, explains the critical role that efficient rate design, including decoupling, can play in today's electricity markets, and suggests practical strategies for implementing such designs.
- *PURPA: Making the Sequel Better than the Original*, The Brattle Group, December 2006, addresses the issues and challenges of avoided cost, net metering and credits for customer demand reduction.
- *Deciding on "Smart" Meters: The Technology Implications of Section 1252 of the Energy Policy Act of 2005*—Plexus Research, September 2006, provides practical guidance on how to evaluate the cost-effectiveness of advanced metering infrastructures.
- *Distributed Resources: Incentives*, NERA Economic Consulting, May 2006, describes barriers to efficient distributed resources development and strategies for their removal; addresses the pros and cons of decoupling, and presents five conceptual designs for rate regulatory policies that would let utilities make a business out of distributed resources.
- *Responding to EPCRA 2005: Looking at Smart Meters for Electricity, Time-based Rate Structures, and Net Metering*—NERA Economic Consulting, May 2006, presents economic principles and policy issues for regulators to consider when evaluating rate options under EPCRA directives, and provides guidance on whether to adopt proposed standards relating to time-based rates, net metering, and other PURPA issues.
- *Reference Manual and Procedures for Implementation of the "PURPA Standards" in the Energy Policy Act of 2005*—NARUC, EEI, APPA, NRECA, March 2006, provides guidance on the procedures that states must follow to comply with the required PURPA considerations.

- *Economic Principles of Demand Response in Electricity*, NERA Economic Consulting, October 2002, identifies the economic principles that should underlie the expanded use of demand response in emerging markets.
- *Barriers to Price-Responsive Demand in Wholesale Electricity Markets*, Eric Hirst, PhD, June 2002, focuses on the need for increased integration of retail and wholesale markets and the barriers that prevent greater retail participation.

2008 Overview

Following is a brief overview of energy efficiency legislation enacted, or approved and awaiting signature, in the first five months of 2008. Links to these bills can be found at: <http://www.statescape.com/search/quickfinder.asp>

State Programs and Policies

- **Colorado** enacted HB 1025 establishing an energy office within the office of the governor to achieve a “new energy economy” in the state by advancing energy efficiency and renewable, clean energy resources. Activities are to be funded by a new clean energy fund in the state treasury office.
- **Florida** passed HB 7135 creating the Florida Energy and Climate Commission within the governor’s office to centralize and promote a more comprehensive, long-term state energy policy and make policy recommendations. The act also directs the Public Service Commission to set up a Florida Energy Systems Consortium to coordinate energy-related research within the state university system to support state energy and climate change objectives. The bill is expected to be signed in late June.
- **Iowa** enacted SF 2386 establishing a commission on energy efficiency standards and practices for buildings. The commission must report to the governor and legislators by 1/1/11. The act also establishes an interim study committee to examine utility energy efficiency plans and programs with a focus on the consumer perspective. This panel must report to legislators by 1/15/09.
- **Maryland** enacted HB 374 establishing a state energy efficiency program, called EmPOWER Maryland, under which a 15 percent reduction in per capita electricity consumption and peak demand must be achieved by the end of 2015.
- **Maryland** enacted HB 368 and SB 268 establishing a Maryland Strategic Investment Fund to serve as a repository for revenue from fines paid by utilities for noncompliance with the state’s Renewable Portfolio Standard (RPS), funds from sale of carbon allowances under the Regional Greenhouse Gas Initiative (RGGI), and other funding sources. The new Maryland Energy Administration will use the funds to encourage development of energy efficiency programs and for other purposes.
- **Virginia** enacted SB 464 establishing the Virginia Commission on Energy and Environment as a legislative study commission to review and recommend steps to implement the state energy plan. The commission is charged with evaluating demand-side energy conservation by utilities and consumers with appropriate return on investments by utilities; energy efficiency goals; all energy consumption

and demand reduction alternatives; programs that reduce energy consumption; rate decoupling and time of use pricing; building codes; and other areas.

Resource Standards

- **Florida** passed HB 7135 directing the Public Service Commission (PSC) to set conservation, energy efficiency and demand-side renewable energy goals for utilities. The PSC is authorized to provide incentives and impose penalties on utilities related to goal performance. The bill is expected to be signed in late June.
- **Maryland** enacted HB 374 establishing a state energy efficiency program, EmPOWER Maryland, under which a 15 percent reduction in per capita electricity consumption and peak demand must be achieved by the end of 2015.
- **New Mexico** enacted HB 305 requiring electric utilities to achieve energy efficiency gains equal to 5 percent of their total sales in 2005, increasing to 10 percent by 2020, through efforts such as appliance rebates, home weatherization, or compact fluorescent light (CFL) programs.
- **Ohio** enacted SB 221 requiring utilities as of 2009 to implement energy efficiency programs to achieve savings equal to 0.3 percent of average annual normalized kWh sales during the preceding three years. Savings requirements gradually increase to 2 percent in 2019 and each year thereafter. As of 2009, utilities must reduce peak demand by 1 percent and an additional 0.75 percent annually through 2018. Programs may include demand response measures and transmission and distribution infrastructure improvements that reduce line loss.

