

**E N G R O S S E D**

COMMITTEE SUBSTITUTE

FOR

**H. B. 2740**

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

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(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.