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Solar Rights in Florida

Public and Private Regulation of Solar Energy Installations

Colleen McCann Kettles, JD
Program Director
Florida Solar Energy Center
2015

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Workshop Outline

- Introduction to the SunShot Initiative
- Overview of Solar Technologies
- Regulation of Solar Energy Installations in Florida
- Florida's Solar Rights Laws
- Q&A – Discussion

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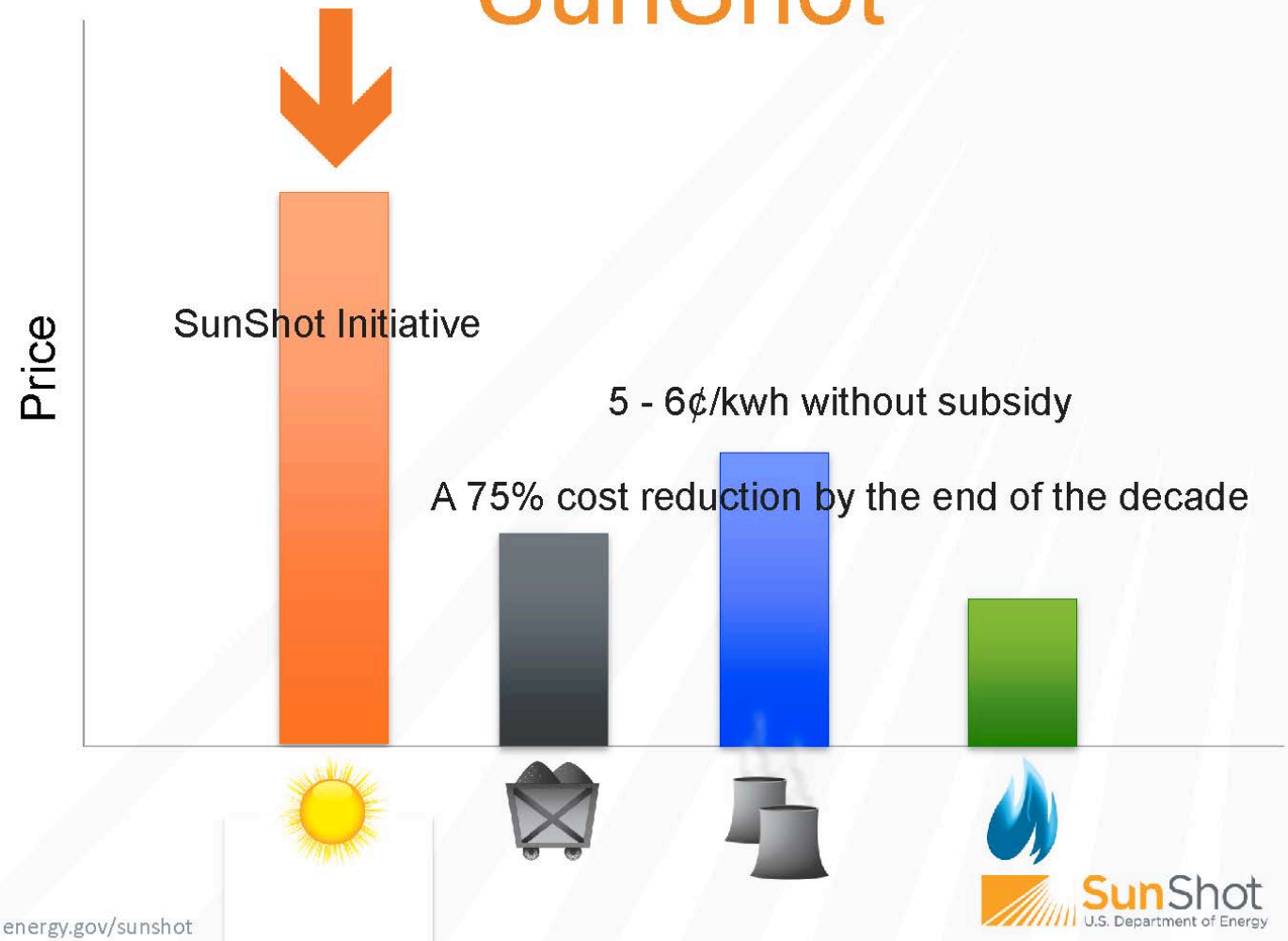
Price
SunShot Initiative
5 - 6¢/kwh without subsidy
A 75% cost reduction by the end of the decade
energy.gov/sunshot
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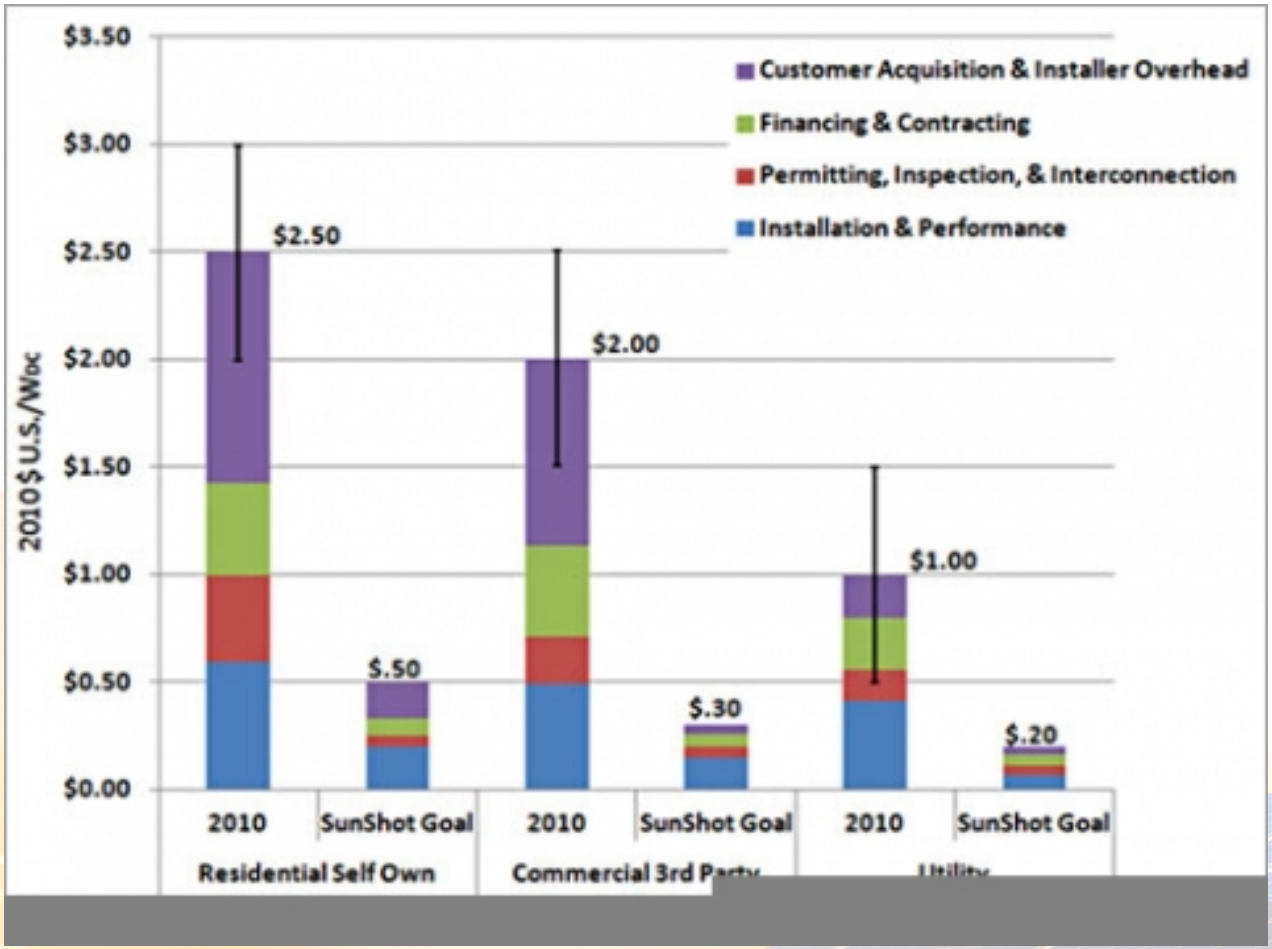
SunShot Soft Costs Goal



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ROOFTOP SOLAR CHALLENGE

- SunShot Home
- About
- Concentrating Solar Power
- Photovoltaics
- Systems Integration
- Soft Costs
  - Reducing Non-Hardware Costs
  - Lowering Barriers
  - Fostering Growth
- Technology to Market
- Financial Opportunities
- Information Resources
- News

The Rooftop Solar Challenge aims to reduce the cost of rooftop solar energy systems through improved permitting, financing, zoning, net metering, and interconnection processes for residential and small commercial photovoltaic (PV) installations.

Launched in February 2012, the first round of the Rooftop Solar Challenge supported one-year projects for 22 regional teams. The aggregated efforts of Rooftop Solar Challenge I teams cut permitting time by 40% and reduced permitting costs by 12% for more than 47 million Americans, cutting hundreds of years of red tape from the process of going solar.

