State of Georgia: Georgia Solar Power Free-Market Financing Act of 2015.

Atlanta - On May 12, 2015, Republican Governor Nathan Deal signed into law the 'Solar Power Free-Market Financing Act of 2015.

> **Take Away:** Georgia Passes Free Market Solar Financing Legislation

> **Take Away:** The Legislation passed both the Georgia House and Senate Unanimously on February 9, 2015 and March 27, 2015 respectively.

This solar photovoltaic (PV) financing law is now found under Article 1 of Chapter 3 of Title 46 of the Official Code of Georgia Annotated in multiple sections, under sections 46-3-60, 46-3-61, 46-3-62, 46-3-63, 46-3-64, 46-3-65 and 46-3-66 respectively and these sections of the law are to be interpreted as one unified statute.

Despite some media comments to the contrary, the Solar Power Free-Market Financing Act of 2015 simply clarifies longstanding and existing Georgia law, clarifying that the financing of solar PV, whether through lease or other financial agreement, when the repayment is related to the electrical output of the solar system, is not prohibited by Georgia law, nor is the outright sale of electricity by a non-utility owner of a solar PV system to a single onsite customer of the owner of a solar PV system.

> **Take Away**: Georgia Governor clarifies that private businesses may sell electricity lawfully, allowing lower up-front solar cost for residential, commercial, institutional and industrial scale solar.

> **Take Away:** Even though the 'Solar Power Free-Market Financing Act of 2015 uses the legal term “Solar Energy Procurement Agreement” that term expressly applies to contracts for the sale of solar power/electricity, more commonly known in the solar industry as Power Purchase Agreements or simply PPAs. This new law makes it clear that solar electric PPAs in Georgia are allowed subject to the restrictions in the statute.

> **Headline Take Away**: Solar PPAs and leases are now allowed by law in the state of Georgia as part of new Solar Power Free-Market Financing Act of 2015.

> **Take Away**: The 'Solar Power Free-Market Financing Act of 2015 applies ONLY to solar, but by definition does NOT apply to solar hot water or non-electric solar heating and cooling. This is because non-electric solar systems do not involve the

sale of electricity and thus are not subject to existing Georgia laws which governs the sale or provision of electricity.

Take Away: Purchases of solar *electricity* in Georgia are finally available to all types of Georgians, including, but not limited to residences of all types, businesses of all types, including, but not limited to, farms, schools and universities of all types, churches, hospitals, fire and police and all types of exempt organizations, including federal, state and local schools and governments including, but not limited to military facilities. The new law covers all users.

Section by Section Analysis of Georgia's 'Solar Power Free-Market Financing Act of 2015.'

O.C.G.A § 46-3-60

This new law shall officially be known and may be cited as the 'Solar Power Free-Market Financing Act of 2015.'

Take Away: With this new law, the Georgia Legislature made it clear that it supports the free market and property rights of all Georgia's residents. By focusing on free market capitalism, freedom of contract and property rights, a unanimous coalition of Georgia electric utilities, legislators, the Governor, property rights advocates represented by the Georgia Property Rights Council, solar industry trade organizations and businesses as well as pro solar supporting organizations and ordinary Georgians could come together on the basis of conservative principles in a state with super-majority conservative Republican rule.

O.C.G.A § 46-3-61.

The 'Solar Power Free-Market Financing Act of 2015 now explicitly states that:

1. It is in the public interest to provide existing customers of electric service providers (public utilities) the freedom to invest in and install solar technologies on their own property;

2. That free-market financing of solar technologies may provide more customers of the public utilities with opportunities to install solar technology even when the public utility is not the one providing their customer with the solar electricity or solar equipment;

3. Solar energy procurement agreements (also known as Power Purchase Agreements or PPAs) and other similar financing arrangements, including those in which the lease or other manner of payments are based on the performance and output of the solar technology installed on the property of customers of public utility electric service providers, are financing arrangements which may help reduce or eliminate upfront costs involved in solar technology investments and installation by such customers; and as such, such sales, leases or financing arrangements do not violate Georgia law that otherwise limits the sale of electricity by public utilities; and

4. Individuals and entities which either offer, or receive, such solar equipment lease or PPA financing opportunities through "solar energy procurement agreements" are not to be either considered or treated as electric service providers, nor as public utilities and thus, shall not be regulated as electric utilities.

