

Regular Session, 2014

SENATE BILL NO. 63

BY SENATOR MORRELL

CRIME/PUNISHMENT. Provides for the crime of solar tax credit fraud with respect to the sale, installation, maintenance or repair of a solar electric or solar thermal system. (gov sig)

AN ACT

To enact R.S. 14:202.2, relative to solar electric and solar thermal system contractors; to provide criminal penalties relative to failure to meet certain contractual obligations for the installation and maintenance of a solar electric system or solar thermal system; to provide relative to definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:202.2 is hereby enacted to read as follows:

§202.2. Solar electric and solar thermal system contractors; solar tax credit fraud

A.(1) It shall be unlawful for any person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system, as defined in R.S. 47:6030(C), to claim a tax credit provided by R.S. 47:6030 or other provision of law against taxes owed to the state of Louisiana if the person:

(a) Has failed to perform or complete the installation of the system or failed to maintain or repair the system under the terms of the contract.

(b) Fails to maintain or repair the system under the terms of the contract

1 subsequent to claiming the tax credit.

2 (2)(a) The knowing material failure by a contractor to perform or
3 complete the installation of a solar electric system or solar thermal system, as
4 defined in R.S. 47:6030(C), or maintain or repair the system under the terms of
5 the contract shall constitute solar installation fraud.

6 (b) Whoever commits the crime of solar installation fraud shall be
7 subject to the penalty provisions provided for in R.S. 14:202.1(D), (E) and (F).

8 B.(1) When the aggregate amount of the tax credit claimed is one
9 thousand dollars or less, whoever violates the provisions of this Section upon
10 conviction may be fined not less than one hundred dollars nor more than five
11 hundred dollars, or imprisoned for not more than six months.

12 (2) When the aggregate amount of the tax credit claimed is greater than
13 one thousand dollars, whoever violates the provisions of this Section upon
14 conviction may be fined not less than one hundred dollars nor more than five
15 hundred dollars, or imprisoned, with or without hard labor, for not more than
16 six months for each one thousand dollars of the tax credit claimed, provided
17 that the aggregate imprisonment shall not exceed five years.

18 C. The district attorney shall notify the Department of Revenue in
19 writing of any prosecution under this Section.

20 D. Nothing contained in this Section shall be construed to prevent the
21 state, through the attorney general, from asserting a cause of action to recover
22 damages or penalties, or assess or collect a penalty, resulting from a violation
23 of this Section.

24 E. The remedies and rights provided under this Section are in addition
25 to and do not preclude any remedy otherwise available under law, including but
26 not limited to the provisions of R.S. 51:1401, et seq.

27 F. Any person who is found liable under a civil action brought by the
28 attorney general resulting from a violation of this Section shall be liable to the
29 attorney general for all costs, expenses and fees related to investigations and

1 proceedings associated with the violation, including attorney fees. An action to
2 recover costs, expenses, fees, and attorney fees shall be ancillary to, and shall be
3 brought and heard in the same court as, the civil action resulting from a
4 violation of this Section.

5 G.(1) The attorney general may examine, or cause to be examined, by
6 agents thereof, without notice, the conditions and affairs of any person who has
7 received money from a contract for the sale, installation, maintenance, or repair
8 of a solar electric system or solar thermal system, as defined in R.S. 47:6030(C),
9 and who has claimed a tax credit.

10 (2) In connection with an examination authorized by this Subsection, the
11 attorney general, or his agents, may examine under oath any person concerning
12 the affairs and business of the person who has received money from a contract
13 for the sale, installation, maintenance, or repair of a solar electric system or
14 solar thermal system, as defined in R.S. 47:6030(C), and who has claimed a tax
15 credit.

16 H. The provisions of this Section shall be applicable to entities engaging
17 in the business of selling, leasing, installing, servicing, or monitoring solar
18 energy equipment. Nothing in this Section shall be construed to impose civil or
19 criminal liability on homeowners or on any third party whose involvement is
20 financing to the homeowner, financing for installation, or purchasing the tax
21 credits described in this Section from any homeowner or contractor. Entities
22 engaged in the business of arranging agreements for the lease or sale of solar
23 energy systems or acquiring customers for financing entities shall not be exempt
24 from the provisions of this Section.

25 Section 2. This Act shall become effective upon signature by the governor or, if not
26 signed by the governor, upon expiration of the time for bills to become law without signature
27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
28 vetoed by the governor and subsequently approved by the legislature, this Act shall become
29 effective on the day following such approval.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Mary Dozier O'Brien.

