

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Garza, Howard of Fort Bend

H.B. No. 2761

A BILL TO BE ENTITLED

AN ACT

1

2 relating to meetings and records of certain property owners'  
3 associations.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 209.005, Property Code, is amended to  
6 read as follows:

7 Sec. 209.005. ASSOCIATION RECORDS. (a) This section does  
8 not apply to a property owners' association that is subject to  
9 Chapter 552, Government Code, by application of Section 552.0036,  
10 Government Code.

11 (b) A property owners' association shall make the books and  
12 records of the association, including financial records, open to  
13 and reasonably available for examination by [to] an owner, or an  
14 owner's attorney or certified public accountant, in accordance with  
15 this section. An owner is entitled to obtain from the association  
16 copies of information contained in the books and records [Section  
17 ~~B, Article 2.23, Texas Non-Profit Corporation Act (Article~~  
18 ~~1396-2.23, Vernon's Texas Civil Statutes)]~~.

19 (c) [~~(a-1)~~] A property owners' association described by  
20 Section 552.0036(2), Government Code, shall make the books and  
21 records of the association, including financial records,  
22 reasonably available to any person requesting access to the books  
23 or records in accordance with Chapter 552, Government Code[~~-~~  
24 ~~Subsection (a) does not apply to a property owners' association to~~

1 ~~which this subsection applies].~~

2       (d) [~~(b)~~] An attorney's files and records relating to the  
3 association, excluding invoices requested by an owner under Section  
4 209.008(d), are not:

- 5           (1) records of the association;  
6           (2) subject to inspection by the owner; or  
7           (3) subject to production in a legal proceeding.

8       (e) An owner or the owner's authorized representative must  
9 submit a written request for access or information under Subsection  
10 (b) by certified mail or other evidence of mailing or delivery, with  
11 sufficient particularity detailing the association's books and  
12 records requested, to the mailing address of the association or  
13 authorized representative as reflected on the most current  
14 management certificate filed under Section 209.004. The request  
15 must contain an election either to inspect the books and records  
16 before obtaining copies or to have the property owners' association  
17 forward copies of the requested books and records and:

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

24           (2) if copies of identified books and records are  
25 requested, the association shall, to the extent those books and  
26 records are required to be retained by the association, produce the  
27 requested books and records for the requesting party on or before

1 the 10th business day after the date the association receives the  
2 request, except as otherwise provided by this section.

3 (f) If the property owners' association is unable to produce  
4 the books or records requested under Subsection (f) on or before the  
5 10th business day after the date the association receives the  
6 request, the association must provide to the requestor written  
7 notice that:

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

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

16 (g) If an inspection is requested or required, the  
17 inspection shall take place at a mutually agreed on time during  
18 normal business hours, and the requesting party shall identify the  
19 books and records for the association to copy and forward to the  
20 requesting party.

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

24 (i) An owner is responsible for actual costs related to  
25 compilation and reproduction of the requested information in an  
26 amount that reasonably includes all actual costs related to  
27 compilation and reproduction of the information, including costs of

1 materials, labor, and overhead, but may not exceed costs that would  
2 be applicable for an item under Section 70.3, Administrative Code.  
3 The association may require advance payment of the costs of  
4 compilation and reproduction.

5 (j) Except as provided by Subsection (l), the association is  
6 not required, other than in meeting minutes, to release or allow  
7 inspection of any books or records that identify the dedicatory  
8 instrument violation history of an individual owner of an  
9 association, an owner's personal financial information, including  
10 records of payment or nonpayment of amounts due the association, an  
11 owner's contact information, other than the owner's address, or  
12 information related to an employee of the association, including  
13 personnel files. Information may be released in an aggregate or  
14 summary manner that would not identify an individual property  
15 owner.

16 (k) The books and records described by Subsection (k) shall  
17 be released or made available for inspection if:

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

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

24 (l) A property owners' association composed of more than 12  
25 lots shall adopt a records retention policy that, except as  
26 provided by this subsection, conforms to the records retention  
27 schedule adopted by the Texas State Library and Archives Commission

1 applicable to all local governments. An association's records  
2 retention policy may require a class of records to be retained  
3 longer than would otherwise be required under this subsection.

