

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
2 the residential and commercial use of solar energy systems
3 and to remove obstacles thereto to promote energy efficiency
4 and pollution reduction. Therefore, upon the effective date
5 of this section any covenant, restriction, or condition
6 contained in any deed, contract, security instrument, or other
7 instrument affecting the transfer or sale of, or any interest in,
8 real property, and any provision of a governing document of
9 a housing development or association that effectively
10 prohibits or restricts the installation or use of a solar energy
11 system is void and unenforceable.

12 (b) For the purposes of this section:

13 (1) “Solar energy system” means a system affixed to a
14 building or buildings that uses solar devices, which are
15 thermally isolated from living space or any other area where
16 the energy is used, to provide for the collection, storage, or
17 distribution of solar energy; and

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

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