

BILL ANALYSIS

C.S.H.B. 1786
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A constituent in House District 58 had an issue in his area where a group of people got a subdivision's restrictive covenant changed by gathering enough signatures of the property owners within the subdivision without having to notify the entire area of the proposed change. Too often, property owners such as this constituent are subject to changes in restrictive covenants without being notified of these changes. This is extremely burdensome to the property owner, because they cannot comply with restrictions they do not know exist. C.S.H.B. 1786 seeks to address this issue by prohibiting the dedicatory instruments of a residential subdivision that does not require membership in a property owners' association from being amended unless notice of the proposed amendment is provided to each property owner in the subdivision.

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. 1786 amends the Property Code to prohibit the dedicatory instruments of a residential subdivision, including a deed containing a restrictive covenant, that does not require membership in a property owners' association from being amended unless notice of the proposed amendment is provided by certified mail, return receipt requested, to each property owner in the subdivision, at the owner's mailing address according to the records of the appraisal district in which the property is located. The bill requires that this notice:

- contain the text of the amendment;
- contain a ballot that the owner may return to an address stated on the ballot in order to cast the owner's vote;
- state a deadline to return the ballot, which may not be less than 60 days after the date the notice is sent; and
- identify an individual or entity who will tabulate the ballots and include the individual's or entity's mailing address.

The bill requires the individual or entity who tabulates the ballots to retain the ballots for at least 180 days after the deadline provided in the notice. If within that ballot retention period a property owner in the subdivision sends a request by certified mail, return receipt requested, to the ballot tabulator at the address included in the notice, the ballot tabulator must provide the owner a copy of all ballots in electronic or paper form. The bill prohibits an amendment that receives the required vote in order to be adopted in accordance with the terms of the dedicatory instrument from being filed of record until the 30th day after the expiration of the ballot retention period.

The bill establishes that these provisions supersede any contrary requirement in a dedicatory instrument.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1786 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 provisions regarding the procedures for amending the restrictive covenants of a residential subdivision without a mandatory property owners' association, including a provision requiring notice of a proposed amendment to be given that includes a ballot to cast a vote on the proposition, a provision instituting a ballot retention period during which the ballots cast may be requested by any property owner in the subdivision, and a provision prohibiting an amendment from being filed of record until 30 days after the retention period has ended. Other than the bill's effective date provision, the substitute does not include any provisions from the introduced, which required notice to be given by a property owners' association of any newly adopted or amended restrictive covenant before the new or amended restrictive covenant may be enforced.