4 SECTION 2. Chapter 209, Property Code, is amended by adding  
5 Section 209.0051 to read as follows:

6 Sec. 209.0051. OPEN BOARD MEETINGS. (a) Meetings of the  
7 board must be open to owners, subject to the right of the board to  
8 adjourn a board meeting and reconvene in closed executive session  
9 to consider actions involving personnel, pending or threatened  
10 litigation, contract negotiations, enforcement actions,  
11 confidential communications with the association's attorney,  
12 matters involving the invasion of privacy of individual owners, or  
13 matters that are to remain confidential by request of the affected  
14 parties and agreement of the board. The general nature of any  
15 business to be considered in executive session must first be  
16 announced at the open meeting.

17 (b) Unless the declaration, bylaws, or certificate of  
18 formation of the association provide otherwise:

19 (1) a meeting of the board may be held by any method of  
20 communication, including electronic and telephonic, if:

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

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

25 (C) the meeting does not involve voting on a  
26 fine, damage assessment, appeal from a denial of architectural  
27 control approval, or suspension of a right of a particular owner

1 before the owner has an opportunity to attend a board meeting to  
2 present the owner's position, including any defense, on the issue;  
3 and

4 (2) the board may act by unanimous written consent of  
5 all the directors, without a meeting, if:

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

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

14 (c) Members shall be given notice of the date, hour, place,  
15 and general subject of a regular, emergency, or special board  
16 meeting, including a general description of any matter to be  
17 brought up for deliberation in executive session.

18 (d) This section does not apply to meetings of the board  
19 during a development period. For purposes of this subsection,  
20 "development period" means a period stated in a declaration during  
21 which a declarant reserves:

22 (1) a right to facilitate the development,  
23 construction, and marketing of the subdivision; and

24 (2) a right to direct the size, shape, and composition  
25 of the subdivision.

26 (e) An action taken by a board at a meeting held in violation  
27 of this section is voidable.

1           SECTION 3. (a) Section 209.005, Property Code, as amended  
2 by this Act, applies only to a request for information received by a  
3 property owners' association on or after the effective date of this  
4 Act. A request for information received by a property owners'  
5 association before the effective date of this Act is governed by the  
6 law in effect immediately before the effective date of this Act, and  
7 that law is continued in effect for that purpose.

8           (b) Section 209.005(m), Property Code, as added by this Act,  
9 applies only with respect to records generated on or after the  
10 effective date of this Act. Records generated before the effective  
11 date of this Act are governed by the law in effect immediately  
12 before the effective date of this Act, and that law is continued in  
13 effect for that purpose.

14           SECTION 4. This Act takes effect January 1, 2012.

# ADOPTED

MAY 24 2011

*Atty. Gen.*  
Secretary of the Senate

By: Roger Wey

H.B. No. 2761

Substitute the following for H.B. No. 2761 :

By: Roger Wey

C.S. H.B. No. 2761

## A BILL TO BE ENTITLED

1 AN ACT  
2 relating to meetings, elections, and records of certain property  
3 owners' associations.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 209.005, Property Code, is amended to  
6 read as follows:

7 Sec. 209.005. ASSOCIATION RECORDS. (a) Except as provided  
8 by Subsection (b), this section applies to all property owners'  
9 associations and controls over other law not specifically  
10 applicable to a property owners' association.

11 (b) This section does not apply to a property owners'  
12 association that is subject to Chapter 552, Government Code, by  
13 application of Section 552.0036, Government Code.

14 (c) Notwithstanding a provision in a dedicatory instrument,  
15 a [A] property owners' association shall make the books and records  
16 of the association, including financial records, open to and  
17 reasonably available for examination by [to] an owner, or a person  
18 designated in a writing signed by the owner as the owner's agent,  
19 attorney, or certified public accountant, in accordance with this  
20 section. An owner is entitled to obtain from the association copies  
21 of information contained in the books and records [Section B,  
22 Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23,  
23 Vernon's Texas Civil Statutes)].