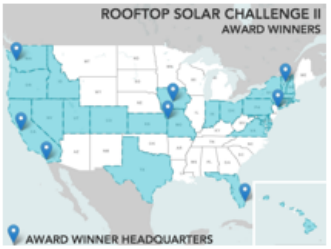
Through the second round of this program, eight collaborative teams that have demonstrated local successes in reducing the cost of solar are leading two-and-a-half year efforts to deploy effective techniques, tools, and standards for the benefit of more Americans. Read the press release.

ROOFTOP SOLAR CHALLENGE II TEAMS

BROWARD COUNTY

- **Location**: Florida (Southeastern)
- **Population Impact**: 4,000,000
- **Amount**: $1,575,000
- **Partners**: Florida Solar Energy Center, Florida Atlantic University, School of Urban and Regional Planning, and local jurisdictions
- **Highlights**: Go SOLAR–Florida will expand its market-leading online permitting solution to nine local municipalities and six additional Florida counties, and will continue to engage Florida stakeholders to expand financing options in the state as it unlocks its full potential as a leader in PV deployment.

TEAM MAP



Rooftop Solar Challenge II teams are scaling up the nation's most effective approaches to local solar market transformation and soft cost reduction, while driving new innovations that decrease the cost of solar deployment. Find your local team on our map.

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Mission And Objectives

Broward County will build upon the lessons, tools, and experience developed in its inaugural effort to expand their approach on a regional basis, beginning with nine (9) additional local municipalities and expanding to jurisdictions in six (6) other Florida counties (Alachua, Miami-Dade, Monroe, Orange, Sarasota, and St. Lucie). Together, the Go SOLAR Florida team will develop policies and procedures to standardize online permitting and remove planning and zoning barriers within each participating county, and work with the Florida Solar Energy Center (FSEC) to provide a single, uniform source of structural and electrical design plans for all Go SOLAR–Florida partners. Separate committees, made up of key stakeholders from across the state, will work to achieve statewide consistency in regulatory standards and overcome financial, political, and bureaucratic hurdles that hinder the development of the solar market in Florida.

The objectives of the Go SOLAR–Florida Project, for all seven partner counties, are to:

1. Develop and market a consortium of early adopter, solar friendly counties within Florida focused on simplifying the solar permitting process and increasing solar installations, working toward a critical mass of solar activity that stimulates the remainder of the State toward more aggressive and comprehensive support of solar development.
2. Lower the soft-costs associated with grid-tied photovoltaics by standardizing the permitting process across participating jurisdictions in seven Florida counties. The goal is to reduce typical permitting times by 95%. The primary standardization will be the creation of permitting systems that use electronic delivery of pre-approved design plans within the permit process, eliminating this expense for the customer. Also included will be the creation of a long term sustainable process by transferring electronic design plan maintenance and approval to FSEC.
3. Standardize solar related zoning regulations.
4. Enhance the availability of financing options.
5. Expand uniform net metering and interconnection standards.
6. Aggressively market solar energy and solar installations across this same target area.

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Go SOLAR Florida

Go SOLAR Florida Team
Broward County, Florida
DE – FOA - 0000788

SOFT COST

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Solar Energy in Florida

Solar Technologies

- Solar Electric (Photovoltaics – PV)
- Solar Thermal
  - Solar Water Heating
  - Solar Pool Heating
  - Process Hot Water (Industrial Scale)

Solar Water Heating

Solar Pool Heating

Photovoltaics (Solar Electric – PV)

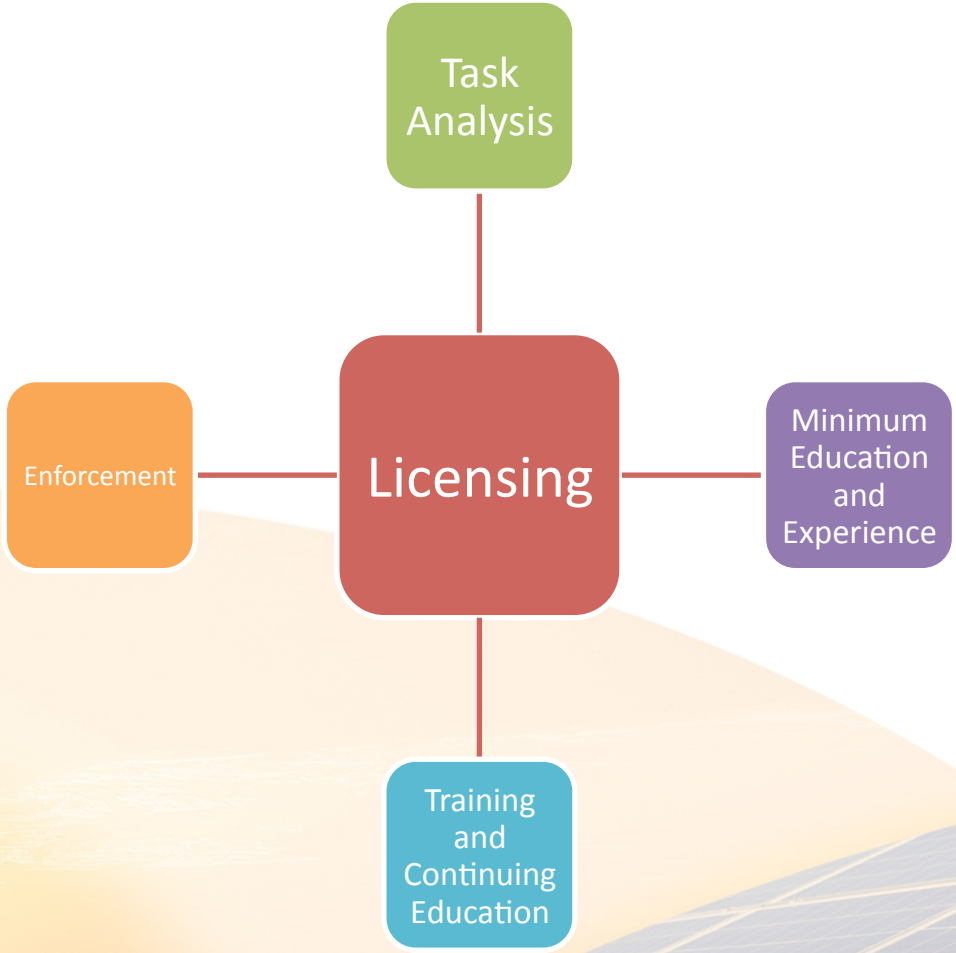
Regulation of Solar Energy Installations

- Quality Control Measures
- Public and Private Land Use Regulations

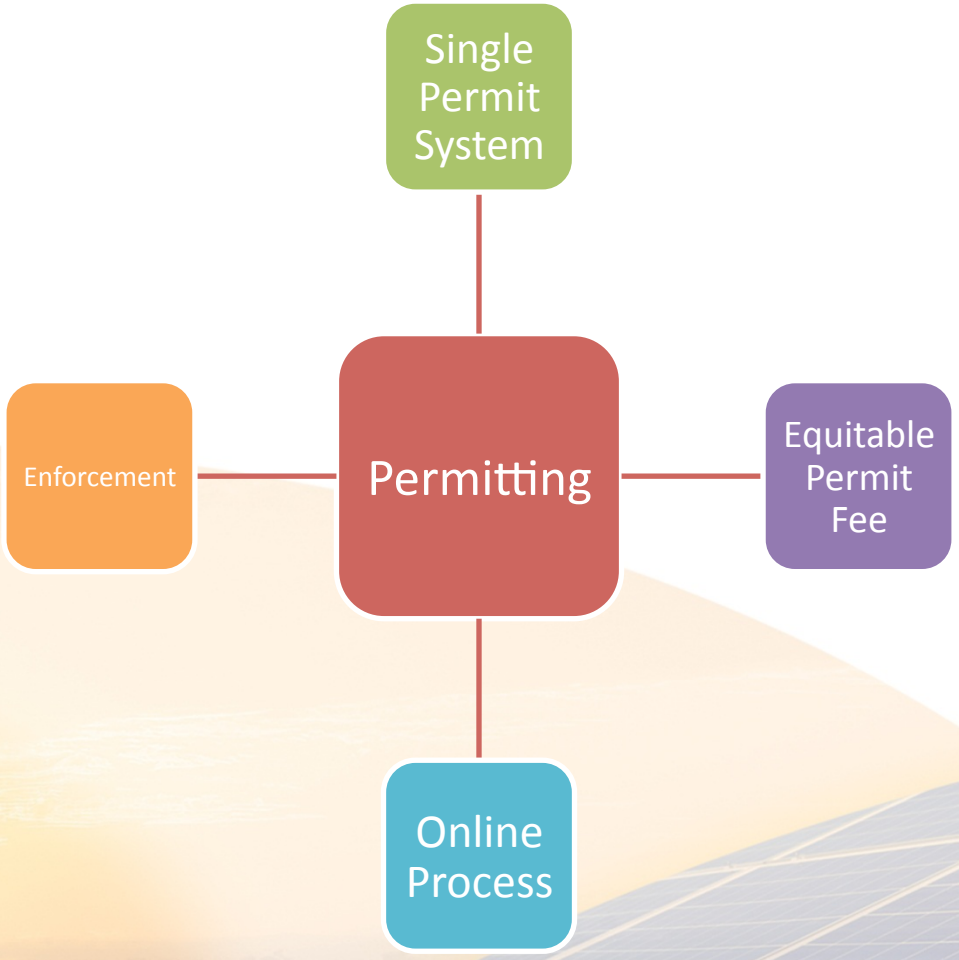

Standards
Inspection
Quality Control
Licensing
Permitting

Product Standards

Practitioner Licensing



Government Permitting



Installed System Inspection

Potential issues

- Permits can require a PV system to meet unnecessary requirements
- PV may not be identified in existing permitting requirements
- Inspections can take up several days to complete
- Permit costs vary, may not be tied to the size or complexity of the PV system
- In many states, solar requires more than one permit “pulled” by a licensed contractor

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Permitting: Potential Issues

- Unnecessary requirements
- Unclear requirements
- Jurisdictional variations
- Submittal and processing time
- Inspection time
- High permit fees

Permitting costs may increase installation costs significantly, but improvements are possible…

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Permitting Best Practices

- **Understand & Simplify**
  - Get Wired
  - Assist
  - Expedite
  - Coordinate

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Important:

Provide training to educate building and electrical inspectors about PV and ST technologies and installations

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What about *The PROCESS?*

- Understand the entire permitting and inspection process.
- Simplify permit application forms and review processes.
- Coordinate permitting procedures with nearby jurisdictions.
- Provide training to building and electrical inspectors.
- Allow online or over-the-counter building permits.

