

BILL ANALYSIS

C.S.H.B. 449
By: Dukes
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2011, many parts of Texas experienced what was reported to be the worst one-year drought on record. During a drought, maintaining a green lawn and a lush landscape becomes particularly water-intensive and expensive, and bans and limits on outdoor watering, while necessary and often mandatory in such a time, only add to the burden of upkeep. In response to these challenges, many Texas homeowners have become increasingly interested in landscape alternatives that require less water to maintain. Interested parties contend, however, that despite some progress many covenants and restrictions of property owners' associations continue to present a barrier for homeowners who wish to transition to a drought-resistant and less water-intensive landscape and lawn. C.S.H.B. 449 seeks to address this issue by protecting a homeowner's right to install a drought-resistant landscape or water-conserving natural turf.

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.H.B. 449 amends Property Code provisions relating to the prohibition of certain restrictive covenants applicable to certain property owners' associations. The bill prohibits a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from using drought-resistant landscaping or water-conserving natural turf. The bill establishes that provisions relating to the prohibition of certain restrictive covenants do not prohibit a property owners' association from requiring an owner to submit a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the property owners' association to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision. The bill prohibits a property owners' association from unreasonably denying or withholding approval of a proposed installation of drought-resistant landscaping or water-conserving natural turf or from unreasonably determining that the proposed installation is aesthetically incompatible with other landscaping in the subdivision.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 449 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 580, Local Government Code, is amended by adding Section 580.0021 to read as follows:

Sec. 580.0021. RESTRICTIONS ON XERISCAPING. (a) In this section, "xeriscaping" has the meaning assigned by Section 202.013, Property Code.

(b) The governing body of a municipality or county may not enact an ordinance or order that prohibits or unreasonably restricts, or enforce an ordinance or order in a manner that prohibits or unreasonably restricts, a property owner from xeriscaping the owner's property.

SECTION 2. Chapter 202, Property Code, is amended by adding Section 202.013 to read as follows:

Sec. 202.013. XERISCAPING. (a) In this section, "xeriscaping" means a landscaping method that maximizes the conservation of water by using plants that are appropriate to the site and efficient water-use techniques. The term includes:

- (1) planning and design;
- (2) appropriate choice of plants;
- (3) soil analysis;
- (4) soil improvement using compost;
- (5) efficient and appropriate irrigation;
- (6) practical use of turf;
- (7) appropriate use of mulches; and
- (8) proper maintenance.

(b) A property owners' association may not adopt a provision in a dedicatory instrument that prohibits or unreasonably restricts, or enforce a provision in a dedicatory instrument in a manner that prohibits or unreasonably restricts, a property owner from xeriscaping the owner's property.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

No equivalent provision.

SECTION 1. Section 202.007, Property Code, is amended by amending Subsections (a) and (d) and adding Subsection (d-1) to read as follows:

(a) A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:

- (1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush,

or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system; ~~or~~

(3) implementing efficient irrigation systems, including underground drip or other drip systems; or

(4) using drought-resistant landscaping or water-conserving natural turf.

(d) This section does not:

(1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the device on the property owner's property where there is reasonably sufficient area to install the device;

(2) require a property owners' association to permit a device described by Subdivision (1) to be installed in or on property:

(A) owned by the property owners' association;

(B) owned in common by the members of the property owners' association; or

(C) in an area other than the fenced yard or patio of a property owner;

(3) prohibit a property owners' association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes;

(4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti;

(5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;

(6) require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:

(A) the property is:

(i) owned by the property owners' association;

(ii) owned in common by the members of the property owners' association; or

(iii) located between the front of the property owner's home and an adjoining or adjacent street; or

(B) the barrel or system:

(i) is of a color other than a color

consistent with the color scheme of the property owner's home; or

(ii) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured; ~~[or]~~

(7) restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if:

(A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and

(B) there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance; ~~or~~

(8) prohibit a property owners' association from requiring an owner to submit a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the property owners' association to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision.

(d-1) A property owners' association may not unreasonably deny or withhold approval of a proposed installation of drought-resistant landscaping or water-conserving natural turf under Subsection (d)(8) or unreasonably determine that the proposed installation is aesthetically incompatible with other landscaping in the subdivision.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 2. Same as introduced version.