

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 362
By: Solomons et al. (West)
Intergovernmental Relations
5/17/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 362 amends current law relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 202, Property Code, by adding Sections 202.010 and 202.011, as follows:

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) Defines, in this section, "solar energy device."

(b) Prohibits a property owners' association, except as otherwise provided by Subsection (d), from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) Provides that a provision that violates Subsection (b) is void.

(d) Authorizes a property owners' association to include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

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

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

(4) is located in an area on the property owner's property other than:

(A) on the roof of the home or of another structure allowed under a dedicatory instrument; or

(B) in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

(A) extends higher than the roofline;

(B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;

(C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or

(D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if located in a fenced yard or patio, is taller than the fence line;

(7) as installed, voids material warranties; or

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

(e) Prohibits a property owner's association or the associations architectural review committee from withholding approval of the installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by Subsection (d) are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.

Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS. Prohibits a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that:

(1) are designed primarily to:

(A) be wind and hail resistant;

(B) provide heating and cooling efficiencies greater than those provided by customary composite shingles; and

(C) provide solar generation capabilities; and

(2) when installed:

(A) resemble the shingles used or otherwise authorized for use on property in the subdivision;

(B) are more durable than and are of equal or superior quality to the shingles described by Paragraph (A); and

(C) match the aesthetics of the property surrounding the owner's property.

SECTION 2. Provides that Sections 202.010 and 202.011, Property Code, as added by this Act, apply to a dedicatory instrument without regard to whether the dedicatory instrument takes effect or is renewed before, on, or after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2011.