

BILL ANALYSIS

Senate Research Center

H.B. 2761
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

An estimated 57 million Americans live in more than 200,000 community associations, including approximately 4.8 million Texans paying assessments in amounts that total \$3.2 billion annually. A property owners' association may be classified as a condominium association, a cooperative association, or a homeowners' association. In Texas, these entities are regulated under the Property Code. As the popularity of homeowners' associations increases, so does the potential for abuse. Existing statutory provisions regarding these associations do not provide adequate protections for homeowners.

H.B. 2671 seeks to ensure the basic private property rights of individuals residing within community associations by changing statutory provisions regarding to provide access to association books and records, including financial documents.

H.B. 2761 amends current law relating to meetings and records of certain property owners' associations.

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 Section 209.005, Property Code, as follows:

Sec. 209.005. ASSOCIATION RECORDS. (a) Provides that this section does not apply to a property owners' association that is subject to Chapter 552 (Public Information), Government Code, by application of Section 552.0036 (Certain Property Owners' Associations Subject to Law), Government Code.

(b) Creates this subsection from existing text. Requires a property owners' association to make the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or an owner's attorney or certified public accountant, rather than reasonably available to an owner, in accordance with this section, rather than Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, V.T.C.S.). Entitles an owner to obtain from the association copies of information contained in the books and records

(c) Redesignates existing Subsection (a-1) as Subsection (c). Requires a property owners' association described by Section 552.0036(2) (relating to conditions under which a property owners' association is subject to this chapter in the same manner as a governmental body), Government Code, to make the books and records of the association, including financial records, reasonably available to any person requesting access to the books or records in accordance with Chapter 552, Government Code. Deletes existing text providing that Subsection (a) does not apply to a property owners' association to which this subsection applies.

(d) Redesignates existing Subsection (b) as Subsection (d). Makes no further changes.

(e) Requires an owner or the owner's authorized representative to submit a written request for access or information under Subsection (b) by certified mail or other evidence of mailing or delivery, with sufficient particularity detailing the association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004 (Management Certificates). Requires that the request contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and:

(1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, is required to send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are required to be retained by the association; or

(2) if copies of identified books and records are requested, the association is required to, to the extent those books and records are required to be retained by the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

(f) Requires the property owners' association, if the association is unable to produce the books or records requested under Subsection (f) on or before the 10th business day after the date the association receives the request, to provide to the requestor written notice that:

(1) informs the requestor the reason that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 30th business day after the date notice under this subsection is given.

(g) Requires that the inspection, if an inspection is requested or required, take place at a mutually agreed on time during normal business hours, and requires the requesting party to identify the books and records for the association to copy and forward to the requesting party.

(h) Authorizes a property owners' association to produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(i) Provides that an owner is responsible for actual costs related to compilation and reproduction of the requested information in an amount that reasonably includes all actual costs related to compilation and reproduction of the information, including costs of materials, labor, and overhead, but may not exceed costs that would be applicable for an item under Section 70.3 (Charges for Providing Copies of Public Information), Administrative Code. Authorizes the association to require advance payment of the costs of compilation and reproduction.

(j) Provides that, except as provided by Subsection (l), the association is not required, other than in meeting minutes, to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an

individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Authorizes information to be released in an aggregate or summary manner that would not identify an individual property owner.

(k) Requires that the books and records described by Subsection (k) be released or made available for inspection if:

(1) the express written approval of the owner whose records are the subject of the request for inspection is provided to the association; or

(2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

(l) Requires a property owners' association composed of more than 12 lots to adopt a records retention policy that, except as provided by this subsection, conforms to the records retention schedule adopted by the Texas State Library and Archives Commission applicable to all local governments. Authorizes an association's records retention policy to require a class of records to be retained longer than would otherwise be required under this subsection.

SECTION 2. Amends Chapter 209, Property Code, by adding Section 209.0051, as follows:

Sec. 209.0051. OPEN BOARD MEETINGS. (a) Requires that meetings of the governing body of a property owners' association (board) be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Requires that the general nature of any business be considered in executive session first be announced at the open meeting.

(b) Provides that, unless the declaration, bylaws, or certificate of formation of the association provide otherwise:

(1) a meeting of the board is authorized to be held by any method of communication, including electronic and telephonic, if:

(A) notice of the meeting has been given as required by law;

(B) each director may hear and be heard by every other director; and

(C) the meeting does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue; and

(2) the board is authorized to act by unanimous written consent of all the directors, without a meeting, if:

(A) the board action does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue; and

(B) a record of the board action is filed with the minutes of board meetings.

(c) Requires that members be given notice of the date, hour, place, and general subject of a regular, emergency, or special board meeting, including a general description of any matter to be brought up for deliberation in executive session.

(d) Provides that this section does not apply to meetings of the board during a development period. Defines, for purposes of this subsection, "development period."

(e) Provides that an action taken by a board at a meeting held in violation of this section is voidable.

SECTION 3. (a) Makes application of Section 209.005, Property Code, as amended by this Act, prospective.

(b) Makes application of Section 209.005(m), Property Code, as added by this Act, prospective.

SECTION 4. Effective date: January 1, 2012.