

- SUBJECT:** Regulating POA restrictive covenants on certain generators for homes
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba
0 nays
- WITNESSES:** For — John Robert Stratton, American Radio Relay League; Jim Phipps, ARRL Member; Kurtiss E. Summers; (*Registered, but did not testify:* Sarah Howard, James Howard, Sallie Howard, and James Howard, American Radio Relay League; William Van Hoy, Texas Propane Gas Association; Craig Bean; Mitchell London)

Against — Patrice Arnold, Texas Community Association Advocates

On — Nim Kidd, Texas Division of Emergency Management
- DIGEST:** CSHB 939 would prohibit a property owners' association (POA) from restricting an owner's right to install and maintain a permanently installed standby electric generator, defined as a device that converts mechanical energy to electricity that was:
- powered by natural gas, gasoline, diesel fuel, biodiesel fuel, or hydrogen;
 - fully enclosed in an integral manufacturer-supplied sound-attenuating enclosure;
 - connected to the main electrical panel of a residence by a transfer switch; and
 - rated for a generating capacity of at least seven kilowatts.
- The POA could adopt and enforce provisions in its dedicatory instruments to require:
- that the generator be installed and maintained in good condition

and in compliance with the manufacturer's specifications and any applicable governmental health, safety, electrical, and building codes;

- that all electrical, plumbing, and fuel line connections be installed by licensed contractors;
- that all electrical and gas or fuel line connections be maintained in good condition and installed in accordance with applicable governmental health, safety, electrical, and building codes;
- that all liquefied petroleum gas fuel line connections be installed in accordance with rules and standards adopted by the Texas Railroad Commission;
- that all separate fuel tanks be maintained according to municipal zoning ordinances and governmental health, safety, electrical, and building codes;
- that any unsafe component be removed or replaced;
- that the owner cover the generator with a screen if it were visible from the street, located in an unfenced backyard, visible from a neighbor's yard, or visible through a fence;
- that periodic testing be conducted according to a reasonable schedule; or
- that the generator be located entirely on the owner's property, although a regulation on the generator's location would be unenforceable if it increased the cost of installation by a certain amount.

The POA could prevent the owner from using the generator to generate all or substantially all of the power to a home, except during periods when power was unavailable or intermittently available from the utility.

CSHB 939 would require that in the event of a hearing, action, or proceeding to determine whether a proposed or installed generator complied with a POA requirement, the party asserting noncompliance would bear the burden of proof. If the generator was installed by a licensed contractor or was approved by a political subdivision, that would be conclusive proof that the generator had been installed in compliance with the POA regulation.

If the POA required the submission of an application for the approval of exterior improvements, it could require the owner to submit an application for the installation of a generator, but the information required for the application could not be greater or more detailed than the application for any other improvement.

This 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, 2015, and would apply to dedicatory instruments adopted before, on, or after the effective date.

**SUPPORTERS
SAY:**

CSHB 939 would allow homeowners in property owners' associations (POAs) to prepare for disasters while providing stringent requirements to ensure their neighbors were not harmed or inconvenienced by the nearby presence of a standby electric generator. Many individuals depend on electrical medical equipment, and when their homes lose power, they risk health complications and possibly their lives. Standby electric generators help to ensure that necessary equipment continues to operate even after power lines have been brought down in a storm. Generators also could provide an important resource to neighborhoods after a natural disaster and might be helpful in supporting the work of emergency personnel.

The bill would provide strict requirements for the installation and maintenance of generators to ensure the safety of the owner and surrounding neighbors. It also would allow the POA to regulate the location of the generator and require a screen to shield it from view, which would uphold the aesthetics of the neighborhood. Generators allowed under this bill are small and make less noise than an air conditioning unit. They would not present a noise nuisance because they would operate only when no power was available from the utility.

Application requirements for generators beyond those required by CSHB 939 would be unnecessary because most applications for approval of an exterior improvement used by POAs require that installations be conducted according to relevant building and electrical codes, which this

bill would require. While the burden of proof would rest with the POA to prove noncompliance, this is generally where the burden rests in disputes over whether a property owner is compliant with a POA regulation.

**OPPONENTS
SAY:**

CSHB 939 would take away a POA's right to ensure the neighborhood's safety and aesthetics and essentially would make POAs powerless over regulating generators. The bill would strip a POA of its ability to determine whether a generator was acceptable in the neighborhood by applying external standards. It should give POA's more authority to regulate generators based on noise, which can be a nuisance in a quiet neighborhood.

The bill unfairly would shift the burden of proof to POAs to show noncompliance, even though they would have no way to prove this without the property owner's cooperation in providing information or documentation on the installation.

CSHB 939 would prohibit a POA from requiring additional information about a generator when an owner submitted an application for approval. This would be unreasonable because an electric generator is much more complicated and dangerous than, for instance, a wooden fence.