24 (d) Except as provided by this subsection, an [(a-1) A



1 ~~property owners' association described by Section 552.0036(2),~~  
2 ~~Government Code, shall make the books and records of the~~  
3 ~~association, including financial records, reasonably available to~~  
4 ~~any person requesting access to the books or records in accordance~~  
5 ~~with Chapter 552, Government Code. Subsection (a) does not apply to~~  
6 ~~a property owners' association to which this subsection applies.~~

7 ~~[(b) An]~~ attorney's files and records relating to the  
8 property owners' association, excluding invoices requested by an  
9 owner under Section 209.008(d), are not[+]

10 ~~[(1)]~~ records of the association and are not[+]

11 ~~[(2)]~~ subject to inspection by the owner[+] or

12 ~~[(3) subject to]~~ production in a legal proceeding. If  
13 a document in an attorney's files and records relating to the  
14 association would be responsive to a legally authorized request to  
15 inspect or copy association documents, the document shall be  
16 produced by using the copy from the attorney's files and records if  
17 the association has not maintained a separate copy of the document.  
18 This subsection does not require production of a document that  
19 constitutes attorney work product or that is privileged as an  
20 attorney-client communication.

21 (e) An owner or the owner's authorized representative  
22 described by Subsection (c) must submit a written request for  
23 access or information under Subsection (c) by certified mail, with  
24 sufficient detail describing the property owners' association's  
25 books and records requested, to the mailing address of the  
26 association or authorized representative as reflected on the most  
27 current management certificate filed under Section 209.004. The

1 request must contain an election either to inspect the books and  
2 records before obtaining copies or to have the property owners'  
3 association forward copies of the requested books and records and:

4           (1) if an inspection is requested, the association, on  
5 or before the 10th business day after the date the association  
6 receives the request, shall send written notice of dates during  
7 normal business hours that the owner may inspect the requested  
8 books and records to the extent those books and records are in the  
9 possession, custody, or control of the association; or

10           (2) if copies of identified books and records are  
11 requested, the association shall, to the extent those books and  
12 records are in the possession, custody, or control of the  
13 association, produce the requested books and records for the  
14 requesting party on or before the 10th business day after the date  
15 the association receives the request, except as otherwise provided  
16 by this section.

17           (f) If the property owners' association is unable to produce  
18 the books or records requested under Subsection (e) on or before the  
19 10th business day after the date the association receives the  
20 request, the association must provide to the requestor written  
21 notice that:

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

25           (2) states a date by which the information will be sent  
26 or made available for inspection to the requesting party that is not  
27 later than the 15th business day after the date notice under this

1 subsection is given.

2 (g) If an inspection is requested or required, the  
3 inspection shall take place at a mutually agreed on time during  
4 normal business hours, and the requesting party shall identify the  
5 books and records for the property owners' association to copy and  
6 forward to the requesting party.

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

10 (i) A property owners' association board must adopt a  
11 records production and copying policy that prescribes the costs the  
12 association will charge for the compilation, production, and  
13 reproduction of information requested under this section. The  
14 prescribed charges may include all reasonable costs of materials,  
15 labor, and overhead but may not exceed costs that would be  
16 applicable for an item under 1 T.A.C. Section 70.3. The policy  
17 required by this subsection must be recorded as a dedicatory  
18 instrument in accordance with Section 202.006. An association may  
19 not charge an owner for the compilation, production, or  
20 reproduction of information requested under this section unless the  
21 policy prescribing those costs has been recorded as required by  
22 this subsection. An owner is responsible for costs related to the  
23 compilation, production, and reproduction of the requested  
24 information in the amounts prescribed by the policy adopted under  
25 this subsection. The association may require advance payment of  
26 the estimated costs of compilation, production, and reproduction of  
27 the requested information. If the estimated costs are lesser or

1 greater than the actual costs, the association shall submit a final  
2 invoice to the owner on or before the 30th business day after the  
3 date the information is delivered. If the final invoice includes  
4 additional amounts due from the owner, the additional amounts, if  
5 not reimbursed to the association before the 30th business day  
6 after the date the invoice is sent to the owner, may be added to the  
7 owner's account as an assessment. If the estimated costs exceeded  
8 the final invoice amount, the owner is entitled to a refund, and the  
9 refund shall be issued to the owner not later than the 30th business  
10 day after the date the invoice is sent to the owner.

11 (j) A property owners' association must estimate costs  
12 under this section using amounts prescribed by the policy adopted  
13 under Subsection (i).

