MICHIGAN
LEGISLATIVE ACTION COMMITTEE
Community Associations Institute

October 18, 2023

Representative Laurie Pohutsky
Chair, Natural Resources, Environment, Tourism and Outdoor Recreation Committee
Michigan House of Representatives
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RE: HB 5028 The Homeowners' Energy Policy Act

Dear Chair Pohutsky,

We are the Community Associations Institute (CAI) Michigan Legislative Action Committee, representing the approximately 1,412,000 Michiganders living in 578,000 homes in more than 8,550 community associations across Michigan. Community associations are also known as condominiums, housing cooperatives, and homeowners associations.

Community associations are homeowner-run and homeowner-funded entities responsible for the day-to-day maintenance of communities across America. Community associations are the homeowner associations, condominium associations, and cooperative housing boards that millions of Americans live under. This model of living is governance at its most grassroots level, via contracts, which homeowners choose to buy in to. Homeowner associations, condominium associations, and cooperative housing boards will often take the lead on energy efficiency initiatives in individual communities, as changes to one residential unit often have immediate impacts on neighboring units.

However, CAI Michigan's LAC strongly opposes HB 5028 and believes that while it serves a laudable goal of attempting to encourage the use of roof-top solar panels, it does so at the extreme expense of eliminating the principles of self-governance and freedom of contract central to Michigan's community association model. HB 5028 would remove the contractual right of a community's democratically elected board of directors or architectural review

committee to best decide what is appropriate in a community and what is most likely to maintain and preserve property values.

Some specific concerns with HB 5028 are as follows:

1. *The Bill appears to improperly apply to existing condominiums and homeowner associations*. HB 5028 appears intended to apply both retroactively and prospectively to existing contracts. We therefore believe the legislation is unconstitutional as it interferes with existing contractual rights of community associations. Michigan law states that a "statute may not be applied retroactively if it abrogates or impairs vested rights, creates new obligations, or attaches new disabilities concerning transactions or considerations occurring in the past." *Davis v State Employees' Ret Bd*, 272 Mich App 151, 158; 725 NW2d 56 (2006).

2. *The Bill appears incomplete as it relates to energy-saving improvements and EV charging stations*. The Bill includes definitions relative to Energy-saving improvements and EV Charging Stations, but then is drafted so as to address almost exclusively situations applicable to roof-top solar panels, except for a single reference in Section 5(a). This single reference, though, is significant. Without regard to any legitimate interest of the association or its members, Section 5(a) would prevent an association from requiring its members to seek approval for a number of items, such as insulation and windows, even though these items are often the responsibility of the association and even though these items are not located in "common areas" as that term is used in Section 3(a). HB 5028 creates a number of problems with this issue and then fails to address them in any way. The Bill, therefore, appears to be incomplete.

3. *The Bill does not distinguish between condominium associations and single family homes or site condominiums*. While this substituted Bill is an improvement over the previous version by excluding "shared roof" situations from its application, it still fails to take into account the existing contractual obligations regarding maintenance, repair and replacement that will be affected by the mandated placement of a solar panel on a roof. Installation of roof-top solar panels also implicates warranty concerns, but HB 5028 does not address nor even mention warranty claims. If the solar panels void a warranty on a roof maintained by the association, who becomes responsible?

4. *The Bill does not address insurance issues related to the roof or solar panel itself.* HB 5028 will create conflicts between insurance obligations of owners and the association, potentially jeopardizing the ability to procure insurance. HB 5028

appears to presume that the insurance obligation for a non-shared roof within a community will always be that of the owner. While this will be true for most communities, it will not be true for all communities. There will be communities that have non-shared roofs which are required to be maintained and insured by the association and not the owner. By failing to address insurance, HB 5028 creates uncertainty, both for associations that seek to procure a master policy for the community's buildings and the individual owner who seeks to insure their dwelling.

5. *The Written Solar Energy Policy (the "Policy") requirement contained in Section 9(1) is particularly problematic*. Through legislation, the state is co-opting the "self-governed" community association and forcing it to take action regardless of whether such actions reflect the desires of the community. Additionally,

   a. The Policy requirement not only requires associations to take affirmative action, by statute, but also mandates inclusion of provisions that make it nearly impossible to safely and effectively regulate solar panels. For example, any standards adopted by an association related to safety or maintenance requirements may not reduce electricity by 10% or increase costs more than $1000, regardless of the need or utility of the standards that would be prohibited. These arbitrary requirements unreasonably limit the ability of an association to ensure the safety of the buildings within the community.

   b. The limitations on the authority of the association to adopt reasonable conditions will negate the ability of the association to impose any reasonable conditions on use. For example, can the association restrict the installation of a solar panel to licensed and insured contractors, even if that increase will result in an increase in cost? HB 5028 appears to prohibit such a condition.

6. *HB 5028 uses vague terminology to undermine the association's existing authority*. Section 9(1)(g) of the Bill permits the association to adopt conditions and standards regarding "maintenance, repair, replacement, or removal" of a damaged or inoperable solar energy system but any such conditions can not be "more burdensome that the conditions imposed on nonsolar energy projects." However, this concept of "burdensome" is an undefined term and these other types of nonsolar energy projects, if they are addressed at all, will necessarily have different aspects that require different conditions or standards. Accordingly, while Section 9(1)(g) appears intended to provide some level of authority to the association, this will be unlikely in practice.

7. *The permitted reasons for denial of an application do not permit denial based on legitimate safety concerns*. Under Section 11, while it is necessary for an owner to submit an application for a solar energy system, the allowed reasons for denial of an application under Section 11(4) are extremely limited. The permitted reasons for denial do not authorize a denial based on legitimate safety concerns or related issues such as uninsured or unlicensed contractors.

8. *The legislation would override legitimate association authority to govern aesthetics*. While CAI Michigan's LAC believes promotion of green energy to be a noble goal, nevertheless, many home buyers purchase specifically into community associations for the predictability their restrictions provide. Under this legislation, regardless of the desires of the association, there could be a proliferation of clotheslines and rain barrels. The legislation is vague as to where these items may be placed, nor any restriction on number. HB 5028 would also prevent an elected Board from having any control over installation of energy-efficient windows, regardless of whether the association would otherwise have such approval. There are valid aesthetic considerations that in many community associations are already governed by elected community members. This legislation will in one stroke of the pen upend thousands of community association restrictions on aesthetics.

CAI supports environmental and energy efficiency policies that recognize and respect the governance and contractual obligations of community association residents as the best mechanism to enact sustainable environmental policies. These principles are set forth in CAI's Conservation, Sustainability and Green Issues Public Policy which states that CAI supports environmental and energy efficiency policies that recognize and respect the governance and contractual obligations of community association residents as the best mechanism to enact sustainable environmental policies.

CAI also supports efforts by state legislatures to empower community associations to build consensus-based solutions regarding environmental initiatives, and opposes government and interest group efforts to override community policy or deed restrictions on single interest issues.

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In this case, however, HB 5028 goes well beyond empowering community associations to build consensus on solar panels, and instead attempts to dictate to community associations and their residents the manner in which solar panels must be allowed. For these reasons we oppose HB 5028.

If you have has any questions, please reach out to CAI Michigan LAC Co-Chairs Todd Skowronski, Esq. at tskowronski@maglawpllc.com, or Matthew Heron, Esq. at mheron@hirzellaw.com.

Sincerely,

Community Associations Institute Michigan Legislative Action Committee Signatures

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