

1-1 By: Solomons, et al. (Senate Sponsor - West) H.B. No. 362  
1-2 (In the Senate - Received from the House April 12, 2011;  
1-3 April 20, 2011, read first time and referred to Committee on  
1-4 Intergovernmental Relations; May 19, 2011, reported adversely,  
1-5 with favorable Committee Substitute by the following vote: Yeas 5,  
1-6 Nays 0; May 19, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 362 By: West

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation by a property owners' association of the  
1-11 installation of solar energy devices and certain roofing materials  
1-12 on property.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 202, Property Code, is amended by adding  
1-15 Sections 202.010 and 202.011 to read as follows:

1-16 Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In  
1-17 this section, "solar energy device" has the meaning assigned by  
1-18 Section 171.107, Tax Code.

1-19 (b) Except as otherwise provided by Subsection (d), a  
1-20 property owners' association may not include or enforce a provision  
1-21 in a dedicatory instrument that prohibits or restricts a property  
1-22 owner from installing a solar energy device.

1-23 (c) A provision that violates Subsection (b) is void.

1-24 (d) A property owners' association may include or enforce a  
1-25 provision in a dedicatory instrument that prohibits a solar energy  
1-26 device that:

1-27 (1) as adjudicated by a court:

1-28 (A) threatens the public health or safety; or

1-29 (B) violates a law;

1-30 (2) is located on property owned or maintained by the  
1-31 property owners' association;

1-32 (3) is located on property owned in common by the  
1-33 members of the property owners' association;

1-34 (4) is located in an area on the property owner's  
1-35 property other than:

1-36 (A) on the roof of the home or of another  
1-37 structure allowed under a dedicatory instrument; or

1-38 (B) in a fenced yard or patio owned and  
1-39 maintained by the property owner;

1-40 (5) if mounted on the roof of the home:

1-41 (A) extends higher than or beyond the roofline;

1-42 (B) is located in an area other than an area  
1-43 designated by the property owners' association, unless the

1-44 alternate location increases the estimated annual energy  
1-45 production of the device, as determined by using a publicly

1-46 available modeling tool provided by the National Renewable Energy  
1-47 Laboratory, by more than 10 percent above the energy production of

1-48 the device if located in an area designated by the property owners'  
1-49 association;

1-50 (C) does not conform to the slope of the roof and  
1-51 has a top edge that is not parallel to the roofline; or

1-52 (D) has a frame, a support bracket, or visible  
1-53 pipng or wiring that is not in a silver, bronze, or black tone  
1-54 commonly available in the marketplace;

1-55 (6) if located in a fenced yard or patio, is taller  
1-56 than the fence line;

1-57 (7) as installed, voids material warranties; or

1-58 (8) was installed without prior approval by the  
1-59 property owners' association or by a committee created in a

1-60 dedicatory instrument for such purposes that provides decisions  
1-61 within a reasonable period or within a period specified in the

1-62 dedicatory instrument.

1-63 (e) A property owners' association or the association's

2-1 architectural review committee may not withhold approval for  
2-2 installation of a solar energy device if the provisions of the  
2-3 dedicatory instruments to the extent authorized by Subsection (d)  
2-4 are met or exceeded, unless the association or committee, as  
2-5 applicable, determines in writing that placement of the device as  
2-6 proposed by the property owner constitutes a condition that  
2-7 substantially interferes with the use and enjoyment of land by  
2-8 causing unreasonable discomfort or annoyance to persons of ordinary  
2-9 sensibilities.

2-10 Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS. A  
2-11 property owners' association may not include or enforce a provision  
2-12 in a dedicatory instrument that prohibits or restricts a property  
2-13 owner who is otherwise authorized to install shingles on the roof of  
2-14 the owner's property from installing shingles that:

2-15 (1) are designed primarily to:  
2-16 (A) be wind and hail resistant;  
2-17 (B) provide heating and cooling efficiencies  
2-18 greater than those provided by customary composite shingles; and  
2-19 (C) provide solar generation capabilities; and

2-20 (2) when installed:  
2-21 (A) resemble the shingles used or otherwise  
2-22 authorized for use on property in the subdivision;  
2-23 (B) are more durable than and are of equal or  
2-24 superior quality to the shingles described by Paragraph (A); and  
2-25 (C) match the aesthetics of the property  
2-26 surrounding the owner's property.

2-27 SECTION 2. Sections 202.010 and 202.011, Property Code, as  
2-28 added by this Act, apply to a dedicatory instrument without regard  
2-29 to whether the dedicatory instrument takes effect or is renewed  
2-30 before, on, or after the effective date of this Act.

2-31 SECTION 3. This Act takes effect immediately if it receives  
2-32 a vote of two-thirds of all the members elected to each house, as  
2-33 provided by Section 39, Article III, Texas Constitution. If this  
2-34 Act does not receive the vote necessary for immediate effect, this  
2-35 Act takes effect September 1, 2011.

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