

BILL ANALYSIS

Senate Research Center
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H.B. 1631
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Intergovernmental Relations
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Under current law, residential subdivisions in unincorporated areas of counties with more than 65,000 people are authorized to amend or modify existing covenants and building restrictions. Residential subdivisions in unincorporated areas in counties with less than 65,000 people are unable to amend covenants and building restrictions. Only with the unanimous consent of the property owners within an unincorporated residential subdivision can they amend, change, or modify the restrictive covenants. Property owners in these counties do not have the ability to zone properties, control growth, or have building restrictions.

H.B. 1631 allows residential subdivisions in unincorporated areas in counties with less than 65,000 the ability to amend or modify existing covenants, and building restrictions.

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 Title 11, Property Code, by adding Chapter 211, as follows:

CHAPTER 211. AMENDMENT AND ENFORCEMENT OF RESTRICTIONS IN CERTAIN SUBDIVISIONS

Sec. 211.001. DEFINITIONS. Defines "dedicatory instrument," "lienholder," "owner," "real property records," "restrictions," "property owners' association," "residential real estate subdivision," and "subdivision."

Sec. 211.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision located in whole or in part within an unincorporated area of a county if the county has a population of less than 65,000.

(b) Provides that this chapter applies only to certain restrictions that affect real property within a residential real estate subdivision or any units or parcels of the subdivision.

(c) Provides that this chapter applies to a restriction regardless of the date on which is created.

Sec. 211.003. FINDINGS AND PURPOSE. (a) Sets forth legislative findings.

(b) Provides that the purpose of this chapter is to provide a procedure for creating, modifying, or adding to residential restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026 (Discriminatory Provisions).

Sec. 211.004. CREATION OR MODIFICATION OF PROCEDURE TO AMEND RESTRICTIONS. (a) Authorizes a property owners' association by a two-thirds vote of

the association's governing body to submit a procedure for amending restrictions to a vote of the property owners in the subdivision or in the unit or parcel of the subdivision governed by restrictions.

(b) Provides that an amendment procedure submitted to a vote under Subsection (a) binds all property owners in the subdivision or the unit parcel of the subdivision to which the procedure applies if more than two-thirds of the voting property owners vote in favor of the procedure.

(c) Requires, not later than the 30th day before the date a ballot for a vote under this section to be received to be counted, the property owners' association to mail to each affected property owner a notice that includes certain information.

(d) Requires the property owners' association to pay all costs of printing and mailing the required notices and ballots; and canvassing, tabulating, and certifying the vote.

(e) Prohibits a property owner from casting more than one vote, regardless of the number of lots the person owns. Authorizes the owners, if more than one person owns an interest in a lot, to cast only one vote for the lot. Prohibits a person from voting if the person has interest in a lot only by virtue of being a lienholder.

(f) Provides that a ballot cast under this section is secret and prohibited from being counted unless it is placed inside an unmarked envelope that is placed inside another that bears the signature and printed name of the property owner casting the enclosed ballot.

(g) Requires the presiding officer of the property owners' association to appoint an election canvassing committee and a committee chairperson to canvass and count the votes and determine the outcome.

(h) Requires the election canvassing committee chairperson, if the amendment procedure receives the number of votes required under Subsection (b), to certify the results to the presiding officer of the property owners' association. Requires the presiding officer to file in the real property records of each county in which all or part of the subdivision is located an instrument that indicates that the procedure was adopted.

(i) Prohibits the property owners' association, if the amendment procedure is not adopted, from submitting the same amendment procedure to a vote under this section on or before the first anniversary of the date the previous votes on the procedure were certified.

Sec. 211.005. EFFECT OF ADOPTING AMENDMENT PROCEDURE. Requires any proposed amendment to the restrictions described by Section 211.002(b) applicable to the subdivision or unit or parcel of the subdivision, as applicable, after the effective date of the adoption of the amendment procedure under this chapter, to be submitted for approval to the owners under the amendment procedure.

SECTION 2. Effective date: September 1, 2005.