

HOUSE BILL 117

N1

8lr0460

By: Delegates Hecht, Bartlett, Bronrott, G. Clagett, DeBoy, Donoghue, Elmore, Feldman, Frank, George, Gilchrist, Guzzone, Howard, Hucker, James, King, Krysiak, Lee, Manno, Mizeur, Morhaim, Murphy, Riley, Rudolph, Schuh, Stocksdale, Stukes, F. Turner, and ~~Weldon Weldon~~, Beidle, Bobo, Cane, Carr, V. Clagett, Frush, Glenn, Healey, Holmes, Lafferty, Niemann, Shewell, Stein, and Montgomery

Introduced and read first time: January 17, 2008

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2008

CHAPTER _____

1 AN ACT concerning

2 **Real Property - ~~Installation of Solar Panels Collector Systems - Clarification~~**
3 **Restriction on Use and Solar Easement**

4 FOR the purpose of ~~defining certain terms relating to the application of a restrictive~~
5 ~~covenant as to the installation of solar collection panels in certain locations;~~
6 prohibiting a ~~condominium council of unit owners from establishing bylaws that~~
7 ~~impose restriction on use from imposing~~ unreasonable limitations on the
8 installation of a solar collection panels in collector system under certain
9 ~~locations; establishing the right of a condominium unit owner or a lot owner in a~~
10 ~~development to negotiate with neighboring unit owners or lot owners to obtain a~~
11 ~~solar easement for a unit or lot that has installed a solar energy system;~~
12 ~~establishing certain requirements for an instrument creating a solar easement~~
13 circumstances; authorizing a property owner who has installed or intends to
14 install a solar collector system to negotiate to obtain a solar easement in
15 writing; requiring any written instrument creating a solar easement to include
16 certain provisions; requiring a written instrument creating a solar easement to
17 be recorded under certain circumstances; exempting a restriction on use on
18 certain historic properties from the applicability of this Act; defining certain
19 terms; and generally relating to ~~enabling the installation and access to sunlight~~
20 of solar ~~energy~~ collector systems.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
 2 Article – Real Property
 3 Section 2-119, ~~11-104(e), and 11-125(f)~~
 4 Annotated Code of Maryland
 5 (2003 Replacement Volume and 2007 Supplement)

6 ~~BY repealing and reenacting, without amendments,~~
 7 ~~Article – Real Property~~
 8 ~~Section 11-104(a)~~
 9 ~~Annotated Code of Maryland~~
 10 ~~(2003 Replacement Volume and 2007 Supplement)~~

11 ~~BY adding to~~
 12 ~~Article – Real Property~~
 13 ~~Section 11-125(f) through (h) and 11B-111.6~~
 14 ~~Annotated Code of Maryland~~
 15 ~~(2003 Replacement Volume and 2007 Supplement)~~

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Real Property**

19 2-119.

20 (a) (1) IN THIS SECTION, “RESTRICTIVE COVENANT” INCLUDES THE
 21 FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

22 (2) “RESTRICTION ON USE” INCLUDES ANY COVENANT,
 23 RESTRICTION, OR CONDITION CONTAINED IN:

24 ~~(1)~~ (I) A DEED;

25 ~~(2)~~ (II) A DECLARATION;

26 ~~(3)~~ (III) A CONTRACT;

27 ~~(4)~~ (IV) THE BYLAWS OR RULES OF A CONDOMINIUM OR
 28 HOMEOWNERS ASSOCIATION;

29 ~~(5)~~ (V) A SECURITY INSTRUMENT; OR

30 ~~(6)~~ (VI) ANY OTHER INSTRUMENT AFFECTING:

31 ~~(1)~~ 1. THE TRANSFER OR SALE OF REAL PROPERTY; OR

~~(H)~~ 2. ANY OTHER INTEREST IN REAL PROPERTY.

(3) “SOLAR COLLECTOR SYSTEM” MEANS A SOLAR COLLECTOR OR OTHER SOLAR ENERGY DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER HEATING.

