

BILL ANALYSIS

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C.S.H.B. 2761
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Committee Report (Substituted)

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.

C.S.H.B. 2761 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.

C.S.H.B. 2761 amends current law relating to meetings, elections, 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, except as provided by Subsection (b), this section applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association.

(b) 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.

(c) Creates this subsection from existing text. Requires a property owners' association, notwithstanding a provision in a dedicatory instrument, to make the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or a person designated in writing signed by the owner as the owner's agent, 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

(d) Redesignates existing Subsection (b) as Subsection (d). Provides that, except as provided by this subsection, an attorney's files and records relating to the association, excluding invoices requested by an owner under Section 209.008(d), are not records of the association and are not subject to inspection by the owner

or to production in a legal proceeding. Requires that a document, if a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. Provides that this subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

(e) Requires an owner or the owner's authorized representative described by Subsection (c) to submit a written request for access or information under Subsection (b) by certified mail with sufficient detail describing the property owners' 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 in the possession, custody, or control of 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 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 property owners' 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) Requires a property owners' association to adopt a records production and copying policy that prescribes the costs the association will charge for compilation, production, and reproduction of information requested under this section. Provides that the prescribed charges is authorized to include all reasonable costs of materials, labor, and overhead but is prohibited from exceeding costs that would be applicable for an item under 1 T.A.C. Section 70.3 (Charges for Providing Copies of Public Information). Requires that the policy

required by this subsection be recorded as a dedicatory instrument in accordance with Section 202.006 (Public Records). Prohibits an association from charging an owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. Provides that an owner is responsible for costs related to compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. Authorizes the association to require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. Requires the association, if the estimated costs are lesser or greater than the actual costs, to submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. Authorizes the additional amounts, if the final invoice includes additional amounts due from the owner, 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. Entitles the owner, if the estimated costs exceeded the final invoice amount, to a refund, and requires that the refund be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

(j) Requires a property owners' association to estimate costs under this section using amounts prescribed by the policy adopted under Subsection (i).

(k) Provides that, except as provided by Subsection (l) to the extent the information is provided in the meeting minutes, the property owners' association is not required 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.

(l) 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.

(m) Requires a property owners' association composed of more than 14 lots to adopt and comply with a records retention policy that includes, at a minimum, the following requirements:

- (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants are required to be retained permanently;
- (2) financial books and records are required to be retained for seven years;
- (3) account records of current owners are required to be retained for five years;
- (4) contracts with a term of one year or more are required to be retained for four years after the expiration of the contract term;
- (5) minutes of meetings of the owners and the board are required to be retained for seven years; and

(6) tax returns and audit records are required to be retained for seven years.

(n) Authorizes a member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section to file a petition 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 requesting relief in accordance with this subsection. Authorizes the justice of the peace, if the justice of the peace finds that the member is entitled to access to or copies of the records, to grant one or more of the following remedies:

(1) a judgment ordering the property owners' association to release or allow access to the books or records;

(2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or

(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivision (2) from any future regular or special assessments payable to the property owners' association.

(o) Entitles the property owners' association, if the association prevails in an action under Subsection (n), to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(p) Requires a person, on or before the 10th business day before the date the person brings an action against a property owners' association under this section, to send written notice to the association of the person's intent to bring the action. Requires that the notice:

(1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004; and

(2) describe with sufficient detail the books and records being requested.

(q) Defines, for purposes of this section, "business day."

Deletes existing Subsection (a-1) requiring 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.

SECTION 2. Amends Chapter 209, Property Code, by adding Section 209.0051 and 209.0056, as follows:

Sec. 209.0051. OPEN BOARD MEETINGS. (a) Provides that this section does not apply to a property owners' association that is subject to Chapter 551 (Open Meetings), Government Code, by application of Section 551.0015 (Certain Property Owners' Associations Subject to Law), Government Code.

(b) Defines, in this section, "board meeting" and "development period."

(c) Requires that regular and special board meetings be open to owners, subject to the right of the governing board of a property owners' association (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 property owners' 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 any decision made in an executive session, following the executive session, be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. Requires that the oral summary include a general explanation of expenditures approved in executive session.