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Public and Private Land Use Restrictions

- Local Ordinances
- Historic Preservation
- Landscape Control
- Community Associations
  - Restrictive Covenants
  - Bylaws and Guidelines

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Florida's Solar Rights Laws

- History of the Right to Sunlight
- Solar Easements (704.07)
- Florida Solar Rights Statute (163.04)
- Solar Rights in Condominiums (718.113)
- Case Studies
- Communicating with your Association

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Solar Access Laws

- Solar Easements: protecting the ability of one property to continue to receive sunlight across property lines without obstruction from another property
- Solar Rights: protecting the ability to install solar energy systems on residential and commercial property that is subject to private restrictions as well as local government ordinances and building codes

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History of the Right to Sunlight

- Doctrine of Ancient Lights

  A doctrine of English Common Law that gives a landowner an Easement or right by prescription to the unobstructed passage of light and air from adjoining land if the landowner has had uninterrupted use of the lights for twenty years. Once a person gains the right to ancient lights, the owner of the adjoining land cannot obscure them, such as by erecting a building. If the neighbor does so, he or she can be sued under a theory of Nuisance, and damages could be awarded. The doctrine of ancient lights has not been adopted in the United States since it would greatly hinder commercial and residential growth and the expansion of towns and cities.

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Florida Landmark Decision

- Fontainebleau vs Eden Roc
  - "No American decision has been cited … that, in the absence of some contractual or statutory obligation, a landowner has a legal right to the free flow of light and air across the adjoining land of his neighbor. … And the English doctrine of 'ancient lights' has been unanimously repudiated in this country.
  - If … public policy demands that a landowner in the Miami Beach area refrain from constructing buildings on his premises that will cast a shadow on the adjoining premises, an amendment of its comprehensive planning and zoning ordinance, applicable to the public as a whole, is the means by which such purpose should be achieved.

FLORIDA LIFE

By Art Levy
alevy@floridatrend.com

The high-rise portion of the Fontainbleau (left) was positioned to shade the pool at the Eden Roc (far right). The tallest structure in the middle was a later expansion by the Eden Roc.

Florida Originals

Out of Spite

The position of the Fontainebleau's 1962 addition served one purpose — to shade the pool at the Eden Roc.

At a press conference in 1952, developer Ben Novack announced that he was going to build "the largest luxury hotel in Miami Beach" and that Morris Lapidus, a New York architect, was going to design it.

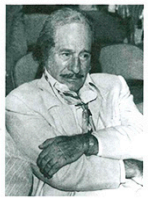
Novack lied.

It was true that he planned to build a major resort hotel on the site of the old Harvey S. Firestone estate off Collins Avenue, but Novack hadn't even spoken with Lapidus about the possibility. After reading about the press conference in a newspaper, Lapidus telephoned Novack, whom he'd worked with before, and asked if he really was going to get to design the Fontainebleau Hotel.

Novak said no.

"Ben explained that he simply used the first name that came to his mind when the reporters asked who was going to be his architect," Lapidus wrote in his 1996 autobiography, "Too Much is Never Enough." "He told me he would be glad to have me as an associate architect again and as the interior designer but that he really would be looking for a prominent architect to plan the hotel."

Lapidus seethed. Known primarily for designing retail stores and hotel interiors, he wanted to be the top guy on the Fontainebleau — and manipulated the tightfisted Novack into giving him the job by offering to work for $80,000, about $100,000 less than the customary 4% fee that an architect would get for designing a project of the Fontainebleau's magnitude.



Developer Ben Novack built the Fontainebleau.

When the hotel opened in 1954, the public loved it. The critics, not so much. But Lapidus, credited with pioneering Miami Beach's lavish midcentury hotel-resort style, never had to work at a discount again.

Less than two years later, Lapidus got another job offer — from Harry Mufson, Novack's former business partner. Mufson, who had fallen out with Novack, had purchased the property just north of the Fontainebleau and wanted Lapidus to design a hotel for him, too.

As a courtesy, Lapidus told Novack of the offer. Novack was livid. He told Lapidus if he took the job, he would never talk to him again and would bar Lapidus from the Fontainebleau forever. Lapidus accepted Mufson's offer anyway and created the Eden Roc.

Side by side, the two Lapidus hotels thrived, hosting celebrities such as Frank Sinatra, Jerry Lewis and Elizabeth Taylor and becoming the epicenter of Miami Beach glitz and glamor.

Novack still wasn't happy. In 1962, he built a 14-story addition on the northern edge of the Fontainebleau's property that was positioned to cast a shadow on the Eden Roc's pool for much of the afternoon. The tower faced the Eden Roc with a vast blank facade that locals nicknamed the "spite wall."

The wall, in fact, had one set of windows, incorporated into Novack's suite, presumably so he could look at the shaded pool below. The tower spurred a case heard by the Florida Supreme Court, which ruled in favor of Novack, saying that the Eden Roc had "no legal right to the free flow of light and air from adjoining land."

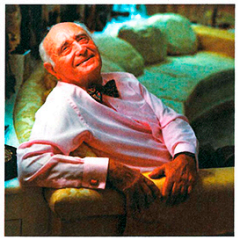
The Eden Roc hired Lapidus to design a new pool on the opposite end of the property from the original one, and over time the animosity faded. Mufson died in 1973 at age 64. Novack owned and operated the Fontainebleau until 1977, when he filed for bankruptcy. He died in 1985 just a week after his son asked a judge to find his father mentally incompetent to handle his own finances. Lapidus died in 2001, but with a professional reputation that had grown over the years.

In 2008, the Eden Roc put an end to the spite wall for good by building a 21-story tower of its own that blocks the view of Novack's wall.

Both hotels have had numerous owners over the years and have come back from hard times. The Eden Roc, part of the Destination Hotels & Resorts chain, and the Fontainebleau, owned by a group led by billionaire Jeffrey Soffer, are back in the middle of Miami Beach's social scene. Today, the hotels are part of the Morris Lapidus Mid-Century Historic District, which protects the buildings from demolition and regulates proposals for alterations.

Debbie Tackett, preservation and design manager of Miami Beach's planning department, says that over the years the city regularly got development proposals that involved demolishing the hotels. No longer, she says — the uniqueness of the building has guaranteed their survival, and some visitors come to Miami Beach just to see them.

"What I think was so revolutionary about Lapidus' work, especially with the Fontainebleau," she says, "is that it really transformed this idea of resort architecture. He created places so joyous. His idea was to make people feel glamorous and special and happy just to be there."



Novack banned architect Morris Lapidus from the Fontainebleau after Lapidus agreed to design the Eden Roc.

photos: Daniel Portnoy left page; Carl Juste / Newscom bottom

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Solar Easements in Florida

- Solar easements are the prevalent method of assuring solar access.
- Since a land owner owns at least as much of the air space above the ground as he can occupy or use in connection with the land, he has the right to grant an easement for light within that airspace.

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Solar Easements in Florida

- Since there is no implied right to light and air (Fontainebleau case), there must be statutory authority to create a solar easement.
- Florida law enables the creation of a solar easement (Section 704.07, FS)
- Solar easements are strictly voluntary, meaning you cannot force a property owner to grant one.

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Florida's Solar Easement Statute

704.07 Solar easements; creation; remedies.—

(1) Easements obtained for the purpose of maintaining exposure of a solar energy device shall be created in writing and shall be subject to being recorded and indexed in the same manner as any other instrument affecting the title to real property. Solar easements may be preserved and protected from extinguishment by the filing of a notice in the form and in accordance with the provisions set forth in ss. 712.05 and 712.06.

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Florida's Solar Easement Statute

(2) In addition to fulfilling the requirements of law relating to conveyance of interests in land, the instrument creating the solar easement shall include:

(a) A description of the properties, servient and dominant.

(b) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.

(c) A description of where the easement falls across the servient property in relation to existing boundaries and various setbacks established by the local zoning authority.

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Florida's Solar Easement Statute

(d) The point on the dominant property from where the angles describing the solar easement are to be measured.

(e) Terms or conditions under which the solar easement is granted or will terminate.

(f) Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

(3) No structure under construction on October 1, 1978, shall be subject to any solar easement recorded pursuant to this section.