Take Away: By clarifying that by simply being party to a lease, PPA, or other solar financing it does not make one an electric service provider (defined under current state law as an electric utility), so the lease of a solar PV system, or the purchase of solar electricity under a PPA is now available to residences of all types, businesses of all types, including but not limited to farms, schools and universities, churches, hospitals, tax exempts, federal, state and local schools and governments of any size, all without their needing to fear being told that such a contract is illegal. The new law is available to all.

Take Away: This new law clarifies the law, and provides clear legal certainty to customers and providers of solar energy and solar systems.

Take Away: This clarification will encourage financing of solar and signal to the capital markets that Georgia is a place to do business in the solar sector.

Take Away: The new law does NOT apply to "utility scale" solar, simply because a utility would be a party to that type of energy contract and the law in Georgia already allows such contracts. So it was not necessary for the new law to address transactions of energy between a utility and a non-utility party.

O.C.G.A § 46-3-62.

This Section contains general definitions and clarifies that solar leases, solar electric PPAs, or other solar electric financing contracts are allowed for BOTH residential and commercial applications.

The law treats residential systems under 10kW AC separately from commercial systems above 10Kw, and establishes that this law expressly allows leases, PPAs or other such forms of solar electric finance as long as any commercial system is not excessively large.

Thus, the commercial system, to fall under this new law, may be no larger than 125% of the "actual or expected maximum annual peak demand of the premises that the solar technology serves."

> **Take Away:** The 10kW residential rule is expected to actually cover nearly 95% of all residential situations. Most residences do not ever need solar systems larger than 10kW to meet their actual electrical needs. Such larger systems are allowed, but special rules apply for such large residential systems (see below).

> **Take Away:** Because the intent of the new law is to allow Georgians to get and use all the solar electric power they actually need, the law is designed to accommodate the physical energy needs of any premises that a solar system actually serves, yet not result in dramatically excessive amounts of electricity to flow into the public utility grid unused by the premises where that solar system is located. The key to this legislation is meeting people's expected actual solar electrical demand, but the law does not address net metering or sales of solar electricity to the existing utilities.

This section also provides for situations where the owner of a premises may have adjacent land to such premises and in that case, allows the solar system be physically located on a different, but physically adjoining parcel of land, and still serve the adjacent premises electrical demand.

> **Take Away:** The focus of the new law is to allow people to get the solar electricity they need, and generate that electricity on or adjacent to their physical premises, but not to allow the creation or operation of "mini" or local utilities where a solar facility on one parcel would provide electricity to premises not physically connected or owned by the same person or entity. Thus, under this law, a person may not operate a solar facility on one parcel of land, and sell the solar power generated by that facility to a person across town.

This section also makes it clear that a property with multiple premises (such as a rental unit or strip-mall) may have multiple solar systems, each financed by separate solar energy procurement agreements (PPAs) or leases; provided, however, that a single solar system is not connected to multiple premises and that the cumulative capacity of solar technologies connected to a premises shall not exceed the capacity limit for that premises. The law requires that solar technology installed to serve one premises shall only generate electric energy that is used on and by such premises or fed back to an electric service provider.

> **Take Away:** The new law allows, for example, the owner or occupier of a "strip-mall" or other such multi-use property to own and operate solar systems that serve more than one tenant of that strip-mall. However, this new law prohibits one solar

system serving more than one premises. This is to comply with existing law, which generally provides that one-to-one sales are not sales "at retail" and thus, are not subject to state electric utility regulation that otherwise applies to persons who provide electricity to "the public."

Take Away: By allowing multiple separate systems on a site like a "strip-mall" the new law allows for owners of real estate to expand their use of that real estate in the future and also benefit those owners or lessees of that real estate who may see an increase in the number of tenants after the date such solar system was installed and thus, not be limited in their ability to enable all their property to benefit from the solar technology.

