

By: West, Wentworth
(Solomons)

S.B. No. 238

A BILL TO BE ENTITLED

AN ACT

relating to the regulation by a property owners' association of the installation of solar energy devices on property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 202, Property Code, is amended by adding Section 202.010 to read as follows:

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

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

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

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

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

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

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

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

3 (A) on the roof of the home or of another
4 structure allowed under a dedicatory instrument; or

5 (B) in a fenced yard or patio owned and
6 maintained by the property owner;

7 (5) if mounted on the roof of the home:

8 (A) extends higher than or beyond the roofline;

9 (B) is located in an area other than an area
10 designated by the property owners' association, unless the
11 alternate location increases the estimated annual energy
12 production of the device, as determined by using a publicly
13 available modeling tool provided by the National Renewable Energy
14 Laboratory, by more than 10 percent above the energy production of
15 the device if located in an area designated by the property owners'
16 association;

17 (C) does not conform to the slope of the roof and
18 has a top edge that is not parallel to the roofline; or

19 (D) has a frame, a support bracket, or visible
20 pipng or wiring that is not in a silver, bronze, or black tone
21 commonly available in the marketplace;

22 (6) if located in a fenced yard or patio, is taller
23 than the fence line;

24 (7) as installed, voids material warranties; or

25 (8) was installed without prior approval by the
26 property owners' association or by a committee created in a
27 dedicatory instrument for such purposes that provides decisions

1 within a reasonable period or within a period specified in the
2 dedicatory instrument.

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

13 SECTION 2. Section 202.010, Property Code, as added by this
14 Act, applies to a dedicatory instrument without regard to whether
15 the dedicatory instrument takes effect or is renewed before, on, or
16 after the effective date of this Act.

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