

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2740

(BY DELEGATES MANYPENNY, DOYLE, MAHAN,
GUTHRIE, CANTERBURY, IAQUINTA, BARKER, HARTMAN,
BROWN AND HATFIELD)

(Originating in the House Committee on the Judiciary)
[February 21, 2012]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-19, relating to making covenants and other restrictions that restrict the installation or use of solar energy systems unenforceable; defines terms; and provides exceptions thereto.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §36-4-19, to read as follows:

ARTICLE 4. COVENANTS.

§36-4-19. Solar energy covenants unenforceable; penalty.

1 (a) It is the policy of the state to promote and encourage the
2 residential and commercial use of solar energy systems and to
3 remove obstacles thereto to promote energy efficiency and
4 pollution reduction. Therefore, upon the effective date of this
5 section any covenant, restriction, or condition contained in any
6 deed, contract, security instrument, or other instrument affecting
7 the transfer or sale of, or any interest in, real property, and any
8 provision of a governing document of a housing development or
9 association that effectively prohibits or restricts the installation
10 or use of a solar energy system is void and unenforceable:
11 *Provided*, That in instances involving a housing development or
12 association, an association may, by vote of its members,
13 establish or remove a restriction that prohibits or restricts the
14 installation or use of a solar energy system.

15 (b) For the purposes of this section:

16 (1) “Solar energy system” means a system affixed to a
17 building or buildings that uses solar devices, which are

18 thermally isolated from living space or any other area where
19 the energy is used, to provide for the collection, storage, or
20 distribution of solar energy; and

21 (2) “Reasonable restriction” means those restrictions that
22 do not effectually result in a prohibition of their use by
23 eliminating the system’s energy conservation benefits or
24 economic practicality.

25 (c) This section does not apply to provisions that impose
26 reasonable restrictions on solar energy systems including
27 restrictions for historical preservation, architectural
28 significance, religious or cultural importance to a given
29 community. Nothing in this section precludes the regulation
30 of solar energy systems by state and local authorities which
31 may establish land use, health and safety standards. Nothing
32 in this section precludes home associations, condominiums or
33 unit properties from restricting or limiting the installation of
34 solar energy systems installed in common areas and common
35 structures.