This section also re-states existing Georgia law which allows the existing electric utilities, including those not regulated by the Georgia Public Services Commission (PSC), e.g., the EMCs and MEAG utilities, to also provide solar financing, by lease, PPA or otherwise, subject to the condition that the otherwise existing Territorial Rights Laws are abided by.

Take Away: Georgia's 100 electric utilities may compete with non-electric utility competitors, but only within their existing regulated territories, as defined under the Georgia Electric Territorial Rights Act of 1973. This ability is current law in Georgia and the new law does not alter this.

The section further clarifies that any person whose business includes, but is not necessarily limited to, the providing of solar system leases, PPAs, other financing or installations of solar electric technology will be covered by the new law as a "solar financing agent" and thus be legally eligible to lawfully provide such financing. As long as the transaction is commercial in nature, such transactions are allowed. The law also makes clear that having this legal ability does not on its own render a person an "electric utility" subject to regulation as an electric utility.

The section also makes clear that the new law applies only to cases where the solar system is connected to the public utility "grid" or power distribution system.

Take Away: Georgians who are completely "off the grid," for example, a solar operated water pump in the middle of a peanut field with no connection to the power grid, is not governed by this new law. The leasing or financing of such systems are not prohibited under existing Georgia law or by this new law.

O.C.G.A § 46-3-63.

This section concerns the coordination of the new law with otherwise existing laws. It clarifies that in all cases, the solar technology and its user(s) must at all times comply

with all other state laws and county and municipal ordinances and any applicable permitting requirements.

> **Take Away:** State and local governments do not give up their home-rule authority under this law. However, the bill's sponsor, R-Mike Dudgeon, stated in open public hearing on the bill, that if either utilities or cities abused their authority in an attempt to hamper or deter the use of solar, he would consider future legislative action to rectify such abuse.

This section also provides a 30 day notice provision before the operation of any solar system financed under the provisions of this new law may commence. The customer of an existing public utility must notify their public electric utility of their system.

> **Take Away:** The 30 day notice provision is ONLY a notice provision. This is NOT a permit, application or permission to use requirement. Mere notice of the fact is all that is required. As discussed below, any permitting or other requirements under law or ordinance must separately be followed.

This section also provides that no electric utility may prevent or interfere with the installation, operation or financing of solar involving a solar financing agent. However, existing rules for safety, power quality and interconnection requirements will still apply.

The section also makes it clear that only if the solar financing agent is also an existing electrical utility will such a utility be legally liable for loss, injury or death caused by the solar customer or the solar financing agent.

> **Take Away:** One can't have an accident or commit negligence with respect to a solar project that is subject to this statute and blame the utility or seek damages from the utility unless the utility itself was responsible.

O.C.G.A § 46-3-64.

This section makes it clear that for solar technology with a peak generating capacity of not more than 10 kilowatts for a residential application and not more than 100 kilowatts for a commercial application, the electric service provider may require the retail electric customer or solar financing agent to provide, at the retail electric customer's or solar financing agent's expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the National Electrical Code, National Electrical Safety Code, Institute of Electrical and Electronics Engineers, and Underwriters Laboratories, prior to interconnecting the solar technology to the electric service provider's electric system.

If such applicable safety, power quality, and interconnection requirements are met, an existing electric utility shall not require compliance with additional safety or performance standards, require the performance of or payment for additional tests, or require the purchase of additional liability insurance.

> **Take Away:** The new law follows existing Georgia Law, whereby for residential systems 10kw or smaller, or commercial systems 100kW or smaller, it's the end user of the power that is responsible for the cost of safety and interconnection costs. This provision was intended to limit the burden that an existing electrical utility could place on a person otherwise interested in using solar on their premises to the burden imposed under current law.

This section also provides that for residential systems above 10kW, and commercial systems above 100kW, the electric utility may require additional measures.

