

## **BILL ANALYSIS**

C.S.S.B. 240  
By: West  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Homeowners' associations (HOAs) (known in law as property owners' associations) are intended to maintain common areas in residential neighborhoods and to protect homeowners' investments in their property by enforcing certain aesthetic guidelines. In recent years, however, many homeowners have become dissatisfied with the operation of their associations. Disputes between HOA boards and individual homeowners often begin with the imposition of relatively small fines by the board for violations of deed restrictions. The actions of some HOA boards can cause such fines to become insurmountable burdens for the homeowner. Additionally, because foreclosure is a remedy available to an HOA board for delinquent assessments, the order of application by the HOA board of payments received from a homeowner is a critical issue.

C.S.S.B. 240 sets forth certain requirements and restrictions regarding a fine imposed by a property owners' association. The bill also requires a property owners' association to adopt reasonable guidelines for an alternative payment schedule, sets forth provisions relating to the priority for the application of payments by a homeowner, and sets forth time limitations relating to collection actions against a homeowner. The bill authorizes a court to assess civil damages for a violation of a restrictive covenant of certain planned developments in an amount not to exceed \$200 for each day of the violation.

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

C.S.S.B. 240 amends the Property Code to require a fine assessed by a property owners' association to be reasonable in the context of the nature and frequency of the violation and the effect of the violation on the subdivision as a whole. The bill requires an association that allows fines for a continuing violation to accumulate against a lot or an owner to establish a reasonable maximum fine amount for a continuing violation at which point the total fine amount is capped. The bill authorizes an association, if a lot occupant other than the owner violates a provision of the dedicatory instrument and in addition to exercising any of the association's powers against the owner to assess a fine directly against the nonowner occupant in the same manner as provided for an owner but prohibits the association from requiring payment from both the owner and a nonowner occupant for the same violation. The bill makes existing notice and hearing provisions applicable to a nonowner occupant who is assessed a fine in the same manner as those provisions apply to an owner.

C.S.S.B. 240 requires a property owners' association to adopt reasonable guidelines to establish an alternative payment schedule by which an owner is authorized to make partial payments to the association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. The bill clarifies that monetary penalties do not include reasonable costs associated with administering the payment plan or

interest. The bill requires a property owners' association to allow partial payments of a special assessment for 12 months for any approved special assessment in an amount greater than the equivalent of the sum or all regular assessments payable in the year the special assessment is approved, unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. The bill authorizes a property owners' association to offer a reasonable discount for an owner making a one-time lump sum payment of the special assessment. The bill requires a property owners' association to allow partial payments of the special assessment for six months for any approved special assessment in an amount greater than the equivalent of one-half the sum of all regular assessments payable in the year the special assessment is approved, unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. The bill authorizes a property owners' association to offer a reasonable discount to an owner making a one-time lump sum payment of the special assessment. The bill establishes that an association is not required to allow a payment plan that extends more than 12 months from the date of the owner's request for a payment plan or to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the five years following the owner's default under a previous payment plan. The bill requires the association to file the guidelines in the real property records of each county in which the subdivision is located. The bill clarifies that a property owners' association's failure to file the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties.

C.S.S.B. 240 requires a payment received by an association from an owner, unless otherwise provided in a writing by the owner at the time the payment is made, to be applied to the owner's debt in the following order of priority: any delinquent assessment, any current assessment, any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure, any fines assessed by the association, any attorney's fees incurred by the association that are not associated solely with assessments or any other charge that could provide the basis for foreclosure, and any other amount owed to the association.

C.S.S.B. 240 requires an association to bring suit or otherwise initiate against an owner a collection action authorized by the dedicatory instruments or other law on or before the 10th anniversary of the date on which the cause of action for collection of the debt accrues. The bill makes state laws relating to the four-year limitations period for certain personal actions inapplicable to the collection of a debt owed by an owner to a property owners' association.

C.S.S.B. 240 restricts the provision that authorizes a court to assess civil damages in an amount not to exceed \$200 for each day of a violation of a restrictive covenant to a violation of a restrictive covenant of a planned development governed by a property owners' association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines.

#### **EFFECTIVE DATE**

January 1, 2010.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 240 differs from the original by requiring a property owners' association to establish a reasonable maximum fine amount for a continuing violation at which point the total fine is capped, whereas the original requires the association to establish a maximum fine for such violation not to exceed 10 times the amount of the initial fine, at which point the total fine amount is capped.

C.S.S.B. 240 differs from the original by requiring an association to adopt guidelines for an alternative payment schedule by which an owner may make partial payment for delinquent assessments or other amounts owed without accruing additional monetary penalties and clarifying that monetary penalties do not include reasonable costs associated with administering the payment plan or interest, whereas the original does not address the accrual of additional monetary penalties in its provision for an alternative payment schedule.

C.S.S.B. 240 adds provisions not in the original requiring an association to allow partial payments of special assessments for 12 months or for six months, depending on the amount of the special assessment relative to the sum of all regular assessments payable in the year the special assessment is approved, unless in either case the property owner requests a shorter payment period at the time the owner requests an alternative payment plan, and authorizing an association to offer a discount for an owner paying the special assessment in a one-time lump sum.

C.S.S.B. 240 establishes that an association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the five years following an owner's default on a previous payment plan, whereas the original, in a similar provision, does not specify the owner's failure to honor the terms of, or default under, a previous payment plan.

C.S.S.B. 240 adds a provision not in the original providing that a property owners' association's failure to file the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties.

C.S.S.B. 240 differs from the original by making any exception to the listed priorities for the application of a property owner's payment to the owner's debt contingent on the owner providing for that exception in writing at the time payment is made, whereas the original does not specify when the written provision must be made.