

## **BILL ANALYSIS**

C.S.H.B. 2761  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Many property owners' associations have the power to make assessments, enforce land use regulations, contract on behalf of their members, sue and be sued on behalf of their members, maintain streets and facilities, operate security services, and perform other such functions. Given the potential consequences of an association's decision-making regarding the exercise of such powers, it is reasonable to expect an association to adhere to reasonable recordkeeping and open meetings practices. C.S.H.B. 2761 seeks to address these matters by establishing requirements for property owners' association document retention policies, access to association records, and the conduct of open meetings by such associations.

### **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.H.B. 2761 amends the Property Code to extend the requirement for a property owners' association to make the association's books and records, including financial records, reasonably available to an owner to include making such books and records open to and reasonably available for examination by an owner's attorney or certified public accountant, as well as the owner, in accordance with applicable statutory provisions. The bill entitles an owner to obtain from the association copies of information contained in the books and records. The bill makes its provisions relating to association records applicable to all property owners' associations, other than those subject to provisions of the state's open records law, and establishes that such provisions control over other law not specifically applicable to a property owners' association.

C.S.H.B. 2761 requires an owner or the owner's attorney or certified public accountant to submit a written request for access or information by certified mail, 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. The bill requires the request to 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.

C.S.H.B. 2761 requires the association, if an inspection is requested, on or before the 10th business day after the date the association receives the request, to send written notice of dates during normal business hours that the owner is authorized to inspect the requested books and records to the extent those books and records are required to be retained by the association, or, if copies of identified books and records are requested, to 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, to the extent those books and records are required to be retained by the association. The bill requires the association, if the association is unable to produce the requested books or records on or before the 10th business day after the date the association receives a request, to

provide to the requestor written notice informing the requestor that the association is unable to produce the information by the specified deadline and stating 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 is given.

C.S.H.B. 2761 requires an inspection, if an inspection is requested or required, to 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. The bill authorizes a property owners' association to produce requested books and records in hard copy, electronic, or other format reasonably available to the association. The bill establishes that an owner is responsible for costs related to compilation and reproduction of the requested information in an amount that reasonably includes all related costs, including costs of materials, labor, and overhead.

C.S.H.B. 2761 authorizes the association to require advance payment of the estimated costs of compilation and reproduction. The bill requires the association, if the estimated costs are lesser or greater than actual costs, to submit a final invoice to the owner on or before the 30th business day after the date the information is delivered to the requestor. The bill authorizes the additional amounts, if the final invoice includes additional amounts due from the owner and if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, to be added to the owner's account as an assessment. The bill entitles the owner to a refund if the estimated costs exceeded the final invoice amount and requires the refund to be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

C.S.H.B. 2761 establishes that 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. The bill authorizes the release of information in an aggregate or summary manner that would not identify an individual property owner. The bill requires such books and records to be released or made available for inspection if the express written approval of the owner whose records are the subject of the request for inspection is provided to the association or a court orders the release of the books and records or orders that the books and records be made available for inspection. The bill requires a property owners' association composed of more than 12 lots to adopt a records retention policy that conforms to the records retention schedule adopted by the Texas State Library and Archives Commission applicable to all local governments. The bill authorizes an association's records retention policy to require a class of records to be retained longer than would otherwise be required under these provisions.

C.S.H.B. 2761 requires meetings of the governing board of a property owners' association to be open to owners, subject to the board's right 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. The bill requires the general nature of any business to be considered in executive session to first be announced at the open meeting. The bill authorizes a meeting of the board to be held by any method of communication, including electronic and telephonic, under the following conditions: notice of the meeting has been given as required by law; each director may hear and be heard by every other director; and 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.

C.S.H.B. 2761 authorizes the board to act by unanimous written consent of all the directors, without a meeting, if 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 a record of the board action is filed with the minutes of board meetings. The bill requires an association, on the written request of an owner, to inform the owner of the time and place of the next regular or special meeting of the board. The bill requires the association, if the association representative to whom the request is made does not know the time and place of the meeting, to promptly obtain the information and disclose it to the owner or inform the owner where the information may be obtained. The bill exempts meetings of the board during a development period from the bill's provisions.

C.S.H.B. 2761 defines "development period."

C.S.H.B. 2761 makes conforming and nonsubstantive changes.

### **EFFECTIVE DATE**

January 1, 2012.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2761 contains a provision not included in the original requiring a property owners' association composed of more than 12 lots to adopt a records retention policy that conforms to the records retention schedule adopted by the Texas State Library and Archives Commission applicable to all local governments and authorizing an association's records retention policy to require a class of records to be retained longer than would otherwise be required.

C.S.H.B. 2761 omits provisions included in the original authorizing a property owners' association to adopt a document retention policy that supersedes the bill's provisions, setting out retention period requirements for the retention of books and records by a property owners' association in the absence of the adoption of a document retention policy, and establishing that those retention period requirements do not apply to a property owners' association that is composed of 12 or fewer lots.

C.S.H.B. 2761 differs from the original by defining "development period," whereas the original references a statutory provision as defining development period.

C.S.H.B. 2761 differs from the original in a transition provision by making its provisions applicable only with respect to records generated on or after the bill's effective date, whereas the original makes its provisions applicable to books and records generated on or after that date.