(c-1) Requires that a board meeting, except for a meeting held by electronic or telephonic means under Subsection (h), be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

(d) Requires the board to keep a record of each regular or special board meeting in the form of written minutes of the meeting. Requires the board to make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

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

(1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least 72 hours before the start of the meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members:

(i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website maintained by the association or other Internet media;

(B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

(f) Provides that it is an owner's duty to keep an updated e-mail address registered with the property owners' association under Subsection (e)(2)(B).

(g) Provides that if the board recesses a regular, or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. Requires the board, if a regular or special board meeting is continued to the following regular business day, and on that following day the

board continues the meeting to another day, to give notice of the continuation in at least one manner prescribed by Subsection (e)(2)(A) within two hours after adjourning the meeting being continued.

(h) Authorizes a board to meet by any method of communication, including electronic and telephonic, without prior notice to owners under Subsection (e), if each director may hear and be heard by every other director, or the board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. Requires that any action taken without notice to owners under Subsection (e) be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. Prohibits the board, without prior notice to owners under Subsection (e), from considering or voting on:

- (1) fines;
- (2) damage assessments;
- (3) initiation of foreclosure actions;
- (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- (5) increases in assessments;
- (6) levying of special assessments;
- (7) appeals from a denial of architectural control approval; or
- (8) a 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.

(i) Provides that this section applies to a meeting of a property owners' association board during the development period only if the meeting is conducted for the purpose of:

- (1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the associations;
- (2) increasing the amount of regular assessments of the association or adopting or increasing a special assessment;
- (3) electing non-developer board members of the association or establishing a process by which those members are elected; or
- (4) changing the voting rights of members of the association.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a) Requires a property owners' association, not later than the 10th day or earlier than the 60th day before the date of an election or vote, to give written notice of the election or vote to:

- (1) each owner of property in the property owners' association, for purposes of an association-wide election or vote; or
- (2) each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involved election of representatives of

the association who are vested under the dedicatory instruments of the property owners' association with the authority to elect or appoint board members of the property owners' association.

(b) Provides that this section supersedes any contrary requirement in a dedicatory instrument.

(c) Provides that this section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

SECTION 3. Amends Section 209.009, Property Code, to prohibit a property owners' association from foreclosing a property owners' association's assessment lien if the debt securing the lien consists solely of certain amounts, including amounts added to the owner's account as an assessment under Section 209.005(i).

SECTION 4. Amends Chapter 209, Property Code, by adding Section 209.014, as follows:

Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO CALL REGULAR MEETING. (a) Requires a board, notwithstanding any provision in a dedicatory instrument, to call an annual meeting of the members of the property owners' association.

(b) Authorizes an owner, if a board does not call an annual meeting of the association members, to demand that a meeting of the association members be called not later than the 30th day after the date of the owner's demand. Requires that the owner's demand be made in writing and sent by certified mail, return receipt request to the registered agent of the property owners' association and to the association at the address for the association according to the most recently filed management certificate. Requires that a copy of the notice be sent to each property owner who is a member of the association.

(c) Authorizes three or more owners, if the board does not call a meeting of the members of the property owners' association on or before the 30th day after the date of a demand under Subsection (b), to form an election committee. Requires the election committee to file written notice of the committee's formation with the county clerk of each county in which the subdivision is located.

(d) Requires that a notice filed by an election committee contain:

(1) a statement that an election committee has been formed to call a meeting of owners who are members of the property owners' association for the sole purpose of electing board members;

(2) the name and residential address of each committee member; and

(3) the name of the subdivision over which the property owners' association has jurisdiction under a dedicatory instrument.

(e) Requires each committee member to sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

(f) Requires the county clerk to enter on the notice the date the notice is filed and record the notice in the county's real property records.

(g) Authorizes only one committee in a subdivision to operate under this section at one time. Provides that, if more than one committee in a subdivision files a notice, the first committee that files a notice, after having complied with all other requirements of this section, is the committee with the power to act under this section. Provides that a committee that does not hold or conduct a successful

election within four months after the date the notice is filed with the county clerk is dissolved by operation of law. Provides that an election held or conducted by a dissolved committee is ineffective for any purpose under this section.

(h) Authorizes the election committee to call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. Provides that notice, quorum, and voting provisions contained in the bylaws of the property owners' association apply to any meeting called by the election committee.

SECTION 5. (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.

(c) Provides that Section 209.014, Property Code, as added by this Act, applies to a property owners' association created before, on, or after the effective date of this Act.

SECTION 6. Effective date: January 1, 2012.