

BILL ANALYSIS

C.S.H.J.R. 76
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law protects a homestead in Texas from foreclosure except to collect on certain debts, including debts owed on the original loan or for taxes on the home, on a refinanced lien, or on a materialman's lien. In its decision in *Inwood North Homeowners' Association, Inc. v. Harris*, 736 S.W.2d 632 (Tex. 1987), the Supreme Court of Texas held that homestead law does not protect an association's homeowners against foreclosure for failure to pay assessments, but Texas laws never have specifically granted this right to property owners' associations.

C.S.H.J.R. 76 proposes a constitutional amendment to establish that an obligation to pay property owners' association fees for maintenance and ownership of common facilities and services or to pay other fees imposed by the association is a debt for which an encumbrance may be fixed on a homestead property. The resolution protects a homestead from forced sale for the payment of such a debt on or after April 1, 2010, unless the forced sale of the homestead for the payment of the debt is authorized by the members of the association in accordance with requirements the legislature may provide by general law.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.J.R. 76 proposes an amendment to the Texas Constitution to establish that an obligation to pay property owners' association fees for maintenance and ownership of common facilities and services or to pay other fees imposed by the association is a debt for which an encumbrance may be fixed on homestead property. The resolution specifies that on and after April 1, 2010, a homestead is protected from forced sale for the payment of such a debt unless such a sale is authorized by the members of the association in accordance with requirements the legislature may provide by general law. The resolution sets forth the required language of the ballot.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 3, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.J.R. 76 differs from the original by removing language that includes an obligation to pay fines imposed by a property owners' association as a debt for which an encumbrance may be properly fixed on homestead property. The substitute differs from the original by specifying that a homestead's protection from forced sale for the payment of a debt is effective on and after April 1, 2010, unless the forced sale of the homestead for the payment of the debt is authorized by the members of the association in accordance with requirements the legislature may provide

by general law. The substitute differs from the original by updating the required language of the ballot to reflect the substitute.