

1-1 By: Farrar (Senate Sponsor - Gallegos) H.B. No. 1129  
1-2 (In the Senate - Received from the House May 7, 2003;  
1-3 May 9, 2003, read first time and referred to Committee on  
1-4 Intergovernmental Relations; May 22, 2003, reported adversely,  
1-5 with favorable Committee Substitute by the following vote: Yeas 5,  
1-6 Nays 0; May 22, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1129 By: Gallegos

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to enforcement of certain types of restrictions in certain  
1-11 municipalities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 212.132, Local Government Code, as  
1-14 redesignated by Chapter 1420, Acts of the 77th Legislature, Regular  
1-15 Session, 2001, is amended to read as follows:

1-16 Sec. 212.132. DEFINITION. In this subchapter,  
1-17 "restriction" means a land-use regulation [~~limitation~~] that:

1-18 (1) affects the character of the use to which real  
1-19 property, including residential and rental property, may be put;

1-20 (2) fixes the distance that a structure must be set  
1-21 back from property lines, street lines, or lot lines; [~~or~~]

1-22 (3) affects the size of a lot or the size, type, and  
1-23 number of structures that may be built on the lot;

1-24 (4) regulates or restricts the type of activities that  
1-25 may take place on the property, including commercial activities,  
1-26 sweepstakes activities, keeping of animals, use of fire, nuisance  
1-27 activities, vehicle storage, and parking;

1-28 (5) regulates architectural features of a structure,  
1-29 construction of fences, landscaping, garbage disposal, or noise  
1-30 levels; or

1-31 (6) specifies the type of maintenance that must be  
1-32 performed on a lot or structure, including maintenance of a yard or  
1-33 fence.

1-34 SECTION 2. Section 212.133, Local Government Code, as  
1-35 redesignated by Chapter 1420, Acts of the 77th Legislature, Regular  
1-36 Session, 2001, is amended to read as follows:

1-37 Sec. 212.133. SUIT TO ENFORCE RESTRICTIONS. (a) Except as  
1-38 provided by Subsection (b), the [The] municipality may sue in any  
1-39 court of competent jurisdiction to enjoin or abate a violation of a  
1-40 restriction contained or incorporated by reference in a properly  
1-41 recorded plan, plat, or other instrument that affects a subdivision  
1-42 located inside the boundaries of the municipality.

1-43 (b) The municipality may not initiate or maintain a suit to  
1-44 enjoin or abate a violation of a restriction if a property owners'  
1-45 association with the authority to enforce the restriction files  
1-46 suit to enforce the restriction.

1-47 (c) In a suit by a property owners' association to enforce a  
1-48 restriction, the association may not submit into evidence or  
1-49 otherwise use the work product of the municipality's legal counsel.

1-50 (d) In a suit filed under this section alleging that any of  
1-51 the following activities violates a restriction limiting property  
1-52 to residential use, it is not a defense that the activity is  
1-53 incidental to the residential use of the property:

1-54 (1) storing a tow truck, crane, moving van or truck,  
1-55 dump truck, cement mixer, earth-moving device, or trailer longer  
1-56 than 20 feet; or

1-57 (2) repairing or offering for sale more than two motor  
1-58 vehicles in a 12-month period.

1-59 (e) A municipality may not enforce a restriction which  
1-60 purports to regulate or restrict the rights granted to public  
1-61 utilities to install, operate, maintain, replace, and remove  
1-62 facilities within easements and private or public rights-of-way.

1-63 SECTION 3. Section 212.133, Local Government Code, as

2-1 redesignated by Chapter 1420, Acts of the 77th Legislature, Regular  
2-2 Session, 2001, and amended by this Act, applies only to a suit filed  
2-3 on or after the effective date of this Act. A suit filed before the  
2-4 effective date of this Act is governed by the law in effect  
2-5 immediately before that date, and that law is continued in effect  
2-6 for that purpose.

2-7 SECTION 4. Subchapter E, Chapter 212, Local Government  
2-8 Code, as redesignated by Chapter 1420, Acts of the 77th  
2-9 Legislature, Regular Session, 2001, is amended by adding Section  
2-10 212.1335 to read as follows:

2-11 Sec. 212.1335. FORECLOSURE BY PROPERTY OWNERS'  
2-12 ASSOCIATION. (a) A municipality may not participate in a suit or  
2-13 other proceeding to foreclose a property owners' association's lien  
2-14 on real property.

2-15 (b) In a suit or other proceeding to foreclose a property  
2-16 owners' association's lien on real property in the subdivision, the  
2-17 association may not submit into evidence or otherwise use the work  
2-18 product of the municipality's legal counsel.

2-19 SECTION 5. Subchapter E, Chapter 212, Local Government  
2-20 Code, as redesignated by Chapter 1420, Acts of the 77th  
2-21 Legislature, Regular Session, 2001, is amended by adding Section  
2-22 212.138 to read as follows:

2-23 Sec. 212.138. EFFECT ON OTHER LAW. This subchapter does not  
2-24 prohibit the exhibition, play, or necessary incidental action  
2-25 thereto of a sweepstakes not prohibited by Chapter 43, Business &  
2-26 Commerce Code, as added by Chapter 1119, Acts of the 77th  
2-27 Legislature, Regular Session, 2001.

2-28 SECTION 6. Section 212.1335, Local Government Code, as  
2-29 added by this Act, applies only to a suit filed on or after the  
2-30 effective date of this Act. A suit filed before the effective date  
2-31 of this Act is governed by the law in effect immediately before that  
2-32 date, and that law is continued in effect for that purpose.

2-33 SECTION 7. This Act takes effect September 1, 2003.

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