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Florida's Solar Rights Law

Florida law forbids ordinances, deed restrictions, covenants, declarations or similar binding agreements from prohibiting the use of solar collectors (including clothes lines) or "other energy devices based on renewable resources," although certain restrictions related to visibility may be imposed on property owners, as long as the effective operation of the system does not suffer as a result.

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Florida's Solar Rights Law

Legislation that took effect in July 2008 (HB 697) extended the application of the renewable energy access law to condominiums. As a result, a condominium or a multi-condominium board of administration may, without approval of the unit owners, install solar collectors (including clotheslines) or other energy-efficient devices on association property for the benefit of the unit owners, while unit owners may only install devices within the boundary of their unit.

Florida's Solar Rights Law

Florida's Solar Rights Law

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Florida's Solar Rights Law

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Florida's Solar Rights Law

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Historic Buildings and Districts

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Solar Policy in Florida

- Sales Tax Exemption
- Property Tax Exemption (Residential Property Only)
- Utility Rebates (schedule to expire in 2015, solar pool heating not eligible)
- Federal Tax Credits (solar pool heating not eligible)

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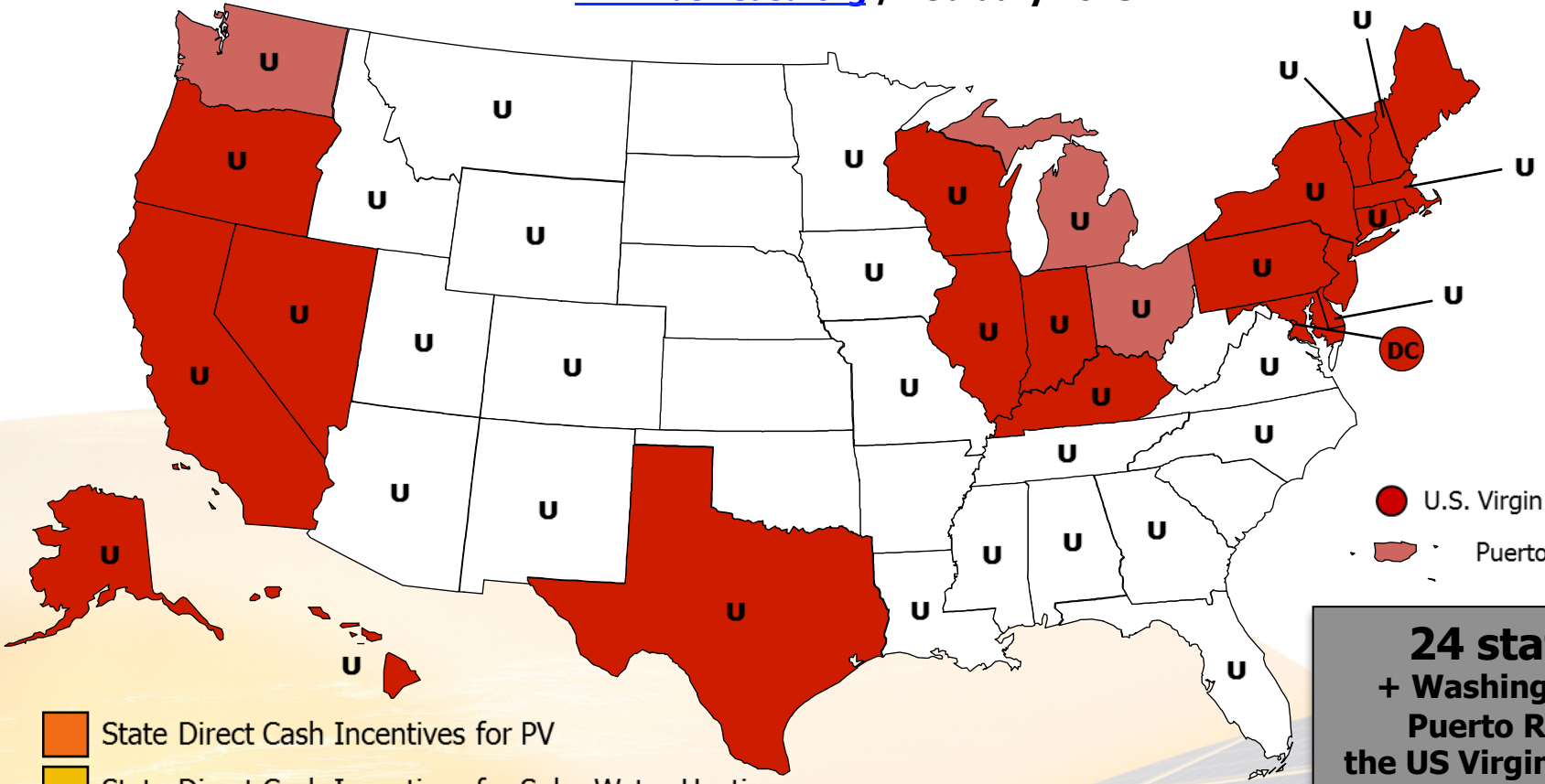
Direct Cash Incentives for Solar Projects

www.dsireusa.org / February 2013



24 states
+ Washington DC
Puerto Rico &
the US Virgin Islands
offer direct cash incentives for solar projects

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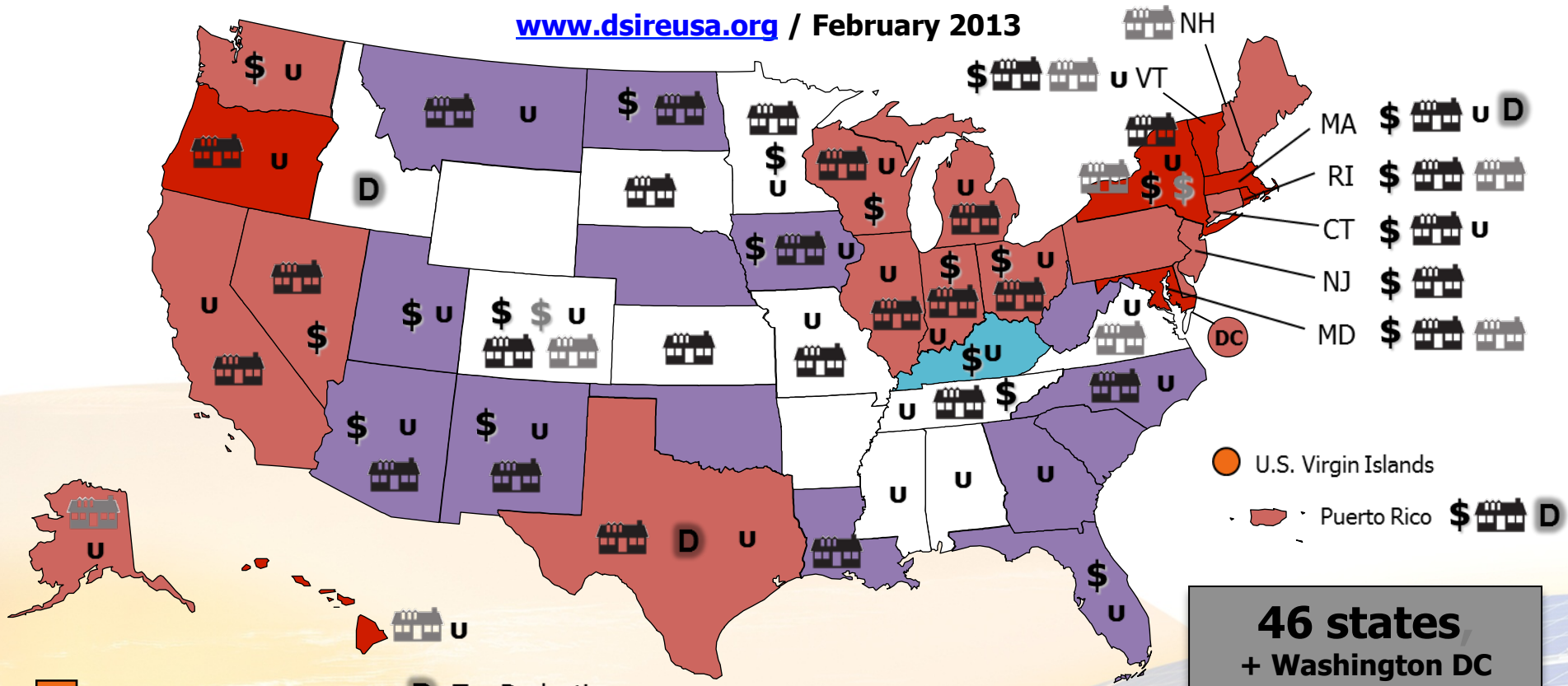
Financial Incentives for Solar PV

www.dsireusa.org / February 2013



Direct Cash Incentive

Tax Credit

Direct Cash Incentive and Tax Credit

D Tax Deduction

$ Sales Tax Incentive

Property Tax Incentive

U Utility Direct Cash Incentive(s)

$ Local option to provide sales tax incentive

Local option to provide property tax incentive

46 states, + Washington DC Puerto Rico & the US Virgin Islands, offer financial incentives for solar PV

