

SUBJECT: Unenforceability of POA covenants preventing standby electric generators

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Bohac, Orr, Rodriguez, Villalba, Walle, Workman  
0 nays

WITNESSES: For — John Robert Stratton, National Association for Amateur Radio; Kurt Summers (*Registered, but did not testify*: Daniel Gonzalez, Texas Association of Realtors; William Van Hoy, Texas Propane Gas Association)

Against — None

On — Patty Arnold, Texas Community Association of Advocates

DIGEST: CSHB 2524 would prohibit a property owners association (POA) from restricting an owner from installing and maintaining a permanently installed standby electric generator, defined as a device that converts mechanical energy to electricity that is:

- 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 the association's dedicatory instruments to require:

- the generator to be installed and maintained in compliance with the manufacturer's specifications and any applicable governmental health, safety, electrical, and building codes;
- all electrical, plumbing, and fuel line connections to be installed by licensed contractors, and all electrical and fuel line connections to be installed underground;

- all separate fuel tanks to be maintained according to municipal zoning ordinances and government health and safety codes;
- any unsafe component to be removed or replaced;
- the owner to cover the generator if it were visible from the street, located in an unfenced backyard, visible from a POA neighbor's yard, or visible through a fence;
- periodic testing according to a reasonable schedule; and
- the location of the generator to be reasonable and situated entirely on the individual owner's property.

The POA regulations could prohibit the use of 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.

A POA regulation would be unenforceable if it increased the cost of installing the generator by more than 10 percent or the cost of installing and connecting the electrical and fuel lines more than 20 percent.

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, 2013, and would apply to a dedicatory instrument adopted before, on, or after that date.