

SUBJECT: Allowing modification of restrictions in certain real estate developments

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero

0 nays

1 absent — Villalba

WITNESSES: For — Michael Beaty and Jeffory Blackard, Blackard Global; Steven Gomez, Pharaoh Valley Neighborhood Association; (*Registered, but did not testify*: Marilyn Jordan, Blackard Global, Inc.; Hugo Berlanga, JMP Corpus LLC; Julián Muñoz Villarreal and David M. Smith, Texas Neighborhoods Together; Pete Moore, Windridge Real Estate)

Against — John Greytok, Concerned Pharaoh Valley Homeowners; Gay Gilson; Claude Gilson; Todd Muenster; Lewis Smith

On — Pam Bailey, Texas Community Association Advocates

DIGEST: CSHB 2594 would create a process for certain communities to change restrictions that applied to neighborhood golf courses. Under the bill, “amenity property” would mean real property that was restricted to be used as a golf course or country club by a dedicatory instrument. “Dedicatory instrument” would mean a governing instrument that restricted the use of amenity property, designated other real property as a beneficiary of that restriction, and addressed the maintenance and operation of the amenity property.

The bill would allow a restriction on the use of amenity property to be changed by petition. The change to the restriction would be adopted if at least 75 percent of the owners of the total number of lots of real property or units of condominium in the development, including the owner of the amenity property, voted in favor of the change.

A petition for a change to a restriction could be circulated if for at least three years the amenity property had either not been operating or maintained or was in a dilapidated or substandard condition and if the owner of the amenity property had received all required zoning approvals for any proposed redevelopment.

The bill would require a petition to include certain information, such as the text of both the current and proposed restriction and the deadline to vote. Each owner of a lot or unit and each owners' association in the development would receive a copy of the petition from the petition circulator.

An owner could cast a vote only by delivering a signed statement to the petition circulator that included certain information, such as the owner's name and address and a statement indicating whether the owner was in favor of or against the change.

The bill would require a petition circulator to certify the result of the votes by filing an affidavit with the county clerk of the county where the relevant restriction was filed. The affidavit would contain certain information, such as the text of both the original and changed restriction and the number of votes in favor of and against the proposed change.

The recording of the affidavit would constitute notice that the restriction was changed, and the circulator would deliver a copy of the affidavit to each person who lived within 200 feet of the amenity property. The changed restriction would take effect on either the date the affidavit was filed or any effective date specified in the petition, whichever was later.

The bill would not apply if a dedicatory instrument already included a procedure to change an amenity property restriction by 100 percent approval of the owners in the development or if a restriction could be amended under the procedures provided in relevant code for condominiums, subdivisions, or property owners' associations.

The bill would take effect September 1, 2015, and would apply only to a

petition circulated on or after that date.

**SUPPORTERS
SAY:**

CSHB 2594 would increase property values for home owners in developments. Since the recession of 2008, many recreational businesses have closed, including golf courses that were built as part of residential communities with houses and condominiums. This is a statewide issue that needs to be resolved. Property Code, sec. 201 offers a process to change these restrictions that is similar to the one proposed in the bill, but it applies only to subdivisions with houses, not condominiums.

The bill would allow communities with golf courses to change the relevant restrictions to allow the property to be used for other purposes, such as retail space or a hotel. This would remove the negative effects caused by dilapidated and neglected golf courses and increase the property values of surrounding homes.

The bill would not take away property rights from owners because a restriction could be changed only if it received 75 percent, or a vast majority, of the vote of all affected property owners.

**OPPONENTS
SAY:**

CSHB 2594 would take away the rights of property owners who bought their homes because they were assured that a golf course would be in the development forever. The bill would allow golf course property to be used for other purposes. This not only would disrupt the peaceful surroundings in which these owners invested, but it also would lower property values because the fact that any restrictions could be changed would create uncertainty about how the surrounding property could be used in the future.

The bill would be unfair because it would give the owner of each condominium unit of a vote, which could allow a relatively small block of real estate to determine the fate of the entire development.