



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 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) A property owner or an association formed for the management of commonly-owned elements and facilities or
12 for regulating use of private property within the community shall not adopt or enforce a restriction, covenant, bylaw, rule
13 or regulation prohibiting or restricting the installation or use of solar collectors on roofs of dwelling units except as
14 permitted by this section.

15 (c) For communities of residential lots first subdivided after January 1, 2010, the developer may restrict up to 20
16 percent of the lots by prohibiting solar collector on the roofs visible from the streets.

17 (d) A property owner or an association may adopt or enforce restrictions or rules to regulate the installation, use,
18 and maintenance of solar collectors on roofs in accordance with subsection (c) of this section, and as follows:

19 (1) The qualifications, certification and insurance requirements of personnel or contractors who may
20 install the solar collectors;

21 (2) The location where solar collectors may be placed on roofs;

22 (3) The concealment of solar collectors' supportive structures, fixtures and piping;

23 (4) The color harmonization of solar collectors among commercially available product with the colors of
24 structures in the development; and

25 (5) The aggregate size or coverage or total number of solar collectors, provided that the provisions of
26 paragraph (2) of subsection (e) below are met.

27 (e) (1) A property owner or an association shall not adopt and shall not enforce any rule related to the
28 installation or maintenance of solar collectors, if compliance with a rule or rules would increase the solar collectors'
29 installation or maintenance costs by an amount which is estimated to be greater than 15 percent of the total cost of the
30 initial installation of the solar collectors, including the costs of labor and equipment.

31 (2) A property owner or an association shall not adopt and shall not enforce any rule related to the
32 installation or maintenance of solar collectors, if compliance with such rules does not allow at least 70% annual access to
33 solar energy per a Solar Pathfinder study (or equivalent) and may be no more restrictive than 10% of its maximum potential
34 efficiency.

35 (f) This section shall not amend, nullify, or affect the enforceability of any covenant, restriction, or condition
36 contained in a deed, declaration, contract or other legal instrument concerning land owned by a maintenance corporation or
37 homeowner's association.

38 (g) This section shall not amend, nullify, or affect the enforceability of any conservation easement or historic
39 preservation covenant.

40 (h) Subsections (a) through (g) of this section shall not apply to any covenant, restriction, or condition contained in
41 a deed, declaration, contract or other legal instrument in effect prior to January 1, 2010 unless it is duly amended to have
42 this section apply.

43 (i) Any covenants, restrictions, or conditions contained in a deed or declaration for residential property which
44 does not explicitly include a mechanism to amend the document, may hereafter be amended by a vote requiring the
45 affirmative vote of no more than 75% of the property owners. Covenants, restrictions, or conditions contained in a deed or
46 declaration for residential property may be amended by a vote requiring the affirmative vote of no more than two-thirds of
47 the property owners for matters concerning solar collectors on roofs.”

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 permits any deed restrictions which are silent as to how they may be amended may hereafter be amended by a vote of no more than 75% of the property owners. Restrictions concerning solar collectors on roofs may be amended by two-thirds of the property owners.

Author: Senator McBride