

# HOUSE BILL NO. 5028

September 20, 2023, Introduced by Reps. Puri, Churches, Miller, Byrnes, Breen, Rheingans, Brabec, Tyrone Carter, Glanville, Koleszar, Skaggs, MacDonell, Morse, Conlin, Wilson, Hope, Morgan, Rogers, Scott, Farhat and Aiyash and referred to the Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

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".

1           Sec. 3. As used in this act:

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

6           (b) "Energy-saving improvement or modification" includes, but  
7 is not limited to, all of the following:

8           (i) A clothesline.

9           (ii) Air source heat pumps.

10          (iii) Ground source heat pumps.

11          (iv) Insulation.

12          (v) Rain barrels.

13          (vi) Reflective roofing.

14          (vii) Energy efficient appliances.

15          (viii) Solar water heaters.

16          (ix) Electric vehicle supply equipment.

17          (x) Energy efficient windows.

18          (xi) Energy efficient insulation materials.

19          (c) "Homeowners' association" means an incorporated  
20 organization of the owners or lessees of residential dwelling  
21 units.

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

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

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

28          (g) "Solar collector" means any of the following:

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

6 (ii) A mechanism that absorbs solar energy and converts it into  
7 electricity.

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

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

12 (h) "Solar energy" means radiant energy received from the sun  
13 at a wavelength that is suitable for heat transfer, photosynthetic  
14 use, or photovoltaic use.

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

24 (j) "Solar storage mechanism" means equipment or elements  
25 including, but not limited to, piping and transfer mechanisms,  
26 containers, heat exchangers, batteries, or gases, solids, or  
27 liquids, or a combination of gases, solids, and liquids, that are  
28 used for storing solar energy gathered by a solar collector for  
29 subsequent use.

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

4           (a) A provision that prohibits, or requires association  
5 approval for, a member to replace, maintain, install, or operate an  
6 energy-saving improvement or modification.

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

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

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

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

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

23          Sec. 7. A provision in a homeowners' association agreement  
24 that prohibits or has the effect of prohibiting the installation of  
25 a solar energy system is invalid and unenforceable as contrary to  
26 public policy.

27          Sec. 9. (1) Within 90 days after the effective date of this  
28 act, each homeowners' association in this state shall adopt a  
29 written solar energy policy statement. A policy adopted under this

1 subsection must not conflict with an existing local, state, or  
2 federal law. All of the following apply to a policy adopted in  
3 accordance with this subsection:

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

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

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

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

18 (e) The policy must not include a provision that contradicts  
19 this act.

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

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

24 (ii) That the homeowners' association will not do any of the  
25 following:

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

27 (B) Impose conditions that impair the operation of a solar  
28 energy system.

29 (C) Impose conditions that negatively impact any component

1 industry standard warranty.

2 (D) Require postinstallation reporting.

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

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

10 (g) The policy may impose reasonable conditions concerning the  
11 maintenance, repair, replacement, or removal of a damaged or  
12 inoperable solar energy system provided that the conditions are not  
13 more burdensome than the conditions imposed on nonsolar energy  
14 projects.

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

16 (a) Make a copy of the policy available to a member, on  
17 request.

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

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

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

27 (a) The member's name.

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

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

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

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

6 (2) Except as otherwise provided in this subsection and  
7 subsection (4), and in accordance with its policy, a homeowners'  
8 association must approve or deny the member's request to install a  
9 solar energy system within 30 days after receipt of the written  
10 application. If the written application is submitted before the  
11 homeowners' association adopts the policy described under section  
12 9(1), the homeowners' association must approve or deny the member's  
13 request to install the solar energy system within 120 days after  
14 receipt of the written application.

15 (3) If a homeowners' association fails to adopt the policy  
16 within the time period specified under section 9(1) or approve or  
17 deny the member's request to install the solar energy system within  
18 the time period specified under subsection (2), a member may  
19 proceed with the installation of the solar energy system. If the  
20 member proceeds with the installation of the solar energy system,  
21 the homeowners' association shall not impose fines or otherwise  
22 penalize the member for complying with this act.

23 (4) A homeowners' association may deny an application to  
24 install a solar energy system or require the removal of a solar  
25 energy system if 1 or more of the following apply:

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

28 (b) The installed solar energy system does not substantially  
29 conform with the member's application to install the solar energy

1 system as approved by the homeowners' association.

2 (c) The homeowners' association has determined that the solar  
3 energy system will be installed on the roof of a home or unit of  
4 the member requesting installation and 1 or more of the following  
5 apply:

6 (i) The solar energy system will extend above or beyond the  
7 roof of that home or unit by more than 6 inches.

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

10 (iii) The solar energy system has a frame, support bracket, or  
11 visible conduit or wiring that is not silver, bronze, or black tone  
12 that are commonly available in the marketplace.

13 (d) The homeowners' association has determined that both of  
14 the following apply:

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

17 (ii) The solar energy system will be taller than the fence  
18 line.

19 (5) A member may resubmit a written application to install a  
20 solar energy system that was submitted to and denied by the  
21 homeowners' association before the effective date of this act. On  
22 receipt of the resubmitted written application, the homeowners'  
23 association shall reevaluate the application under this act.

24 Sec. 13. This act does not apply to any home or unit that has  
25 a shared roof, unless all members served by the shared roof agree  
26 to the installation of the solar energy system. As used in this  
27 section, "shared roof" means a roof that meets both of the  
28 following requirements:

29 (a) Serves more than 1 home or unit, including, but not



1 limited to, a contiguous roof that serves adjacent homes or units.

2 (b) Is part of the common elements or common area. As used in  
3 this subdivision, "common elements or common area" means a portion  
4 of a building that is generally accessible to all occupants of the  
5 building. Common area includes, but is not limited to, a hallway, a  
6 stairway, an elevator, a lobby, a swimming pool, a laundry or  
7 recreational room, a playground, a community center, a garage, or a  
8 fitness room.

9 Sec. 15. If a homeowners' association violates this act, a  
10 member may bring a civil action against the homeowners' association  
11 for damages, reasonable attorney fees, and the costs of bringing  
12 the action.

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

18 Enacting section 1. The legislature recognizes that the  
19 replacement, maintenance, installation, or operation of an energy-  
20 saving improvement or modification or the installation of a solar  
21 energy system is an effective means for a member of a homeowners'  
22 association to manage the member's energy budget and increase  
23 energy resiliency.