

BILL ANALYSIS

Senate Research Center

S.B. 1845
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1845 applies to certain mixed-use real estate developments located within Harris County in which property owners are subject to mandatory membership in a property owners association. Mixed-use real estate developments are unique in that they can include a variety of uses such as office, hotel, light industrial, manufacturing, and retail uses.

Certain mixed-use real estate developments are subject to restrictive covenants that contain restrictions that are extremely difficult, if not impossible, to amend or modify. Some require 90 percent or more of the owners to consent to an amendment. Moreover, traditional property owners' association laws do not appropriately address that issue in such mixed-use real estate developments. Other Property Code sections permit amendment by lower percentages.

S.B. 1845 is intended to address the unique nature of certain mixed-use real estate developments and establishes a new section of the Property Code relating to the amendment of dedicatory instruments of certain mixed-use real estate developments in property owners associations. (Original Author's/Sponsor's Statement of Intent)

S.B. 1845 amends current law relating to the amendment of the dedicatory instruments of certain mixed-use real estate developments.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 11, Property Code, by adding Chapter 214, as follows:

CHAPTER 214. AMENDMENT OF DEDICATORY INSTRUMENTS OF CERTAIN MIXED-USE REAL ESTATE DEVELOPMENTS

Sec. 214.001. DEFINITIONS. Defines "current developer," "declaration," "dedicatory instrument," "mixed-use real estate development," and "property owners' association."

Sec. 214.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to a mixed-use real estate development that is located in:

- (1) a municipality with a population of two million or more; and
- (2) a county with a population of 3.3 million or more.

(b) Provides that this chapter does not apply to:

- (1) a mixed-use real estate development that includes single-family residential properties; or

(2) a condominium subject to Chapter 81 (Condominiums Created Before Adoption of Uniform Condominium Act) or 82 (Uniform Condominium Act).

(c) Provides that this chapter applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

Sec. 214.003. AMENDMENT OF DEDICATORY INSTRUMENT. (a) Provides that this section supersedes any conflicting requirement in a dedicatory instrument of a mixed-use real estate development.

(b) Provides that, to the extent of any conflict with another provision of this title (Restrictive Covenants), this section prevails.

(c) Authorizes a declaration of a mixed-use real estate development, except as provided by Subsection (d), to be amended only by a vote of a majority of the total votes allocated to property owners entitled to vote on the amendment of the declaration.

(d) Provides that, if the declaration contains a lower approval requirement than prescribed by Subsection (c), the approval requirement in the declaration controls. Authorizes the declaration, if the declaration is silent as to voting rights for an amendment, to be amended by a vote of a majority of the total votes allocated to property owners entitled to vote on the amendment of the declaration.

(e) Provides that, while the mixed-use real estate development has a current developer, an amendment made to the declaration under this section requires the current developer to consent to the amendment to be valid.

(f) Prohibits a bylaw of a mixed-use real estate development from being amended to conflict with this section.

SECTION 2. Effective date: September 1, 2019.