

## CREATE THE HOMEOWNERS' ENERGY POLICY ACT

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<http://www.house.mi.gov/hfa>

House Bill 5028 (H-2) as adopted

Sponsor: Rep. Ranjeev Puri

Committee: Natural Resources, Environment, Tourism  
and Outdoor Recreation

Complete to 10-31-23

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 5028 would create a new act, the Homeowners' Energy Policy Act, which would declare certain provisions of a homeowners' association agreement invalid and unenforceable if they violate the provisions of the bill concerning the ability of a *member* of the association to install certain *energy-saving improvements or modifications*. Homeowners' associations would also be required to adopt a policy statement on solar energy that complies with requirements in the bill.

*Member* would mean an owner of a home or a unit that is within the jurisdiction of the homeowners' association.

*Energy-saving improvement or modification* would include at least all of the following:

- A clothesline.
- Air source heat pumps.
- Ground source heat pumps.
- Insulation.
- Rain barrels.
- Reflective roofing.
- Energy efficient appliances.
- Solar water heaters.
- *Electric vehicle supply equipment*.
- Energy efficient windows.
- Energy efficient insulation materials.

*Electric vehicle supply equipment* would mean a machine or other device that is supplied with electricity and designed or used for placing or delivering electricity into the battery storage system of a motor vehicle.

Section 5 of the bill would provide that the following provisions, if present in a homeowners' association agreement, are invalid and unenforceable as contrary to public policy:

- A provision that prohibits, or requires the approval of the homeowners' association for, a member to replace, maintain, install, or operate an energy-saving improvement or modification.
- A provision that compels, or requires association approval for, a member to make auxiliary changes needed for the installation of an energy-saving improvement or modification.
- A provision that prohibits or has the effect of prohibiting the installation of a *solar energy system*.

***Solar energy system*** would mean a complete assembly, structure, or design of a ***solar collector***, or a ***solar storage mechanism*** that uses ***solar energy*** for generating electricity or heating or cooling gases, solids, liquids, or other materials. Solar energy system would include the design, materials, or elements of a solar energy system and its maintenance, operation, labor components, and the necessary components, if any, of supplemental conventional energy systems designed or constructed to interface with a solar energy system.

***Solar collector*** would mean any of the following:

- An assembly, a structure, or a design, including passive elements, used for gathering, concentrating, or absorbing direct and indirect solar energy, or specially designed for holding a substantial amount of useful thermal energy, that transfers that energy to gas, solid, or liquid or uses that energy directly.
- A mechanism that absorbs solar energy and converts it into electricity.
- A mechanism or process used for gathering solar energy through wind or thermal gradients.
- A component used to transfer thermal energy to a gas, solid, or liquid or convert thermal energy into electricity.

***Solar storage mechanism*** would mean equipment or elements that are used for storing solar energy gathered by a solar collector for subsequent use, including piping and transfer mechanisms; containers; heat exchangers; batteries; gases, solids, or liquids; or a combination of gases, solids, and liquids.

***Solar energy*** would mean radiant energy received from the sun at a wavelength that is suitable for heat transfer, photosynthetic use, or photovoltaic use.

Additionally, a local unit of government (county, township, city, or village) could not require a member to obtain the approval of a homeowners' association to do either of the following:

- Replace, maintain, install, or operate an energy-saving improvement or modification.
- Make auxiliary changes needed for the installation of an energy-saving improvement or modification.

However, subject to the above, the bill would not prohibit a local unit of government from imposing requirements that may prohibit or limit the replacement, maintenance, installation, or operation of an energy-saving improvement or modification or making of auxiliary changes needed for the installation of an energy-saving improvement or modification by a member of a homeowners' association.

Section 9 of the bill would require a homeowners' association to adopt a written solar energy policy statement within one year of the bill's effective date. This policy could not conflict with existing local, state, or federal law, and any provision in a policy that conflicts with the Homeowners' Energy Policy Act would be void and unenforceable. In addition, any provision in a policy that prohibits or has the effect of prohibiting the installation of a solar energy system would be invalid and unenforceable as contrary to public policy.

All of the following would apply to such a policy:

- It would have to include the standards established by the bill that would be enforced by the homeowners' association.
- It could not prohibit elements of the solar energy system from being installed on a roof face.
- It could not require that a specific technology be utilized for the installation of a solar energy system, including solar shingles rather than traditional solar panels.
- Any standards enforced under the policy could not result in a reduction in the **production** of electricity by the solar energy system by more than 10% or increase the total cost of the installation of the solar energy system to the member by more than \$1,000. (As used here, **production** would mean the estimated annual electrical production of the solar energy system.)
- It could not include a provision that contradicts the Homeowners' Energy Policy Act.
- It would have to include the following statements:
  - That the approval of an adjacent home or unit owner is not required to approve a member's application to install a solar energy system on the member's home or unit.
  - That the homeowners' association will not do any of the following:
    - Inquire into a member's energy usage.
    - Impose conditions that impair the operation of a solar energy system or that would negatively impact any component industry standard warranty.
    - Require post-installation reporting.
    - Require a fee for submitting an application to install a solar energy system above that assessed for other applications related to a change to the property.
    - Prohibit a member from resubmitting a written application to install a solar energy system after a written application submitted after the bill's effective date was denied by the association.
  - That the homeowners' association will not deny a member's application to install a solar energy system because of the identity of the entity that owns the solar energy system or financing method chosen by the member.
  - That a member must comply with state and local building codes and permit requirements in the replacement, maintenance, installation, or operation of an energy-saving improvement or modification or the installation of a solar energy system.
- It could impose reasonable conditions concerning the maintenance, repair, replacement, or removal of a damaged or inoperable solar energy system as long as the conditions are not more burdensome than the conditions imposed on non-solar energy projects.