DIGEST

Morrell (SB 63)

Proposed law creates the crime of solar tax credit fraud.

Proposed law makes it unlawful for any person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system, as defined in present law, to claim a tax credit provided by present law against taxes owed to the state if the person:

- (1) Has failed to perform or complete the installation of the system or failed to maintain or repair the system under the terms of the contract.
- (2) Fails to maintain or repair the system under the terms of the contract subsequent to claiming the tax credit.

Proposed law provides that the knowing material failure by a contractor to perform or complete the installation of a solar electric or solar thermal system or maintain or repair the system under the terms of the applicable contract shall constitute the crime of solar installation fraud.

Proposed law provides that whoever commits the crime of solar installation fraud shall be subject to penalty provisions provided in present law for home improvement fraud.

Proposed law provides the following penalties for violating proposed law:

- (1) When the aggregate amount of the tax credit claimed is \$1,000 or less, the person is to be fined not less than \$100 nor more than \$500, or imprisoned for not more than six months.
- (2) When the aggregate amount of the tax credit claimed is greater than \$1,000, the person is to be fined not less than \$100 nor more than \$500, or imprisoned, with or without hard labor, for not less than 90 days nor more than six months, or both, for each \$1,000 of the tax credit claimed, provided that the aggregate imprisonment cannot exceed five years.

Proposed law provides that the district attorney is to notify the Dept. of Revenue in writing of any prosecution under proposed law.

Proposed law provides that nothing contained in proposed law is to be construed to prevent the state, through the attorney general, from asserting a cause of action to recover damages or penalties, or assess or collect a penalty, resulting from a violation of proposed law.

Proposed law provides that the remedies and rights provided under proposed law are in addition to and do not preclude any remedy otherwise available under present law.

Proposed law provides that any person who is found liable under a civil action brought by the attorney general resulting from a violation of proposed law is liable to the attorney general for all costs, expenses and fees related to investigations and proceedings associated with the violation, including attorney fees. Proposed law further provides that an action to recover costs, expenses, fees, and attorney fees is ancillary to, and is to be brought and heard in the same court as, the civil action resulting from a violation of proposed law.

Proposed law provides that the attorney general may examine, or cause to be examined, by agents thereof, without notice, the conditions and affairs of any person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system and who has claimed a tax credit.

Proposed law provides that in connection with an examination authorized by proposed law, the attorney general, or his agents, may examine under oath any person concerning the affairs and business of the person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system and who has claimed a tax credit.

Proposed law states that the provisions of proposed law shall be applicable to entities engaging in the business of selling, leasing, installing, servicing, or monitoring solar energy equipment.

Proposed law is not to be construed to impose civil or criminal liability on homeowners or on any third party whose involvement is financing to the homeowner, financing for installation, or purchasing the tax credits. Proposed law states that entities engaged in the business of arranging for the lease or sale of solar energy systems or acquiring customers for financing entities shall not be exempt from the provisions of proposed law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 14:202.2)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds provisions relative to solar electric and solar thermal systems to present law relative to the crime of home improvement fraud.
2. Deletes certain affirmative defenses to home improvement fraud from present law.
3. Adds provisions relative to the authority of the attorney general.
4. Adds provision exempting homeowners and third parties from civil and criminal liability.
5. Changes penalty for lowest grade offense from felony to misdemeanor.

Senate Floor Amendments to engrossed bill

1. Removes provisions from the bill dealing with home improvement fraud.
2. Removes proposed law that deals with the person who received money from a contract for the sale, installation, maintenance or repair of a solar electric system or solar thermal system and claimed a tax credit for such receipts shall pay the reasonable cost of examination authorized by the proposed law.
3. Removes from proposed law that nothing in the proposed law shall be construed to impose civil or criminal liability on any homeowner arising out of the contractor's failure to perform or on any third party purchasing the tax credits.

4. Adds provision that proposed law shall be applicable to entities engaging in the business of selling, leasing, servicing, or monitoring solar energy equipment.
5. Adds that nothing in proposed law shall be construed to impose civil or criminal liability on homeowners or on any third party whose involvement is financing to the homeowner, financing for installation, or purchasing the tax credits.
6. Adds provisions that entities engaged in the business of arranging for the lease or sale of solar energy systems or acquiring customers for financing entities shall not be exempt from the provisions of proposed law.
7. Technical amendments.