

BILL ANALYSIS

C.S.H.B. 939
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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 standby electric generators at their homes. Interested parties have raised concerns regarding residents being unable to use medical devices and other electrical monitoring equipment after a power outage caused by a catastrophic storm or overload on the Texas power grid. C.S.H.B. 939 seeks to amend the applicable law to allow the use of certain standby electric generators.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 939 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" as a device that converts mechanical energy to electrical energy and, among other conditions, is rated for a generating capacity of not less than seven kilowatts.

C.S.H.B. 939 prescribes specified dedicatory instrument provisions that a property owners' association is authorized to adopt or enforce to regulate the operation and installation of standby electric generators; requires the provisions, if adopted, to be reasonably applied and enforced; and sets out certain restrictions for those dedicatory instrument provisions. The bill establishes that if a dedicatory instrument requires that the installation of a standby electric generator be approved before installation, approval may not be withheld if the proposed installation meets or exceeds the dedicatory instrument provisions permitted by the bill. The bill specifies that if a dedicatory instrument provision requires an owner to submit an application for approval of improvements located exterior to a residence, the bill's provisions do not negate the requirement, but the bill establishes that 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. The bill places the burden of proof on the party asserting noncompliance in a hearing, action, or proceeding to determine whether a proposed or installed standby electric generator complies with the requirements of a dedicatory instrument provision. 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

political subdivision is conclusive proof that the standby electric generator and its components were installed in compliance with the bill's provisions.

C.S.H.B. 939 applies to a dedicatory instrument adopted before, on, or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 939 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted 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:

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 with:

(A) the manufacturer's specifications; and

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) a dedicatory instrument provision that requires a standby electric generator to be installed and maintained in compliance 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

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

(2) a dedicatory instrument provision that requires all electrical, plumbing, and fuel line connections to be installed only by licensed contractors;

(3) a dedicatory instrument provision that requires all electrical connections to be installed in accordance with applicable governmental health, safety, electrical, and building codes;

(4) a dedicatory instrument provision that requires all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections to be installed in accordance with applicable governmental health, safety, electrical, and building codes;

(5) a dedicatory instrument provision that requires all liquefied petroleum gas fuel line connections to be installed in accordance with rules and standards promulgated and adopted by the Railroad Commission of Texas and other applicable governmental health, safety, electrical, and building codes;

(6) a dedicatory instrument provision that requires nonintegral 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;

(7) a dedicatory instrument provision that requires the standby electric generator and its electrical lines and fuel lines to be maintained in good condition;

(8) a dedicatory instrument provision that requires the repair, replacement, or removal of any deteriorated or unsafe component of a standby electric generator, including electrical or fuel lines;

(9) a dedicatory instrument provision that requires 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 a 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; 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

(C) located in a 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;

(10) a dedicatory instrument provision that sets reasonable times, consistent with the manufacturer's recommendations, for the periodic testing of a standby electric generator;

(11) a dedicatory instrument provision that prohibits 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 nonpayment for utility service to the residence;

(12) a dedicatory instrument provision that regulates the location of the standby electric generator; or

(13) a dedicatory instrument provision that prohibits an owner from locating a standby electric generator on property:

(A) owned or maintained by the property owners' association; or

(B) owned in common by the property owners' association members.

(d) A dedicatory instrument provision permitted by Subsection (c), 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 10 percent; or

(2) it increases the cost of installing and connecting the electrical and fuel lines for the standby electric generator by more than 20 percent.

(f) If a dedicatory instrument requires that the installation of a standby electric generator be approved before 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. 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.

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, 2015.

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 a dedicatory instrument provision permitted by Subsection (c), the party asserting noncompliance 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 political subdivision is conclusive proof that the standby electric generator and its components were installed in compliance with Subsection (c).

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.