

BILL ANALYSIS

C.S.H.B. 362
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some sources assert that there are approximately 30,000 property owners' associations in Texas. An owner of a lot in such an association is hampered in developing that property by restrictive covenants in a dedicatory instrument of the association, including restrictions on the owner's use of solar energy devices and roofing materials. C.S.H.B. 362 addresses this situation by prohibiting a property owners' association from including or enforcing in a dedicatory instrument a ban on the installation of a solar energy device and roofing materials that meet certain criteria.

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.H.B. 362 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, with certain exceptions, and makes void a provision violating this prohibition. The bill authorizes an association to include or enforce 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
- is located on property owned or maintained by the association
- is located on property owned in common by the members of the association
- is located in an area on the property owner's property other than on the roof of the home or of another structure allowed under a dedicatory instrument or in a fenced yard or patio owned and maintained by the property owner
- if mounted on the roof of the home, extends higher than the roofline; is located in an area other than an area designated by the association, unless the alternate location increases the estimated annual energy production of the device, as determined by a designated modeling tool, by more than a specified percent under certain conditions; does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or has certain components that are not in a silver, bronze, or black tone commonly available in the marketplace
- if located in a fenced yard or patio, is taller than the fence line
- as installed, conflicts with the manufacturer's installation requirements; or voids material warranties
- was installed without prior approval by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in a dedicatory instrument.

The bill prohibits such a committee from withholding approval of the installation of a solar

energy device that meets or exceeds the minimum requirements of a dedicatory instrument.

C.S.H.B. 362 prohibits a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that are designed primarily to be wind and hail resistant and provide heating and cooling efficiencies greater than those provided by customary composite shingles; and, when installed, resemble the shingles used or otherwise authorized for use on property in the subdivision, are more durable than and are of equal or superior quality to such shingles, match the aesthetics of the property surrounding the owner's property, or that provide solar generation capabilities.

C.S.H.B. 362 provides for the meaning of "solar energy device" by reference to the Tax Code.

C.S.H.B. 362 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.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 362 differs from the original by authorizing a property owners' association to include or enforce a provision in a dedicatory instrument that prohibits a solar energy device under certain circumstances, whereas the original specifies that its provisions do not prohibit the inclusion or enforcement of such a provision in a dedicatory instrument.

C.S.H.B. 362 contains provisions not included in the original providing that the areas on the property owner's property exempted from provisions of the dedicatory instrument prohibiting a solar energy device that an association is authorized to include or enforce include, in addition to an area on the roof of the property owner's home, an area on the roof of another structure allowed under a dedicatory instrument and in a fenced yard or patio owned by the property owner.

C.S.H.B. 362 contains provisions not included in the original that describe additional conditions under which a property owners' association is authorized to include or enforce a provision in a dedicatory instrument that prohibits a solar energy device, those conditions being when the device:

- if mounted on the roof of the home, extends higher than the roofline; is located in an area other than an area designated by the association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a designated modeling tool, by more than a specified percent above the energy production of the device under certain conditions; does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or has certain components that are not in a silver, bronze, or black tone commonly available in the marketplace
- if located in a fenced yard or patio, is taller than the fence line
- as installed, conflicts with the manufacturer's installation requirements, or voids material warranties
- was installed without prior approval by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in a dedicatory instrument.

The substitute contains a provision not included in the original prohibiting such a committee

from withholding approval of the installation of a solar energy device that meets or exceeds the minimum requirements of a dedicatory instrument.

C.S.H.B. 362 contains a provision not included in the original prohibiting a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that provide solar generation capabilities. The substitute differs from the original by making nonsubstantive changes.