

House Bill 522

By: Representatives Frye of the 122nd, Drenner of the 85th, Washburn of the 144th, Romman of the 97th, Gullett of the 19th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 6 of Chapter 3 and Article 3 of Chapter 5 of Title 44 of the Official Code
2 of Georgia Annotated, relating to property owners' associations and covenants and
3 warranties, respectively, so as to prohibit property owners' associations from creating or
4 enforcing covenants which infringe upon a lot owner's right to install a solar energy device
5 or to display the United States flag; to provide for definitions; to provide for exceptions; to
6 provide for applicability; to provide for related matters; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 6 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to
11 property owners' associations, is amended in Code Section 44-3-221, relating to definitions
12 applicable to property owners' associations, by adding a new paragraph to read as follows:
13 "(19) 'Solar energy device' means equipment that uses solar radiation as a substitute for
14 traditional energy for water heating, active and passive space heating and cooling, or
15 generating electrical or mechanical power, as well as related equipment necessary for

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16 collecting, storing, exchanging, conditioning, or converting solar energy to other useful
17 forms of energy."

18 **SECTION 2.**

19 Said article is further amended by adding a new Code section to read as follows:

20 "44-3-222.1.

21 (a) Except as otherwise provided in subsection (c) of this Code section, no association
22 shall prohibit or restrict:

23 (1) A lot owner from installing or maintaining a solar energy device on the lot owner's
24 property; or

25 (2) A lot owner or a person with a right to exclusive possession of a lot from displaying
26 the official flag of the United States of America through the use of an attachment to the
27 structure of a building or a flagpole, provided that any such flag is not larger than four
28 and one half feet by six feet, and provided that any rule adopted by the association
29 limiting flagpole size or placement complies with reasonable time, place, and manner
30 restrictions and furthers a substantial interest of the association and the community.

31 (b) A provision in an instrument, or any subsidiary document adopted pursuant to an
32 instrument, that violates subsection (a) of this Code section shall be void and
33 unenforceable.

34 (c) An association may prohibit installation of a solar energy device that:

35 (1) As adjudicated by a court:

36 (A) Threatens the public health or safety;

37 (B) Violates a law; or

38 (C) Would conflict with a local ordinance adopted in conformity with Article 2 of
39 Chapter 10 of this title;

40 (2) Is used for any purpose other than energy generation for consumption or passive
41 heating and cooling by the lot owner;

- 42 (3) Is located on property owned or maintained by the association;
 43 (4) Is located within a common area;
 44 (5) Is located in an area on the lot owner's property other than:
 45 (A) On the roof of the home or on the roof of another structure not prohibited by an
 46 instrument or other rules or regulations adopted pursuant to an instrument; or
 47 (B) In a fenced yard or fenced patio screened from public view and located behind the
 48 home;
 49 (6) If mounted on a roof:
 50 (A) Extends higher than or beyond the highest point of the roof;
 51 (B) Does not conform to the slope of the roof; or
 52 (C) Has a frame, support bracket, or visible piping or wiring that is not in a silver,
 53 bronze, or black color or a color which matches the color of the roof; or
 54 (7) If located in a fenced yard or fenced patio, extends higher than the fence line.
 55 (d) No association shall require a permit or fee for:
 56 (1) The installation or continuous use of a solar energy device; or
 57 (2) The display of the official flag of the United States of America.
 58 (e) This Code section shall apply to any instruments entered into or renewed on or after
 59 January 1, 2024, and to any rules or regulations adopted by an association on or after
 60 January 1, 2024."

61 **SECTION 3.**

62 Article 3 of Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to
 63 covenants and warranties, is amended by adding a new Code section to read as follows:

64 "44-5-60.1.

65 (a) As used in this Code section, the term 'solar energy device' means equipment that uses
 66 solar radiation as a substitute for traditional energy for water heating, active and passive
 67 space heating and cooling, or generating electrical or mechanical power, as well as related

68 equipment necessary for collecting, storing, exchanging, conditioning, or converting solar
69 energy to other useful forms of energy.

70 (b) Except as otherwise provided in subsection (d) of this Code section, no covenant
71 running with the land shall prohibit or restrict:

72 (1) A lot owner from installing or maintaining a solar energy device on the lot owner's
73 property; or

74 (2) A lot owner or a person with a right to exclusive possession of a lot the official flag
75 of the United States of America through the use of an attachment to the structure of a
76 building, provided that any such flag is not larger than four and one half feet by six feet.

77 (c) A provision in an instrument, or any subsidiary document adopted pursuant to a
78 covenant, that violates subsection (b) of this Code section shall be void and unenforceable.

79 (d) A homeowners' association established pursuant to a covenant running with the land
80 may prohibit installation of a solar energy device that:

81 (1) As adjudicated by a court:

82 (A) Threatens the public health or safety;

83 (B) Violates a law; or

84 (C) Would conflict with a local ordinance adopted in conformity with Article 2 of
85 Chapter 10 of this title;

86 (2) Is used for any purpose other than energy generation for consumption or passive
87 heating and cooling by the lot owner;

88 (3) Is located on property owned or maintained by the association;

89 (4) Is located on a portion of the lot owner's property or structure that the homeowners'
90 association is required to maintain;

91 (5) Is located in an area on the lot owner's property other than:

92 (A) On the roof of the home or on the roof of another structure not prohibited by an
93 instrument or other rules or regulations adopted pursuant to an instrument; or

- 94 (B) In a fenced yard or fenced patio screened from public view and located behind the
95 home;
- 96 (6) If mounted on a roof:
- 97 (A) Extends higher than or beyond the highest point of the roof;
98 (B) Does not conform to the slope of the roof; or
99 (C) Has a frame, support bracket, or visible piping or wiring that is not in a silver,
100 bronze, or black color or a color which matches the color of the roof; or
- 101 (7) If located in a fenced yard or fenced patio, extends higher than the fence line.
- 102 (e) No homeowners' association shall require a permit or fee for:
- 103 (1) The installation or continuous use of a solar energy device; or
104 (2) The display of the official flag of the United States of America.
- 105 (f) This Code section shall apply to any covenants running with the land created for
106 subdivisions entered into as contemplated under subsection (d) of Code Section 44-5-60
107 and on or after January 1, 2024, and to any rules or regulations adopted by an association
108 on or after January 1, 2024."

109 **SECTION 4.**

110 All laws and parts of laws in conflict with this Act are repealed.