(4) “SOLAR EASEMENT” MEANS AN INTEREST IN LAND THAT:

(I) IS CONVEYED OR ASSIGNED IN PERPETUITY; AND

(II) LIMITS THE USE OF THE LAND TO PRESERVE THE RECEIPT OF SUNLIGHT ACROSS THE LAND FOR THE USE OF A PROPERTY OWNER’S SOLAR COLLECTOR SYSTEM.

(B) (1) ~~A restrictive covenant~~ RESTRICTION ON USE regarding land use, ~~which becomes effective after July 1, 1980,~~ may not impose or act to impose unreasonable limitations on the installation of ~~solar collection panels~~ A SOLAR COLLECTOR SYSTEM on the roof or exterior walls of improvements.

(2) ~~AN~~ FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION, AN UNREASONABLE LIMITATION INCLUDES A LIMITATION THAT:

(I) SIGNIFICANTLY INCREASES THE COST OF THE SOLAR COLLECTOR SYSTEM; OR

(II) SIGNIFICANTLY DECREASES THE EFFICIENCY OF THE SOLAR COLLECTOR SYSTEM;

~~(III) SIGNIFICANTLY DECREASES THE SPECIFIED PERFORMANCE OF THE SYSTEM; OR.~~

~~(IV) DOES NOT ALLOW FOR AN ALTERNATIVE SYSTEM OF COMPARABLE COST, EFFICIENCY, AND ENERGY CONSERVATION BENEFITS.~~

(C) (1) A PROPERTY OWNER WHO HAS INSTALLED OR INTENDS TO INSTALL A SOLAR COLLECTOR SYSTEM MAY NEGOTIATE TO OBTAIN A SOLAR EASEMENT IN WRITING.

(2) ANY WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL INCLUDE:

(I) A DESCRIPTION OF THE DIMENSIONS OF THE SOLAR EASEMENT EXPRESSED IN MEASURABLE TERMS, INCLUDING VERTICAL OR

1 HORIZONTAL ANGLES MEASURED IN DEGREES OR THE HOURS OF THE DAY ON
 2 SPECIFIED DATES WHEN DIRECT SUNLIGHT TO A SPECIFIED SURFACE OF A
 3 SOLAR COLLECTOR SYSTEM MAY NOT BE OBSTRUCTED;

4 (II) THE RESTRICTIONS PLACED ON VEGETATION,
 5 STRUCTURES, AND OTHER OBJECTS THAT WOULD IMPAIR THE PASSAGE OF
 6 SUNLIGHT THROUGH THE SOLAR EASEMENT; AND

7 (III) THE TERMS UNDER WHICH THE SOLAR EASEMENT MAY
 8 BE REVISED OR TERMINATED.

9 (3) A WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT
 10 SHALL BE RECORDED IN THE LAND RECORDS OF THE COUNTY WHERE THE
 11 PROPERTY IS LOCATED.

12 [(b)] ~~(C)~~ (D) This section does not apply to a ~~restrictive covenant~~ RESTRICTION
 13 ON USE on historic property that is listed ~~by~~

14 ~~(1) The Maryland Inventory of Historic Properties; or~~

15 ~~(2) The~~ IN, OR DETERMINED BY THE DIRECTOR OF THE
 16 MARYLAND HISTORICAL TRUST TO BE ELIGIBLE FOR INCLUSION IN, THE
 17 Maryland Register of Historic Properties.

18 ~~11-104.~~

19 ~~(a) The administration of every condominium shall be governed by bylaws~~
 20 ~~which shall be recorded with the declaration. If the council of unit owners is~~
 21 ~~incorporated, these bylaws shall be the bylaws of that corporation.~~

22 ~~(e) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~
 23 ~~SUBSECTION, THE bylaws also may contain any other provision regarding the~~
 24 ~~management and operation of the condominium including any restriction on or~~
 25 ~~requirement respecting the use and maintenance of the units and the common~~
 26 ~~elements.~~

27 ~~(2) THE BYLAWS MAY NOT IMPOSE OR ACT TO IMPOSE~~
 28 ~~UNREASONABLE LIMITATIONS ON THE INSTALLATION OF SOLAR COLLECTION~~
 29 ~~PANELS ON THE ROOF OR EXTERIOR WALLS OF A UNIT.~~

