

BILL ANALYSIS

C.S.H.B. 2594
By: Parker
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that amenity properties, such as golf courses and country clubs, may be subject to special restrictions that prohibit the property from being used for other purposes. These parties assert that such restrictions prevent unkempt or unused neighborhood golf courses and country clubs from being repurposed for alternative uses, which drives down local property values and discourages further investment in the locality. C.S.H.B. 2594 seeks to address this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2594 amends the Property Code to authorize a restriction in a dedicatory instrument that restricts the use of certain real property, designated as an amenity property, to its use as a golf course or country club to be modified or terminated by petition in accordance with the bill's provisions. The bill specifies that its provisions do not apply if a dedicatory instrument includes a procedure to modify or terminate a restriction on the use of an amenity property on approval of the owners of 100 percent of, as applicable, the lots or parcels of land and units or apartments of condominiums in the development or if a restriction on the use of an amenity property may be modified or terminated under the procedures of the Condominium Act, the Uniform Condominium Act, or the Texas Residential Property Owners Protection Act or under the procedures of statutory provisions regarding restrictive covenants applicable to certain subdivisions. The bill prohibits the circulation of a petition unless for a continuous period of at least 36 months the amenity property has not been in operation, has not been maintained, or has been operated or maintained in a dilapidated or substandard condition and, if zoning regulations apply to the amenity property, the owner of the amenity property has received all required zoning approvals for any proposed redevelopment of the amenity property. The bill authorizes a petition to be circulated by an owner, a property owners' association, a unit owners' association, or a council of owners and requires the petition to include all relevant information about the proposed modification or termination and to state the date by which a signed statement required of a property owner casting a vote on the proposal must be received to be counted.

C.S.H.B. 2594 requires a petition circulator to deliver a copy of the petition to all owners of each lot or parcel of real property and of each condominium unit or apartment, if any, in the development and to each property owners' association, unit owners' association, and council of

owners in the development. The bill authorizes the petition circulator to deliver a copy of the petition in any reasonable manner, including by mail, personal delivery, or at a special or regular meeting of affected stakeholders in the development, and establishes that, if the petition circulator acts in good faith in determining ownership and delivering copies of the petition, an owner's lack of receipt of a copy of the petition does not affect the application of a modification or termination of a restriction to the amenity property.

C.S.H.B. 2594 establishes that the modification or termination of the restriction is adopted if the owners of at least 75 percent of the total number, as applicable, of the lots or parcels of land and the units or apartments of condominiums in the development, including the owner of the amenity property, vote in favor of modifying or terminating the restriction. The bill sets out requirements for the casting of a vote by a property owner, restricts multiple owners having joint ownership of property in the development to one vote for that property, and prohibits a person whose only property interest in a lot or parcel of land or unit or apartment of a condominium is that of a contract purchaser, lienholder, or mineral interest holder from casting a vote for that property. The bill authorizes a vote to be counted only if the vote is received before the deadline stated in the petition. The bill establishes that the signed statement of an owner conclusively establishes that the petition was received by the owner in accordance with the circulation procedure and that the statement accurately reflects the vote of the owner.

C.S.H.B. 2594 requires the petition circulator to certify the result of the votes by filing an affidavit with the county clerk of the county in which the restriction modified or terminated is recorded, specifies the content requirements for such an affidavit, and requires the petition circulator to affirm in the affidavit that the petition was delivered in accordance with the circulation procedure.

C.S.H.B. 2594 establishes that the recording of the affidavit constitutes notice that the restriction is modified or terminated. The bill requires the petition circulator to deliver to each person who resides within 200 feet of the boundary of the amenity property a copy of the affidavit and authorizes the affidavit to be delivered by regular mail, by certified mail, return receipt requested, or by personal delivery. The bill makes the modification or termination effective on the later of the date the affidavit is filed with the county clerk or the date, if any, specified as the effective date in the petition. The bill requires the petition circulator to make the original petition, the signed statements, and the affidavit available for inspection and copying at least one year after the date the affidavit is filed with the county clerk. The bill's provisions expire September 1, 2021.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2594 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Title 11, Property Code, is amended by adding Chapter 213 to read as follows:

CHAPTER 213. MODIFICATION OR TERMINATION OF RESTRICTIONS BY PETITION IN REAL ESTATE

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 11, Property Code, is amended by adding Chapter 213 to read as follows:

CHAPTER 213. MODIFICATION OR TERMINATION OF RESTRICTIONS BY PETITION IN REAL ESTATE

DEVELOPMENTS WITH CERTAIN AMENITIES

Sec. 213.001. DEFINITIONS. In this chapter:

(1) "Amenity property" means real property the use of which is restricted by a dedicatory instrument to use as a golf course or country club.

(2) "Council of owners" has the meaning assigned by Section 81.002 as it relates to an existing condominium in a development.

(3) "Dedicatory instrument" means the governing instrument that:

(A) restricts amenity property to use as amenity property;

(B) designates real property in the development, other than amenity property, as a beneficiary of the restriction described by Paragraph (A); and

(C) addresses the establishment, maintenance, and operation of amenity property.

