

H. B. 2740

(By Delegates Manypenny, Doyle, Mahan, Guthrie, Canterbury, Iaquina, Barker, Hartman, Brown and Hatfield)

[Introduced January 21, 2011; referred to the Committee on the Judiciary.]

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 that restrict the installation or use of solar energy systems unenforceable; and provides civil penalties.

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.

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the

1 policy of the state to promote and encourage the use of solar
2 energy systems and to remove obstacles thereto. Accordingly,
3 reasonable restrictions on a solar energy system are those
4 restrictions that do not significantly increase the cost of the
5 system or significantly decrease its efficiency or specified
6 performance, or that allow for an alternative system of comparable
7 cost, efficiency, and energy conservation benefits.

8 (c) (1) A solar energy system shall meet applicable health and
9 safety standards and requirements imposed by state and local
10 permitting authorities.

11 (2) A solar energy system for heating water shall be certified
12 by the Solar Rating Certification Corporation (SRCC) or other
13 nationally recognized certification agencies. SRCC is a nonprofit
14 third party supported by the United States Department of Energy.
15 The certification shall be for the entire solar energy system and
16 installation.

17 (3) A solar energy system for producing electricity shall also
18 meet all applicable safety and performance standards established by
19 the National Electrical Code, the Institute of Electrical and
20 Electronics Engineers, and accredited testing laboratories such as
21 Underwriters Laboratories and, where applicable, rules of the
22 Public Service Commission regarding safety and reliability.

23 (d) For the purposes of this section:

24 (1) (A) For solar domestic water heating systems or solar
25 swimming pool heating systems that comply with state and federal
26 law, "significantly" means an amount exceeding twenty percent of

1 the cost of the system or decreasing the efficiency of the solar
2 energy system by an amount exceeding twenty percent, as originally
3 specified and proposed.

4 (B) For photovoltaic systems that comply with state and
5 federal law, "significantly" means an amount not to exceed \$2,000
6 over the system cost as originally specified and proposed, or a
7 decrease in system efficiency of an amount exceeding twenty percent
8 as originally specified and proposed.

9 (2) "Solar energy system" means a system that uses solar
10 devices, which are thermally isolated from living space or any
11 other area where the energy is used, to provide for the collection,
12 storage, or distribution of solar energy.

13 (e)(1) Whenever approval is required for the installation or
14 use of a solar energy system, the application for approval shall be
15 processed and approved by the appropriate approving entity in the
16 same manner as an application for approval of an architectural
17 modification to the property and may not be willfully avoided or
18 delayed.

19 (2) For an approving entity that is a homeowners' association,
20 and that is not a public entity, both of the following apply:

21 (A) The approval or denial of an application shall be in
22 writing; and

23 (B) If an application is not denied in writing within sixty
24 days from the date of receipt of the application, the application
25 is deemed approved, unless that delay is the result of a reasonable
26 request for additional information.

1 (f) Any entity, other than a public entity, that willfully
2 violates this section is liable to the applicant or other party for
3 actual damages occasioned thereby, and shall pay a civil penalty to
4 the applicant or other party in an amount not to exceed \$1,000.

5 (g) In any action to enforce compliance with this section, the
6 prevailing party shall be awarded reasonable attorney's fees.

7 (h) (1) A public entity that fails to comply with this section
8 may not receive funds from a state-sponsored grant or loan program
9 for solar energy. A public entity shall certify its compliance with
10 the requirements of this section when applying for funds from a
11 state-sponsored grant or loan program.

12 (2) A local public entity may not exempt residents in its
13 jurisdiction from the requirements of this section.

14 (i) Notwithstanding other provisions of this section, any
15 association may impose reasonable provisions that:

16 (1) Restrict the installation of solar energy systems
17 installed in common areas to those systems approved by the
18 association;

19 (2) Require the owner of a separate interest to obtain the
20 approval of the association for the installation of a solar energy
21 system in a separate interest owned by another;

22 (3) Provide for the maintenance, repair, or replacement of
23 roofs or other building components; and

24 (4) Require installers of solar energy systems to indemnify or
25 reimburse the association or its members for loss or damage caused
26 by the installation, maintenance, or use of the solar energy

1 system.

NOTE: The purpose of this bill makes covenants that restrict the installation or use of solar energy systems unenforceable. The bill also addresses homeowners' associations. The bill further provides guidelines and sets forth civil penalties.

This section is new; therefore, it has been completely underscored.