

BILL ANALYSIS

Senate Research Center

S.B. 472
By: West
Intergovernmental Relations
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Property owners' associations are intended to maintain common areas in residential neighborhoods and to protect homeowners' investments in their properties by enforcing certain aesthetic guidelines. In recent years, however, many homeowners have become dissatisfied with the operation of their associations. In particular, many homeowners feel left out of board elections due to provisions in association dedicatory instruments that prohibit homeowners from voting for certain reasons and disallow homeowners from running for positions on the association's board. In addition, as electronic voting has become more palatable, current statutory provisions have not kept pace with technological advances. S.B. 472 attempts to restore confidence in the property owners' association election process by ensuring that all homeowners have the right to vote and participate in the management of their association. It also updates statutory provisions to reflect modernized association voting practices.

S.B. 472 amends current law relating to voting practices and elections of 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 209.003, Property Code, by adding Subsection (e), to provide that Sections 209.0058 and 209.00593 do not apply to a property owners' association that is a mixed use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines.

SECTION 2. Amends Chapter 209, Property Code, by adding Section 209.0041, as follows:

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) Defines, in this section, "development period."

(b) Provides that this section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(c) 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.

(d) Provides that this section does not apply to the amendment of a declaration during a development period.

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

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

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

(h) Authorizes a declaration to be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law, except as provided by this subsection. Provides that if the declaration contains a lower percentage, the percentage in the declaration controls.

(i) Prohibits a bylaw from being amended to conflict with the declaration.

SECTION 3. Amends Chapter 209, Property Code, by adding Sections 209.0058, 209.0059, 209.00592, 209.00593, and 209.00594, as follows:

Sec. 209.0058. **BALLOTS.** (a) Requires that any vote cast in an election or vote by a member of a property owners' association be in writing and signed by the member.

(b) Provides that electronic votes cast under Section 209.00593 constitute written and signed ballots.

(c) Provides that written and signed ballots, in an association-wide election, are not required for uncontested races.

Sec. 209.0059. **RIGHT TO VOTE.** (a) Provides that a provision in a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(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.

Sec. 209.00592. **BOARD MEMBERSHIP.** (a) Provides that except as provided by Subsection (b), a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association (board) is void.

(b) Provides that if a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

Sec. 209.00593. **VOTING; QUORUM.** (a) Authorizes the voting rights of an owner to be cast or given:

(1) in person or by proxy at a meeting of the property owners' association;

(2) by absentee ballot in accordance with this section;

(3) by electronic ballot in accordance with this section; or

(4) by any method of representative or delegated voting provided by a dedicatory instrument.

(b) Provides that an absentee or electronic ballot:

(1) is authorized to be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;

(2) is prohibited from being counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and

(3) is prohibited from being counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

(c) Requires that a solicitation for votes by absentee ballot include an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action; instructions for delivery of the completed absentee ballot, including the delivery location; and certain language relating to voting by absentee ballot. Sets forth the required language regarding absentee voting.

(d) Defines for the purposes of this section "electronic ballot."

(e) Requires that a notice of the posting, if an electronic ballot is posted on an Internet website, be sent to each owner that contains instructions on obtaining access to the posting on the website.

(f) Provides that this section supersedes any contrary provision in a dedicatory instrument.

(g) 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.

Sec. 209.00594. TABULATION OF AND ACCESS TO BALLOTS. (a) Prohibits a person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, notwithstanding any other provision of this chapter or any other law, from tabulating or otherwise being given access to the ballots cast in that election or vote except as provided by this section.

(b) Authorizes a person other than a person described by Subsection (a) to tabulate votes in an association election or vote but prohibits the person from disclosing to any other person how an individual voted.

(c) Authorizes a person other than a person who tabulates votes under Subsection (b), including a person described by Subsection (a), notwithstanding any other provision of this chapter or any other law, to be given access to the ballots cast in the election or vote only as part of a recount process authorized by law.

SECTION 4. Provides that Sections 209.0059, 209.00592(a), and 209.00593, Property Code, as added by this Act, apply to a provision in a dedicatory instrument enacted before, on, or after the effective date of this Act.

SECTION 5. Effective date: September 1, 2011.