(4) "Development" means:

(A) amenity property; and

(B) all real property designated as beneficiary property in the dedicatory instrument.

(5) "Owner" means a person, or the person's personal representative, who holds record title to:

(A) a lot or parcel of real property in a development; or

(B) a unit or apartment of a condominium in the development.

(6) "Petition circulator" means a person authorized to circulate a petition under Section 213.004.

(7) "Property owners' association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of lots or parcels of real property in a development;

(B) has a membership primarily consisting of those owners; and

(C) manages or regulates all or part of the development for the benefit of those owners.

(8) "Restriction" and "restrictive covenant" have the meanings assigned by Section 209.002.

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(1) "Amenity property" means real property the use of which is restricted by a dedicatory instrument to use as a golf course or country club.

(2) "Council of owners" has the meaning assigned by Section 81.002 as it relates to an existing condominium in a development.

(3) "Dedicatory instrument" means a governing instrument that:

(A) restricts amenity property to use as amenity property;

(B) designates real property in the development, other than amenity property, as a beneficiary of a restriction described by Paragraph (A); and

(C) addresses the establishment, maintenance, and operation of amenity property.

(4) "Development" means:

(A) amenity property; and

(B) all real property designated as beneficiary property in the dedicatory instrument.

(5) "Owner" means a person, or the person's personal representative, who holds record title to:

(A) a lot or parcel of real property in a development; or

(B) a unit or apartment of a condominium in the development.

(6) "Petition circulator" means a person authorized to circulate a petition under Section 213.005.

(7) "Property owners' association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of lots or parcels of real property in a development;

(B) has a membership primarily consisting of those owners; and

(C) manages or regulates all or part of the development for the benefit of those owners.

(8) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(9) "Unit owners' association" means an association of unit owners organized under Section 82.101 for a condominium in a development.

Sec. 213.002. FINDINGS AND PURPOSE.

Sec. 213.003. MODIFICATION OR TERMINATION BY PETITION. In addition to any procedure to modify or terminate a restriction provided in the dedicatory instrument, a restriction on the use of an amenity property may be modified or terminated by petition in accordance with this chapter.

Sec. 213.004. PETITION CIRCULATOR.

Sec. 213.005. CONTENTS OF PETITION.

Sec. 213.006. CIRCULATION PROCEDURE. (a) A petition circulator shall deliver a copy of the petition to:
(1) owners of:
(A) each lot or parcel of real property in the

(9) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(10) "Unit owners' association" means an association of unit owners organized under Section 82.101 for a condominium in a development.

Sec. 213.002. FINDINGS AND PURPOSE.

Sec. 213.003. MODIFICATION OR TERMINATION BY PETITION. (a) Except as provided by Subsection (b), a restriction on the use of an amenity property may be modified or terminated by petition in accordance with this chapter.

(b) This chapter does not apply if:

(1) a dedicatory instrument includes a procedure to modify or terminate a restriction on the use of an amenity property on approval of the owners of 100 percent of, as applicable, the lots or parcels of land and units or apartments of condominiums in the development; or

(2) a restriction on the use of an amenity property may be modified or terminated under the procedures of Chapter 81, 82, 201, or 209.

Sec. 213.004. PREREQUISITES FOR CIRCULATION. A petition may not be circulated under this chapter unless:

(1) for a continuous period of at least 36 months, the amenity property has not been in operation, has not been maintained, or has been operated or maintained in a dilapidated or substandard condition; and

(2) if zoning regulations apply to the amenity property, the owner of the amenity property has received all required zoning approvals for any proposed redevelopment of the amenity property.

Sec. 213.005. PETITION CIRCULATOR.

Sec. 213.006. CONTENTS OF PETITION.

Sec. 213.007. CIRCULATION PROCEDURE. (a) A petition circulator shall deliver a copy of the petition to:
(1) all owners of:
(A) each lot or parcel of real property in the

development; and
(B) each unit or apartment of each condominium, if any, in the development; and

(2) each property owners' association, unit owners' association, and council of owners in the development.

(b) The petition circulator may deliver a copy of the petition in any reasonable manner, including:

(1) by regular mail or certified mail, return receipt requested, to the last known address of the owner or entity described by Subsections (a)(1) and (2);

(2) personal delivery to the owner or entity described by Subsections (a)(1) and (2);

(3) at a meeting of owners in the development called for the purpose of voting on the petition;

(4) at a regular meeting of a property owners' association, unit owners' association, or council of owners; or

(5) at a special meeting of a property owners' association, unit owners' association, or council of owners called for the purpose of voting on the petition.

(c) If the petition circulator acts in good faith in determining ownership and delivering copies of the petition as required by this section, an owner's lack of receipt of a copy of the petition does not affect the application of a modification or termination of a restriction under this chapter to the amenity property.

Sec. 213.007. VOTE ON PROPOSAL. (a) The modification or termination of the restriction is adopted if at least 66 percent of the total number of the lots and parcels of land and the units and apartments of condominiums in the development vote in favor of the modification or termination of the restriction.

