

BILL ANALYSIS

C.S.S.B. 1845
By: Miles
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding certain mixed-use real estate developments that are subject to restrictive covenants that are difficult to amend or modify. It has been suggested that certain laws relating to property owners' associations may not appropriately address this issue with regard to these developments. C.S.S.B. 1845 seeks to address the unique nature of these developments by providing for the amendment of declarations of certain mixed-use real estate developments located in certain municipalities and counties.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1845 amends the Property Code to require an amendment of a declaration of a mixed-use real estate development, as defined by the bill, that is located in a municipality with a population of two million or more and a county with a population of 3.3 million or more to be approved by a vote of a majority of the total votes allocated to property owners entitled to vote on the amendment, except that a lower approval requirement in the declaration controls, if applicable. The bill authorizes a declaration that is silent as to voting rights for an amendment to be amended by a vote of that majority.

C.S.S.B. 1845 establishes that, while the mixed-use real estate development has a current developer, as defined by the bill, an amendment made to the declaration under the bill's provisions requires the current developer to consent to the amendment to be valid. The bill prohibits a bylaw of an applicable development from being amended to conflict with the bill's provisions and establishes that the bill's provisions supersede any conflicting requirement in a dedicatory instrument. The bill establishes that its provisions prevail to the extent of any conflict with another Property Code provision relating to restrictive covenants and apply to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

C.S.S.B. 1845 exempts the following from its provisions:

- a mixed-use real estate development that includes single-family residential properties; and
- a condominium subject to the Condominium Act or the Uniform Condominium Act.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1845 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a provision making the bill's provisions applicable to a mixed-use real estate development located in a municipality with a population of two million or more. The substitute exempts a mixed-use real estate development that includes single-family residential properties or a condominium subject to the Condominium Act or the Uniform Condominium Act from the bill's provisions.

The substitute does not include as a specification in the bill's applicability provision that a development to which the bill's provisions apply is a development in which property owners are subject to mandatory membership in a property owners' association but the substitute revises the definition of "mixed-use real estate development" to specify that such a development, among other things, is a development that is governed by a property owners' association and that is subject to a dedicatory instrument that:

- requires mandatory membership in the property owners' association;
- authorizes the property owners' association to collect a regular assessment on all or a majority of the property in the development;
- requires the approval of owners of more than:
 - 90 percent of the ground area constituting the development to change a provision of the dedicatory instrument governing the permitted use of a property; or
 - 60 percent of the ground area constituting the development to change a provision of the dedicatory instrument that is not related to the permitted use of a property; and
- provides that voting for an amendment is based on the number of acres owned by each owner.

The substitute further revises the definition of "mixed-use real estate development" as a development that contains at least 200 acres and not more than 250 acres of deed-restricted property composed of at least 20 separate tracts or parcels of property. The substitute specifies that, for purposes of the revised definition, the commercial properties included as a development are properties that constitute at least 70 percent of the total land area of the development. The substitute includes office properties that constitute at least 50 percent of the total land area of the development in the revised definition.

The substitute includes a provision establishing that an amendment made to a declaration requires the current developer to consent to the amendment to be valid while the mixed-use real estate development has a current developer. The substitute includes a definition of "current developer."