14 (k) Except as provided by Subsection (l) and to the extent  
15 the information is provided in the meeting minutes, the property  
16 owners' association is not required to release or allow inspection  
17 of any books or records that identify the dedicatory instrument  
18 violation history of an individual owner of an association, an  
19 owner's personal financial information, including records of  
20 payment or nonpayment of amounts due the association, an owner's  
21 contact information, other than the owner's address, or information  
22 related to an employee of the association, including personnel  
23 files. Information may be released in an aggregate or summary  
24 manner that would not identify an individual property owner.

25 (l) The books and records described by Subsection (k) shall  
26 be released or made available for inspection if:

27 (1) the express written approval of the owner whose

1 records are the subject of the request for inspection is provided to  
2 the property owners' association; or

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

6 (m) A property owners' association composed of more than 14  
7 lots shall adopt and comply with a document retention policy that  
8 includes, at a minimum, the following requirements:

9 (1) certificates of formation, bylaws, restrictive  
10 covenants, and all amendments to the certificates of formation,  
11 bylaws, and covenants shall be retained permanently;

12 (2) financial books and records shall be retained for  
13 seven years;

14 (3) account records of current owners shall be  
15 retained for five years;

16 (4) contracts with a term of one year or more shall be  
17 retained for four years after the expiration of the contract term;

18 (5) minutes of meetings of the owners and the board  
19 shall be retained for seven years; and

20 (6) tax returns and audit records shall be retained  
21 for seven years.

22 (n) A member of a property owners' association who is denied  
23 access to or copies of association books or records to which the  
24 member is entitled under this section may file a petition with the  
25 justice of the peace of a justice precinct in which all or part of  
26 the property that is governed by the association is located  
27 requesting relief in accordance with this subsection. If the

1 justice of the peace finds that the member is entitled to access to  
2 or copies of the records, the justice of the peace may grant one or  
3 more of the following remedies:

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

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

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

13 (o) If the property owners' association prevails in an  
14 action under Subsection (n), the association is entitled to a  
15 judgment for court costs and attorney's fees incurred by the  
16 association in connection with the action.

17 (p) On or before the 10th business day before the date a  
18 person brings an action against a property owners' association  
19 under this section, the person must send written notice to the  
20 association of the person's intent to bring the action. The notice  
21 must:

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

27 (2) describe with sufficient detail the books and

1 records being requested.

2 (q) For the purposes of this section, "business day" means a  
3 day other than Saturday, Sunday, or a state or federal holiday.

4 SECTION 2. Chapter 209, Property Code, is amended by adding  
5 Sections 209.0051 and 209.0056 to read as follows:

6 Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does  
7 not apply to a property owners' association that is subject to  
8 Chapter 551, Government Code, by application of Section 551.0015,  
9 Government Code.

10 (b) In this section:

11 (1) "Board meeting":

12 (A) means a deliberation between a quorum of the  
13 voting board of the property owners' association, or between a  
14 quorum of the voting board and another person, during which  
15 property owners' association business is considered and the board  
16 takes formal action; and

17 (B) does not include the gathering of a quorum of  
18 the board at a social function unrelated to the business of the  
19 association or the attendance by a quorum of the board at a  
20 regional, state, or national convention, ceremonial event, or press  
21 conference, if formal action is not taken and any discussion of  
22 association business is incidental to the social function,  
23 convention, ceremonial event, or press conference.

24 (2) "Development period" means a period stated in a  
25 declaration during which a declarant reserves:

26 (A) a right to facilitate the development,  
27 construction, and marketing of the subdivision; and

1           (B) a right to direct the size, shape, and  
2 composition of the subdivision.

3           (c) Regular and special board meetings must be open to  
4 owners, subject to the right of the board to adjourn a board meeting  
5 and reconvene in closed executive session to consider actions  
6 involving personnel, pending or threatened litigation, contract  
7 negotiations, enforcement actions, confidential communications  
8 with the property owners' association's attorney, matters involving  
9 the invasion of privacy of individual owners, or matters that are to  
10 remain confidential by request of the affected parties and  
11 agreement of the board. Following an executive session, any  
12 decision made in the executive session must be summarized orally  
13 and placed in the minutes, in general terms, without breaching the  
14 privacy of individual owners, violating any privilege, or  
15 disclosing information that was to remain confidential at the  
16 request of the affected parties. The oral summary must include a  
17 general explanation of expenditures approved in executive session.

