



SPONSOR: Sen. McBride; Reps. Mulrooney & Oberle  
Sens. Simpson, McDowell, Peterson & Katz; Reps.  
Kovach, Lavelle, Hocker, Carey, Wilson, Outten &  
Carson

DELAWARE STATE SENATE  
145th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 49

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO SOLAR PHOTOVOLTAIC SYSTEMS  
AND AMENDMENTS TO DEED RESTRICTIONS.

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

1 Section 1. Amend Chapter 3, Title 25 of the Delaware Code, by adding a new §318 as follows:

2 “§318. Restrictive Covenants.

3 (a) As used in this section, ‘roof’ or ‘roofs’ means:

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

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

11 (b) No covenant, restriction, or condition contained in a deed, contract or other legal instrument which affects the  
12 transfer, sale or any other interest in real property that prohibits or unreasonably restricts the owner of the property from  
13 using a roof mounted system for obtaining solar energy on his or her property shall be allowed in any deed contract or legal  
14 instrument recorded after January 1, 2010.

15 (c) This section shall not amend, nullify, or affect the enforceability of any covenant, restriction, or condition  
16 contained in a deed, declaration, contract or other legal instrument concerning land owned by a maintenance corporation or  
17 homeowner’s association.

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

20 (e) Any covenants, restrictions, or conditions contained in a deed or declaration for residential property  
21 which does not explicitly include a mechanism to amend the document, may hereafter be amended by a vote requiring the  
22 affirmative vote of two-thirds of the property owners. Covenants, restrictions, or conditions contained in a deed or  
23 declaration for residential property that prohibit or restrict the installation of rooftop solar systems may be amended to  
24 allow or promote installation of rooftop solar systems by an affirmative vote of two-thirds of the property owners.”

#### SYNOPSIS

This Bill enables the use of rooftop solar systems on privately owned residential dwellings by limiting the use of covenants or other restrictions beginning January 1, 2010 but does not impact restrictions in effect prior to then. This Bill also bans the use of covenants or other restrictions to prohibit the installation of solar photovoltaic systems in Delaware. A provision to allow homeowners associations to eliminate prohibitions or loosen restrictions for installation of rooftop solar systems in existing covenants is also included in the Bill.

Author: Senator McBride