

**SUBSTITUTE FOR
HOUSE BILL NO. 5028**

A bill to invalidate certain provisions in homeowners' association agreements that prohibit the replacement, maintenance, installation, or operation of certain energy-saving improvements or modifications or the installation of solar energy systems; to provide for the adoption of certain policy statements; to prescribe penalties and remedies; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "homeowners' energy
2 policy act".

3 Sec. 3. As used in this act:

4 (a) "Common area" means a portion of a building, land, or
5 amenities owned or managed by the homeowners' association that is

1 generally accessible to all members of the association. Common area
2 includes, but is not limited to, a hallway, a stairway, an
3 elevator, a lobby, a laundry and recreational room, a playground, a
4 community center, a garage, a public green space, a park, or a
5 fitness room.

6 (b) "Electric vehicle supply equipment" means a machine or
7 other device located within this state that is supplied with
8 electricity and designed or used for placing or delivering
9 electricity into the battery storage system of a motor vehicle.

10 (c) "Energy-saving improvement or modification" includes, but
11 is not limited to, all of the following:

12 (i) A clothesline.

13 (ii) Air source heat pumps.

14 (iii) Ground source heat pumps.

15 (iv) Insulation.

16 (v) Rain barrels.

17 (vi) Reflective roofing.

18 (vii) Energy efficient appliances.

19 (viii) Solar water heaters.

20 (ix) Electric vehicle supply equipment.

21 (x) Energy-efficient windows.

22 (xi) Energy-efficient insulation materials.

23 (d) "Local unit of government" means a county, township, city,
24 or village.

25 (e) "Member" means an owner of a home or unit that is within
26 the jurisdiction of the homeowners' association.

27 (f) "Policy" means the written solar energy policy statement
28 described under section 9(1).

29 (g) "Shared roof" means a roof that serves more than 1 home or

1 unit, including, but not limited to, a contiguous roof that serves
2 adjacent homes or units.

3 (h) "Solar collector" means any of the following:

4 (i) An assembly, a structure, or a design, including passive
5 elements, used for gathering, concentrating, or absorbing direct
6 and indirect solar energy, or specially designed for holding a
7 substantial amount of useful thermal energy, that transfers that
8 energy to gas, solid, or liquid or uses that energy directly.

9 (ii) A mechanism that absorbs solar energy and converts it into
10 electricity.

11 (iii) A mechanism or process used for gathering solar energy
12 through wind or thermal gradients.

13 (iv) A component used to transfer thermal energy to a gas,
14 solid, or liquid or convert thermal energy into electricity.

15 (i) "Solar energy" means radiant energy received from the sun
16 at a wavelength that is suitable for heat transfer, photosynthetic
17 use, or photovoltaic use.

18 (j) "Solar energy system" means a complete assembly,
19 structure, or design of a solar collector, or a solar storage
20 mechanism that uses solar energy for generating electricity or
21 heating or cooling gases, solids, liquids, or other materials.
22 Solar energy system includes the design, materials, or elements of
23 a solar energy system and its maintenance, operation, labor
24 components, and the necessary components, if any, of supplemental
25 conventional energy systems designed or constructed to interface
26 with a solar energy system.

27 (k) "Solar storage mechanism" means equipment or elements
28 including, but not limited to, piping and transfer mechanisms,
29 containers, heat exchangers, batteries, or gases, solids, or

1 liquids, or a combination of gases, solids, and liquids, that are
2 used for storing solar energy gathered by a solar collector for
3 subsequent use.

4 Sec. 5. (1) Any of the following in a homeowners' association
5 agreement is invalid and unenforceable as contrary to public
6 policy:

7 (a) A provision that prohibits, or requires the approval of a
8 homeowners' association for, a member to replace, maintain,
9 install, or operate an energy-saving improvement or modification.

10 (b) A provision that compels, or requires association approval
11 for, a member to make auxiliary changes needed for the installation
12 of an energy-saving improvement or modification.

13 (2) A local unit of government shall not require a member to
14 obtain the approval of a homeowners' association to do any of the
15 following:

16 (a) Replace, maintain, install, or operate an energy-saving
17 improvement or modification.

18 (b) Make auxiliary changes needed for the installation of an
19 energy-saving improvement or modification.

20 (3) Subject to subsection (2), this act does not prohibit a
21 local unit of government from imposing requirements that may
22 prohibit or limit the replacement, maintenance, installation, or
23 operation of an energy-saving improvement or modification or making
24 of auxiliary changes needed for the installation of an energy-
25 saving improvement or modification by a member.

26 Sec. 7. A provision in a homeowners' association agreement or
27 the policy adopted under section 9(1) that prohibits or has the
28 effect of prohibiting the installation of a solar energy system is
29 invalid and unenforceable as contrary to public policy.

1 Sec. 9. (1) Within 1 year after the effective date of this
2 act, each homeowners' association in this state shall adopt a
3 written solar energy policy statement. A policy adopted under this
4 subsection must not conflict with an existing local, state, or
5 federal law. All of the following apply to a policy adopted in
6 accordance with this subsection:

7 (a) The policy must include the standards established under
8 this act to be enforced by the homeowners' association.

9 (b) The policy may not prohibit elements of the solar energy
10 system from being installed on a roof face.

11 (c) The policy may not require that a specific technology be
12 utilized for the installation of a solar energy system, including,
13 but not limited to, solar shingles rather than traditional solar
14 panels.

15 (d) Any standards enforced under the policy may not result in
16 a reduction in the production of electricity by the solar energy
17 system by more than 10% or increase the total cost of the
18 installation of the solar energy system to the member by more than
19 \$1,000.00. As used in this subdivision, "production" means the
20 estimated annual electrical production of the solar energy system.

21 (e) The policy must not include a provision that contradicts
22 this act.

