

SUBJECT: Restricting homeowners' association regulation of solar energy devices

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Deshotel, Elkins, Gattis, Keffer, Orr, Quintanilla, S. Turner

0 nays

4 absent — Christian, England, Giddings, S. Miller

WITNESSES: For — Richard Craig; Andrew McCalla, Texas Renewable Energy Industries Association; Luke Metzger, Environment Texas; David Power; John Stratton, ARRL; Raymond Walker, Standard Renewable Energy LP; (*Registered, but did not testify:* David Mintz, Community Associations Institute Texas Legislative Action Committee; Patrick Reinhart, Solar Alliance; Susan Ross, Texas Renewable Energy Industries Association)

Against — None

BACKGROUND: Tax Code, sec. 171.107 defines a solar energy device as a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The definition includes a mechanical or chemical device that can store solar-generated energy for heating, cooling, or production of power.

DIGEST: HB 25 would prevent a property owners' or homeowners' association from including or enforcing a deed restriction or other provision in a real estate dedicatory instrument that would prohibit a homeowner from installing a solar energy device as defined by Tax Code, sec. 171.107. The restriction would void any existing deed restriction against solar energy devices and would apply to any deed restrictions that become effective or are renewed on or after the effective date of the bill.

HB 25 would not disallow deed restrictions that prohibited solar energy devices that:

- threatened public health or safety;
- violated a law;
- were located on property owned or maintained by the property owners' association;
- were located on property owned in common by the members of the property owners association;
- were located anywhere on the individual property owner's premises other than the roof of the home or in a fenced yard or patio; or
- were mounted on a device that was taller or more visually obtrusive than was necessary for the solar energy device to operate at 90 percent or more of its rated efficiency.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS
SAY:

HB 25 would allow homeowners in neighborhoods protected by homeowner association review of deed restrictions to take advantage of solar power systems to heat or cool their homes or to generate electricity. Most deed restrictions were written before technologies such as solar panels became readily available. Too many of those covenants on aesthetics represent "dollhouse documents" that reflect the developers' original vision of an ideal neighborhood. HB 25 would establish a reasonable exception that would take into account how modern families actually live.

HB 25 would provide a well-crafted balance between the desire of homeowners to save on their energy bills and homeowners' associations to enforce reasonable restrictions to preserve property values for the entire neighborhood. The standards on health and safety or violation of other laws and prohibitions against use of common property are unambiguous and can be fairly interpreted and enforced.

Solar generation of electric power is a \$100 billion industry worldwide, and Texas enjoys unique advantages to attract and develop solar generation companies. However, existing homeowner association restrictions hamper growing firms that market to individual property owners. Thirteen states have laws similar to HB 25, and another eight are considering such measures. By enacting HB 25, the Legislature would be helping both homeowners and solar generation entrepreneurs.

Newer solar photovoltaic technologies, such as crystalline silicon and thin-film, convert the sun's rays directly into electricity and can be scaled to a small roof top installation to a large commercial array. Other methods can use stone walls, patios, and sand beds to collect solar radiation for heating, cooling, and generation of electricity. HB 25 would facilitate installation of systems that would be aesthetically pleasing and enhance property values.

The Tax Code provision defining solar energy devices would be sufficient for the enforcement of HB 25.

OPPONENTS SAY:

HB 25 would not sufficiently protect homeowners desiring to install solar generation devices on their property in neighborhoods with homeowner associations and could create opportunities for future litigation. The exceptions for threats to public health or safety or for violations of other laws — which the homeowners associations cannot authorize anyway—should be eliminated. Such provisions could invite homeowners' associations to make determinations on what constitutes a threat to public health or safety or a violation of law and to impose fines without any judicial determination.

OTHER OPPONENTS SAY:

The Legislature should consider a broader definition of “solar energy device” than the limited language in the Tax Code. The Tax Code provisions relate only to allowable deductions for a business calculating its margins tax. Texas could follow the example of Arizona, which establishes public policy that favors an enforceable right of homeowners to install and use a wide range of solar energy devices.

NOTES:

The companion bill, SB 236 by West, passed the Senate on March 19 by 31-0 on the Local and Uncontested Calendar and has been referred to the House Business and Industry Committee. The Senate companion bill differs from HB 25 in that it would be effective on January 1, 2010.

During the 2007 regular session an identical bill, HB 1651 by Leibowitz, was placed on the General State Calendar, but the House took no further action. The House added the bill as an amendment on SB 12 by Averitt, an air quality enhancement program bill that included energy-efficiency standards, but it was removed by the conference committee.