

By: Goodwin

H.B. No. 330

A BILL TO BE ENTITLED

AN ACT

relating to regulation of residential wind power facilities by property owners' associations.

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

SECTION 1. Chapter 202, Property Code, is amended by adding Section 202.024 to read as follows:

Sec. 202.024. REGULATION OF RESIDENTIAL WIND POWER FACILITIES. (a) In this section:

(1) "Development period" and "residential unit" have the meanings assigned by Section 202.010.

(2) "Wind power facility" has the meaning assigned by Section 301.0001, Utilities 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 wind power facility of an appropriate residential scale.

(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 wind power facility that:

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

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

3           (3) is located on property owned in common by the  
4 members of the property owners' association;

5           (4) is located in an area on the property owner's  
6 property other than an area designated by the property owners'  
7 association, unless the alternate location increases the estimated  
8 annual energy production of the facility, as determined by using a  
9 publicly available modeling tool provided by the National Renewable  
10 Energy Laboratory, by more than 10 percent above the energy  
11 production of the facility if located in an area designated by the  
12 property owners' association;

13           (5) as installed, voids material warranties; or

14           (6) was installed without prior approval by the  
15 property owners' association or by a committee created in a  
16 dedicatory instrument for such purposes that provides decisions  
17 within a reasonable period or within a period specified in the  
18 dedicatory instrument.

19           (e) A property owners' association or the association's  
20 architectural review committee may not withhold approval for  
21 installation of a wind power facility if the provisions of the  
22 dedicatory instruments to the extent authorized by Subsection (d)  
23 are met or exceeded, unless the association or committee, as  
24 applicable, determines in writing that placement of the facility as  
25 proposed by the property owner constitutes a condition that  
26 substantially interferes with the use and enjoyment of land by  
27 causing unreasonable discomfort or annoyance to persons of ordinary

1 sensibilities. For purposes of making a determination under this  
2 subsection, the written approval of the proposed placement of the  
3 facility by all property owners of adjoining property constitutes  
4 prima facie evidence that such a condition does not exist.

5 (f) During the development period for a development with  
6 fewer than 51 planned residential units, the declarant may prohibit  
7 or restrict a property owner from installing a wind power facility.

8 SECTION 2. This Act takes effect September 1, 2023.