

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SECTION 1. Section 209.005, Property Code, is amended to read as follows:
Sec. 209.005. ASSOCIATION RECORDS.

(a) 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.

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

SENATE VERSION (IE)

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

(e) The following provisions of this chapter 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:

- (1) Section 209.005(c);
- (2) Section 209.0056;
- (3) Section 209.0057;
- (4) Section 209.0058; and
- (5) Section 209.00592. [FA1(4)]

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

Sec. 209.005. ASSOCIATION RECORDS. (a) 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) 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.

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

CONFERENCE

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Statutes)].

(c) [(a-1)] A property owners' association described by Section 552.0036(2), Government Code, shall 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[. Subsection (a) does not apply to a property owners' association to which this subsection applies].

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

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

(e) An owner or the owner's authorized representative must submit a written request for access or information under Subsection (b) by certified mail or other evidence of mailing or delivery, 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 filed

SENATE VERSION (IE)

~~Corporation Act (Article 1396 2.23, Vernon's Texas Civil Statutes)].~~

(d) Except as provided by this subsection, an [(a-1)] A property owners' association described by Section 552.0036(2), Government Code, shall 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. Subsection (a) does not apply to a property owners' association to which this subsection applies.

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

- [(1)] records of the association **and are not**[;
- [(2)] subject to inspection by the owner[;] or
- [(3) **subject to**] production in a legal proceeding. **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, the document shall 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. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.**

(e) An owner or the owner's authorized representative **described by Subsection (c)** must submit a written request for access or information under Subsection (c) 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

CONFERENCE

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

under Section 209.004. The request must 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, shall 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 shall, to the extent those books and records are **required to be retained by** 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) If the property owners' 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, the association must provide to the requestor written notice that:

(1) informs the requestor **the reason** 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) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal

SENATE VERSION (IE)

under Section 209.004. The request must 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, shall 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 **in the possession, custody, or control of** the association; or

(2) if copies of identified books and records are requested, the association shall, 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) If the property owners' association is unable to produce the books or records requested under Subsection (e) on or before the 10th business day after the date the association receives the request, the association must 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 **15th** business day after the date notice under this subsection is given.

(g) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal

CONFERENCE

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

business hours, and the requesting party shall identify the books and records for the association to copy and forward to the requesting party.

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

(i) An owner is responsible for actual costs related to compilation and reproduction of the requested information in an amount that reasonably includes all actual costs related to compilation and reproduction of the information, including costs of materials, labor, and overhead, but may not exceed costs that would be applicable for an item under Section 70.3, Administrative Code. The association may require advance payment of the costs of compilation and reproduction.

SENATE VERSION (IE)

business hours, and the requesting party shall identify the books and records for the **property owners'** association to copy and forward to the requesting party.

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

(i) A property owners' association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. An association may not charge 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. An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment.

CONFERENCE

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(j) Except as provided by Subsection (l), 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. Information may be released in an aggregate or summary manner that would not identify an individual property owner.

(k) The books and records described by Subsection (k) shall 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.

(l) A property owners' association composed of more than 12 lots shall adopt a records retention policy that, except as provided by this subsection, conforms to the records retention schedule adopted by the Texas State Library and Archives Commission applicable to all local governments. An

SENATE VERSION (IE)

If the estimated costs exceeded the final invoice amount, the owner is entitled to a refund, and the refund shall be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

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

(k) Except as provided by Subsection (l) and 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. Information may be released in an aggregate or summary manner that would not identify an individual property owner.

(l) The books and records described by Subsection (k) shall 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 property owners' 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) A property owners' association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

(1) certificates of formation, bylaws, restrictive covenants,

CONFERENCE

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

association's records retention policy may require a class of records to be retained longer than would otherwise be required under this subsection.

SENATE VERSION (IE)

and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;

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

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

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

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

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

(n) 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 may 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. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may 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) If the property owners' association prevails in an action under Subsection (n), the association is entitled to a judgment

CONFERENCE

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

for court costs and attorney's fees incurred by the association in connection with the action.

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

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

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

Sec. 209.0051. OPEN BOARD MEETINGS.

SECTION 2. Chapter 209, Property Code, is amended by adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059, 209.00591, 209.00592, and 209.00593 to read as follows:

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

(b) In this section:

(1) "Board meeting":

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

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(a) Meetings of the board must be open to owners, subject to the right of the 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 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 general nature of any business to be considered in executive session must first be announced at the open meeting.

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

(1) a meeting of the board may be held by any method of

SENATE VERSION (IE)

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

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

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

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

(c) Regular and special board meetings must be open to owners, subject to the right of the 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. Following an executive session, any decision made in the executive session must 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. The oral summary must include a general explanation of expenditures approved in executive session.