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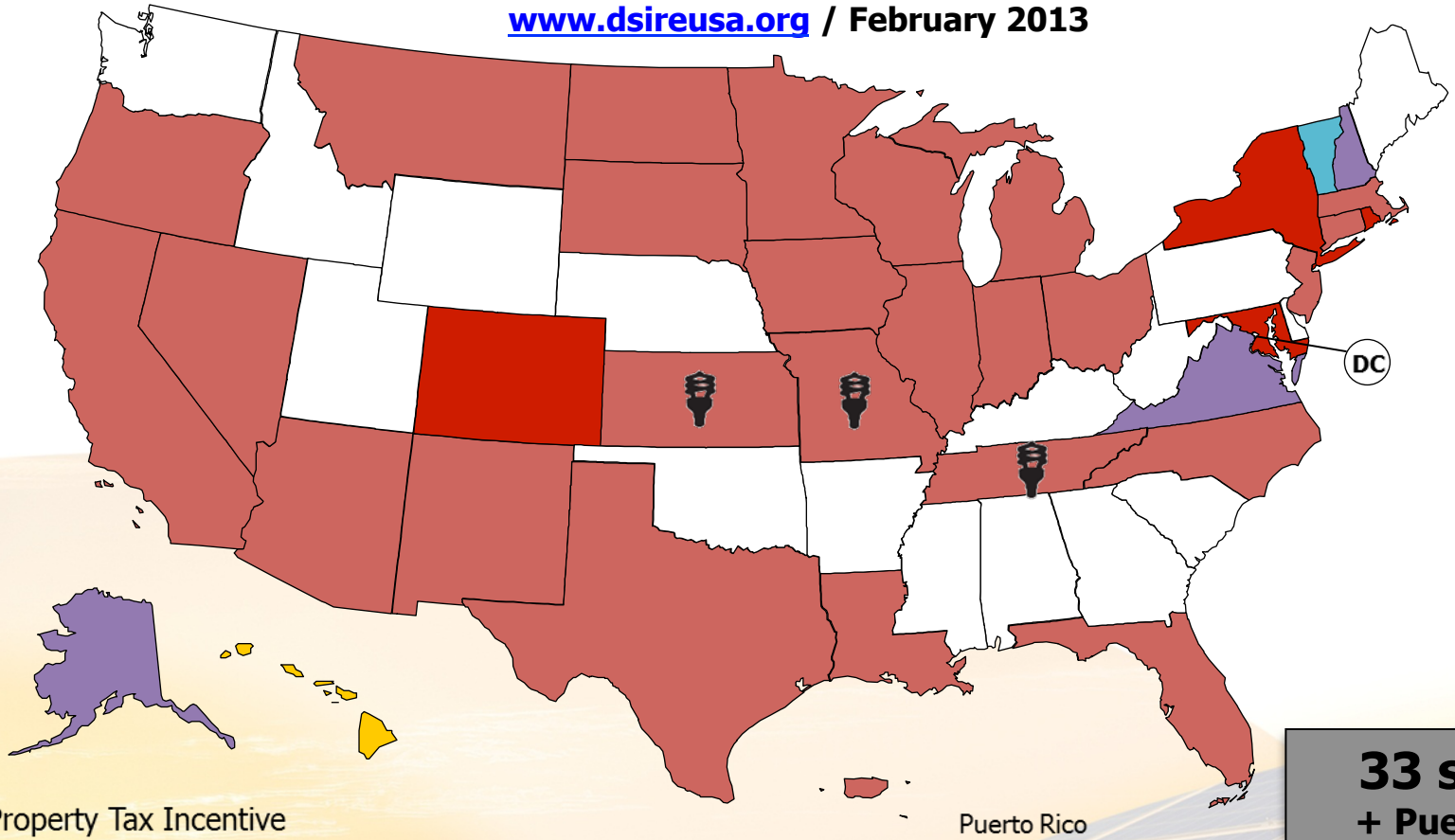
State Property Tax Incentives for Solar Projects

www.dsireusa.org / February 2013



Property Tax Incentive

Local Option for Property Tax Incentive

State Property Tax Incentive and Local Option for Property Tax Incentive

Applies to Solar Electric Only

33 states
+ Puerto Rico offer property tax incentives for solar projects

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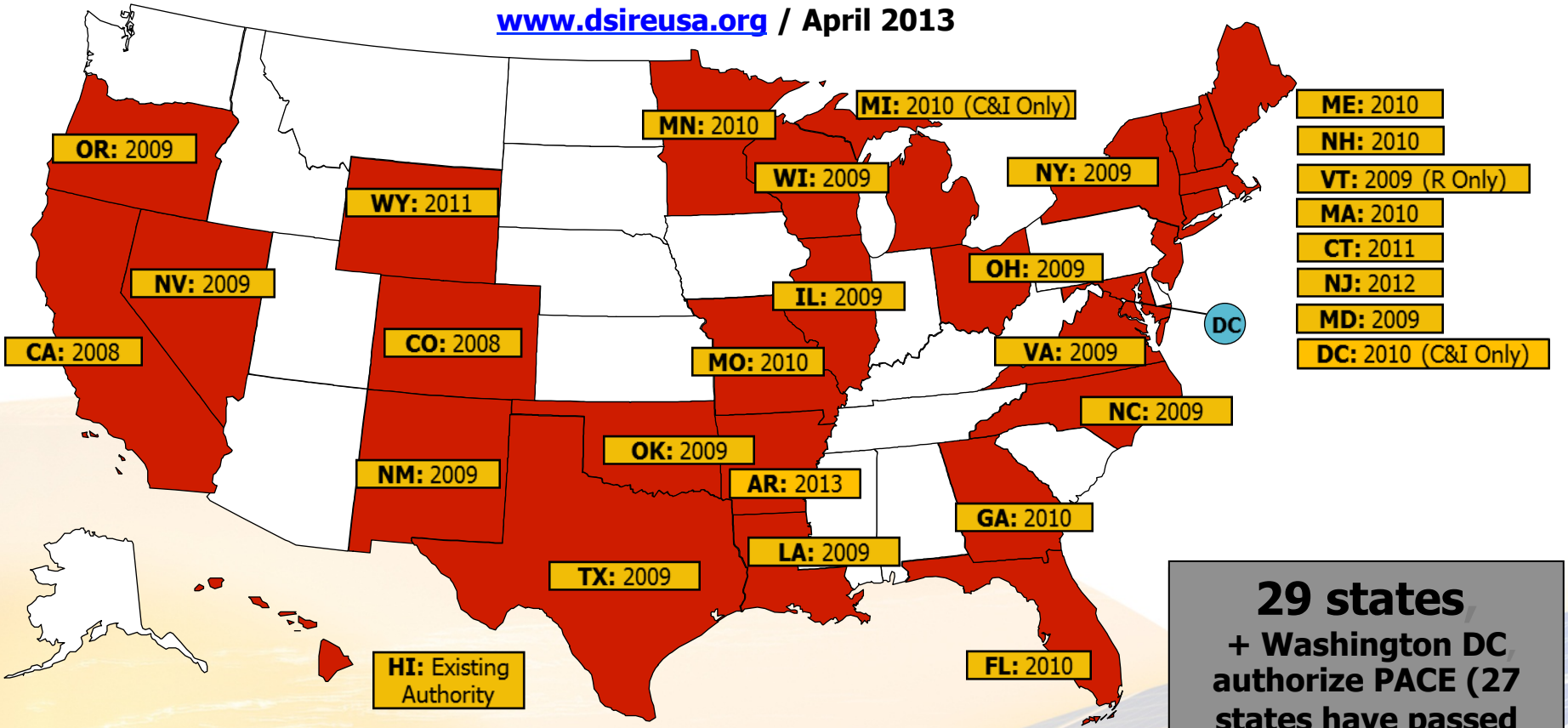
Property Assessed Clean Energy (PACE)

www.dsireusa.org / April 2013



PACE financing authorized by the state*

*The Federal Housing Financing Agency (FHFA) issued a statement in July 2010 concerning the senior lien status associated with most PACE programs. In response to the FHFA statement, most local PACE programs have been suspended until further clarification is provided.

29 states
+ Washington DC authorize PACE (27 states have passed legislation and HI permits it based on existing law)

