



SPONSOR: Rep. K. Williams & Rep. Bennett & Sen. Cloutier &
Sen. McDowell
Reps. Keeley, Kowalko, Lynn, Miro; Sens. Ennis, Walsh

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 58

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO SOLAR PHOTOVOLTAIC SYSTEMS
AND RESTRICTIVE COVENANTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 318, Title 25 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 318. Restrictive covenants.

(a) As used in this section, "roof" or "roofs" means:

(1) A roof of a single family dwelling unit which is solely owned by a person, persons, trust or entity and which is not designated as a common element or common property in the governing documents of an association; and

(2) A roof of a townhouse dwelling unit, which for the purposes of this section means any single-family dwelling unit constructed with attached walls to another such unit on at least 1 side, which unit extends from the foundation to the roof, and has at least 2 sides which are unattached to any other building, and the repair of the roof for the townhouse dwelling unit is designated as the responsibility of the owner and not the association in the governing documents.

(b) ~~No~~ Any covenant, restriction, or condition contained in a deed, contract or other legal instrument which affects the transfer, sale or any other interest in real property that effectively prohibits or unreasonably restricts the owner of the property from installing or using a roof mounted system for obtaining solar energy on that owner's property is void and unenforceable ~~shall be allowed in any deed contract or legal instrument recorded after January 1, 2010.~~

(c) ~~This section shall not amend, nullify, or affect the enforceability of any covenant, restriction, or condition contained in a deed, declaration, contract or other legal instrument concerning land owned by a maintenance corporation or homeowner's association.~~ This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the State of Delaware to protect the public health, safety, and welfare by encouraging the development and use of renewable resources and to remove obstacles thereto. Accordingly, reasonable restrictions on roof mounted systems for obtaining solar energy are those restrictions that do not significantly increase the cost of the

23 system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of
24 comparable cost, efficiency, and energy conservation benefits.

25 (d) This section shall not amend, nullify, or affect the enforceability of any conservation easement or historic
26 preservation covenant.

27 ~~(e) Any covenants, restrictions, or conditions contained in a deed or declaration, including a declaration under the~~
28 ~~Unit Property Act [§ 2201 et seq. of this title], for residential property which does not explicitly include a mechanism to~~
29 ~~amend the document, may hereafter be amended by a vote requiring the affirmative vote of 2/3 of the property owners.~~
30 ~~Covenants, restrictions, or conditions contained in a deed or declaration, including a declaration under the Unit Property~~
31 ~~Act [§ 2201 et seq. of this title], for residential property that prohibit or restrict the installation of rooftop or ground-~~
32 ~~mounted solar systems may be amended to allow or promote installation of rooftop or ground-mounted solar systems by an~~
33 ~~affirmative vote of 2/3 of the property owners.~~

34 ~~(f)(e) No~~ Any covenant, restriction, or condition contained in a deed, contract, or other legal instrument which
35 affects the transfer, sale, or any other interest in real property, which is zoned for residential use and the lot or lots are 1/2 of
36 an acre or greater in size, that effectively prohibits or unreasonably restricts the owner of the property from installing or
37 using a ground mounted system for obtaining solar energy on that owner's property is void and unenforceable ~~shall be~~
38 ~~allowed in any deed, contract or other legal instrument.~~ A covenant, restriction, or condition which requires that fencing,
39 landscaping, or other appropriate means be used to shield the system from view, so that it is not readily visible from
40 adjacent streets shall be deemed to be a reasonable restriction.

41 (f) In any litigation arising under the provisions of this section, the prevailing party shall be entitled to costs and
42 reasonable attorney's fees.

SYNOPSIS

This Bill enables the use of roof or ground mounted solar systems on privately owned residential dwellings by making covenants or other restrictions that effectively prohibit or unreasonably restrict the installation of solar photovoltaic systems in Delaware void and unenforceable, regardless of the date recorded. This Bill also explains that it is the policy of the State of Delaware to protect the public health, safety, and welfare by encouraging the development and use of renewable resources and to remove obstacles thereto. This Bill further provides for costs and reasonable attorneys' fees to be awarded to the prevailing party in any litigation arising under the provisions of this Section. This Bill does not render void and unenforceable reasonable restrictions on roof or ground mounted solar systems.