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

22           (d) The board shall keep a record of each regular or special  
23 board meeting in the form of written minutes of the meeting. The  
24 board shall make meeting records, including approved minutes,  
25 available to a member for inspection and copying on the member's  
26 written request to the property owners' association's managing  
27 agent at the address appearing on the most recently filed



1 management certificate or, if there is not a managing agent, to the  
2 board.

3 (e) Members shall be given notice of the date, hour, place,  
4 and general subject of a regular or special board meeting,  
5 including a general description of any matter to be brought up for  
6 deliberation in executive session. The notice shall be:

7 (1) mailed to each property owner not later than the  
8 10th day or earlier than the 60th day before the date of the  
9 meeting; or

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

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

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

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

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

23 (f) It is an owner's duty to keep an updated e-mail address  
24 registered with the property owners' association under Subsection  
25 (e)(2)(B).

26 (g) If the board recesses a regular or special board meeting  
27 to continue the following regular business day, the board is not

1 required to post notice of the continued meeting if the recess is  
2 taken in good faith and not to circumvent this section. If a  
3 regular or special board meeting is continued to the following  
4 regular business day, and on that following day the board continues  
5 the meeting to another day, the board shall give notice of the  
6 continuation in at least one manner prescribed by Subsection  
7 (e)(2)(A) within two hours after adjourning the meeting being  
8 continued.

9 (h) A board may meet by any method of communication,  
10 including electronic and telephonic, without prior notice to owners  
11 under Subsection (e), if each director may hear and be heard by  
12 every other director, or the board may take action by unanimous  
13 written consent to consider routine and administrative matters or a  
14 reasonably unforeseen emergency or urgent necessity that requires  
15 immediate board action. Any action taken without notice to owners  
16 under Subsection (e) must be summarized orally, including an  
17 explanation of any known actual or estimated expenditures approved  
18 at the meeting, and documented in the minutes of the next regular or  
19 special board meeting. The board may not, without prior notice to  
20 owners under Subsection (e), consider or vote on:

- 21 (1) fines;  
22 (2) damage assessments;  
23 (3) initiation of foreclosure actions;  
24 (4) initiation of enforcement actions, excluding  
25 temporary restraining orders or violations involving a threat to  
26 health or safety;  
27 (5) increases in assessments;

1           (6) levying of special assessments;

2           (7) appeals from a denial of architectural control  
3 approval; or

4           (8) a suspension of a right of a particular owner  
5 before the owner has an opportunity to attend a board meeting to  
6 present the owner's position, including any defense, on the issue.

7           (i) This section applies to a meeting of a property owners'  
8 association board during the development period only if the meeting  
9 is conducted for the purpose of:

10           (1) adopting or amending the governing documents,  
11 including declarations, bylaws, rules, and regulations of the  
12 association;

13           (2) increasing the amount of regular assessments of  
14 the association or adopting or increasing a special assessment;

15           (3) electing non-developer board members of the  
16 association or establishing a process by which those members are  
17 elected; or

18           (4) changing the voting rights of members of the  
19 association.

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

24           (1) each owner of property in the property owners'  
25 association, for purposes of an association-wide election or vote;

26 or

27           (2) each owner of property in the property owners'

1 association entitled under the dedicatory instruments to vote in a  
2 particular representative election, for purposes of a vote that  
3 involves election of representatives of the association who are  
4 vested under the dedicatory instruments of the property owners'  
5 association with the authority to elect or appoint board members of  
6 the property owners' association.

7 (b) This section supersedes any contrary requirement in a  
8 dedicatory instrument.

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

12 SECTION 3. Section 209.009, Property Code, is amended to  
13 read as follows:

14 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN  
15 CIRCUMSTANCES. A property owners' association may not foreclose a  
16 property owners' association's assessment lien if the debt securing  
17 the lien consists solely of:

- 18 (1) fines assessed by the association; [~~or~~]  
19 (2) attorney's fees incurred by the association solely  
20 associated with fines assessed by the association; or  
21 (3) amounts added to the owner's account as an  
22 assessment under Section 209.005(i).