Once adopted, the homeowners' association would have to make a copy of the policy available within 30 days after its adoption or upon request and, if the association maintains a website, post a copy of the policy on its website.

Section 11 of the bill would require a member who wants to install a solar energy system in their home or unit, starting on the effective date of the bill, to submit a written application to

the homeowners' association. This written application would have to include all of the following information:

- The member's name.
- The street address of the location where the solar energy system will be installed.
- The name and contact information of the person that will install the solar energy system.
- An image that shows the layout of the solar energy system on the home or unit.
- A description of the solar energy system to be installed.

An HOA would have 30 days after receiving a member's request for installation of a solar energy system to approve or deny it. If an application is submitted before the adoption of the required written solar energy policy statement, the HOA would have to approve or deny the member's request to install the solar energy system within 120 days after receipt of the written application. A member could resubmit an installation application if it was submitted and denied prior to the effective date of the bill, and once received, the HOA would have to evaluate the application based on the provisions of the bill.

If an HOA failed to adopt the written solar energy policy within 90 days of the bill's effective date or failed to approve or deny the member's request to install the solar energy system within 30 days, the applicant could proceed with the installation of the solar energy system. If the member proceeds with the installation of the solar energy system, the HOA could not impose fines or otherwise penalize the member for complying with the provisions in the HB 5028.

The bill would allow the following reasons for an HOA to deny an application for installation or require the removal of a solar energy system:

- A court has found that the installation of the solar energy system violates a law.
- The installed solar energy system does not substantially conform with the member's application to install the solar energy system as approved by the association.
- The HOA has determined that the solar energy system will be installed on the roof of a home or unit of the member requesting installation and one or more of the following apply:
  - The solar energy system will extend above or beyond the roof of that home or unit by more than six inches.
  - The solar energy system does not conform to the slope of the roof and has a top edge that is not parallel to the roof line.
  - The solar energy system has a frame, support bracket, or visible conduit or wiring that is not silver, bronze, or black tone that are commonly available in the marketplace.
- The HOA has determined that both of the following apply:
  - The solar energy system will be installed in a fenced yard or patio rather than on the roof of a home or unit.
  - The solar energy system will be taller than the fence line.

Section 13 of the bill states that it does not apply to the installation of a solar energy system, or the replacement, maintenance, installation, or operation of an energy-saving improvement or modification, in a *common area* or on a *shared roof*.

*Common area* would mean a portion of a building, land, or amenities owned or managed by the HOA that is generally accessible to all members of the association. This would include a hallway, stairway, elevator, lobby, laundry and recreation room, playground, community center, garage, a public green space, a park, or a fitness room.

*Shared roof* would mean a roof that serves more than one home or unit, including a contiguous roof that serves adjacent homes or units.

If a homeowners' association violates the provisions of the bill, a member could bring a civil action against the HOA for damages, reasonable attorney fees, and the costs of bringing the action.

Finally, the bill says that if any provision of the Homeowners Energy Policy Act or its application to any person or circumstances is held invalid, then its invalidity would not affect other provisions or applications that can be given effect without the invalid provision or application, and, to this end, the provisions of the act are severable. (All Michigan laws are always already severable under section 5 of Chapter 1 of the Revised Statutes of 1846.<sup>1</sup>)

#### Enacting provisions

The bill contains a statement that the legislature recognizes the replacement, maintenance, installation, or operation of an energy-saving improvement or modification, or installation of a solar energy system is an effective means for a member of a homeowners' association to manage the member's energy budget and increase energy resiliency.

The bill would take effect 90 days after it is enacted into law.

#### **BRIEF DISCUSSION:**

Supporters of the bill say it addresses concerns of homeowners who meet requirements of their local municipalities regarding building permits but have been stymied by homeowner associations who refuse to allow modifications to a home's appearance. Promoting energy resilience on an individual home level relates to other bills that seek to move Michigan toward a higher percentage of the state's power needs being supplied by renewable energy sources, such as solar panels. Relatedly, the state has also offered millions in incentives to automotive manufacturing projects that would supply parts for electric vehicles.

Opponents of the bill say that individuals who purchased homes within a neighborhood covered by an HOA did so voluntarily and should be familiar with the bylaws before purchasing the house. If an individual wishes to make modifications, they should move through existing processes, and if they do not like the outcome of their application, they should work to convince their neighbors to change the HOA bylaws to permit the desired modification.

#### **FISCAL IMPACT:**

House Bill 5028 would have no fiscal impact on the Department of Labor and Economic Opportunity (LEO) or on local units of government.

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<sup>1</sup> <http://legislature.mi.gov/doc.aspx?mcl-8-5>

## POSITIONS:

Representatives of the Michigan Energy Innovation Business Council testified in support of the bill. (10-5-23)

The following entities indicated support for the bill:

- City of Ann Arbor (10-5-23)
- Clean Fuels Michigan (10-5-23)
- Electrification Coalition (10-19-23)
- FLO EV Charging (10-5-23)
- Michigan Environmental Council (10-5-23)
- Michigan League of Conservation Voters (10-5-23)
- Michigan Municipal League (10-5-23)
- Sierra Club of Michigan (10-5-23)
- Southeast Michigan Council of Governments (10-5-23)

The following entities indicated opposition to the bill:

- Community Associations Institute of Michigan (10-5-23)
- Michigan Legislative Action Committee (10-19-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.