30 ~~(3) AN UNREASONABLE LIMITATION INCLUDES A LIMITATION~~
 31 ~~THAT:~~

32 ~~(i) SIGNIFICANTLY INCREASES THE COST OF THE SYSTEM;~~

1 ~~(II) SIGNIFICANTLY DECREASES THE EFFICIENCY OF THE~~
2 ~~SYSTEM;~~

3 ~~(III) SIGNIFICANTLY DECREASES THE SPECIFIED~~
4 ~~PERFORMANCE OF THE SYSTEM; OR~~

5 ~~(IV) DOES NOT ALLOW FOR AN ALTERNATIVE SYSTEM OF~~
6 ~~COMPARABLE COST, EFFICIENCY, AND ENERGY CONSERVATION BENEFITS.~~

7 ~~11-125.~~

8 ~~(F) (1) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE~~
9 ~~MEANINGS INDICATED.~~

10 ~~(2) "SOLAR EASEMENT" MEANS AN INTEREST IN LAND THAT:~~

11 ~~(I) IS CONVEYED OR ASSIGNED IN PERPETUITY; AND~~

12 ~~(II) LIMITS THE USE OF THE LAND TO PRESERVE THE~~
13 ~~RECEIPT OF SUNLIGHT ACROSS THE LAND FOR THE USE OF A UNIT OWNER'S~~
14 ~~SOLAR ENERGY SYSTEM.~~

15 ~~(3) "SOLAR ENERGY SYSTEM" MEANS:~~

16 ~~(I) A SOLAR COLLECTOR OR OTHER SOLAR ENERGY~~
17 ~~DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE~~
18 ~~COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR~~
19 ~~ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER~~
20 ~~HEATING; OR~~

21 ~~(II) A STRUCTURAL DESIGN FEATURE OF A UNIT, THE~~
22 ~~PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE,~~
23 ~~AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE~~
24 ~~HEATING, SPACE COOLING, OR WATER HEATING.~~

25 ~~(C) A UNIT OWNER WHO OWNS A UNIT THAT HAS INSTALLED A SOLAR~~
26 ~~ENERGY SYSTEM MAY NEGOTIATE WITH NEIGHBORING UNIT OWNERS TO OBTAIN~~
27 ~~A SOLAR EASEMENT THAT SHALL BE RECORDED IN WRITING.~~

28 ~~(H) ANY WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL~~
29 ~~INCLUDE:~~

30 ~~(1) A DESCRIPTION OF THE DIMENSIONS OF THE EASEMENT~~
31 ~~EXPRESSED IN MEASURABLE TERMS, INCLUDING VERTICAL OR HORIZONTAL~~
32 ~~ANGLES MEASURED IN DEGREES OR THE HOURS OF THE DAY ON SPECIFIED~~

~~1 DATES WHEN DIRECT SUNLIGHT TO A SPECIFIED SURFACE OF A SOLAR ENERGY
2 SYSTEM MAY NOT BE OBSTRUCTED;~~

~~3 (2) THE RESTRICTIONS PLACED ON VEGETATION, STRUCTURES,
4 AND OTHER OBJECTS THAT WOULD IMPAIR THE PASSAGE OF SUNLIGHT
5 THROUGH THE EASEMENT; AND~~

~~6 (3) THE TERMS UNDER WHICH THE EASEMENT MAY BE REVISED
7 OR TERMINATED.~~

~~8 [(f)] (1) (1) The declaration or bylaws may give the council of unit
9 owners authority to grant easements, rights of way, licenses, leases in excess of 1
10 year, or similar interests affecting the common elements of the condominium if the
11 grant is approved by the affirmative vote of unit owners having 66 2/3 percent or more
12 of the votes, and with the express written consent of the mortgagees holding an
13 interest in those units as to which unit owners vote affirmatively. Any easement,
14 right of way, license, or similar interest granted by the council of unit owners under
15 this subsection shall state that the grant was approved by unit owners having at least
16 66 2/3 percent of the votes, and by the corresponding mortgagees.~~