23 SECTION 4. Chapter 209, Property Code, is amended by adding  
24 Section 209.014 to read as follows:

25 Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO  
26 CALL REGULAR MEETING. (a) Notwithstanding any provision in a  
27 dedicatory instrument, a board of a property owners' association

1 shall call an annual meeting of the members of the association.

2 (b) If a board of a property owners' association does not  
3 call an annual meeting of the association members, an owner may  
4 demand that a meeting of the association members be called not later  
5 than the 30th day after the date of the owner's demand. The owner's  
6 demand must be made in writing and sent by certified mail, return  
7 receipt requested, to the registered agent of the property owners'  
8 association and to the association at the address for the  
9 association according to the most recently filed management  
10 certificate. A copy of the notice must be sent to each property  
11 owner who is a member of the association.

12 (c) If the board does not call a meeting of the members of  
13 the property owners' association on or before the 30th day after the  
14 date of a demand under Subsection (b), three or more owners may form  
15 an election committee. The election committee shall file written  
16 notice of the committee's formation with the county clerk of each  
17 county in which the subdivision is located.

18 (d) A notice filed by an election committee must contain:

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

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

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

27 (e) Each committee member must sign and acknowledge the

1 notice before a notary or other official authorized to take  
2 acknowledgments.

3 (f) The county clerk shall enter on the notice the date the  
4 notice is filed and record the notice in the county's real property  
5 records.

6 (g) Only one committee in a subdivision may operate under  
7 this section at one time. If more than one committee in a  
8 subdivision files a notice, the first committee that files a  
9 notice, after having complied with all other requirements of this  
10 section, is the committee with the power to act under this section.  
11 A committee that does not hold or conduct a successful election  
12 within four months after the date the notice is filed with the  
13 county clerk is dissolved by operation of law. An election held or  
14 conducted by a dissolved committee is ineffective for any purpose  
15 under this section.

16 (h) The election committee may call meetings of the owners  
17 who are members of the property owners' association for the sole  
18 purpose of electing board members. Notice, quorum, and voting  
19 provisions contained in the bylaws of the property owners'  
20 association apply to any meeting called by the election committee.

21 SECTION 5. (a) Section 209.005, Property Code, as amended  
22 by this Act, applies only to a request for information received by a  
23 property owners' association on or after the effective date of this  
24 Act. A request for information received by a property owners'  
25 association before the effective date of this Act is governed by the  
26 law in effect immediately before the effective date of this Act, and  
27 that law is continued in effect for that purpose.

1           (b) Subsection (m), Section 209.005, Property Code, as  
2 added by this Act, applies only with respect to books and records  
3 generated on or after the effective date of this Act. Books and  
4 records generated before the effective date of this Act are  
5 governed by the law in effect immediately before the effective date  
6 of this Act, and that law is continued in effect for that purpose.

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

10           SECTION 6. This Act takes effect January 1, 2012.

**ADOPTED**

MAY 24 2011

*Arlene Law*  
Secretary of the Senate :

*Roger W. N.*

FLOOR AMENDMENT NO. 1

1 Amend C.S.H.B. No. 2761 (senate committee printing) as  
2 follows:

3 (1) In SECTION 2 of the bill, in the recital (page 3, line  
4 68), strike "Sections 209.0051 and 209.0056" and substitute  
5 "Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059,  
6 209.00591, 209.00592, and 209.00593".

7 (2) In SECTION 2 of the bill, following added Section  
8 209.0056, Property Code (page 6, between lines 2 and 3), insert the  
9 following:

10 Sec. 209.0057. RECOUNT OF VOTES. (a) This section does  
11 not apply to a property owners' association that is subject to  
12 Chapter 552, Government Code, by application of Section 552.0036,  
13 Government Code.

14 (b) Any owner may, not later than the 15th day after the date  
15 of the meeting at which the election was held, require a recount of  
16 the votes. A demand for a recount must be submitted in writing  
17 either:

18 (1) by certified mail, return receipt requested, or by  
19 delivery by the United States Postal Service with signature  
20 confirmation service to the property owners' association's mailing  
21 address as reflected on the latest management certificate filed  
22 under Section 209.004; or

23 (2) in person to the property owners' association's  
24 managing agent as reflected on the latest management certificate  
25 filed under Section 209.004 or to the address to which absentee and  
26 proxy ballots are mailed.