Utility Incentives and Requirements

- **Florida** approved HB 7135 directing the PSC to study revenue decoupling and set conservation goals for utilities. The bill authorizes the PSC to provide performance incentives/penalties to utilities and authorize a return on equity premium of up to 50 basis points if annual load growth is offset by more than 20 percent through energy efficiency and conservation measures. The bill is expected to be signed in late June.
- **Iowa** enacted SF 2386 providing for utility reporting of energy efficiency results and savings.
- **Maryland** enacted SB 417, an emergency bill requiring utilities at least once a year to notify customers of any energy efficiency and conservation charges, and resulting benefits, on the company website or with the customer bill. The bill was offered in response to a recently terminated Allegheny Power CFL mailing and surcharge program. State regulators also must report to lawmakers every two years on the status of energy efficiency and conservation programs.

- **Maryland** enacted HB 374 directing state regulators to require utilities to procure or provide to customers energy efficiency and conservation measures and services designed to achieve specified energy reduction targets by specified dates. The law requires utilities to submit plans to the state Public Service Commission, which must review for adequacy and cost-effectiveness, and to consult with the newly created Maryland Energy Administration regarding certain provisions. The act also imposes reporting requirements on both the commission and utilities.
- **New Mexico** enacted HB 305 requiring electric utilities to achieve specified energy efficiency gains by 2020. To aid in this effort, state regulators must identify and remove disincentives and barriers, and allow utilities an opportunity to earn a profit on energy efficiency programs. Cost recovery is allowed via base rates or a special surcharge.
- **Ohio** enacted SB 221 allowing the state Public Utilities Commission to establish rules governing the content of an application for approval of a revenue decoupling mechanism.
- **Virginia** enacted SB 718 requiring utilities to report annually on their efforts to conserve energy, and requiring the Virginia Energy Plan to be updated more frequently.

Third-party Administrators

- **Hawaii** enacted SB 3001 requiring transfer of ratepayer funds collected through a DSM surcharge to a third-party administrator contracted by the state Public Utilities Commission. The surcharge is called the public benefits fee. The funds will be used to support energy efficiency and DSM programs.
- **New Mexico** enacted HB 305 requiring electric utilities to achieve specified energy efficiency gains by 2020. State regulators are directed to require utilities to solicit competitive bids from third-party contractors for energy efficiency and load management resources. The regulators must consider whether such programs would be more effective or cheaper if delivered by third-party contractors.

Building Energy Codes

- **Iowa** enacted SF 517 directing the state building code commissioner to require compliance of all construction with energy conservation requirements. The act also allows the commissioner to offer training to builders and other interested persons.
- **Minnesota** enacted SB 2706 setting cost-effective energy efficiency performance standards for new or substantially reconstructed commercial, industrial, and institutional buildings to reduce greenhouse gas emissions.

- **Tennessee** enacted SB 116 establishing minimum energy conservation standards for any new residential building construction. The law specifies what an energy efficiency and environmental building standard adopted by a state or local jurisdiction may include, and encourages builders to voluntarily comply with stricter standards for residential and commercial construction.
- **Washington** enacted HB 3120 providing a sales and use tax exemption for environmentally certified residential and commercial construction.
- **Vermont** enacted SB 209 setting upgraded goals and requirements for increased building efficiency.

Government Buildings

- **Colorado** enacted SB 78 requiring governmental entities to adopt standards to promote energy efficiency in distribution of grant monies from the state historical fund to benefit historic properties.
- **Florida** passed HB 7135 requiring state, regional, and local government entities to comply with a nationally recognized high performance green building rating system for new construction. The bill is expected to be signed in late June.
- **Idaho** enacted HB 422 requiring all major state buildings and building renovations to be designed, constructed and certified to a standard that achieves energy savings at least 30 percent greater than the current statutory energy code.
- **Indiana** enacted HB 1280 requiring the environmental quality service council to study whether public entities should be required or encouraged to achieve energy and environmental design ratings in the construction and renovation of public buildings and structures.
- **Kentucky** enacted HB 2 requiring that all construction or renovation of public buildings for which 50 percent or more of total capital cost is paid by the state be built to high performance building standards. Requires all buildings leased by the state to meet specified high performance standards; buildings that meet such standards will be given preference in the state leasing process.
- **Maryland** enacted SB 208 requiring buildings constructed or renovated solely with state funds to be high performance buildings; requiring two state agencies to establish jointly a waiver process; and requiring new schools that receive state public school construction funds to be built to high performance standards.
- **Minnesota** enacted SB 2706 requiring development of sustainable building designs for new state buildings or major renovations of state buildings.