~~17 (2) The board of directors may, by majority vote, grant easements,
18 rights of way, licenses, leases in excess of 1 year, or similar interests for the provision
19 of utility services or communication systems for the exclusive benefit of units within
20 the condominium regime. These actions by the board of directors are subject to the
21 following requirements:~~

~~22 (i) The action shall be taken at a meeting of the board held
23 after at least 30 days' notice to all unit owners and mortgagees of record with the
24 condominium;~~

~~25 (ii) At the meeting, the board may not act until all unit owners
26 and mortgagees shall be afforded a reasonable opportunity to present their views on
27 the proposed easement, right of way, license, lease, or similar interest;~~

~~28 (iii) The easement, right of way, license, lease, or similar
29 interest shall contain the following provisions:~~

~~30 1. The service or system shall be installed or affixed to
31 the premises at no cost to the individual unit owners or the council of unit owners
32 other than charges normally paid for like services by residents of similar or
33 comparable dwelling units within the same area;~~

~~34 2. The unit owners and council of unit owners shall be
35 indemnified for any damage arising out of the installation of the service or system; and~~

~~36 3. The board of directors shall be provided the right to
37 approve of the design for installation of the service or system in order to insure that~~

1 ~~the installation conforms to any conditions which are reasonable to protect the safety,~~
2 ~~functioning, and appearance of the premises.~~

3 ~~(3) By majority vote, the board of directors may grant to the State~~
4 ~~perpetual easements, rights of way, licenses, leases in excess of 1 year, or similar~~
5 ~~interests affecting the common elements of the condominium for bulkhead~~
6 ~~construction, dune construction or restoration, beach replenishment, or periodic~~
7 ~~maintenance and replacement construction, on Maryland's ocean beaches, including~~
8 ~~rights in the State to restrict access to dune areas. These actions by the board of~~
9 ~~directors are subject to the following requirements:~~

10 ~~(i) The action shall be taken at a meeting of the board held~~
11 ~~after at least 30 days' notice to all unit owners and mortgagees of record with the~~
12 ~~condominium; and~~

13 ~~(ii) At the meeting, the board may not act until all unit owners~~
14 ~~and mortgagees shall be afforded a reasonable opportunity to present their views on~~
15 ~~the proposed easement, right of way, license, lease, or similar interest.~~

16 ~~(4) By majority vote, the board of directors may settle an eminent~~
17 ~~domain proceeding or grant to the State or any county, municipality, or agency or~~
18 ~~instrumentality thereof with condemnation authority, perpetual easements,~~
19 ~~rights of way, licenses, leases in excess of 1 year, or similar interests affecting the~~
20 ~~common elements of the condominium for road, highway, sidewalk, bikeway, storm~~
21 ~~drain, sewer, water, utility, and similar public purposes. These actions by the board of~~
22 ~~directors are subject to the following requirements:~~

23 ~~(i) The action shall be taken at a meeting of the board held~~
24 ~~after at least 60 days' notice to all unit owners and all first mortgagees listed with the~~
25 ~~condominium;~~

26 ~~(ii) The notice shall include information provided by the~~
27 ~~condemnation authority that describes the purpose and the extent of the property~~
28 ~~being acquired for public use; and~~

29 ~~(iii) At the meeting, the board may not act until all unit owners~~
30 ~~and mortgagees in attendance have been afforded a reasonable opportunity to present~~
31 ~~their views on the proposed easement, right of way, license, lease, or similar interest.~~

32 ~~(5) The action of the board of directors granting any easement,~~
33 ~~right of way, license, lease, or similar interest under paragraphs (2), (3), or (4) of this~~
34 ~~subsection shall not be final until the following have occurred:~~

35 ~~(i) Within 15 days after the vote by the board to grant an~~
36 ~~easement, right of way, license, lease, or similar interest, a petition may be filed with~~
37 ~~the board of directors signed by the unit owners having at least 15 percent of the votes~~
38 ~~calling for a special meeting of unit owners to vote on the question of a disapproval of~~
39 ~~the action of the board of directors granting such easement, right of way, license,~~

