

- SUBJECT:** Prohibiting restrictive covenants from limiting water conservation measures
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 8 ayes — Mowery, J. Jones, Goolsby, Haggerty, Hochberg, Howard, Noriega, Pickett
- 0 nays
- 1 absent — Guillen
- WITNESSES:** For — Joe Dominguez; Calvin R. Finch, San Antonio Water System; Mike Howe, Lakes at Wells Branch Homeowners Association; (*Registered but did not testify:*) Carole D. Baker; Seth Mitchell, Bexar County Commissioners Court; Dan Strub; (*On committee substitute:*) Ken Kramer, Sierra Club Lone Star Chapter
- Against — Connie Heyer, Texas Community Associations Institute; Rebecca Jones, Barton Creek North Property Owners Association; Amy McLin; Cecilia A. Thomas; (*Registered, but did not testify:*) Robert E. Bell; Sue Bell; Orville R. Bevel, Jr., Greater Lake Palestine Council; Martin Hoffman, Texas Neighborhoods Together, Dallas Homeowners League; Ken Nelson, Texas Neighborhoods Together; Ronald D. Richards, Callendes Lake Property Owners Improvement Association; Gary Salas; David M. Smith, Texas Neighborhoods Together, Plano Homeowners Council; David Thomason, Canterbury Trail Neighborhood Association; Jude Wiggins, Cypress Creek United Civic Association; (*On committee substitute, registered, but did not testify:*) Chuck Bailey, Las Colinas Association
- On — Eddy Edmondson, Texas Nursery and Landscape Association
- BACKGROUND:** In some areas, homeowner or property owner associations are formed to provide services for homeowners in exchange for mandatory assessments or dues. Associations can provide street lighting and garbage services, maintain common areas, build and maintain parks and swimming pools, and enforce architectural consistency. The associations are governed by the homes' deed restrictions and by the associations' articles of incorporation, bylaws, and

rules. Deed restrictions and rules generally are enforced through a system of fines for infractions. An association typically is a nonprofit entity governed by a board elected by the homeowners to represent the owners and sometimes the developers.

Under Property Code, sec. 202.001, a dedicatory instrument is a governing instrument covering the establishment, maintenance, and operation of a residential subdivision or any similar planned development. It includes a declaration or instrument subjecting real property to restrictive covenants or bylaws, to properly adopted rules and regulations of the homeowner association, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

DIGEST:

CSHB 645 would prohibit a property owners' association from including or enforcing requirements in a dedicatory instrument that:

- prohibited or restricted a property owner from composting vegetation, using a rainwater harvesting system, installing drip irrigation systems, or installing appurtenances, such as patios, decks, or sidewalks; or
- required a property owner to install an automatic sprinkler system or a minimum amount of turf grass

Any provision violating the prohibition would be void. A property owners' association could restrict the type of turf that a property owner could plant to encourage water conservation.

The bill would not:

- restrict a property owners' association from regulating the installation of a composting device, rain barrel, or other appurtenance, if the regulation did not prohibit installation in an area sufficient to accommodate the device;
- require an association to allow installation of such devices on property owned by the association, owned in common by members of the association, or somewhere other than a property owner's fenced yard or patio;
- prohibit an association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for

- aesthetic purposes;
- prohibit an association from regulating the use of gravel, rocks, or cacti; or
- restrict an association from regulating yard and landscape maintenance, if it did not prohibit landscaping to promote water conservation.

The bill would take effect September 1, 2003. It would apply to a provision in a dedicatory instrument regardless of when it was adopted.

**SUPPORTERS  
SAY:**

CSHB 645 would allow homeowners to choose water-efficient landscapes for their homes. Many homeowner associations currently enforce restrictive covenants that limit a homeowner's ability to implement water-conserving landscape practices or other water conservation measures. For example, some restrictive covenants require planting of Saint Augustine grass, a notoriously thirsty plant, while prohibiting native species or other drought-tolerant varieties. A homeowner should have the right to implement reasonable water conservation measures on their property that conformed to the aesthetic beauty of the neighborhood.

The bill would help to conserve water for the state's growing population. On average, lawn watering is a residential customer's biggest use of water. During the summer months, homeowners can significantly reduce water utility bills through water-efficient landscaping or other conservation measures. Unfortunately, some homeowner associations try to prevent homeowners from implementing measures to conserve water and money.

The bill would not prevent a homeowner association from enforcing restrictive covenants to preserve a neighborhood's aesthetic beauty or property values. A homeowner's association could regulate landscape or yard maintenance, as long as the regulations did not hinder water conservation measures. Moreover, many water-efficient landscapes consist of vegetation as lush and beautiful as Saint Augustine grass and other plants that require a lot of water. Under the bill, homeowner associations still would have ample authority to enforce restrictions to preserve property values.

**OPPONENTS  
SAY:**

This bill would erode the authority of homeowner associations under the guise of water conservation. By reducing their authority, the bill could open the floodgates to unintended consequences, such as irresponsible behavior by

homeowners. For example, a homeowner's property value could suffer because neighbors allowed their yard to grow into a weed garden while claiming it was a water conservation measure. With so many prohibitions on a homeowner association's restrictive covenants, the bill would hinder an association's ability to promote uniformity to enhance a neighborhood's aesthetic appeal. By promoting aesthetic beauty, an association helps homeowners to preserve their property values. Unfortunately, the bill would limit an association's ability to serve this important function.

By applying retroactively, the bill would create problems for homeowner associations that enforced restrictions prior to its effective date. For example, in a neighborhood that was not fully built out, the bill would prevent an association from requiring new residents to install automatic sprinkler systems. However, this would be unfair to existing homeowners who had been required by the association to go through the trouble and expense of installing automatic sprinklers.

NOTES:

The companion bill, SB 779 by Armbrister, has been referred to Senate Natural Resources.

The substitute made a number of changes to the original, including:

- allowing a home owner association to restrict the type of drought tolerant turf grass planted by a homeowner; and
- specifying powers of a homeowners association that the bill would not restrict.