(b) An owner may cast a vote only by delivering to the petition circulator a signed statement that includes:

(1) the owner's name, the legal description or street address of the owner's property, and the owner's mailing address;

(2) a statement that the owner holds record title to the property;

(3) if more than one person owns an interest in the property, the name and mailing

development; and

(B) each unit or apartment of each condominium, if any, in the development; and

(2) each property owners' association, unit owners' association, and council of owners in the development.

(b) The petition circulator may deliver a copy of the petition in any reasonable manner, including:

(1) by regular mail or certified mail, return receipt requested, to the last known address of the owners or entities described by Subsections (a)(1) and (2);

(2) personal delivery to the owners or entities described by Subsections (a)(1) and (2);

(3) at a meeting of owners in the development called for the purpose of voting on the petition;

(4) at a regular meeting of a property owners' association, unit owners' association, or council of owners; or

(5) at a special meeting of a property owners' association, unit owners' association, or council of owners called for the purpose of voting on the petition.

(c) If the petition circulator acts in good faith in determining ownership and delivering copies of the petition as required by this section, an owner's lack of receipt of a copy of the petition does not affect the application of a modification or termination of a restriction under this chapter to the amenity property.

Sec. 213.008. VOTE ON PROPOSAL. (a) The modification or termination of the restriction is adopted if the owners of at least 75 percent of the total number, as applicable, of the lots or parcels of land and the units or apartments of condominiums in the development, including the owner of the amenity property, vote in favor of the modification or termination of the restriction.

(b) An owner may cast a vote only by delivering to the petition circulator a signed statement that includes:

(1) the owner's name, the legal description or street address of the owner's property, and the owner's mailing address;

(2) a statement that the owner holds record title to the property;

(3) if more than one person owns an interest in the property, the name and mailing

address of each co-owner; and
(4) a statement indicating whether the owner is in favor of or against the modification or termination proposed by the petition.
(c) An owner may vote only in favor of or against the modification or termination as proposed in the petition.
(d) If more than one person owns an interest in a lot or parcel of land or a unit or apartment of a condominium, the owners may cast only one vote for that lot, parcel, unit, or apartment. Except as otherwise provided by this subsection, the vote of multiple owners in favor of or against the modification or termination may be reflected by the signatures of a majority of the co-owners who return a signed statement. The vote of owners who are married may be reflected by the signature of only one of those owners.
(e) A person whose only property interest in a lot or parcel of land or unit or apartment of a condominium is that of a contract purchaser, lienholder, or mineral interest holder may not cast a vote for that property under this chapter.
(f) A vote may be counted only if the vote is received before the deadline stated in the petition as required by Section 213.005(b).
(g) The signed statement of an owner conclusively establishes that:
(1) the petition was received by the owner in accordance with Section 213.006; and
(2) the statement accurately reflects the vote of the owner.

Sec. 213.008. CERTIFICATION OF RESULTS BY RECORDED AFFIDAVIT.

Sec. 213.009. NOTICE. The recording of the affidavit required by Section 213.008 constitutes notice that the restriction is modified or terminated.

Sec. 213.010. EFFECTIVE DATE OF MODIFICATION OR TERMINATION.

address of each co-owner; and
(4) a statement indicating whether the owner is in favor of or against the modification or termination proposed by the petition.
(c) An owner may vote only in favor of or against the modification or termination as proposed in the petition.
(d) If more than one person owns an interest in a lot or parcel of land or a unit or apartment of a condominium, the owners may cast only one vote for that lot, parcel, unit, or apartment. Except as otherwise provided by this subsection, the vote of multiple owners in favor of or against the modification or termination may be reflected by the signatures of a majority of the co-owners who return a signed statement. The vote of owners who are married may be reflected by the signature of only one of those owners.
(e) A person whose only property interest in a lot or parcel of land or unit or apartment of a condominium is that of a contract purchaser, lienholder, or mineral interest holder may not cast a vote for that property under this chapter.
(f) A vote may be counted only if the vote is received before the deadline stated in the petition as required by Section 213.006(b).
(g) The signed statement of an owner conclusively establishes that:
(1) the petition was received by the owner in accordance with Section 213.007; and
(2) the statement accurately reflects the vote of the owner.

Sec. 213.009. CERTIFICATION OF RESULTS BY RECORDED AFFIDAVIT.

Sec. 213.010. NOTICE. (a) The recording of the affidavit required by Section 213.009 constitutes notice that the restriction is modified or terminated.

(b) Notwithstanding Subsection (a), the petition circulator must deliver to each person who resides within 200 feet of the boundary of the amenity property a copy of the affidavit. The affidavit may be delivered by regular mail, by certified mail, return receipt requested, or by personal delivery.

Sec. 213.011. EFFECTIVE DATE OF MODIFICATION OR TERMINATION.

Sec. 213.011. DOCUMENTATION AVAILABLE.

SECTION 2. The change in law made by this Act applies only to a petition circulated on or after the effective date of this Act. A petition circulated before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

Sec. 213.012. DOCUMENTATION AVAILABLE.

Sec. 213.013. EXPIRATION. This chapter expires September 1, 2021.

SECTION 2. The change in law made by this Act does not apply to a petition circulated before the effective date of this Act.

SECTION 3. Same as introduced version.