

1-1 By: West, Wentworth S.B. No. 238
1-2 (In the Senate - Filed November 23, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Intergovernmental
1-4 Relations; March 17, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 March 17, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 238 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 on property.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 202, Property Code, is amended by adding
1-14 Section 202.010 to read as follows:

1-15 Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In
1-16 this section, "solar energy device" has the meaning assigned by
1-17 Section 171.107, Tax Code.

1-18 (b) Except as otherwise provided by Subsection (d), a
1-19 property owners' association may not include or enforce a provision
1-20 in a dedicatory instrument that prohibits or restricts a property
1-21 owner from installing a solar energy device.

1-22 (c) A provision that violates Subsection (b) is void.

1-23 (d) A property owners' association may include or enforce a
1-24 provision in a dedicatory instrument that prohibits a solar energy
1-25 device that:

1-26 (1) as adjudicated by a court:

1-27 (A) threatens the public health or safety; or

1-28 (B) violates a law;

1-29 (2) is located on property owned or maintained by the
1-30 property owners' association;

1-31 (3) is located on property owned in common by the
1-32 members of the property owners' association;

1-33 (4) is located in an area on the property owner's
1-34 property other than:

1-35 (A) on the roof of the home or of another
1-36 structure allowed under a dedicatory instrument; or

1-37 (B) in a fenced yard or patio owned and
1-38 maintained by the property owner;

1-39 (5) if mounted on the roof of the home:

1-40 (A) extends higher than or beyond the roofline;

1-41 (B) is located in an area other than an area
1-42 designated by the property owners' association, unless the

1-43 alternate location increases the estimated annual energy
1-44 production of the device, as determined by using a publicly

1-45 available modeling tool provided by the National Renewable Energy
1-46 Laboratory, by more than 10 percent above the energy production of

1-47 the device if located in an area designated by the property owners'
1-48 association;

1-49 (C) does not conform to the slope of the roof and
1-50 has a top edge that is not parallel to the roofline; or

1-51 (D) has a frame, a support bracket, or visible
1-52 pipng or wiring that is not in a silver, bronze, or black tone
1-53 commonly available in the marketplace;

1-54 (6) if located in a fenced yard or patio, is taller
1-55 than the fence line;

1-56 (7) as installed, voids material warranties; or

1-57 (8) was installed without prior approval by the
1-58 property owners' association or by a committee created in a
1-59 dedicatory instrument for such purposes that provides decisions
1-60 within a reasonable period or within a period specified in the
1-61 dedicatory instrument.

1-62 (e) A property owners' association or the association's
1-63 architectural review committee may not withhold approval for

2-1 installation of a solar energy device if the provisions of the
2-2 dedicatory instruments to the extent authorized by Subsection (d)
2-3 are met or exceeded, unless the association or committee, as
2-4 applicable, determines in writing that placement of the device as
2-5 proposed by the property owner constitutes a condition that
2-6 substantially interferes with the use and enjoyment of land by
2-7 causing unreasonable discomfort or annoyance to persons of ordinary
2-8 sensibilities.

2-9 SECTION 2. Section 202.010, Property Code, as added by this
2-10 Act, applies to a dedicatory instrument without regard to whether
2-11 the dedicatory instrument takes effect or is renewed before, on, or
2-12 after the effective date of this Act.

2-13 SECTION 3. This Act takes effect immediately if it receives
2-14 a vote of two-thirds of all the members elected to each house, as
2-15 provided by Section 39, Article III, Texas Constitution. If this
2-16 Act does not receive the vote necessary for immediate effect, this
2-17 Act takes effect September 1, 2011.

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