

SUBJECT: Revising voting practices in property owners associations

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Deshotel, Bohac, Garza, Giddings, S. Miller, Solomons, Workman
0 nays
2 absent — Orr, Quintanilla

SENATE VOTE: On final passage, March 17— 30-1 (Fraser), on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Property Code, ch. 209, the Texas Residential Property Owners Protection Act, applies to all mandatory homeowners’ associations (HOAs) and establishes requirements for association records, voting, attorneys’ fees, foreclosure on property, and other procedures.

DIGEST: SB 472 would add provisions in Property Code, ch. 209 to create new requirements for voting practices by HOAs.

The bill would require any vote cast in an election by a member of an association to be in writing and signed, a requirement that an electronic ballot would satisfy. Written and signed ballots would not be required for uncontested races.

The bill would void a restrictive covenant that disqualified a property owner from voting in an association election. A restrictive covenant that restricted a property owner’s right to run for a position on an association board also would be void.

The bill would bar a board member who was verifiably convicted of a felony or a crime involving moral turpitude from serving.

A property owner's voting rights could be cast in person or by proxy at an association meeting, by an absentee or electronic ballot, or by any method provided in an association's restrictive covenants. An absentee or electronic ballot would be counted as an owner present and voting in order to establish a quorum, but could not be counted if the property owner attended a meeting to vote in person. An absentee or electronic ballot also would not count if the final vote on a proposal had been amended to be different from the exact language on the absentee ballot. For purposes of voting rights, an electronic ballot could be submitted by email, fax, or a posting on a website, provided the owner's identity could be confirmed.

The bill also would establish requirements for the contents of a solicitation for votes by absentee ballot.

CSSB 472 would not apply to an association that was subject to the state laws on open records, and provisions on ballots and voting would not apply to certain mixed use associations that existed before 1974.

The bill would take effect September 1, 2011. Provisions on voting rights of owners and prohibitions against restricting owners' right to vote and run for a position on an association board would apply to associations dedicated before, on, or after the bill's effective date.

**SUPPORTERS
SAY:**

SB 472 would enact measures to address recurring problems in voting and board service in some homeowners associations. It also would add alternative methods for delegating voting and affirm options for electronic voting.

The bill would address issues that have arisen in some associations with secret ballots. Secret voting practices in some HOAs have resulted in issues with forgery and other types of voting manipulation. Removing the option for HOAs to use secret ballots would add accountability to each vote and allow associations to better enforce voting practices.

The bill would address abuses by some associations that have adopted covenants to prohibit or restrict property owners who owe fines or assessments from voting in association elections or serving on a HOA board. Some associations have even prevented certain property owners from participating by fining them prior to an election.

SB 472 would ban these practices by voiding any association covenant that barred a homeowner from voting or serving on a HOA board, except a convicted felon. Associations have abundant means at their disposal to collect assessments — they can even foreclose on an owner for outstanding assessments — so unfair sanctions, such as barring an owner from voting, are not necessary. The bill would address these conspicuous problems without hampering the majority of associations.

OPPONENTS
SAY:

This bill would ban secret ballots in HOA elections and other votes, which could have a number of unfortunate consequences. Secret ballots are used in all major governmental votes and most private surveys, and they are particularly important in small scale elections, where the participants may personally know each other. Removing anonymity could unduly influence the vote of a person who knew their ballot would be identified with their name and available for retrieval in association records. Removing anonymity could generate fear of possible retribution for a vote.