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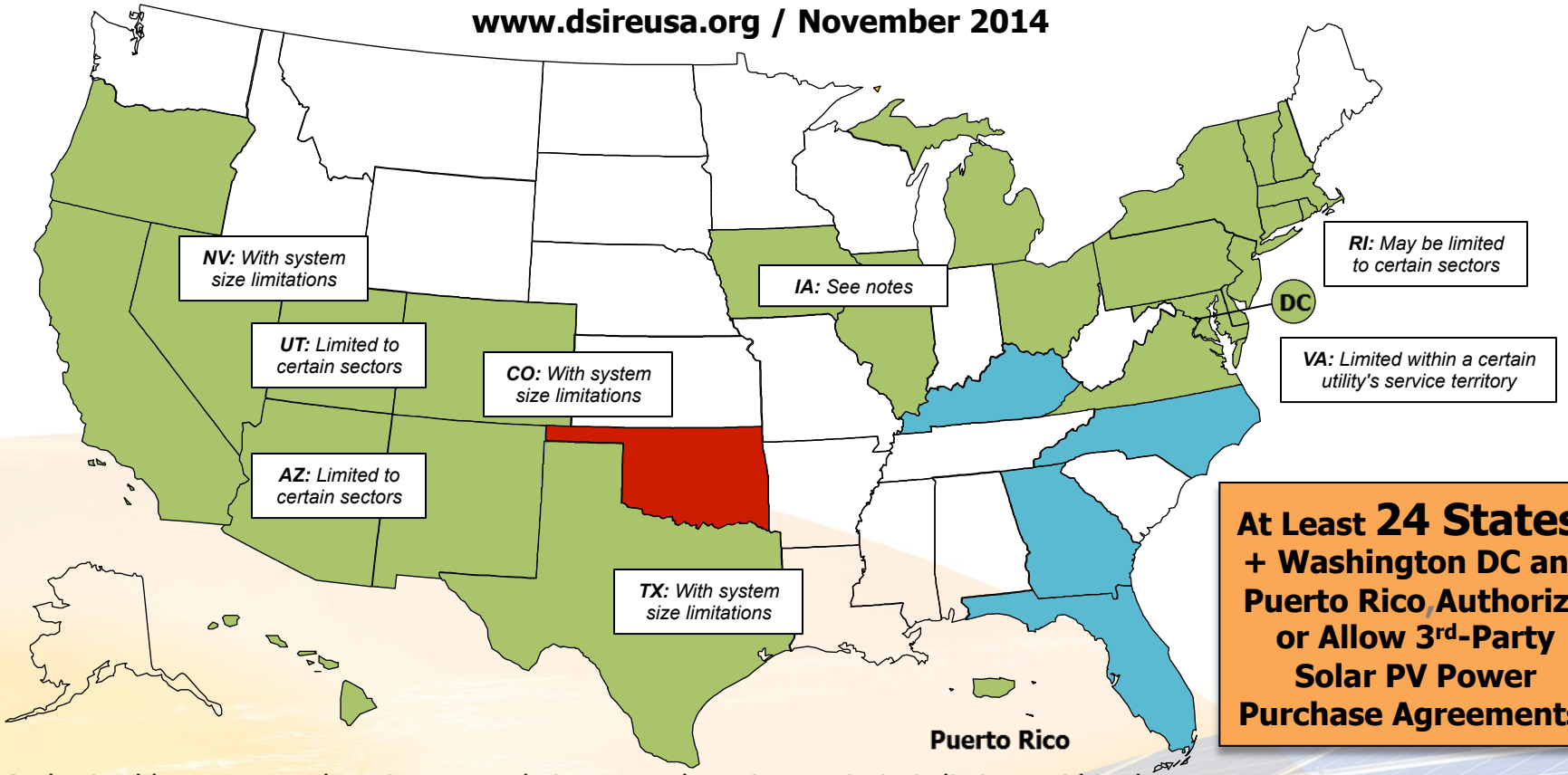
3rd-Party Solar PV Power Purchase Agreements (PPAs)

www.dsireusa.org / November 2014



At Least 24 States, + Washington DC and Puerto Rico, Authorize or Allow 3rd-Party Solar PV Power Purchase Agreements.

- Authorized by state or otherwise currently in use, at least in certain jurisdictions within the state
- Apparently disallowed by state or otherwise restricted by legal barriers
- Status unclear or unknown

Note: This map is intended to serve as an unofficial guide; it does not constitute legal advice. Seek qualified legal expertise before making binding financial decisions related to a 3rd-party PPA. See following slides for additional important information and authority references.

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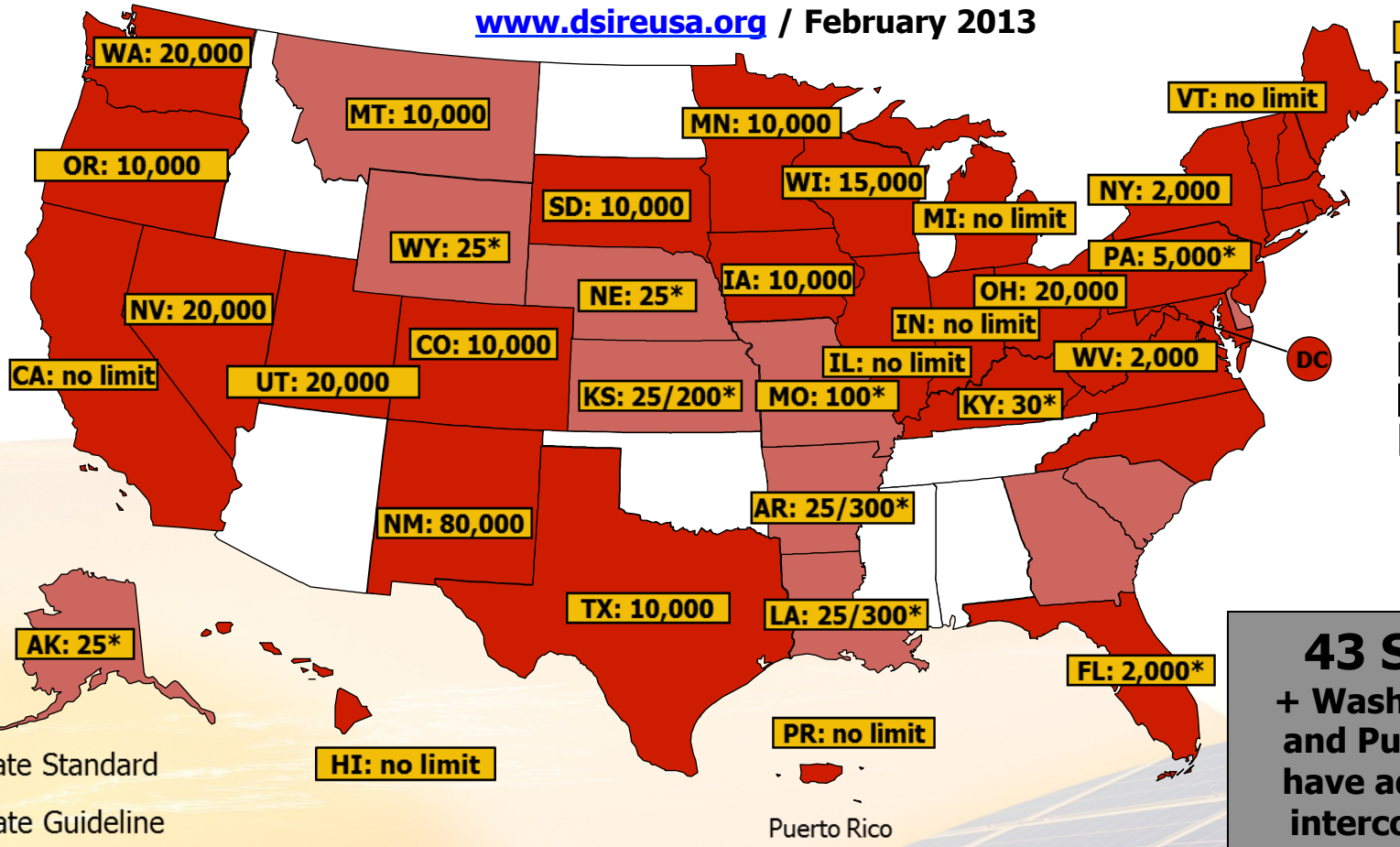
Interconnection Policies

www.dsireusa.org / February 2013



State Standard

State Guideline

* Standard or Guideline only applies to net-metered systems

43 States + Washington DC and Puerto Rico have adopted an interconnection policy.

Notes: Numbers indicate system capacity limit in kW. Some state limits vary by customer type (e.g., residential versus non-residential). "No limit" means that there is no stated maximum size for individual systems. Other limits may apply. Generally, state interconnection standards apply only to investor-owned utilities.

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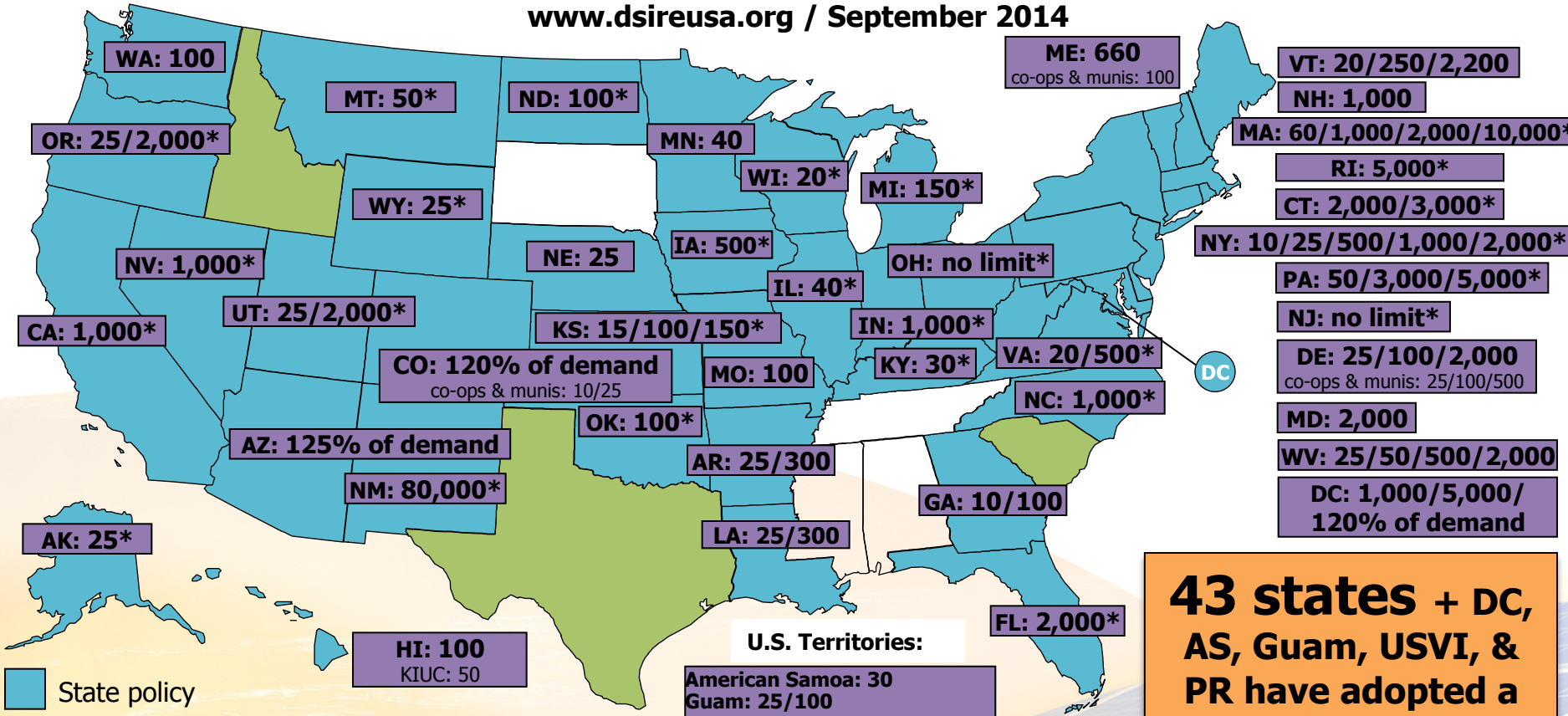
Net Metering

