

## **BILL ANALYSIS**

Senate Research Center  
77R8581 PAM-D

H.B. 2580  
By: Bosse (Whitmire)  
Intergovernmental Relations  
5/4/2001  
Engrossed

### **DIGEST AND PURPOSE**

Many Texas cities rely on zoning to plan and control land use, while others, such as the city of Houston, rely on recorded covenants or deed restrictions. Zoning is listed in the Texas Tort Claims Act as a governmental function, while deed restriction enforcement is not mentioned. A recent appellate court case, *Oldfield v. City of Houston*, held that the enforcement of deed restrictions is a proprietary rather than a governmental function, hindering the ability of a city to enforce such restrictions. The decision has resulted in a number of difficulties for the city of Houston regarding deed restriction violations and their enforcement. H.B. 2580 adds the enforcement of deed restrictions and actions filed by a municipality to enforce them to the list of the governmental functions of a municipality.

### **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 Section 101.0215(a), Civil Practice and Remedies Code, to provide that a municipality is liable under this chapter for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public, including but not limited to enforcement of land use restrictions under Chapter 230A (Enforcement of Land Use Restrictions Contained in Plats and Other Instruments), Local Government Code.

SECTION 2. Amends Chapter 230A, Local Government Code, by adding Section 230.007, as follows:

Sec. 230.007. GOVERNMENTAL FUNCTION. Provides that an action filed by a municipality under this subchapter to enforce a land use restriction is a governmental function of the municipality.

SECTION 3. Effective date: upon passage or September 1, 2001.