

- SUBJECT:** Amending procedures for governing certain residential subdivisions.
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 8 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Miller, Solomons, Workman
- 0 nays
- 1 absent — Quintanilla
- WITNESSES:** For — Ernie Bogart; Linda Laughinghouse, McElureath Landowners Association; David Smith, Texas Neighborhoods Together; (*Registered, but did not testify*: Janet Ahmad, Home Owners for Better Building National President; Ed Dupnick)
- Against — None
- On — Nancy Hentschel
- BACKGROUND:** Property Code, ch. 211 regulates the amendment and enforcement of deed restrictions in certain subdivisions. It applies to a residential real estate subdivision or any unit or parcel of the subdivision located wholly or partly within an unincorporated area of a county if the county has a population of less than 65,000. Ch. 211 applies only to restrictions affecting real property within a residential real estate subdivision that, by the express terms of the instrument creating the restrictions:
- are not subject to a procedure by which the restrictions may be amended; or
 - may not be amended without the unanimous consent of all property owners in the subdivision or all property owners in a unit or parcel of the subdivision.
- DIGEST:** HB 663 would specify that the determination of whether a county's population was less than 65,000 for determining if Property Code, ch. 211 applied to the subdivision would be based on the federal 2000 decennial census or a later federal decennial census.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS
SAY:

HB 663 would remedy a real problem for a limited number of older subdivisions in small to medium-sized counties that do not have any procedure for amending the restrictive covenants under which the subdivision was formed. The bill would establish that if a subdivision were located in a county that had a population of less than 65,000 as of the 2000 federal decennial census, ch. 211 would continue to apply to that subdivision.

Without the procedures made available in state law, landowners in some subdivisions are prevented from responding to current land use needs that in some instances affect the health and safety of the residents. Most jurisdictions have provisions that allow amendment of restrictions, covenants, and conditions, but current law does not apply to all of them. For example, a subdivision in a county with a population under 50,000 may modify the covenants, conditions, and restrictions not otherwise provided for in the restrictions themselves. A subdivision located in a county with a population of more than 70,000, depending on its location, may not be allowed to modify the restrictions not otherwise provided for in the restrictions themselves .

Many rural counties have fallen out of statutory regulation because of growing populations. Now the only way for them to amend the restrictions is by unanimous vote of the landowners, which is nearly impossible in many cases. Using older census population data would allow medium-sized counties to be covered under the statutory category that allows an amendment process.

Most of the covenant restrictions were written in the 1950s and 1960s, and many do not even apply today. Many older subdivisions have older infrastructure and were not adequately designed in the first place. Many are outside the boundaries of a city with roads that are not up to county standards, and the county has no responsibility for maintaining the roads. It is up to the residents of the subdivision to upgrade the roads, and if one person does not vote to do so, nothing can be done unless a handful of residents decide to take it on themselves.

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HB 663 would allow a continuation in certain counties of a democratic procedure for amending a subdivision's restrictive covenants by allowing a property owners' association of a residential subdivision, if it did not have a procedure, to amend the restrictive covenants upon a vote of two-thirds of the voting landowners. It would also help remove impediments that some lenders see as undesirable.

**OPPONENTS
SAY:**

Instead of applying existing statutory regulation to a larger number of subdivisions, as HB 663 would do, the Legislature should adopt uniform guidelines for all subdivisions. The amendment of restrictions, covenants, and conditions of restrictive covenants is a patchwork of laws that does not treat all subdivisions uniformly. Whether a subdivision is located near a county with a population that is above or below a certain number should have no bearing on how it is permitted to amend the subdivision's restrictions, covenants, and conditions.