

SENATE AMENDMENTS

2nd Printing

By: Solomons, et al.

H.B. No. 362

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Chapter 202, Property Code, is amended by adding Sections 202.010 and 202.011 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

1 members of the property owners' association;

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

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

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

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

9 (A) extends higher than the roofline;

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

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

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

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

25 (7) as installed:

26 (A) conflicts with the manufacturer's
27 installation requirements; or

1 (B) voids material warranties; or
2 (8) was installed without prior approval by a
3 committee created in a dedicatory instrument for such purposes that
4 provides decisions within a reasonable period or within a period
5 specified in the dedicatory instrument.

6 (e) A committee described by Subsection (d)(8) may not
7 withhold approval of the installation of a solar energy device that
8 meets or exceeds the minimum requirements of a dedicatory
9 instrument.

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

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

19 (C) provide solar generation capabilities; and

20 (2) when installed:
21 (A) resemble the shingles used or otherwise
22 authorized for use on property in the subdivision;

23 (B) are more durable than and are of equal or
24 superior quality to the shingles described by Paragraph (A); and

25 (C) match the aesthetics of the property
26 surrounding the owner's property.

27 SECTION 2. Sections 202.010 and 202.011, Property Code, as

1 added by this Act, apply to a dedicatory instrument without regard
2 to whether the dedicatory instrument takes effect or is renewed
3 before, on, or after the effective date of this Act.

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

ADOPTED

MAY 25 2011

Aditya Dandekar
Secretary of the Senate No. 362

By: *Roger W. N.*

Substitute the following for H.B. No. 362:

By: *Roger W. N.*

C.S. H.B. No. 362

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9 this section, "solar energy device" has the meaning assigned by
10 Section 171.107, Tax Code.

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

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

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

19 (1) as adjudicated by a court:

20 (A) threatens the public health or safety; or

21 (B) violates a law;

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

24 (3) is located on property owned in common by the

1 members of the property owners' association;
2 (4) is located in an area on the property owner's
3 property other than:
4 (A) on the roof of the home or of another
5 structure allowed under a dedicatory instrument; or
6 (B) in a fenced yard or patio owned and
7 maintained by the property owner;
8 (5) if mounted on the roof of the home:
9 (A) extends higher than or beyond the roofline;
10 (B) is located in an area other than an area
11 designated by the property owners' association, unless the
12 alternate location increases the estimated annual energy
13 production of the device, as determined by using a publicly
14 available modeling tool provided by the National Renewable Energy
15 Laboratory, by more than 10 percent above the energy production of
16 the device if located in an area designated by the property owners'
17 association;
18 (C) does not conform to the slope of the roof and
19 has a top edge that is not parallel to the roofline; or
20 (D) has a frame, a support bracket, or visible
21 pipng or wiring that is not in a silver, bronze, or black tone
22 commonly available in the marketplace;
23 (6) if located in a fenced yard or patio, is taller
24 than the fence line;
25 (7) as installed, voids material warranties; or
26 (8) was installed without prior approval by the
27 property owners' association or by a committee created in a

1 dedicatory instrument for such purposes that provides decisions
2 within a reasonable period or within a period specified in the
3 dedicatory instrument.

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

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

- 19 (1) are designed primarily to:
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7 before, on, or after the effective date of this Act.

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 26, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB362 by Solomons (Relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, SD, KKR, AG, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 18, 2011

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB362 by Solomons (Relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, KKR, AG, TP

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 16, 2011

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB362 by Solomons (Relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, KKR, AG, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 30, 2011

TO: Honorable Joe Deshotel, Chair, House Committee on Business & Industry

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB362 by Solomons (Relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, AG, TP

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

February 24, 2011

TO: Honorable Joe Deshotel, Chair, House Committee on Business & Industry

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB362 by Solomons (Relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, AG, TP