

BILL ANALYSIS

C.S.S.B. 236
By: West
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Property owners' associations are intended to maintain common areas in residential neighborhoods and to protect homeowners' investments in their property by enforcing certain aesthetic guidelines. In recent years, individual homeowners have become frustrated with what they perceive as unduly restrictive association board policies regarding the installation of solar energy devices. C.S.S.B. 236 strikes a balance between the community's interest in maintaining consistent aesthetics and the freedom of individual homeowners to make sensible investments in clean energy.

C.S.S.B. 236 prohibits a property owners' association from imposing or enforcing a restriction against solar energy devices except under certain circumstances. The bill provides that restrictions that violate its provisions are void.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 236 amends the Property Code to prohibit a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device. The bill establishes that a provision in a dedicatory instrument that violates this prohibition is void. The bill specifies that this prohibition does not prohibit the inclusion or enforcement of a provision in a dedicatory instrument that prohibits a solar energy device that as adjudicated by a court threatens the public health or safety or violates a law, that is located on property owned or maintained by the property owners' association, that is located on property owned in common by the members of the property owners' association, or that is located in an area on the property owner's property other than on the roof of the home or in a fenced yard or patio maintained by the property owner.

C.S.S.B. 236 makes its provisions applicable to a dedicatory instrument without regard to whether the dedicatory instrument takes effect or is renewed before, on, or after the effective date of the bill. The bill defines "solar energy device."

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 236 specifies that the prohibition against a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device does not prohibit the inclusion or enforcement of a provision in a dedicatory instrument that prohibits a solar energy device that, as adjudicated by a court, threatens the public health or safety or violates a law, whereas the original does not

specify that such device be adjudicated by a court as a public health or safety threat or violation of a law.

C.S.S.B. 236 removes a provision in the original specifying that such prohibition does not prohibit the inclusion or enforcement of a provision in a dedicatory instrument that prohibits a solar energy device that is mounted on a device that is taller or more visually obtrusive than is necessary for the solar energy device to operate at not less than 90 percent of its rated efficiency.

C.S.S.B. 236 makes its provisions applicable to a dedicatory instrument without regard to whether the instrument takes effect or is renewed before, on, or after the substitute's effective date, whereas the original makes its provisions applicable to a deed restriction enacted before, on, or after the original's effective date.

C.S.S.B. 236 differs from the original by changing the effective date of the bill from January 1, 2010, to on passage, or, if the act does not receive the necessary vote, September 1, 2009.