23 (f) The policy must include the following statements:

24 (i) That the approval of an adjacent home or unit owner is not
25 required to approve a member's application to install a solar
26 energy system on the member's home or unit.

27 (ii) That the homeowners' association will not do any of the
28 following:

29 (A) Inquire into a member's energy usage.

1 (B) Impose conditions that impair the operation of a solar
2 energy system.

3 (C) Impose conditions that negatively impact any component
4 industry standard warranty.

5 (D) Require postinstallation reporting.

6 (E) Require a fee for submitting an application to install a
7 solar energy system above that which it assesses for other
8 applications related to a change to the property.

9 (F) Prohibit a member from resubmitting a written application
10 to install a solar energy system after a written application
11 submitted after the effective date of this act was denied by the
12 homeowners' association.

13 (iii) That the homeowners' association will not deny a member's
14 application to install a solar energy system because of the
15 identity of the entity that owns the solar energy system or
16 financing method chosen by the member.

17 (iv) That a homeowners' association may deny an application to
18 install a solar energy system or require the removal of a solar
19 energy system if 1 or more of the following apply:

20 (A) A court has found that the installation of the solar
21 energy system violates a law.

22 (B) The installed solar energy system does not substantially
23 conform with the member's application to install the solar energy
24 system as approved by the homeowners' association.

25 (C) The homeowners' association has determined that the solar
26 energy system will be installed on the roof of a home or unit of
27 the member requesting installation and 1 or more of the following
28 apply:

29 (I) The solar energy system will extend above or beyond the

1 roof of that home or unit by more than 6 inches.

2 (II) The solar energy system does not conform to the slope of
3 the roof and has a top edge that is not parallel to the roof line.

4 (III) The solar energy system has a frame, support bracket, or
5 visible conduit or wiring that is not silver, bronze, or black tone
6 that are commonly available in the marketplace.

7 (D) The homeowners' association has determined that both of
8 the following apply:

9 (I) The solar energy system will be installed in a fenced yard
10 or patio rather than on the roof of a home or unit.

11 (II) The solar energy system will be taller than the fence
12 line.

13 (v) That a member shall comply with state and local building
14 codes and permit requirements in the replacement, maintenance,
15 installation, or operation of an energy-saving improvement or
16 modification or the installation of a solar energy system.

17 (vi) That both of the following apply:

18 (A) A member who wants to install a solar energy system in the
19 member's home or unit shall comply with the application
20 requirements under section 11(1).

21 (B) A member may resubmit a written application to install a
22 solar energy system in accordance with section 11(4).

23 (g) The policy may impose reasonable conditions concerning the
24 maintenance, repair, replacement, or removal of a damaged or
25 inoperable solar energy system provided that the conditions are not
26 more burdensome than the conditions imposed on nonsolar energy
27 projects.

28 (2) A homeowners' association shall do both of the following:

29 (a) Make a copy of the policy available to a member within 30

1 days after the adoption of the policy, or on request.

2 (b) If the homeowners' association maintains an internet
3 website, post a copy of the policy on its website.

4 (3) Any provision in a policy that conflicts with this act is
5 void and unenforceable.

6 Sec. 11. (1) Beginning on the effective date of this act, a
7 member who wants to install a solar energy system in the member's
8 home or unit shall submit a written application to the homeowners'
9 association. The written application required under this subsection
10 must include all of the following information:

11 (a) The member's name.

12 (b) The street address of the location where the solar energy
13 system will be installed.

14 (c) The name and contact information of the person that will
15 install the solar energy system.

16 (d) An image that shows the layout of the solar energy system
17 on the member's home or unit.

18 (e) A description of the solar energy system to be installed.

19 (2) Except as otherwise provided in this subsection and in
20 accordance with its policy, a homeowners' association must approve
21 or deny the member's request to install a solar energy system
22 within 30 days after receipt of the written application. If the
23 written application is submitted before the homeowners' association
24 adopts the policy described under section 9(1), the homeowners'
25 association must approve or deny the member's request to install
26 the solar energy system within 120 days after receipt of the
27 written application.

28 (3) If a homeowners' association fails to adopt the policy
29 within the time period specified under section 9(1) or approve or

1 deny the member's request to install the solar energy system within
2 the time period specified under subsection (2), a member may
3 proceed with the installation of the solar energy system. If the
4 member proceeds with the installation of the solar energy system,
5 the homeowners' association shall not impose fines or otherwise
6 penalize the member for complying with this act.

7 (4) A member may resubmit a written application to install a
8 solar energy system that was submitted to and denied by the
9 homeowners' association before the effective date of this act. On
10 receipt of the resubmitted written application, the homeowners'
11 association shall reevaluate the application under this act.

12 Sec. 13. This act does not apply to either of the following in
13 a common area or on a shared roof:

14 (a) The replacement, maintenance, installation, or operation
15 of an energy-saving improvement or modification.

16 (b) The installation of a solar energy system.

17 Sec. 15. If a homeowners' association violates this act, a
18 member may bring a civil action against the homeowners' association
19 for damages. If the member prevails in an action brought under this
20 act, the court may award reasonable attorney fees and the costs
21 incurred in bringing the action.

22 Sec. 17. If any provision of this act or its application to
23 any person or circumstances is held invalid, the invalidity does
24 not affect other provisions or applications of this act that can be
25 given effect without the invalid provision or application, and, to
26 this end, the provisions of this act are severable.

27 Enacting section 1. The legislature recognizes that the
28 replacement, maintenance, installation, or operation of an energy-
29 saving improvement or modification or the installation of a solar

1 energy system is an effective means for a member of a homeowners'
2 association to manage the member's energy budget and increase
3 energy resiliency.

4 Enacting section 2. This act takes effect 90 days after the
5 date it is enacted into law.