

## **BILL ANALYSIS**

C.S.H.B. 2274  
By: Johnson, Ann  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Subdivisions developed in the 1950s and after may have detailed deed restrictions that can be extended indefinitely and may also be amended with the consent of a majority or supermajority of the owners in the subdivision. However, many older subdivisions have basic deed restrictions that do not explicitly provide for unlimited extensions or for any kind of amendment. Additionally, many older subdivision deed restrictions also still contain exclusionary language regarding race, religion, and national origin that have since been found to be unenforceable under the U.S. Constitution.

The inability of owners to extend or amend their deed restrictions in older subdivisions, in which no zoning regulations apply, creates uncertainty in living conditions and discourages investments in those subdivisions. C.S.H.B. 2274 seeks to remedy this issue by providing for the extension or amendment of deed restrictions in certain older subdivisions. The bill also provides for a mechanism by which outdated and exclusionary clauses in older subdivision deed restrictions may be disregarded and removed.

### **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.H.B. 2274 amends the Property Code to provide for the extension or amendment of deed restrictions in certain older subdivisions, as described by the bill, wholly or partly located in a municipality with a population of two million or more.

C.S.H.B. 2274 authorizes an extension or amendment of restrictions in a dedicatory instrument for an applicable subdivision without action by a property owners' association. The bill establishes that the amendment of restrictions includes the adoption of new restrictions or the modification or removal of existing restrictions. The bill prohibits an amendment of restrictions from creating a property owners' association with mandatory membership and makes such an amendment void. The bill, with respect to the extension or amendment of restrictions, does the following:

- authorizes a procedure in a dedicatory instrument for an initial extension of the original restrictions to be used for successive extensions of the original restrictions unless the dedicatory instrument expressly prohibits the procedure from being used;

- prohibits a procedure from being used to provide for automatic extensions if the dedicatory instrument prohibits the procedure from being used for that purpose;
- establishes that a provision in a dedicatory instrument that prohibits the extension of an existing restriction during a certain period does not apply to a successive extension under a procedure for initial extension of original restrictions;
- authorizes an extension to be for a period equal to the term of the original restriction or a shorter period and provide for additional automatic extensions of the term of the restrictions for a period of not more than 10 years for each extension; and
- authorizes a dedicatory instrument that provides for the extension and does not provide for amendments to be amended, including by amending the provision providing for the extension.

C.S.H.B. 2274 authorizes the extension or amendment by a petition or ballots that indicate the written consent of the owners of at least 66.6 percent of the total number of separately owned parcels or tracts in the subdivision, regardless of whether the parcels or tracts contain part or all of one or more platted lots or combination of lots. A restriction that is so extended or amended applies to all sections of the subdivision, including any annex, to the extent that the extended or amended restriction expressly applies to the entire subdivision, regardless of whether:

- each section has separate restrictions; or
- each owner is a member of the property owners' association.

If the original restrictions for a subdivision contain a lower percentage to extend or amend the restrictions, the percentage in the original restrictions controls.

C.S.H.B. 2274 provides for the method of distribution for the petition or ballots and the effective date of an extension or amendment of a restriction. The bill establishes that an owner's signature on a petition or ballot conclusively establishes the owner's consent and provides the following regarding the effect of the owner's signature and the effective date of an extension or an amendment under the bill's provisions:

- the vote of multiple owners of a lot, parcel, or tract may be reflected by the signature of one of the owners;
- after an owner signs a petition or ballot for an extension or amendment of a restriction, the owner's subsequent conveyance of the owner's interest in real property in the subdivision covered by the extension or amendment does not affect the validity of the signature for the purposes of the petition or ballot; and
- an extension or amendment of a restriction under the bill's provisions takes effect on the date the extension or amendment and the petition or ballots that reflect the written consent of the required number of owners in the subdivision for the adoption of the extension or amendment are filed and recorded in the real property records of the county in which the subdivision is located.

C.S.H.B. 2274, with respect to the applicability of an extension or amendment, provides the following:

- an extension or amendment of a restriction is binding on a lot, parcel, or tract in the subdivision as provided by the restriction, regardless of whether the owner or owners of the lot, parcel, or tract consented to the extension or amendment;
- an owner may not opt out of the applicability to the owner's property of a restriction that is extended or amended under the bill's provisions; and
- an extension or amendment is binding on a lienholder or a person who acquires title to property at a foreclosure sale or by deed from a foreclosing lienholder.

C.S.H.B. 2274 establishes the following:

- if a provision in extended restrictions is void and unenforceable under the U.S. Constitution or statutory provisions relating to discriminatory provisions, the restrictions are considered as if the void and unenforceable provision was never contained in the restrictions;

- the procedure provided by the bill's provisions for the extension or amendment is cumulative of and not in lieu of any other method by which restrictions of a subdivision to which the bill applies may be extended or amended;
- the bill's provisions and any petition or ballot made or action taken in connection with an attempt to comply with the bill's provisions must be liberally construed to effectuate the intent of the provisions and the petition, ballot, or action; and
- a restriction that is extended or amended under the bill's provisions must be liberally construed to give effect to the restriction's purposes and intent.

C.S.H.B. 2274 applies to an older subdivision in an applicable municipality that:

- had original restrictions that:
  - did not have an express procedure that provides for successive extensions of the restrictions;
  - did not have an express procedure for amending the restrictions;
  - could not be amended without certain unanimous consent; and
  - may no longer be valid due to an inability to extend or amend the restrictions; and
- has a single property owners' association in which all owners in the subdivision are eligible for membership but in which membership is not mandatory.

C.S.H.B. 2274 applies to a restriction regardless of the date on which the restriction was created and supersedes any contrary requirement for the extension or amendment of a restriction in a dedicatory instrument of a subdivision to which the bill's provisions apply. The bill sets out certain applicable definitions and legislative findings and establishes the purposes of its provisions.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

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

While C.S.H.B. 2274 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions which were not included in the original prohibiting an amendment of restrictions from creating a property owners' association with mandatory membership and making such an amendment void.

The substitute changes the definition of "older subdivision" in the original to specify that the applicable recorded map or plat filed in the county real property records is a map or plat filed before 1947, rather than before 1950 as specified in the original.