

## **BILL ANALYSIS**

C.S.S.B. 1668  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Condominium owners' associations could benefit from some of the changes made to the statutes governing property owners' associations by the passage of S.B. 1588 during the 87th Legislature, Regular Session. Current statutory language has separate requirements for property owners' and condominium owners' associations, but broadening the application of changes made by S.B. 1588 would increase clarity regarding the operation of these organizations. C.S.S.B. 1668 seeks to address these concerns by revising provisions relating to condominium owners' and property owners' associations. C.S.S.B. 1668 also further refines changes to the Property Code made by S.B. 1588 in the 87th Legislative Session, including clarifying ways a property owners' association may regulate fencing and further specifying who is eligible to serve on an architectural review committee and the methods by which architectural review committee members may be appointed.

### **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. 1668 amends the Property Code to revise provisions relating to property owners' associations and condominium owners' associations. The bill requires a condominium owners' association to make the current version of the association's dedicatory instruments relating to the association and filed in the county deed records available on a website that is accessible to association members and maintained by the association or a management company on behalf of the association. The requirement applies only to an association of a condominium governed under the Uniform Condominium Act that is composed of at least 60 units or an association that has contracted with a management company.

C.S.S.B. 1668 specifies that the certificate the association is required to record in each applicable county is a management certificate, and the bill includes the following among the information such a management certificate is required to state:

- any amendments to the declaration that created the condominium association;
- the telephone number and email address of any management company;
- the website address of any website on which the association's dedicatory instruments are available; and
- the amount and description of a fee or fees charged to a unit seller or buyer relating to a transfer of a property interest in a unit of the condominium.

C.S.S.B. 1668 requires the association to electronically file the management certificate or an amended management certificate with the Texas Real Estate Commission (TREC) not later than the seventh day after the date an association files such a certificate with the applicable county. The bill requires TREC to only collect the management certificate and amended management certificate for the purpose of making the data accessible to the public through a website. The bill sets out the following with respect to liability for a delay or failure in recording or filing the certificate:

- establishes that the association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to electronically file the management certificate with TREC, unless the delay or failure is wilful or caused by gross negligence; and
- establishes that a unit owner is not liable for attorney's fees incurred by an association relating to the collection of a delinquent assessment against the unit owner, or interest on the delinquent assessment, if the fees are incurred or the interest accrues during the period the management certificate is not recorded with a county clerk or electronically filed with TREC.

A condominium owners' association that has recorded a management certificate or amended management certificate with a county clerk before the bill's effective date is required to electronically file the most recently recorded management certificate or amended management certificate with TREC not later than March 1, 2024.

C.S.S.B. 1668 authorizes a condominium owners' association to charge a reasonable and necessary fee, not to exceed \$375, to furnish a resale certificate to a unit owner other than a declarant who intends to sell a unit.

C.S.S.B. 1668 includes the following among the actions that a property owners' association is not prohibited from taking under the prohibition against adopting or enforcing a restrictive covenant that prevents a property owner from building or installing certain security measures:

- prohibiting the placement of fencing that obstructs a license area as defined by a written license agreement or plat, a sidewalk in the public right-of-way or otherwise installed for public or community use, or a drainage easement or drainage area;
- requiring a driveway gate to be set back at least 10 feet from the right-of-way if the driveway intersects with a laned roadway; and
- if provided by a restrictive covenant, prohibiting the installation of fencing in front of the front-most building line of a dwelling.

The bill authorizes a property owner to maintain any perimeter fencing or fencing in front of a dwelling's front-most building line installed or constructed before September 1, 2023. A property owners' association may not prohibit a property owner from installing perimeter fencing or fencing in front of the front-most building line of a dwelling if the property owner's residential address is exempt from state or federal public disclosure law or the property owner provides to the association documentation from a law enforcement agency of the property owner's need for enhanced security measures.

C.S.S.B. 1668 revises provisions relating to an architectural review authority of a property owners' association that consists of more than 40 lots as follows:

- requires the association to provide notice to the association members soliciting persons interested in serving on the authority no later than the 10th day before the date the association or its governing body takes action to elect or appoint or meets to elect or appoint a person to serve on the authority;
- sets out the required contents of and methods for providing that notice;
- establishes that the date established by an association by which notification of the person's interest in serving on the architectural review authority must be received by the association may not be a date earlier than the 10th day after the date the association provides the notice;

- prohibits a person from being appointed or elected to serve on an authority unless the person timely notifies the unit owners' association of the person's interest in serving on the authority; and
- if a vacancy remains on the architectural review authority after each eligible person is appointed or elected, authorizes the association to appoint any person to fill the vacancy, including a person not otherwise eligible on the grounds that the person is a current board member, a current board member's spouse, or a person residing in a current board member's household.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1668 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 prohibition absent from the engrossed against a property owners' association prohibiting a property owner from installing perimeter fencing or fencing in front of the front-most building line of a dwelling if the property owner's residential address is exempt from state or federal public disclosure law or the property owner provides to the association documentation from a law enforcement agency of the property owner's need for enhanced security measures.

While both the engrossed and substitute include certain actions among the actions that a property owners' association is not prohibited from taking under the prohibition against adopting or enforcing a restrictive covenant that prevents a property owner from building or installing certain security measures, the versions of the bill differ as follows:

- whereas the engrossed version established that a property owners' association is not prohibited from prohibiting the placement of fencing that obstructs a license area as defined by a written license agreement or plat or other dedicatory instrument, the substitute provides that a property owners' association is not prohibited from prohibiting the placement of fencing that obstructs a license area as defined by a written license agreement or plat;
- the substitute includes a specification absent from the engrossed that the sidewalk for which a property owners' association is not prohibited from prohibiting the placement of fencing that obstructs the sidewalk is a sidewalk in the public right-of-way or otherwise installed for public or community use;
- whereas the engrossed established that a property owners' association is not prohibited from requiring a driveway gate to be set back at least 18 feet from a right-of way if the driveway intersects with a laned roadway, the substitute instead establishes that a property owners' association is not prohibited from requiring a driveway gate to be set back at least 10 feet from the right-of-way in such a circumstance; and
- whereas the engrossed established that a property owners' association is not prohibited from prohibiting the installation of certain fencing if provided by a dedicatory instrument, the substitute instead establishes that a property owners' association is not prohibited from prohibiting such installation if provided by a restrictive covenant.

Whereas the engrossed prohibited the date by which a person must notify a property owners' association of the person's interest in serving on the architectural review authority from being earlier than the 10th day after the date the association provides the initial solicitation notice, the substitute instead prohibits the date established by a property owners' association by which a person's interest in serving on the authority must be received by the association from being a date earlier than the 10th day after the date the association provides the initial solicitation notice.