(c-1) Except for a meeting held by electronic or telephonic means under Subsection (h), a board meeting must be held in a county in which all or part of the property in the subdivision

CONFERENCE

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

communication, including electronic and telephonic, if:

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

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

(C) 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; and

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

(A) 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

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

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

SENATE VERSION (IE)

is located or in a county adjacent to that county.

(d) The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall 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) Members shall 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. The notice shall 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

CONFERENCE

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(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; and

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

(f) 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) 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. 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, the board shall 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) A board may 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. Any

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

action taken without notice to owners under Subsection (e) must 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. The board may not, without prior notice to owners under Subsection (e), consider or vote 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) 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 association;
- (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) Not later than the 10th day or earlier than the 60th day before the date of an election or vote,

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

a property owners' association shall 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 involves 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) This section supersedes any contrary requirement in a dedicatory instrument.

(c) 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. 209.0057. RECOUNT OF VOTES. (a) 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.

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

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

(2) in person to the property owners' association's managing agent as reflected on the latest management certificate filed

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

under Section 209.004 or to the address to which absentee and proxy ballots are mailed.

(c) The property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes under this subsection. The association shall enter into a contract for the services of a person who:

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

(2) is:

(A) a current or former:

(i) county judge;

(ii) county elections administrator;

(iii) justice of the peace; or

(iv) county voter registrar; or

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

(d) Any recount under Subsection (b) must be performed on or before the 30th day after the date of receipt of a request and payment for a recount in accordance with Subsections (b) and

(c). If the recount changes the results of the election, the property owners' association shall reimburse the requesting owner for the cost of the recount. The property owners' association shall provide the results of the recount to each owner who requested the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

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

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

(b) 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. 209.00591. BOARD MEMBERSHIP. (a) Except as provided by this section, 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 is void.

(b) 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.

(c) The declaration may provide for a period of declarant control of the association during which a declarant, or persons designated by the declarant, may appoint and remove board members and the officers of the association, other than board members or officers elected by members of the property owners' association. Regardless of the period of declarant control provided by the declaration, on or before the 120th

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a declarant, at least one-third of the board members must be elected by owners other than the declarant. If the declaration does not include the number of lots that may be created and made subject to the declaration, at least one-third of the board members must be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded.

Sec. 209.00592. VOTING; QUORUM. (a) The voting rights of an owner may 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) An absentee or electronic ballot:

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

(2) may not be 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) may not be 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) A solicitation for votes by absentee ballot must include:

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

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

action;

(2) instructions for delivery of the completed absentee ballot, including the delivery location; and

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

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

(1) given by:

(A) e-mail;

(B) facsimile; or

(C) posting on an Internet website;

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

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

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

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

(g) 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. 209.00593. ELECTION OF BOARD MEMBERS. (a) Notwithstanding any provision in a dedicatory instrument, any

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

- (1) a right to facilitate the development, construction, and marketing of the subdivision; and
- (2) a right to direct the size, shape, and composition of the subdivision.

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

No equivalent provision.

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

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

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

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

- (1) a right to facilitate the development, construction, and marketing of the subdivision; and
- (2) a right to direct the size, shape, and composition of the subdivision.

(e) This section does not apply to a representative board whose members or delegates are elected or appointed by representatives of a property owners' association who are elected by owner members of a property owners' association.
[FA1(1),(2)]

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

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. A property owners'

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

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

No equivalent provision.

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

Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO CALL REGULAR MEETING. (a)

Notwithstanding any provision in a dedicatory instrument, a board of a property owners' association shall call an annual meeting of the members of the association.

(b) If a board of a property owners' association does not call an annual meeting of the association members, an owner may demand that a meeting of the association members be called not later than the 30th day after the date of the owner's demand. The owner's demand must be made in writing and sent by certified mail, return receipt requested, 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. A copy of the notice must be sent to each property owner who is a member of the association.

(c) 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), three or more owners may form an election committee. The election committee shall file written notice of the committee's

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

formation with the county clerk of each county in which the subdivision is located.

(d) A notice filed by an election committee must 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) Each committee member must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

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

(g) Only one committee in a subdivision may operate under this section at one time. 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. 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. An election held or conducted by a dissolved committee is ineffective for any purpose under this section.

(h) The election committee may call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. Notice, quorum, and voting provisions contained in the bylaws of the property

House Bill 2761
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

SENATE VERSION (IE)

owners' association apply to any meeting called by the election committee.

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

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

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

(c) 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. [FA1(3)]

SECTION 6. Same as House version.

CONFERENCE