

## **BILL ANALYSIS**

Senate Research Center

H.B. 362  
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Intergovernmental Relations  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Some sources assert that there are approximately 30,000 property owners' associations in Texas. An owner of a lot in such an association is hampered in developing that property by restrictive covenants in a dedicatory instrument of the association, including restrictions on the owners' use of solar energy devices and roofing materials. H.B. 362 addresses this situation by prohibiting a property owners' association from including or enforcing in a dedicatory instrument a ban on the installation of a solar energy device and roofing material that meets certain criteria.

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:

(A) conflicts with the manufacturer's installation requirements; or

(B) voids material warranties; or

(8) was installed without prior approval 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 committee described by Subsection (d)(8) from withholding approval of the installation of a solar energy device that meets or exceeds the minimum requirements of a dedicatory instrument.

**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.