

SUBJECT: Restricting homeowner association rules for solar energy devices and roofs

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Deshotel, Orr, Bohac, Giddings, S. Miller, Solomons, Workman
1 nay — Garza
1 absent — Quintanilla

WITNESSES: For — Irene Adolph, Lynn G. Walshak, HOA Reform Coalition; Larry Atherton, Alternative Power Solutions; Pat Carlson, Texas Eagle Forum; Jim Hudson, Attic Breeze, Texas Solar Energy Society (TXSES); Robin Klar Lent, Coalition HOA Reform, Texas Homeowners for HOA Reform; Luke Metzger, Environment Texas; David Power, Public Citizen; Cyrus Reed, Lone Star Chapter, Sierra Club; (*Registered, but did not testify:* Mike Barnett, Texas Association of Realtors; Alfred Bingham Jr., SolarBridge Technologies, Inc.; Pat Carlson, National Homeowner Advocate Group; Jeffrey Clark, Technology Association of America, Tech America; Robert Doggett, Texas Housing Justice League; Sandra Haverlah, Environmental Defense Fund; Joshua Houston, Texas Impact; Michael Jewell, ECD/United Solar Ovonic and Solyndra, Inc.; Matt Phillips, The Nature Converancy; Gerard Torres, TXU Energy; David Weinberg, Texas League of Conservation Voters)

Against — David Smith, Plano Homeowners Council and Texas Neighborhoods Together

On — Janet Ahmad, Home Owners for Better Building; Nancy Hentschel; Susan Wright, Texas Association of Builders, Texas Community Association Advocates

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:

CSHB 362 would prevent a property owners' association from including or enforcing a provision in a real estate dedicatory instrument that would prohibit a homeowner from installing a solar energy device as defined by the Tax Code. The bill would void any existing deed restriction against solar energy devices.

A homeowner would have to get approval from an association committee created for such purposes before installing a solar energy device. The committee would be prohibited from denying the request if the solar energy device met or exceeded the minimum standards listed in the property owners' association covenants.

The property owners' association could prohibit a solar energy device that:

- threatened public health or safety;
- violated a law;
- was located on property owned or maintained by the property owners' association;
- was located on property owned in common by the members of the property owners' association;
- was located anywhere on the individual property owner's premises other than the roof of the home or in a fenced yard or patio;
- if mounted on the roof: was higher than the roofline; did not conform to the slope of the roof and had a top edge not parallel to the roofline; had a frame, support bracket, or visible piping or wiring that was not in a commonly available silver, bronze, or black tone; or was in an area other than the one designated by the property owners' association unless this area increased its energy production by more than 10 percent as determined by the National Renewable Energy Laboratory;
- if in a fenced yard or patio, was taller than the fence; or
- conflicted with the manufacturer's installation requirements or voided material warranties.

The bill also would prohibit the property owners' association from prohibiting or restricting a homeowner from installing roof shingles that were designed to be wind and hail resistant and to provide greater heating and cooling efficiencies than customary composite shingles. The shingles would have to resemble the shingles installed or allowed in the subdivision and would have to be more durable than and at least of equal

quality to those shingles. The shingles would have to match the aesthetics of the property or provide solar generation capabilities.

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, 2011. It would apply to any real estate dedicatory instrument regardless of whether it was in place before, on, or after the effective date.

**SUPPORTERS
SAY:**

CSHB 362 would help protect private homeowners' rights by keeping a homeowners' association (HOA) from arbitrarily prohibiting solar panels. It also would serve a larger public purpose in promoting energy conservation and efficiency. Homeowners should be encouraged to generate more of the electricity that they use and should be able to sell excess power back to the electricity grid. Solar panels are part of a larger energy program to develop new fuel mixtures, smart metering, and other initiatives. The rolling blackouts this past February demonstrate the need for local electricity generation separate from the central power plants.

CSHB 362 would create a fair and reasonable standard to allow a homeowner to install solar energy devices or wind- and hail-resistant shingles. The procedure would be similar to a zoning request, where approval must be given if the property owner meets established standards. The bill would permit a HOA to designate the location of the solar panel as long as the generation capacity increased by more than 10 percent as measured by nationally recognized standards. The bill would provide a balance between homeowners' desire to place a solar energy device on their property to maximize its effectiveness while allowing HOAs to ensure that the placement did not pose additional hazards or risks, such as on golf courses near the residences.

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. CSHB 362 would establish reasonable exceptions that would take into account how modern families actually live.

Damage from wind and hail occurs throughout the state from the Gulf Coast to the Panhandle. Residents in neighborhoods governed by HOAs should be allowed to install shingles that would resist weather damage or

improve energy efficiency. Modern design and building materials make these roofs indistinguishable from others in the neighborhoods.

CSHB 362 would provide a well-crafted balance between the desires of homeowners to save money on their energy bills and those of HOAs 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 multibillion-dollar industry worldwide, and Texas is uniquely positioned to attract and develop solar generation companies. However, existing HOA restrictions continue to hamper growing firms that market to individual property owners. By enacting CSHB 362, the Legislature would be helping both homeowners and solar generation entrepreneurs.

Solar panels have evolved from the ugly designs that prevailed in the 1970s. 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 rooftop installation or 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. CSHB 362 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 CSHB 362.

OPPONENTS
SAY:

HOAs also have property rights and a vested interest in preserving the quality of life and property values in their neighborhoods. While some associations have made what appear to be arbitrary decisions, most are willing to allow property owners to install solar energy devices as long as they meet standards set in the deed restrictions. Such choices are more properly made at the local level, and the Legislature should not interfere in these matters.

OTHER
OPPONENTS
SAY:

CSHB 362 would not sufficiently protect homeowners who wished to install solar generation devices in neighborhoods with HOAs and could create opportunities for future litigation. The exceptions for threats to public health or safety or for violations of other laws — which the HOAs

cannot authorize anyway— should be eliminated. Such provisions could invite HOAs to determine what constitutes a public health or safety threat or a violation of law and to impose fines without any judicial basis. Also, many deed restrictions and other covenants are outdated, and it may be difficult for a homeowner to show a committee that the proposed installations would meet the standards.

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 favors an enforceable right of homeowners to install and use a wide range of solar energy devices.

NOTES:

The committee substitute added provisions not included in the original version of the bill that would require approval of a committee before solar energy devices could be installed and would require a HOA committee to approve any solar energy device that met or exceeded the standards set in the deed restrictions or covenants.

During the 2009 regular session, a similar bill, HB 25 by Leibowitz, passed the House by 129-13 and was referred to the Senate Administration Committee, which took no further action. HB 1976 by Solomons, which included a solar panel provision, passed the House by 98-33 and was placed on the Senate Intent Calendar, but no further action was taken. The Senate passed SB 545 by Fraser, a solar energy bill that also included a similar provision concerning solar panels, by 26- 4, and it was placed on the House Major State Calendar, but no further action was taken.