

BILL ANALYSIS

S.B. 238
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Among a property owners' association's functions are the maintenance of common areas in residential neighborhoods and the protection of a homeowner's investment in residential property by enforcing certain aesthetic guidelines. In recent years, there have been reports of homeowners becoming frustrated with what they perceive as unduly restrictive association policies regarding the installation of solar energy devices. S.B. 238 attempts to strike a balance between the community's interest in maintaining consistent aesthetics and the freedom of individual homeowners to make sensible investments in clean energy.

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

S.B. 238 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 and to void a provision that violates such a prohibition. The bill authorizes the property owners' 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 located in a fenced yard or patio, is taller than the fence line; as installed, voids material warranties; or was installed without prior approval by the association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

S.B. 238 authorizes the property owners' association to include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that, if mounted on the roof of the home, extends higher than or beyond 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 publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the association; does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace.

S.B. 238 prohibits an association or the association's architectural review committee from withholding approval for installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by the bill's provisions are met or exceeded, unless the

association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.

S.B. 238 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 bill's effective date and provides for the meaning of "solar energy device" by reference to the Tax Code.

EFFECTIVE DATE

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