- **Mississippi** enacted SB 3007 requiring the department of finance and administration to adopt rules and regulations regarding energy performance of state-funded buildings, and that major facility construction projects be built to exceed existing energy conservation requirements by at least 30 percent under certain circumstances.
- **Oregon** enacted HB 3612 requiring the state agency that finances construction, purchase or renovation of state facilities to require an energy consumption analysis; and the state energy department to adopt rules setting guidelines for incorporating energy efficiency requirements in certain lease agreements and for energy reduction in state facilities.
- **Tennessee** enacted SB 2872 clarifying duties of two departments to include setting and implementing conservation/energy management goals for existing and future state buildings, and developing and implementing an energy management program for the state government.
- **Tennessee** enacted SB 3992 encouraging promulgation of requirements for design, construction, and certification of state buildings to specified green standards.
- **West Virginia** enacted HB 4028 authorizing counties and municipalities (agencies) to enter into performance-based contracts with qualified providers of energy conservation services to significantly reduce energy operating costs of agency-owned buildings.

Smart Meters

- **Maryland** enacted HB 374 requiring state regulators to study smart metering and smart grid technology. If the regulators find such technology cost-effective, they may require implementation by utilities.
- **Ohio** enacted SB 221 allowing utilities to enter into arrangements with other utilities or customers to provide advanced meters and to recover costs of any legacy meters that are prematurely retired as a result.
- **Vermont** enacted SB 209 setting the scope for continued investigation by state regulators of smart metering.

Net Metering

- **Ohio** enacted SB 221 amending the state net metering law to expand eligibility, e.g., by removing the 1 percent aggregate capacity limit for all customer generators, and limitations related to technology and system size at hospitals. Utilities must develop a separate contract or tariff providing for net metering for hospitals.
- **South Carolina** enacted HB 3395, a joint resolution requiring the state energy office and to report the legislature with recommendations for establishing net metering programs through distribution electric utilities.
- **Vermont** enacted SB 209 providing for increased use of net metering, e.g., through expansion of eligibility and allowing individuals to apply to be treated as a group.

Program Financing

- **Alaska** passed SB 289, which is awaiting signature and due back from the governor 6/9/08. The bill would provide \$300 million to expand home weatherization and energy efficiency programs operated by the Alaska Finance and Housing Corp.
- **Colorado** enacted HB 1350 allowing local governments to provide below-market-rate loans to homeowners for energy efficiency and renewable energy home improvements.
- **Maryland** enacted HB 368 and SB 268 establishing a Maryland Strategic Investment Fund to serve as a repository for revenue from fines paid by utilities for noncompliance with the state RPS, funds from sale of carbon allowances under the RGGI, and other funding sources. The new Maryland Energy Administration will use the funds to encourage development of energy efficiency programs and other purposes.
- **New Hampshire** approved HB 1434 establishing a CO2 emissions cap and trade program under which revenue from purchase of allowances would go directly to a fund dedicated to energy efficiency projects. The initial price of \$6/ton in 2009 would generate \$120 million for such projects, rising to \$12/ton by 2015, after which all allowance revenue would be designated for energy saving programs. The bill is awaiting signature.
- **Oklahoma** enacted SB 1451 creating the Oklahoma Energy Efficiency and Emission Reduction Program to fund, through grants to governmental and nongovernmental entities, energy efficiency and other activities and projects designed to reduce regional air pollution.

- **Utah** legislators approved HB 198 creating a revolving loan fund for state agencies to finance energy efficiency measures. The bill awaits signature.
- **Virginia** enacted HB 171/SB 242 authorizing creation of the Virginia Resources Authority to finance local governments' energy conservation and energy efficiency projects, and other projects.
- **Vermont** enacted SB 209 creating a new \$4 million fuel efficiency fund, to be financed by existing revenue and the sale of greenhouse gas emission credits, to support delivery of energy efficiency services to heating and process fuel customers. State regulators will award performance-based contracts to service providers under a competitive process.

Tax Policies and Incentives

- **Virginia** enacted SB 174 and HB 239 expanding the definition of energy efficient buildings by requiring them to meet or exceed LEED performance standards to be classified as a separate class of real property for tax rate purposes.
- **Virginia** enacted HB 1229 adding energy- and water-efficient products to the state's product sales tax holidays held for a four-day period every October.
- **Washington** enacted HB 3120 providing a sales and use tax exemption for environmentally certified residential and commercial construction.
- **Washington** enacted HB 3362 providing tax incentives to encourage businesses to purchase certain high efficiency appliances and equipment and to maximize the energy savings opportunity available through increased and sustained market share of those appliances and equipment.

Miscellaneous

- **Colorado** enacted HB 1270 to prevent homeowner associations from limiting members' use of energy efficiency devices, e.g., solar panels, wind generators, shutters, attic fans, and clotheslines.