

BILL ANALYSIS

C.S.H.B. 92
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Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The COVID-19 pandemic and Winter Storm Uri forced Texans to retreat into their homes. At the height of the pandemic, grocery store shelves were empty and access to medical care was limited. During the winter storm, many Texans went without lifesaving heat and life-sustaining potable water for days. These recent events have proven that access to the most basic human needs like food and water cannot be guaranteed during times of widespread crisis. The fundamental role of government being the protection of life and property, it is incumbent upon the legislature to ensure Texans are not restricted in their ability to fend for themselves or provide for their families, including by local red tape. C.S.H.B. 92 seeks to address this issue by providing for a prohibition against a municipality, county, or property owners' association adopting or enforcing a regulation that prohibits certain activities on residence homestead property, including the growing of produce, the raising or keeping of certain animals, and the installation of certain devices.

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. 92 amends the Local Government Code and Property Code to prohibit a municipality or county and a property owners' association, respectively and except as provided by the bill, from adopting or enforcing an order, ordinance, resolution, rule, or other regulation, or a restrictive covenant, that prohibits any of the following activities on residence homestead property, defined by the bill as real property that is all or part of a residence homestead:

- growing fruits and vegetables;
- raising or keeping the following:
 - six or fewer chickens or domestic chickens, as applicable; or
 - six or fewer adult rabbits;
- installing for on-site use:
 - a solar energy device;
 - a rainwater harvesting system; or
 - a standby electric generator; or
- applicable only to a property owners' association, producing food at a cottage food production operation.

C.S.H.B. 92 authorizes a municipality or county to impose reasonable regulations, and a property owners' association to adopt and enforce a restrictive covenant imposing reasonable requirements, on the growing of fruits and vegetables on residence homestead property that do not have the effect of prohibiting that growing in a residence's rear yard, including a requirement that the growing area be maintained in good condition if visible from the street faced by the property or from an adjoining lot.

C.S.H.B. 92 authorizes a municipality or county to impose reasonable regulations, and a property owners' association to adopt and enforce a restrictive covenant imposing reasonable requirements, on the raising or keeping of chickens or rabbits on residence homestead property to control odor, noise, safety, or sanitary conditions that do not have the effect of prohibiting the raising or keeping of the chickens or rabbits, including the following:

- a limit on the number of chickens or rabbits that is more than:
 - the minimum number allowed by the bill; or
 - a total combined number of eight chickens and rabbits, subject to the bill's limits for each type of animal;
- a prohibition on raising or keeping a rooster;
- the minimum distance between an animal shelter and a residential structure other than the animal owner's own residence;
- a requirement for fencing or shelter sufficient to contain the chickens or rabbits on the owner's residence homestead property;
- minimum requirements for combined housing and outdoor space of at least 20 square feet per chicken and nine square feet per rabbit;
- a requirement to address sanitary conditions in a manner that prevents accumulation of animal waste in a quantity sufficient to create an offensive odor or attract pests; or
- a requirement that the chickens or rabbits may only be kept in the rear yard of a residence.

C.S.H.B. 92 voids a municipal or county order, ordinance, resolution, rule, or other regulation, or a restrictive covenant provision, that violates the bill's provisions.

C.S.H.B. 92 expressly does not do the following:

- restrict a property owners' association from regulating the size and shielding of, or the materials used in the construction of, an animal shelter that is visible from a street, another lot, or a common area if the restriction does not prohibit the economic installation of the animal shelter on the property owner's residence homestead property; or
- require a property owners' association to permit the growing of fruits or vegetables or the raising or keeping of chickens or rabbits on property that is owned by the association or owned in common by the association's members.

C.S.H.B. 92 exempts a condominium unit from the bill's municipality and county provisions and exempts the following from the bill's property owners' association provisions:

- a condominium council of owners governed by the Condominium Act; and
- a unit owners' association governed by the Uniform Condominium Act.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 92 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a prohibition against a municipality or county from adopting or enforcing an order, ordinance, resolution, rule, or other regulation that prohibits specified activities on residence homestead property, whereas the introduced included only a prohibition against a municipality or county from adopting or enforcing such an ordinance.

With regard to activities allowed on residence homestead property:

- whereas the introduced provided for the raising or keeping of domestic fowl, the substitute instead provides for the raising or keeping of chickens with respect to a municipality or county and for the raising or keeping of domestic chickens with respect to a property owners' association; and
- the substitute does not provide for the installation for on-site use of the following whereas the introduced provided for such installation:
 - a wind-powered energy device;
 - an underground shelter; and
 - rain barrels.

With regard to the reasonable regulations or requirements that a municipality, county, or property owners' association may impose on the growing of fruits and vegetables on residence homestead property that do not have the effect of prohibiting the growing in the yard of a residence, the introduced provided for the growing in the front, side, or rear yard whereas the substitute only provides for the growing in the rear yard. The substitute does not include as such a reasonable regulation or requirement that was present in the introduced a requirement for the trimming or removal of a tree as necessary for the maintenance of a utility easement.

With regard to the reasonable regulation or requirement that a municipality, county, or property owners' association may impose to require applicable animals only be kept in the yard of a residence, the introduced specified the side or rear yard whereas the substitute specifies only the rear yard.

The substitute does not include provisions that were present in the introduced establishing that the bill's provisions expressly do not restrict a property owners' association from doing the following:

- regulating or prohibiting the installation of signage by a cottage food operation; or
- regulating parking or vehicular or pedestrian traffic associated with a cottage food operation.