

BILL ANALYSIS

S.B. 472
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Among the functions of a property owners' association is the maintenance of common areas in residential neighborhoods and the protection of a homeowner's investments in residential property by enforcing certain aesthetic guidelines. In recent years, however, reports indicate that many homeowners have become dissatisfied with the operation of their associations. In particular, observers contend, many homeowners feel disenfranchised with respect to board elections because of provisions in dedicatory instruments that prohibit homeowners from voting for certain reasons and disallow homeowners from running for positions on the association's board. Furthermore, according to interested parties, current statutory provisions have not kept pace with technological advances relating to electronic voting, which may contribute to the reported dissatisfaction with the conduct of association elections. 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 and by including provisions for alternative voting practices, including the use of electronic ballots.

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

S.B. 472 amends the Property Code to require any vote cast in an election under the Texas Residential Property Owners Protection Act or vote by a member of a property owners' association to be in writing and signed by a member. The bill establishes that electronic votes constitute written and signed ballots and that written and signed ballots are not required for uncontested races in an association-wide election.

S.B. 472 establishes 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. The bill exempts a property owners' association that is subject to the state's open records law by application of statutory provisions that make such an association subject to that law in the same manner as a governmental body under certain conditions from this statutory provision relating to the right to vote.

S.B. 472 establishes that a provision in a dedicatory instrument restricting a property owner's right to run for a position on the board of a property owners' association is void, with the exception of a board member who becomes immediately ineligible to serve on the board, is automatically considered removed from the board, and is prohibited from future service on the board if the board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that the board member has been convicted of a felony or crime involving moral turpitude.

S.B. 472 authorizes the voting rights of an owner to be cast or given in person or by proxy at a

meeting of the property owners' association, by absentee ballot, by electronic ballot, or by any method of representative or delegated voting provided by a dedicatory instrument. The bill authorizes an absentee or electronic ballot to be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot. The bill prohibits an absentee or electronic ballot 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 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. The bill requires a solicitation for votes by absentee ballot to 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 ballot, including the delivery location; and a specified advisory notice relating to the effect of casting a vote via absentee ballot if a meeting is held and if there are amendments to the proposals on the ballot. The bill requires a notice of posting, if an electronic ballot is posted on an Internet website, to be sent to each owner with instructions on obtaining access to the website posting. The bill establishes that its provisions relating to voting and a quorum supersede any contrary provision in a dedicatory instrument and exempts from these provisions a property owners' association that is subject to the state's open records law by application of certain statutory provisions. The bill defines "electronic ballot" for purposes of the bill's provisions relating to voting and a quorum.

S.B. 472 makes its provisions relating to ballot requirements, board membership, and voting and a quorum applicable to a provision in a dedicatory instrument enacted before, on, or after the bill's effective date. The bill exempts from its provisions relating to ballots and voting and a quorum 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.

EFFECTIVE DATE

September 1, 2011.