www.dsireusa.org / September 2014

Note: Net Metering rules are being actively discussed in over a dozen state public service & utility commissions across the country.



U.S. Territories:

American Samoa: 30
Guam: 25/100
Puerto Rico: 25/1,000/5,000
Virgin Islands: 20/100/500

43 states + DC, AS, Guam, USVI, & PR have adopted a net metering policy

State policy

Voluntary utility program(s) only

* State policy applies to certain utility types only (e.g., investor-owned utilities)

State: kW limit residential/ kW limit nonresidential

Note: Numbers indicate individual system capacity limit in kW. Some limits vary by customer type, technology and/or application. Other limits might also apply. This map generally does not address statutory changes until administrative rules have been adopted to implement such changes.

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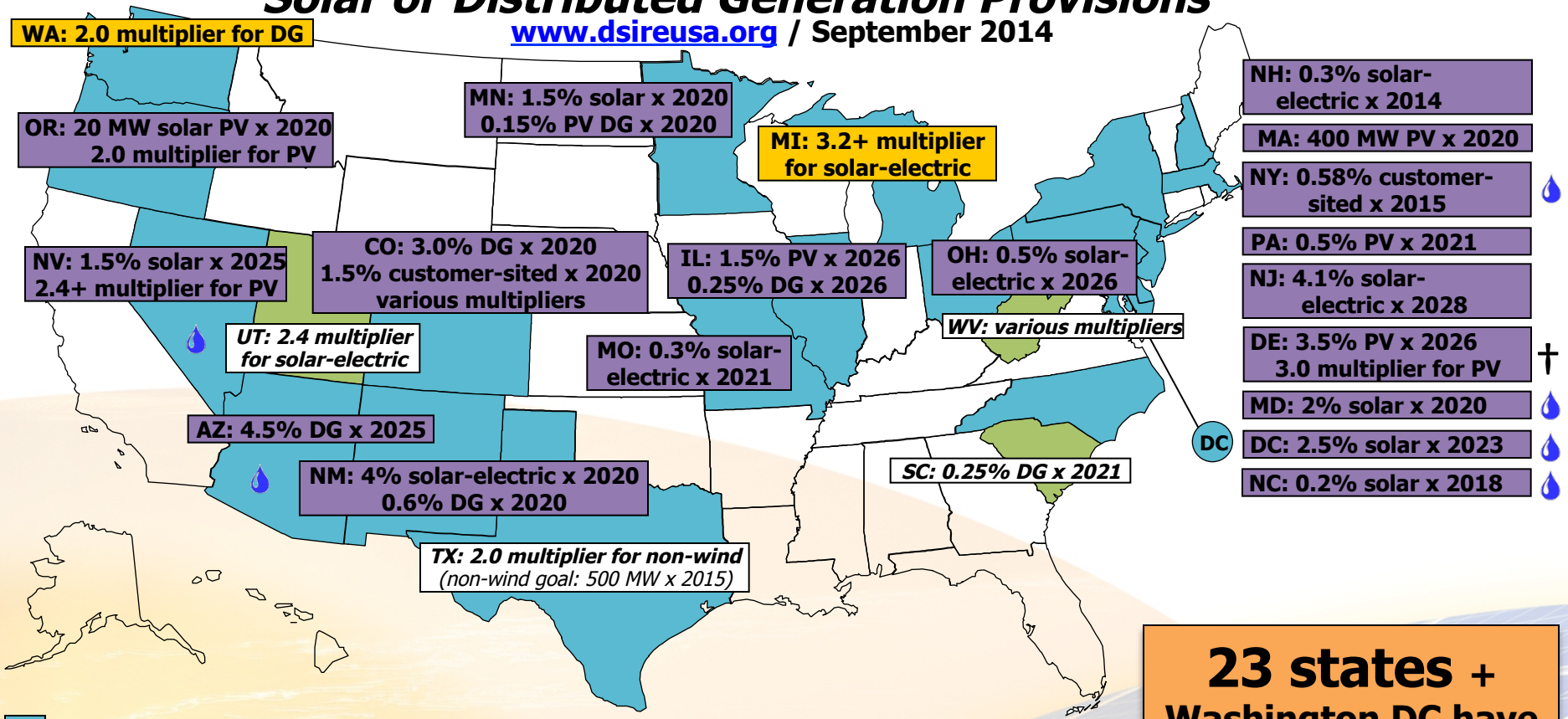
Renewable Portfolio Standard Policies with Solar or Distributed Generation Provisions

www.dsireusa.org / September 2014



Renewable portfolio standard with solar / distributed generation (DG) provision

Renewable portfolio goal with solar / DG provision

Solar water heating counts toward solar / DG provision

† Delaware allows certain fuel cell systems to qualify for the PV carve-out

23 states + Washington DC have an RPS with solar or DG provisions

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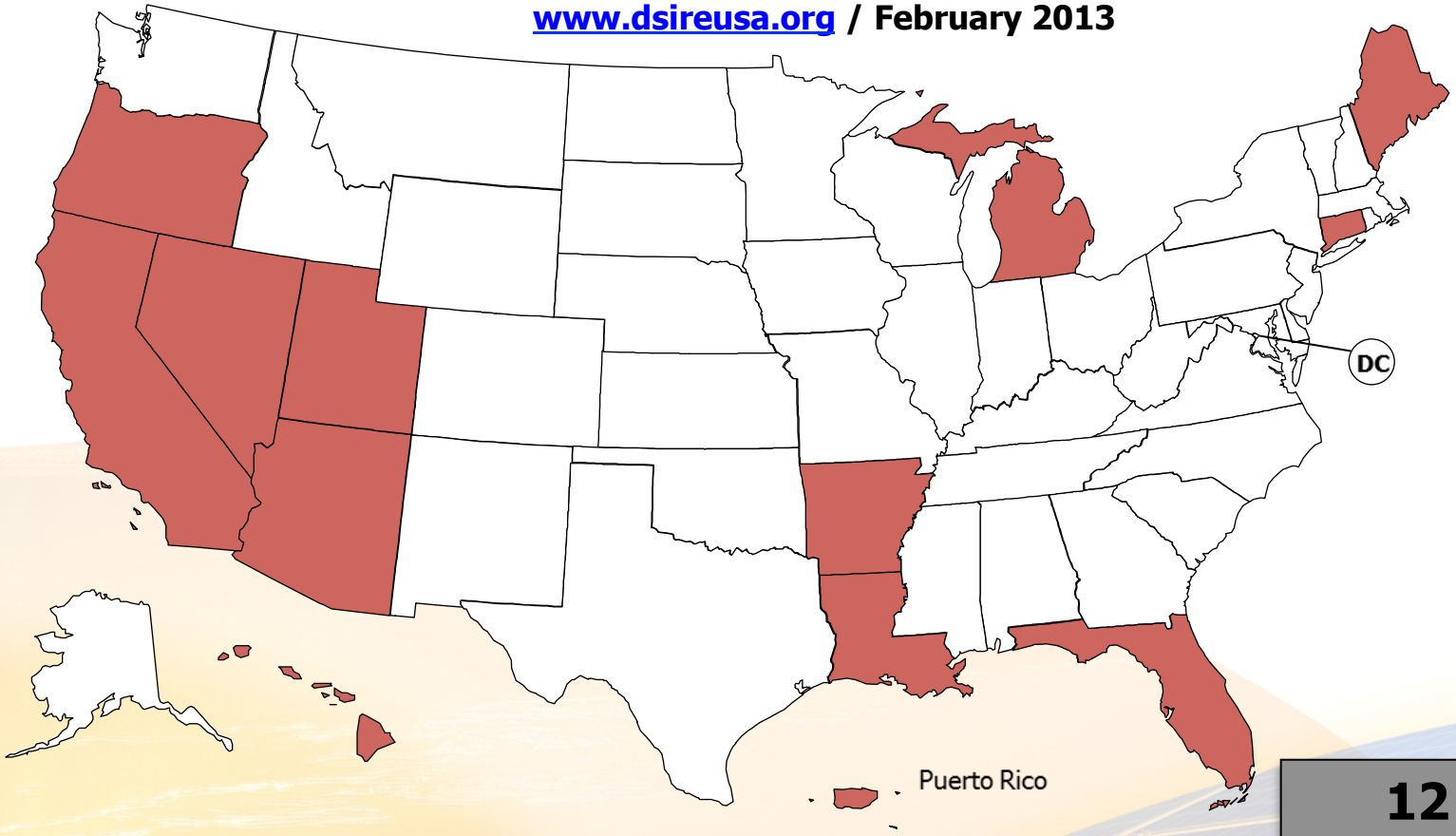
Solar Contractor Licensing Requirements

www.dsireusa.org / February 2013



State Solar Contractor Licensing Requirement

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12 states + Puerto Rico have solar contractor licensing requirements

