

BILL ANALYSIS

C.S.H.B. 818
By: White
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, property owners' associations have an open voting procedure. Interested parties contend that under this system an elected association board member may be able to identify association members who voted against the board member, making retaliation against the property owner by the association's management possible. C.S.H.B. 818 seeks to authorize a property owners' association board to allow members to cast secret ballot votes and, if a board elects to permit voting by secret ballot, to require the provision of a practical and effective means of doing so.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 818 amends Section 209.0058, Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011, to clarify that an electronic vote cast in an election or a vote by a member of certain property owners' associations must be considered a written and signed ballot if the identity of the property owner submitting the ballot can be confirmed. The bill authorizes a property owners' association board to elect to allow each vote cast in an election or each vote cast by a member of the association to be by secret ballot and, if the board elects to allow voting by secret ballot, requires the property owners' association to provide a practical and effective means for each such vote to be by secret ballot.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 818 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the original and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 209.0058(a), Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 209.0058, Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

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(a) ~~A property owners' association must provide a practical and effective means for each [Any] vote cast in an election or each vote cast by a member of a property owners' association to [must] be by secret ballot [in writing and signed by the member].~~

(a) Except as provided by Subsection (d), any [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.

~~(b) Electronic votes cast under Section 209.00592 shall be considered [constitute] written and signed ballots if the identity of the property owner submitting the ballot can be confirmed.~~

~~(d) The property owners' association board may elect to allow each vote cast in an election or each vote cast by a member of the property owners' association to be by secret ballot.~~

SECTION 2. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Section 209.0058(a), Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(a) ~~A property owners' association must provide a practical and effective means for each [Any] vote cast in an election or each vote cast by a member of a property owners' association to [must] be by secret ballot [in writing and signed by the member].~~

SECTION 2. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Section 209.0058, Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d), any [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.

~~(b) Electronic votes cast under Section 209.00593 shall be considered [constitute] written and signed ballots if the identity of the property owner submitting the ballot can be confirmed.~~

~~(d) The property owners' association board may elect to allow each vote cast in an election or each vote cast by a member of the property owners' association to be by secret ballot.~~

SECTION 3. Sections 209.00592(a) and (d), Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011, are amended to read as follows:

(a) ~~Subject to Section 209.0058, the [The] voting rights of an owner may be cast or~~

SECTION 3. Section 209.00592, Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a) and (d) and adding Subsection (b-1) to read as follows:

(a) Subject to Subsection (b-1), the [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.

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

- (1) given by:
 - (A) e-mail;
 - (B) facsimile; or
 - (C) posting on an Internet website; and
- (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.

SECTION 4. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Sections 209.00593(a) and (d), Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011, are amended to read as follows:

(a) Subject to Section 209.0058, the [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

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-1) If a property owners' association board elects to allow voting by secret ballot under Section 209.0058(d), the property owners' association must provide a practical and effective means for each vote cast in an election or each vote cast by a member of the property owners' association to be by secret ballot.

(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, unless the board elects to allow voting by secret ballot under Section 209.0058(d); and

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

SECTION 4. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Section 209.00593, Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a) and (d) and adding Subsection (b-1) to read as follows:

(a) Subject to Subsection (b-1), the [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.

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

(1) given by:

(A) e-mail;

(B) facsimile; or

(C) posting on an Internet website; and

(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.

SECTION 5. (a) Sections 209.0058(b) and (c), Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011, are repealed.

(b) Sections 209.0058(b) and (c), Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011, are repealed.

SECTION 6. To the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

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

~~(b-1) If a property owners' association board elects to allow voting by secret ballot under Section 209.0058(d), the property owners' association must provide a practical and effective means for each vote cast in an election or each vote cast by a member of the property owners' association to be by secret ballot.~~

(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, ~~unless the board elects to allow voting by secret ballot under Section 209.0058(d); and~~

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

~~No equivalent provision.~~

SECTION 5. Same as introduced version.

13.103.360

SECTION 7. This Act takes effect January 1, 2014.

SECTION 6. Same as introduced version.