27 (c) The property owners' association shall, at the expense  
28 of the owner requesting the recount, retain for the purpose of  
29 performing the recount, the services of a person qualified to



1 tabulate votes under this subsection. The association shall enter  
2 into a contract for the services of a person who:

3 (1) is not a member of the association or related to a  
4 member of the association board within the third degree by  
5 consanguinity or affinity, as determined under Chapter 573,  
6 Government Code; and

7 (2) is:

8 (A) a current or former:

9 (i) county judge;

10 (ii) county elections administrator;

11 (iii) justice of the peace; or

12 (iv) county voter registrar; or

13 (B) a person agreed on by the association and the  
14 persons requesting the recount.

15 (d) Any recount under Subsection (b) must be performed on or  
16 before the 30th day after the date of receipt of a request and  
17 payment for a recount in accordance with Subsections (b) and (c).  
18 If the recount changes the results of the election, the property  
19 owners' association shall reimburse the requesting owner for the  
20 cost of the recount. The property owners' association shall  
21 provide the results of the recount to each owner who requested the  
22 recount. Any action taken by the board in the period between the  
23 initial election vote tally and the completion of the recount is not  
24 affected by any recount.

25 Sec. 209.0058. BALLOTS. (a) Any vote cast in an election  
26 or vote by a member of a property owners' association must be in  
27 writing and signed by the member.

28 (b) Electronic votes cast under Section 209.00592  
29 constitute written and signed ballots.

30 (c) In an association-wide election, written and signed  
31 ballots are not required for uncontested races.

1       Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a  
2 dedicatory instrument that would disqualify a property owner from  
3 voting in a property owners' association election of board members  
4 or on any matter concerning the rights or responsibilities of the  
5 owner is void.

6       (b) This section does not apply to a property owners'  
7 association that is subject to Chapter 552, Government Code, by  
8 application of Section 552.0036, Government Code.

9       Sec. 209.00591. BOARD MEMBERSHIP. (a) Except as provided  
10 by this section, a provision in a dedicatory instrument that  
11 restricts a property owner's right to run for a position on the  
12 board of the property owners' association is void.

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

20       (c) The declaration may provide for a period of declarant  
21 control of the association during which a declarant, or persons  
22 designated by the declarant, may appoint and remove board members  
23 and the officers of the association, other than board members or  
24 officers elected by members of the property owners' association.  
25 Regardless of the period of declarant control provided by the  
26 declaration, on or before the 120th day after the date 75 percent of  
27 the lots that may be created and made subject to the declaration are  
28 conveyed to owners other than a declarant, at least one-third of the  
29 board members must be elected by owners other than the declarant.  
30 If the declaration does not include the number of lots that may be  
31 created and made subject to the declaration, at least one-third of

1 the board members must be elected by owners other than the declarant  
2 not later than the 10th anniversary of the date the declaration was  
3 recorded.

4 Sec. 209.00592. VOTING; QUORUM. (a) The voting rights of  
5 an owner may be cast or given:

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

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

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

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

14 (b) An absentee or electronic ballot:

15 (1) may be counted as an owner present and voting for  
16 the purpose of establishing a quorum only for items appearing on the  
17 ballot;

18 (2) may not be counted, even if properly delivered, if  
19 the owner attends any meeting to vote in person, so that any vote  
20 cast at a meeting by a property owner supersedes any vote submitted  
21 by absentee or electronic ballot previously submitted for that  
22 proposal; and

23 (3) may not be counted on the final vote of a proposal  
24 if the motion was amended at the meeting to be different from the  
25 exact language on the absentee or electronic ballot.

26 (c) A solicitation for votes by absentee ballot must  
27 include:

28 (1) an absentee ballot that contains each proposed  
29 action and provides an opportunity to vote for or against each  
30 proposed action;

31 (2) instructions for delivery of the completed

1 absentee ballot, including the delivery location; and

2 (3) the following language: "By casting your vote via  
3 absentee ballot you will forgo the opportunity to consider and vote  
4 on any action from the floor on these proposals, if a meeting is  
5 held. This means that if there are amendments to these proposals  
6 your votes will not be counted on the final vote on these measures.  
7 If you desire to retain this ability, please attend any meeting in  
8 person. You may submit an absentee ballot and later choose to  
9 attend any meeting in person, in which case any in-person vote will  
10 prevail."

