

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2740**

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

7 (Originating in the House Committee on the Judiciary)

8 [February 21, 2012]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §36-4-19, relating to
12 making covenants and other restrictions that restrict the
13 installation or use of solar energy systems unenforceable;
14 defines terms; and provides exceptions thereto.

15 *Be it enacted by the Legislature of West Virginia:*

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

19 **ARTICLE 4. COVENANTS.**

20 **§36-4-19. Solar energy covenants unenforceable; penalty.**

21 (a) It is the policy of the state to promote and encourage
22 the residential and commercial use of solar energy systems and to
23 remove obstacles thereto to promote energy efficiency and pollution
24 reduction. Therefore, upon the effective date of this section any
25 covenant, restriction, or condition contained in any deed,

1 contract, security instrument, or other instrument affecting the
2 transfer or sale of, or any interest in, real property, and any
3 provision of a governing document of a housing development or
4 association that effectively prohibits or restricts the
5 installation or use of a solar energy system is void and
6 unenforceable.

7 (b) For the purposes of this section:

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

13 (2) "reasonable restriction" means those restrictions that do
14 not effectually result in a prohibition of their use by eliminating
15 the system's energy conservation benefits or economic practicality.

16 (c) This section does not apply to provisions that impose
17 reasonable restrictions on solar energy systems. Nothing in this
18 section precludes the regulation of solar energy systems by state
19 and local authorities which may establish land use, health and
20 safety standards. Nothing in this section precludes home
21 associations, condominiums or unit properties from restricting or
22 limiting the installation of solar energy systems installed in
23 common areas and common structures.