

BILL ANALYSIS

C.S.H.B. 2524
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Homeowners residing in some areas governed by property owners' associations are currently prohibited from using electric generators at their homes. Interested parties contend that, given the increasing number of power outages in Texas resulting from catastrophic storms and overloads on the Texas power grid, many residents are unable to use medical devices and other electrical monitoring equipment after a storm or power outage in those areas. C.S.H.B. 2524 seeks to amend the applicable law to allow the use of certain standby electric generators.

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

C.S.H.B. 2524 amends the Property Code to prohibit a property owners' association from adopting or enforcing a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from owning, operating, installing, or maintaining a permanently installed standby electric generator. The bill defines "standby electric generator" to mean a device that converts mechanical energy to electrical energy and is powered by natural gas, liquefied petroleum gas, diesel fuel, bio-diesel fuel, or hydrogen, is fully enclosed in an integral manufacturer-supplied sound attenuating enclosure, is connected to the main electrical panel of a residence by a manual or automatic transfer switch, and is rated for a generating capacity of not less than seven kilowatts.

C.S.H.B. 2524 sets out dedicatory instrument provisions a property owners' association is authorized to adopt or enforce in order to regulate the operation and installation of standby electric generators. The bill requires the dedicatory instrument provisions, if adopted, to be reasonably applied and enforced and specifies a dedicatory instrument provision that regulates the location of a standby electric generator is unenforceable if it increases the cost of installing the standby electric generator by more than 10 percent or increases the cost of installing and connecting the electrical and fuel lines for the standby electric generator by more than 20 percent. The bill prohibits approval of the standby electric generator from being withheld if the proposed installation meets or exceeds the dedicatory instrument provisions permitted under the authorization to regulate the operation and installation of such generators. The bill's provisions do not negate a dedicatory instrument's requirement of an owner to submit an application for approval of improvements located exterior to a residence and prohibits the information required to be submitted as part of the application for the installation of a standby electric generator from being greater or more detailed than the application for any other improvement.

C.S.H.B. 2524 specifies that the party asserting noncompliance bears the burden of proof in a hearing, action, or proceeding to determine whether a proposed or installed standby electric generator complies with the requirements of the dedicatory instrument provisions. The bill establishes that the installation of a standby electric generator by a licensed contractor or the

acceptance of the installation of a standby electric generator, or any of its components, by a utility provider, governmental subdivision or department of such a governmental subdivision, is conclusive proof that a standby electric generator was installed in compliance with the bill's provisions.

C.S.H.B. 2524 makes its provisions applicable to a dedicatory instrument adopted before, on, or after the effective date of the bill.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2524 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 202, Property Code, is amended by adding Section 202.019, to read as follows:

STANDBY ELECTRIC GENERATORS.

Sec. 202.019. STANDBY ELECTRIC GENERATORS. (a) In this section "standby electric generator" means a device that converts mechanical energy to electrical energy and is:

- (1) Powered by natural gas, liquefied petroleum gas, diesel fuel, bio-diesel fuel or hydrogen;
- (2) Fully enclosed in an integral manufacturer supplied sound attenuating enclosure;
- (3) Connected to the main electrical panel of a residence by a manual or automatic transfer switch; and,
- (4) Rated for a generating capacity of not less than seven kilowatts.

(b) Except as provided by this section, a property owners' association may not adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from owning, operating, installing or maintaining a permanently installed standby electric generator.

(c) A property owners' association may adopt or enforce any of the following dedicatory instrument provisions to regulate the operation and installation of standby electric generators:

- (1) Require a standby electric generator to be installed and maintained in compliance:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 202, Property Code, is amended by adding Section 202.019, to read as follows:

Sec. 202.019. STANDBY ELECTRIC GENERATORS. (a) In this section, "standby electric generator" means a device that converts mechanical energy to electrical energy and is:

- (1) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel or hydrogen;
- (2) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure;
- (3) connected to the main electrical panel of a residence by a manual or automatic transfer switch; and
- (4) rated for a generating capacity of not less than seven kilowatts.

(b) Except as provided by this section, a property owners' association may not adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from owning, operating, installing or maintaining a permanently installed standby electric generator.

