

**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 that is  
5 generally accessible to all occupants of a building. Common area



1 includes, but is not limited to, a hallway, a stairway, an  
2 elevator, a lobby, a laundry and recreational room, a playground, a  
3 community center, a garage, or a fitness room.

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

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

10 (i) A clothesline.

11 (ii) Air source heat pumps.

12 (iii) Ground source heat pumps.

13 (iv) Insulation.

14 (v) Rain barrels.

15 (vi) Reflective roofing.

16 (vii) Energy efficient appliances.

17 (viii) Solar water heaters.

18 (ix) Electric vehicle supply equipment.

19 (x) Energy-efficient windows.

20 (xi) Energy-efficient insulation materials.

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

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

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

27 (g) "Shared roof" means a roof that serves more than 1 home or  
28 unit, including, but not limited to, a contiguous roof that serves  
29 adjacent homes or units.



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

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

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

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

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

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

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

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



1 subsequent use.

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

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

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

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

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

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

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

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

28 Sec. 9. (1) Within 1 year after the effective date of this  
29 act, each homeowners' association in this state shall adopt a



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

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

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

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

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

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

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

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

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

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

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



1 (C) Impose conditions that negatively impact any component  
2 industry standard warranty.

3 (D) Require postinstallation reporting.

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

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

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

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

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

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

25 (a) Make a copy of the policy available to a member within 30  
26 days after the adoption of the policy, or on request.

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

29 (3) Any provision in a policy that conflicts with this act is



1 void and unenforceable.

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

7 (a) The member's name.

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

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

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

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

15 (2) Except as otherwise provided in this subsection and  
16 subsection (4), and in accordance with its policy, a homeowners'  
17 association must approve or deny the member's request to install a  
18 solar energy system within 30 days after receipt of the written  
19 application. If the written application is submitted before the  
20 homeowners' association adopts the policy described under section  
21 9(1), the homeowners' association must approve or deny the member's  
22 request to install the solar energy system within 120 days after  
23 receipt of the written application.

24 (3) If a homeowners' association fails to adopt the policy  
25 within the time period specified under section 9(1) or approve or  
26 deny the member's request to install the solar energy system within  
27 the time period specified under subsection (2), a member may  
28 proceed with the installation of the solar energy system. If the  
29 member proceeds with the installation of the solar energy system,



1 the homeowners' association shall not impose fines or otherwise  
2 penalize the member for complying with this act.

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

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

8 (b) The installed solar energy system does not substantially  
9 conform with the member's application to install the solar energy  
10 system as approved by the homeowners' association.

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

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

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

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

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

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

26 (ii) The solar energy system will be taller than the fence  
27 line.

28 (5) A member may resubmit a written application to install a  
29 solar energy system that was submitted to and denied by the





1 homeowners' association before the effective date of this act. On  
2 receipt of the resubmitted written application, the homeowners'  
3 association shall reevaluate the application under this act.

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

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

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

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.

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