> **Take Away:** The new law protects the public and the power-grid by allowing for additional safety, power quality and system reliability measures ***but only if*** necessary to protect public safety, power quality and system reliability.

> **Take Away:** It was the intent of the legislation to not allow such additional requirements if those requirements were being imposed to limit, restrict or impair a system users property rights or ability to use solar on their premises as they otherwise wish. Good faith and clean hands by the existing utilities are required.

O.C.G.A § 46-3-65.

This section again reiterates that notwithstanding existing electrical utility statutory regulations in Georgia that prior to the enactment of this new law were alleged by the electrical utilities in Georgia to limit the provision or sale of electricity only by existing electrical utilities, the new law now expressly allows such previously non-permitted sales or provision of electricity to occur. However, the new Georgia law states that despite the new law appearing to grant "new" rights to those who are not electric utilities, such a change does not in any way expand the existing service territory rights of those utilities otherwise currently able to sell or provide electricity in Georgia within their currently allotted service territories.

> **Take Away:** These provisions highlight the reason for the new legislation.
>
> Regardless of one's view on what HB 57 did or didn't do, the law is finally clear and thus, all Georgians may now finance solar for use on their premises within the state and without fear of being sued by the utilities or being harmed by the financial consequences of such utility litigation.

O.C.G.A § 46-3-66.

This section makes clear that the new law does not create or alter any right in real property or to interfere with any otherwise applicable real estate restrictions or regulations on the use of real estate, including no interference with otherwise lawful covenants, contracts, ordinances or state or federal law. Nor does the new law restrict, affect, or diminish any county or municipality to adopt or enforce such rules or laws, including zoning, land use or public rights of way.

> **Take Away:** The real estate industry lobby and the lobby for Georgia municipal cities were concerned the new law could impair their business interests in the private sector or limit their authority as governments. This provision makes it clear that HB 57 concerns the financing and ability to use solar equipment on one's premises.

Finally, this section makes clear that nothing in this new law shall be applied to any wholesale electric power or transmission service contract entered into prior to the effective date of this part or to any original party to such contract that is subsequently amended or extended to the extent that the financing and installation of the solar technology would cause such party to be in breach of such contract or increase the costs of such contract by $100,000.00 or more. And that any legal successor to substantially all rights and assets of a party shall also be considered a party under this subsection."

> **Take Away:** The Utilities required this as a condition of agreement to the new law.

Legislative History of HB 57

FOR IMMEDIATE RELEASE

Atlanta – May 12, 2015

Link to Georgia Property Rights Council Website

http://www.georgiapropertyrightscouncil.org/

Bill Caption-Title of GA House Bill HB 57

"The Solar Power Free-Market Financing Act"

Description of Bill HB 57

Clarifies existing law that it is in the public interest to facilitate electric utility customers to invest in and install on their property solar technologies using free market financing to reduce or eliminate upfront costs and clarifies that those who offer such financing are not classified as regulated electric utilities under the terms of this legislation.

GA House Sponsors

- Mike Dudgeon – Primary Sponsor
- Harry Geisinger
- Karla Drenner
- Ed Setzler
- Buzz Brockway
- Mark Hamilton

GA House Energy, Utilities, and Telecommunications Subcommittee and Committee Members

- Parsons, Don – Committee Chairman
- Geisinger, Harry – Sub-committee Chairman
- Carson, John
- Allison, Stephen
- Dempsey, Katie M.
- Dickey, Robert

- Dollar, Matt
- Drenner, Karla
- Dudgeon, Mike – Author and Lead Sponsor
- Frazier, Gloria
- Hamilton, Mark
- Harbin, Ben
- Hatchett, Matt
- Holmes, Susan
- Kelley, Trey
- Martin, Chuck
- Raffensperger, Brad
- Smith, Earnest
- Stover, David
- Teasley, Sam
- Williams, "Coach"

