

By: Dale

H.B. No. 939

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 202.019, 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

1 of the following dedicatory instrument provisions to regulate the
2 operation and installation of standby electric generators:

3 (1) require a standby electric generator to be
4 installed and maintained in compliance with:

5 (A) the manufacturer's specifications; and

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

8 (2) require all electrical, plumbing and fuel line
9 connections to be installed only by licensed contractors;

10 (3) require all electrical and fuel line connections
11 to be installed underground;

12 (4) require non-integral standby electric generator
13 fuel tanks to be installed and maintained to comply with applicable
14 municipal zoning ordinances and governmental health, safety,
15 electrical and building codes;

16 (5) require the standby electric generator, its
17 electrical lines and its fuel lines, to be maintained in good
18 condition;

19 (6) require the repair, replacement or removal of any
20 deteriorated or unsafe component of a standby electric generator,
21 including electrical or fuel lines;

22 (7) require an owner to screen a standby electric
23 generator if the standby electric generator is:

24 (A) visible from the street faced by the
25 dwelling;

26 (B) located in an unfenced side or rear yard of a
27 residence and is visible either from an adjoining residence or from

1 adjoining property owned by the property owners' association; or
2 (C) located in a side or rear yard fenced by a
3 wrought iron or residential aluminum fence and is visible through
4 the fence either from an adjoining residence or from adjoining
5 property owned by the property owners' association;

6 (8) set reasonable times, consistent with the
7 manufacturer's recommendations, for the periodic testing of a
8 standby electric generator;

9 (9) prohibit the use of a standby electric generator
10 to generate all or substantially all of the electrical power to a
11 residence, except when utility generated electrical power to the
12 residence is not available or is intermittent due to causes other
13 than non-payment for utility service to the residence;

14 (10) regulate the location of the standby electric
15 generator;

16 (11) prohibit an owner from locating a standby
17 electric generator on property:

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

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

22 (d) The foregoing dedicatory instrument provisions, if
23 adopted, must be reasonably applied and enforced.

24 (e) A dedicatory instrument provision that regulates the
25 location of a standby electric generator is unenforceable if:

26 (1) it increases the cost of installing the standby
27 electric generator by more than ten percent; or

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

4 (f) If a dedicatory instrument requires that the
5 installation of a standby electric generator be approved prior to
6 installation, approval may not be withheld if the proposed
7 installation meets or exceeds the dedicatory instrument provisions
8 permitted by Subsection (c).

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

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

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

27 SECTION 2. Section 202.019, Property Code, as added by this

1 Act, applies to a dedicatory instrument adopted before, on, or
2 after the effective date of this Act.

3 SECTION 3. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2015.