

By: Birdwell

S.B. No. 440

A BILL TO BE ENTITLED

AN ACT

relating to unenforceable restrictive covenants regarding standby electric generators affecting residential homes.

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

SECTION 1. Chapter 202, Property Code, is amended by adding Section 202.020 to read as follows:

Sec. 202.020. STANDBY ELECTRIC GENERATORS. (a) In this section:

(1) "Owner" has the meaning assigned by Section 201.003 and includes a relative or tenant of an owner.

(2) "Standby electric generator" means a device that converts mechanical energy to electrical energy and is:

(A) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen;

(B) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure;

(C) connected to the main electrical panel of a residence by a manual or automatic transfer switch; and

(D) 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 or restricts, or has the effect of prohibiting or restricting, an owner from owning, installing,

1 operating, or maintaining a permanently installed standby electric
2 generator on the owner's property.

3 (c) A property owners' association may adopt or enforce a
4 reasonable dedicatory instrument provision that:

5 (1) requires a standby electric generator to be
6 installed and maintained in a manner that complies with:

7 (A) the manufacturer's specifications; and

8 (B) applicable health, safety, electrical, and
9 building codes;

10 (2) requires all electrical, plumbing, and fuel line
11 connections to be installed only by an appropriately licensed
12 contractor;

13 (3) requires all electrical and fuel line connections
14 to be installed underground;

15 (4) requires nonintegral standby electric generator
16 fuel tanks to be installed and maintained in a manner that complies
17 with applicable zoning ordinances and health, safety, electrical,
18 and building codes;

19 (5) requires the standby electric generator and its
20 electrical or fuel lines to be maintained in good condition;

21 (6) requires the repair, replacement, or removal of
22 any component of the standby electric generator, including
23 electrical or fuel lines, if the component has deteriorated or is
24 unsafe;

25 (7) sets reasonable times, consistent with the
26 manufacturer's recommendations, for periodic testing of a standby
27 electric generator;

1 (8) prohibits the use of a standby electric generator
2 to generate all or substantially all of the electrical power for a
3 residence, except in the event that utility-generated electrical
4 power is not available or only intermittently available for a cause
5 other than nonpayment for utility services;

6 (9) regulates the location of the standby electric
7 generator;

8 (10) requires the screening of a standby electric
9 generator that is visible from any public street on which the
10 residence on the lot faces; or

11 (11) prohibits an owner from locating a standby
12 electric generator on property owned or maintained by the property
13 owners' association or owned in common by the members of the
14 property owners' association.

15 (d) If prior approval of the installation of a standby
16 electric generator is required by the dedicatory instrument,
17 approval may not be withheld for a proposed installation that meets
18 or exceeds the provisions described by Subsection (c).

19 (e) In a hearing, action, or proceeding challenging the
20 installation or proposed installation of a standby electric
21 generator, the party alleging a violation of a provision described
22 by Subsection (c) bears the burden of proof of the violation.

23 (f) A property owners' association dedicatory instrument
24 provision regulating the location of a standby electric generator
25 is void if enforcement of the provision would:

26 (1) increase the cost of installing the standby
27 electric generator by more than 10 percent; or

1 (2) increase the cost of installing and connecting the
2 electrical and fuel lines by more than 20 percent.

3 SECTION 2. Section 202.020, Property Code, as added by this
4 Act, applies to a dedicatory instrument provision adopted by a
5 property owners' association before, on, or after the effective
6 date of this Act.

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