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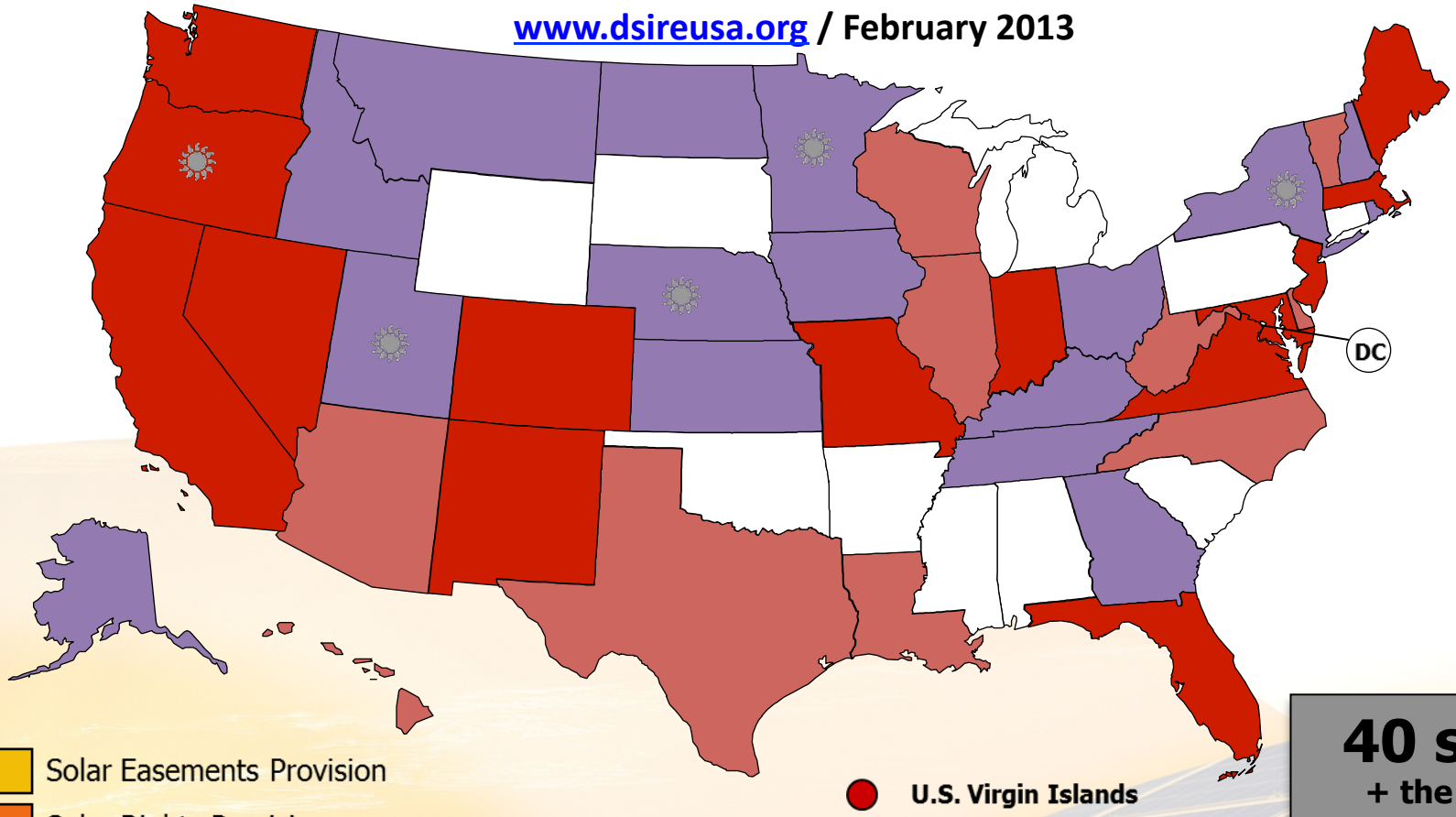
State Solar Access Laws

www.dsireusa.org / February 2013



Solar Easements Provision

Solar Rights Provision

Solar Easements and Solar Rights Provisions

Local option to create solar rights provision

40 states, + the US Virgin Islands, have solar access laws

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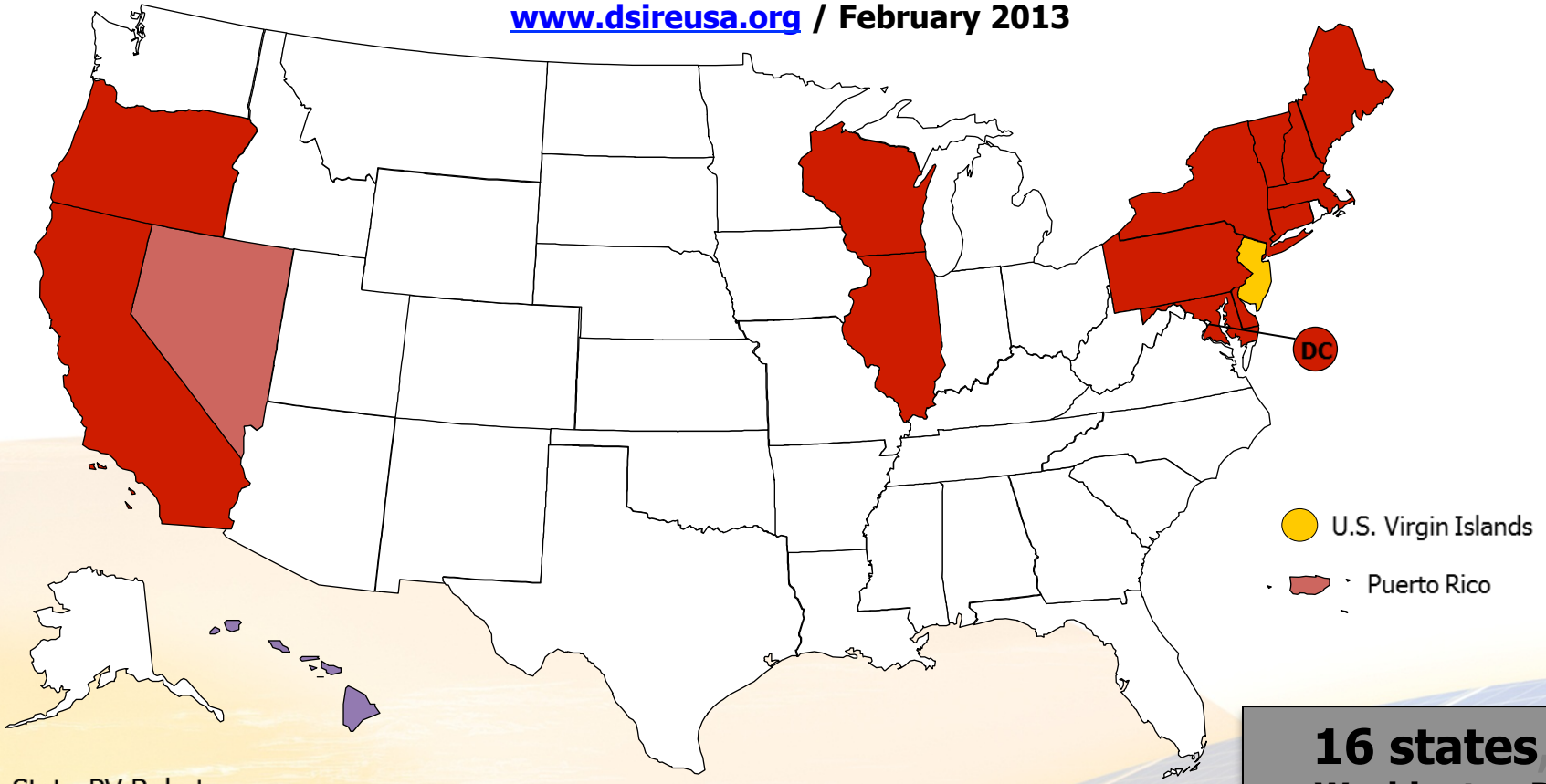
State Rebates for Solar Projects

www.dsireusa.org / February 2013



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U.S. Department of Energy

16 states, + Washington DC, Puerto Rico & the US Virgin Islands offer rebates for solar projects