11 (d) For the purposes of this section, "electronic ballot"  
12 means a ballot:

13 (1) given by:

14 (A) e-mail;

15 (B) facsimile; or

16 (C) posting on an Internet website;

17 (2) for which the identity of the property owner  
18 submitting the ballot can be confirmed; and

19 (3) for which the property owner may receive a receipt  
20 of the electronic transmission and receipt of the owner's ballot.

21 (e) If an electronic ballot is posted on an Internet  
22 website, a notice of the posting shall be sent to each owner that  
23 contains instructions on obtaining access to the posting on the  
24 website.

25 (f) This section supersedes any contrary provision in a  
26 dedicatory instrument.

27 (g) This section does not apply to a property owners'  
28 association that is subject to Chapter 552, Government Code, by  
29 application of Section 552.0036, Government Code.

30 Sec. 209.00593. ELECTION OF BOARD MEMBERS.

31 (a) Notwithstanding any provision in a dedicatory instrument, any

1 board member whose term has expired must be elected by owners who  
2 are members of the property owners' association. A board member may  
3 be appointed by the board only to fill a vacancy caused by a  
4 resignation, death, or disability. A board member appointed to  
5 fill a vacant position shall serve the unexpired term of the  
6 predecessor board member.

7 (b) The board of a property owners' association may amend  
8 the bylaws of the property owners' association to provide for  
9 elections to be held as required by Subsection (a).

10 (c) The appointment of a board member in violation of this  
11 section is void.

12 (d) This section does not apply to the appointment of a  
13 board member during a development period. In this subsection,  
14 "development period" means a period stated in a declaration during  
15 which a declarant reserves:

16 (1) a right to facilitate the development,  
17 construction, and marketing of the subdivision; and

18 (2) a right to direct the size, shape, and composition  
19 of the subdivision.

20 (e) This section does not apply to a representative board  
21 whose members or delegates are elected or appointed by  
22 representatives of a property owners' association who are elected  
23 by owner members of a property owners' association.

24 (3) In SECTION 5 of the bill, insert the following  
25 appropriately designated subsection and redesignate subsections of  
26 the SECTION accordingly:

27 ( ) Section 209.0059 and Subsection (a), Section 209.00591,  
28 Property Code, as added by this Act, apply to a provision in a  
29 dedicatory instrument or a restrictive covenant enacted before, on,  
30 or after the effective date of this Act.

31 (4) Add the following appropriately numbered SECTION to the

1 bill and renumber SECTIONS of the bill accordingly:

2 SECTION \_\_\_\_\_. Section 209.003, Property Code, is amended by  
3 adding Subsection (e) to read as follows:

4 (e) The following provisions of this chapter do not apply to  
5 a property owners' association that is a mixed-use master  
6 association that existed before January 1, 1974, and that does not  
7 have the authority under a dedicatory instrument or other governing  
8 document to impose fines:

9 (1) Section 209.005(c);

10 (2) Section 209.0056;

11 (3) Section 209.0057;

12 (4) Section 209.0058; and

13 (5) Section 209.00592.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 25, 2011**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2761** by Garza (Relating to meetings, elections, and records of certain property owners' associations. ), **As Passed 2nd House**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, KKR, AG, JB, TP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 19, 2011**

**TO:** Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2761** by Garza (Relating to meetings, elections, and records of certain property owners' associations.), **Committee Report 2nd House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
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**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, KKR, AG, JB, TP



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 16, 2011**

**TO:** Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2761** by Garza (Relating to meetings and records of certain property owners' associations.), **As Engrossed**

<b>No fiscal implication to the State is anticipated.</b>
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**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, KKR, AG, JB, TP

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 14, 2011**

**TO:** Honorable Joe Deshotel, Chair, House Committee on Business & Industry

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2761** by Garza (Relating to meetings and records of certain property owners' associations.), **Committee Report 1st House, Substituted**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, AG, JB, TP

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**March 25, 2011**

**TO:** Honorable Joe Deshotel, Chair, House Committee on Business & Industry

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2761** by Garza (Relating to the operation of property owners' associations.), As  
**Introduced**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, AG, TP