

BILL ANALYSIS

S.B. 1018
By: Staples
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law requires that 75 percent of all property owners voting on a property owners' association measure of petition vote in favor of the measure for a change to a restrictive covenant to become effective. In certain homeowners' associations and property owners' associations, the governing bodies as unable to contact 75 percent of the owners, making any changes unattainable. Senate Bill No. 1018 allows property owners associations and homeowners' associations within a defined area to modify existing restrictive covenants with 66 percent of the owners voting in favor of change.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that 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 210, as follows:

CHAPTER 210. EXTENSION OR MODIFICATION OF RESIDENTIAL RESTRICTIVE COVENANTS

Sec. 210.001. DEFINITIONS. Defines "dedicatory instrument," "owner," "property owners' association," "residential real estate subdivision," and "restrictions."

Sec. 210.002. APPLICABILITY OF CHAPTER. Sets forth to which residential real estate subdivisions this chapter applies.

Sec. 210.003. FINDINGS AND PURPOSE. Sets forth the findings of the legislature relating to the purpose of this chapter. Sets forth the purpose of this chapter.

Sec. 210.004. EXTENSION OR MODIFICATION OF RESTRICTIONS. (a) Authorizes a property owners' association (association) or a petition committee (committee) comprised of at least three owners, in addition to any procedures provided in a subdivision's restrictions, to circulate a petition proposing to extend or modify existing restrictions.

(b) Provides that an extension or modification of existing restrictions that is approved by the owners becomes effective when the resolution required by Section 210.008 is filed as a dedicatory instrument with the county clerk of each county in which the subdivision is located.

(c) Provides that an extension or modification of existing restrictions that is approved by the owners under this chapter is binding on all properties in the subdivision.

Sec. 210.005. PETITION PROCEDURE. (a) Requires the association or committee to deliver to each record owner of property in the subdivision a petition describing the exact terms of the proposed extension or modification of the existing restrictions.

- (b) Requires the petition to state the date by which a response must be received in order to be counted.
- (c) Authorizes the petition to allow each owner to indicate approval or disapproval of the entire proposal or specific provisions of the proposal.
- (d) Authorizes separate signature pages to be delivered if the proposed extension or modification is stated fully or referenced on each signature page. Authorizes a reference to be made by a specific assertion.
- (e) Requires the petition to be sent by certified mail, return receipt requested, to each owner's mailing address as reflected in the appraisal records maintained by the appraisal district in which the owner's property is located.
- (f) Provides that the signature of an owner on the petition conclusively establishes that the owner received the petition.

Sec. 210.006. VOTE ON PROPOSAL. (a) Provides that if the petition allows owners to indicate only approval or disapproval of the entire proposal, the proposal is adopted if the owners of at least 66 percent of the real property in the subdivision vote in favor of the proposal. Provides that if the petition allows owners to indicate approval or disapproval of the specific provisions proposal, the provision is adopted if the owners of at least 66 percent of the real property in the subdivision vote in favor of the provision.

- (b) Requires the association or committee to exclude votes by lienholders, contract purchasers, and owners of mineral interests.
- (c) Authorizes the approval or disapproval of multiple owners of property, except as provided by this subsection, to be reflected by the signatures of a majority of the co-owners. Authorizes the approval or disapproval of owners who are married to be reflected by the signature of one of those owners.
- (d) Provides that an owner is considered to have cast a vote if the owner signs the petition indicating approval or disapproval of the proposal or one or more specific provisions of the proposal.
- (e) Authorizes the association or committee to only count a vote if the association or committee receives the vote before the deadline stated in the petition.

Sec. 210.007. SUBDIVISION CONSISTING OF MULTIPLE SECTIONS. Provides that if a subdivision consisting of multiple sections, each with its own restrictions, is represented by a single property owners' association, a proposal or specific provision of a proposal is adopted if the owners of at least 66 percent of the total number of properties in the subdivision vote in favor of the proposal or provision.

Sec. 210.008. RESOLUTION CERTIFYING RESULTS OF VOTE. (a) Requires the association or committee to certify the results of a vote under this chapter by a written resolution specifying the number of votes for and against the proposal, and to certify that the petition was delivered to each record owner of property in the subdivision as required by Section 210.005.

- (b) Requires the association or committee to attach to the resolution a statement of the exact terms of the proposed extension or modification of the existing restrictions.
- (c) Requires the association or committee to make the resolution, petition, and signature pages available to any owner on request.

Sec. 210.009. ADDITIONAL PROCEDURES. Provides that the procedures provided by this chapter are in addition to any procedures provided in a subdivision's restrictions for the extension or modification of existing restrictions. Authorizes the association or

committee to propose the extension or modification of existing restrictions either in accordance with the procedures provided by the subdivision's restrictions or the procedures provided by this chapter.

SECTION 2. Effective date: September 1, 2005.

EFFECTIVE DATE

September 1, 2005