GA Senate Sponsor

- Steve Gooch

GA Senate Regulated Industries and Utilities Committee Members

- Jeffares, Rick – Committee Chairman
- Ginn, Frank – Vice Chairman
- McKoon, Joshua
- Harbison, Ed
- Shafer, David
- Unterman, Renee S
- Beach, Brandon
- Cowsert, Bill
- Gooch, Steve – Senate bill Sponsor
- Henson, Steve
- Hill, Jack
- Lucas, David
- Miller, Butch
- Mullis, Jeff

GA Legislative Votes - Dates and Vote Totals

January 13, 2015 – House Committee on Energy, Utilities, and Telecommunications Subcommittee approves HB 57

January 28, 2015 – HB 57 passed the House Committee on Energy, Utilities, and Telecommunications – Unanimous Vote

February 9, 2015 – Full House Vote #22 – 165 yeas - 0 nay

March 12, 2013 – HB 57 passed the Senate Committee on Regulated Industries and Utilities – Only one member voting "no" but not opposing the bill.

March 27, 2015 - Full Senate Vote – Unanimous vote – 51 yeas – 0 nay

Media Articles on the Bill to Date

MEDIA on HB 57 – Free Market Solar Finance Legislation

http://www.ajc.com/news/news/state-regional-govt-politics/solar-power-bill-passes-key-georgia-house-panel/njykz/

Page A17 of Thursday, January 29, 2015 issue of The Atlanta Journal-Constitution: HB 57 recognized by Conservative Columnist Kyle Wingfield. "This bill is a sound way to help an alternative power source grow without public subsidies or risk."

http://gareport.com/story/2015/01/28/solar-financing-bill-gets-committee-ok/

http://us10.campaign-archive1.com/?u=c4a8e253a332096d65796cd5f&id=5cf98a46fe&e=4e311d7694
http://www.gpb.org/news/2015/01/15/new-bill-may-make-solar-panels-more-affordable

http://politics.blog.ajc.com/2015/01/13/a-deal-on-solar-power-for-georgia-homeowners-is-unveiled/[politics.blog.ajc.com]

http://digital.olivesoftware.com/Olive/ODE/AtlantaJournalConstitution/LandingPage/LandingPage.aspx?href=QUpDLzIwMTUvMDMvMTI.&pageno=MQ..&entity=QXIwMDEwMw..&view=ZW50aXR5

http://www.politifact.com/florida/statements/2015/mar/24/americans-prosperity-florida/koch-backed-group-says-georgia-solar-policies-cost/

Videos/Links to Georgia Assembly Votes

January 28, 2015 – Georgia House Energy, Utilities & Telecommunications Committee Approves HB 57:
http://www.house.ga.gov/Committees/en-US/CommitteeArchives128.aspx

February 9, 2015 – Georgia House Unanimously Passes HB 57:
http://www.gpb.org/lawmakers/2015/day-12

March 13, 2015 – Georgia Senate Regulated Industries and Utilities Committee Approves HB 57:
http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/57

Bobby Baker, Board Member – Georgia Property Rights Council, Former Georgia Public Service Commissioner, Attorney at Freeman Mathis & Gary

Bobby Baker's practice focus is on providing strategic and regulatory advice to private companies and local governments, with an emphasis on energy, transportation and technology issues. In addition, Mr. Baker handles appellate and mediation matters.

Mr. Baker was first elected to the *Public Service Commission* in 1992 and was the first Republican to win a statewide election for a Georgia constitutional office since Reconstruction. As Commissioner, Mr. Baker worked aggressively to develop competitive markets for utility and technology services, and to reduce the regulatory burden on businesses. He was elected to a third six-year term in November 2004, but did not seek re-election in 2010, deciding instead to return to private practice.

Mike Dudgeon – Author and Primary Sponsor of HB 57

R – Johns Creek
District 25

Don Parsons – Chairman of the House Energy, Utilities, and Telecommunications Committee

R – Marietta
District 44

Harry Geisinger (Deceased 4/15) – Former Vice Chairman of the House Energy, Utilities, and Telecommunications Committee

R – Roswell
District 48

Steve Gooch – Member of the Senate Regulated Industries and Utilities

Majority Whip
District 51
Republican