

BILL ANALYSIS

H.B. 1071
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Many real estate subdivisions in Texas have deed restrictions that place limitations on the use of the property. Deed restrictions are usually initiated by the developers who determine what the land will be used for and divide the land into plots to build homes, office buildings, or retail buildings. Often these deed restrictions come with the property and are difficult for subsequent owners to change or remove. H.B. 1071 seeks to establish new provisions in statute relating to the extension of deed restrictions in certain residential real estate subdivisions.

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

H.B. 1071 amends the Property Code to authorize the extension of deed restrictions in certain residential real estate subdivisions by the written consent of the owners of a majority of the lots in the subdivision without respect to the number of lots owned by a particular owner. The bill makes its provisions applicable only to a residential real estate subdivision that is located wholly or partly in a municipality with a population of more than two million located in a county with a population of 3.3 million or more and is subject to restrictions, the terms of which provide that the restrictions expire, permit the restrictions to be extended after the initial restriction period expires by consent of the majority of the owners of lots in the subdivision under certain conditions, and do not expressly provide for or expressly prohibit successive extensions of the restrictions after the initial extension period expires.

H.B. 1071 authorizes consent for extensions of deed restrictions under the bill's provisions to be reflected by an owner's signature on a petition or written ballot and sets out procedures for the distribution of petitions, written ballots, or both to the owners of lots in a subdivision, requirements for obtaining signatures, and the deadline by which petitions or written ballots must be filed for record in the county in which the subdivision is located. The bill limits the extension of restrictions under the bill's provisions to only once during each unexpired extension period.

H.B. 1071 authorizes the vote of multiple owners of a lot to be reflected by the signature of one of the owners and establishes that, after an owner signs a petition or ballot, the owner's subsequent conveyance of the owner's interest in a lot or unplatted real property in the subdivision does not affect the validity of the signature for the purpose of consenting to the extension or termination of restrictions. The bill authorizes restrictions to be extended under these provisions without the creation of or action by a property owners' association, homeowners association, community association, civic club, or similar organization.

H.B. 1071 makes the effective date of an extension of restrictions under the bill's provisions the date the petitions, written ballots, or both, as applicable, sufficient to reflect the required consent are filed and recorded in the real property records of the county in which the subdivision is

located. The bill establishes that an extension of restrictions under the bill's provisions, subject to provisions relating to the termination of restrictions, is for a period equal to the original term of the restrictions or a shorter period agreed to by the owners of a majority of the lots in a subdivision in the signed petitions or written ballots.

H.B. 1071 authorizes restrictions extended under its provisions to be terminated before their expiration date if certain requirements are met. The bill authorizes any petitions or written ballots used to extend such restrictions to provide that the restrictions may be terminated only on one or more termination dates specified in those forms or that the petitions or ballots, sufficient to reflect the required consent to termination, must be filed for record before a time specified in those forms.

H.B. 1071 makes an extension of restrictions under the bill's provisions binding on all lots and all unplatted real property in the subdivision without regard to whether the owner or owners of any individual lot or unplatted real property signify consent to extend the restrictions. The bill makes inapplicable to such restrictions any statute authorizing a property owner to opt out of the restrictions and makes an extension of restrictions under the bill's provisions binding on a lienholder or a person who acquires title to property at a foreclosure sale or by deed from a foreclosing lienholder. The bill establishes that any provision in an extended restriction that is void and unenforceable under the United States Constitution is considered as if the provision was never contained in the restrictions.

H.B. 1071 authorizes the procedure provided by the original restrictions for the initial extension of those restrictions, in addition to the procedure for extending restrictions as provided by the bill, to be used for successive extensions of the original restrictions in certain circumstances and specifies the term for such an extension. The bill establishes that the procedure provided by the bill's provisions for the extension or termination of restrictions is cumulative of and not in lieu of any other method by which restrictions of a subdivision to which the bill's provisions apply may be added to, modified, created, extended, or terminated.

H.B. 1071 requires its provisions and any petition or ballot made or action taken in connection with an attempt to comply with its provisions to be liberally construed to effectuate the intent of the provisions and the petition, ballot, or action. The bill requires a deed restriction that is extended under its provisions to be liberally construed to give effect to the restriction's purposes and intent. The bill provides for the meaning of "lienholder," "owner," "restrictions," and "residential real estate subdivision" or "subdivision" by reference to the use of those terms in provisions of the bill relating to the procedure for successive extensions of restrictions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.