(c) A property owners' association may adopt or enforce any of the following dedicatory instrument provisions to regulate the operation and installation of standby electric generators:

- (1) require a standby electric generator to be installed and maintained in compliance

- (A) with the manufacturer's specifications;
- (B) applicable governmental health, safety, electrical codes and building codes;
- (2) Require all electrical, plumbing and fuel line connections be installed only by licensed contractors;
- (3) Require all electrical and fuel line connections be installed underground;
- (4) Require non-integral standby electric generator fuel tanks be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical and building codes;
- (5) Require the standby electric generator, its electrical lines and its fuel lines, to be maintained in good condition;
- (6) Require the repair, replacement or removal of any deteriorated or unsafe components of a standby electric generator, including electrical or fuel lines;
- (7) Require an owner to screen a standby electric generator, if the standby electric generator is visible from the street faced by the dwelling;

- (8) Set reasonable times, consistent with manufacturers' recommendations, for the periodic testing of a standby electric generator;
- (9) Prohibit the use of a standby electric generator to generate all or substantially all of the electrical power to a residence, except when utility generated electrical power to the residence is not available or is intermittent due to causes other than non-payment for utility service to the residence;
- (10) Regulate the location of the standby electric generator;
- (11) Prohibit a **property** owner from locating a standby electric generator on property:
 - (A) owned or maintained by the property

with:

- (A) the manufacturer's specifications; and
- (B) applicable governmental health, safety, electrical codes and building codes;
- (2) require all electrical, plumbing and fuel line connections to be installed only by licensed contractors;
- (3) require all electrical and fuel line connections to be installed underground;
- (4) require non-integral standby electric generator fuel tanks to be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical and building codes;
- (5) require the standby electric generator, its electrical lines and its fuel lines, to be maintained in good condition;
- (6) require the repair, replacement or removal of any deteriorated or unsafe component of a standby electric generator, including electrical or fuel lines;
- (7) require an owner to screen a standby electric generator if the standby electric generator is:
 - (A) visible from the street faced by the dwelling;
 - (B) located in an unfenced side or rear yard of a residence and is visible either from an adjoining residence or from adjoining property owned by the property owners' association; or
 - (C) located in an side or rear yard fenced by a wrought iron or residential aluminum fence and is visible through the fence either from an adjoining residence or from adjoining property owned by the property owners' association;
- (8) set reasonable times, consistent with the manufacturer's recommendations, for the periodic testing of a standby electric generator;
- (9) prohibit the use of a standby electric generator to generate all or substantially all of the electrical power to a residence, except when utility generated electrical power to the residence is not available or is intermittent due to causes other than non-payment for utility service to the residence;
- (10) regulate the location of the standby electric generator;
- (11) prohibit an owner from locating a standby electric generator on property:
 - (A) owned or maintained by the property

owners' association;
(B) owned in common by the property owner association members;
(d) The foregoing dedicatory instrument provisions, if adopted, must be reasonably applied and enforced;
(e) A dedicatory instrument provision that regulates the location of a standby electrical generator is unenforceable if:
(1) it increases the cost of installing the standby electric generator by more than ten percent; or,
(2) increases the cost of installing and connecting the electrical and fuel lines for the standby electric generator by more than twenty percent.
(f) If a dedicatory instrument requires that the installation of a standby electric generator be approved prior to installation, approval may not be withheld if the proposed installation meets or exceeds the dedicatory instrument provisions permitted by Subsection (c).

(g) In a hearing, action or proceeding to determine whether a proposed or installed standby electric generator complies with the requirements of the dedicatory instrument provisions permitted by Subsection (c), the party asserting non-compliance bears the burden of proof.

SECTION 2. Section 202.019, Property Code, as added by this Act, applies to a dedicatory instrument adopted before, on, or after the effective date of this Act.

owners' association; or
(B) owned in common by the property owners' association members.
(d) The foregoing dedicatory instrument provisions, if adopted, must be reasonably applied and enforced.
(e) A dedicatory instrument provision that regulates the location of a standby electric generator is unenforceable if:
(1) it increases the cost of installing the standby electric generator by more than ten percent; or
(2) it increases the cost of installing and connecting the electrical and fuel lines for the standby electric generator by more than twenty percent.
(f) If a dedicatory instrument requires that the installation of a standby electric generator be approved prior to installation, approval may not be withheld if the proposed installation meets or exceeds the dedicatory instrument provisions permitted by Subsection (c).

(g) If a dedicatory instrument provision requires an owner to submit an application for approval of improvements located exterior to a residence, this Section does not negate the requirement, but the information required to be submitted as part of the application for the installation of a standby electric generator may not be greater or more detailed than the application for any other improvement.

(h) In a hearing, action or proceeding to determine whether a proposed or installed standby electric generator complies with the requirements of the dedicatory instrument provisions permitted by Subsection (c), the party asserting non-compliance bears the burden of proof.

(i) The installation of a standby electric generator by a licensed contractor or the acceptance of the installation of a standby electric generator, or any of its components, by a utility provider, governmental subdivision or department of such a governmental subdivision, is conclusive proof that a standby electric generator was installed in compliance with this Section.

SECTION 2. Same as introduced version.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.