

BILL ANALYSIS

C.S.S.B. 238
By: West
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Property owners' associations (HOAs) are intended to maintain common areas in residential neighborhoods and to protect homeowners' investments in their property by enforcing certain aesthetic guidelines. In recent years, however, many homeowners have become dissatisfied with the operation of their associations. Often, homeowners feel frustrated in attempts to challenge an association board decision due to a lack of information.

C.S.S.B. 238 sets forth remedies available to a homeowner if a property owner's association board fails to comply with requirements to make its books and records, including financial records, reasonably available to a homeowner. The bill requires an association to keep such books and records in a building that is accessible to a homeowner during certain times or to provide other access to the information.

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. 238 amends Property Code provisions relating to the availability of the records of a property owners' association to clarify that those provisions do not apply to certain property owners' associations that are subject to state public information laws. The bill specifies that the requirement for an association to make its books and records, including financial records, reasonably available to an owner are for the owner's examination; adds to that requirement that the association make the records open to an owner; removes language establishing that this requirement is in accordance with provisions of the Texas Non-Profit Corporation Act; and entitles an owner to copies of information contained in the association's books and records.

C.S.S.B. 238 requires a property owners' association to maintain a copy of the association's books and records, including financial records and invoices, in a building in which the books and records are appropriately stored and that is staffed during normal business hours and accessible to members of the association during those hours, and located on property commonly owned by the association within the boundaries of the subdivision governed by the association. The bill establishes that, if such a building does not exist on property that meets those requirements, the association is required to make the books and records available to a requesting party within a reasonable time after the association receives the request, which is considered to be 10 business days after receipt. The bill requires a party requesting association books or records to submit the request in writing to a current board member or to the mailing address of the association or its authorized representative as provided on the most current management certificate. The bill requires an association, if the association is unable to produce a requested book or record on or before the 10th business day after the date the information is requested, to provide to the requestor notice that informs the requestor that the association is unable to produce the information on or before the 10th business day after the date of the request and states a date by

which the information will be available for inspection that occurs not later than the 30th day after the date the notice is given. The bill requires an association to make books and records available to the requestor in one or more of the following formats as agreed on by the requestor and the association: an electronic format delivered to an electronic mail address provided by the requestor or delivered in a disc or other standard format to the mailing address of the requestor or, if the requesting party does not provide a mailing address, to the address of the requestor's property in the subdivision; or a hard-copy format delivered to the mailing address of the requestor or, if the requesting party does not provide a mailing address, mailed to the address of the requestor's property in the subdivision or made available at a location not more than 50 miles from the boundary of the county in which the requestor's property is located. The bill establishes that these provisions do not require an association to staff a building described under these requirements.

C.S.S.B. 238 authorizes an association to charge an owner for copies of the requested information in an amount that reasonably includes all costs related to reproducing the information, including costs of materials, labor, and overhead. The bill prohibits any information maintained by the association that is released under the bill's provisions from identifying an individual member of an association or an individual's personal financial information. The bill authorizes information to be released in an aggregate manner that would not identify an individual property owner. The bill requires an association to keep all records as to changes to the dedicatory instruments in perpetuity and to maintain records related to financial matters of the association, including assessments, fines, foreclosures, and enforcement actions for at least seven years. The bill authorizes an association member who is denied access to or copies of association books or records to which the member is entitled to file a petition for such access with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located. The bill requires the justice of the peace, if the justice finds that the member is entitled to such access, to order the association to provide the access or copies requested by the member and to pay the court costs and the member's reasonable attorney's fees and court costs. The bill defines "business day."

EFFECTIVE DATE

January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 238 differs from the original by clarifying that provisions relating to property owners' association records do not apply to certain property owners' associations that are subject to state public information laws and that an association is required to make its books and records open to and reasonably available for examination by an owner, rather than in accordance with the Texas Non-Profit Corporation Act or a successor to that statute as in the original. The substitute adds a provision not included in the original entitling an owner to copies of information contained in the books and records of an association.

C.S.S.B. 238 omits a provision included in the original requiring books and records stored in the required storage building to be made available within three business days of a request by a member of the association.

C.S.S.B. 238 omits language included in the original requiring notice of an association's inability to produce a requested book or record within a specified period to be provided not later than the 10th business day after the date the association receives the request. The substitute differs from the original by requiring such notice to state a date by which the information will be available for inspection to occur not later than the 30th day after the date of such notice, rather than state a date reasonable in light of the nature, age, and quantity of records requested and the staffing and other resources available to the association as in the original.

C.S.S.B. 238 adds a provision not in the original requiring a party requesting association books or records to submit the request in writing to a current board member or to the mailing address of the association or authorized representative provided on the most current management certificate.

C.S.S.B. 238 differs from the original by specifying that the format in which a requested book or record is made available is agreed upon by the requestor and the association, whereas the original establishes that the format is specified by the requestor.

C.S.S.B. 238 adds provisions not in the original relating to the delivery of a hard-copy format of a requested book or record.

C.S.S.B. 238 differs from the original by authorizing a hard-copy format to be made available at a location not more than 50 miles from the boundary of the county in which the requestor's property is located if the requesting party does not provide a mailing address, whereas the original requires a hard-copy format to be made available for review by the requesting party at a location not farther than 25 miles from the boundary of the subdivision governed by the association.

C.S.S.B. 238 adds a provision not in the original authorizing an association to charge an owner for copies of the requested information.

C.S.S.B. 238 adds provisions not in the original prohibiting any information maintained by the association that is released from identifying an individual member of an association or an individual's personal financial information and authorizing information to be released in an aggregate manner that would not identify an individual property owner.

C.S.S.B. 238 adds a provision not in the original requiring an association to keep all records as to changes to the dedicatory instruments in perpetuity and to maintain records related to financial matters of the association for at least seven years.

C.S.S.B. 238 differs from the original by authorizing an association member who is denied access to or copies of association books and records to file a petition with the appropriate justice of the peace and requiring, if the justice finds for the member, to order the association to provide the access and pay the court costs and the member's reasonable attorney's fees and court costs, whereas the original authorizes an owner to seek one or more remedies that include a court order directing the association, a judgment against the association for a penalty of not more than \$1,500, a judgment against the association for court costs and attorney's fees incurred in connection with seeking a remedy under these provisions, or a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under the other remedies from any future regular or special assessments payable to the association.