1 ~~lease, or similar interest. If no such petition is received within 15 days, the decision of~~
 2 ~~the board shall be final;~~

3 ~~(ii) If a qualifying petition is filed, a special meeting shall be~~
 4 ~~held no less than 15 days or more than 30 days from receipt of the petition. At the~~
 5 ~~special meeting, if a quorum is not present, the decision of the board of directors shall~~
 6 ~~be final;~~

7 ~~(iii) 1. If a special meeting is held and 50 percent of the unit~~
 8 ~~owners present and voting disapprove the grant, and the unit owners voting to~~
 9 ~~disapprove the grant are more than 33 percent of the total votes in the condominium,~~
 10 ~~then the grant shall be void; or~~

11 ~~2. If the vote of the unit owners is not more than 33~~
 12 ~~percent of the total votes in the condominium, the decision of the board or council to~~
 13 ~~make the grant shall be final;~~

14 ~~(iv) Mortgagees shall receive notice of and be entitled to attend~~
 15 ~~and speak at such special meeting; and~~

16 ~~(v) Any easement, right of way, license, lease, or similar~~
 17 ~~interest granted by the board of directors under the provisions of this subsection shall~~
 18 ~~state that the grant was approved in accordance with the provisions of this subsection.~~

19 ~~(6) The provisions of this subsection are applicable to all~~
 20 ~~condominiums, regardless of the date they were established.~~

21 ~~**11B-111.6.**~~

22 ~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE~~
 23 ~~MEANINGS INDICATED.~~

24 ~~(2) "SOLAR EASEMENT" MEANS AN INTEREST IN LAND THAT:~~

25 ~~(I) IS CONVEYED OR ASSIGNED IN PERPETUITY; AND~~

26 ~~(II) LIMITS THE USE OF THE LAND TO PRESERVE THE~~
 27 ~~RECEIPT OF SUNLIGHT ACROSS THE LAND FOR THE USE OF A LOT OWNER'S~~
 28 ~~SOLAR ENERGY SYSTEM.~~

29 ~~(3) "SOLAR ENERGY SYSTEM" MEANS:~~

30 ~~(I) A SOLAR COLLECTOR OR OTHER SOLAR ENERGY~~
 31 ~~DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE~~
 32 ~~COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR~~

1 ~~ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER~~
2 ~~HEATING; OR~~

3 ~~(H) A STRUCTURAL DESIGN FEATURE OF A BUILDING, THE~~
4 ~~PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE,~~
5 ~~AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE~~
6 ~~HEATING, SPACE COOLING, OR WATER HEATING.~~

7 ~~(B) A LOT OWNER WHO OWNS A DWELLING UNIT THAT HAS INSTALLED A~~
8 ~~SOLAR ENERGY SYSTEM MAY NEGOTIATE WITH NEIGHBORING LOT OWNERS TO~~
9 ~~OBTAIN A SOLAR EASEMENT THAT SHALL BE RECORDED IN WRITING.~~

10 ~~(C) ANY WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL~~
11 ~~INCLUDE:~~

12 ~~(1) A DESCRIPTION OF THE DIMENSIONS OF THE EASEMENT~~
13 ~~EXPRESSED IN MEASURABLE TERMS, INCLUDING VERTICAL OR HORIZONTAL~~
14 ~~ANGLES MEASURED IN DEGREES OR THE HOURS OF THE DAY ON SPECIFIED~~
15 ~~DATES WHEN DIRECT SUNLIGHT TO A SPECIFIED SURFACE OF A SOLAR ENERGY~~
16 ~~SYSTEM MAY NOT BE OBSTRUCTED;~~

17 ~~(2) THE RESTRICTIONS PLACED ON VEGETATION, STRUCTURES,~~
18 ~~AND OTHER OBJECTS THAT WOULD IMPAIR THE PASSAGE OF SUNLIGHT~~
19 ~~THROUGH THE EASEMENT; AND~~

20 ~~(3) THE TERMS UNDER WHICH THE EASEMENT MAY BE REVISED~~
21 ~~OR TERMINATED.~~

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.