

## BILL ANALYSIS

Senate Research Center  
81R5401 AJA-F

S.B. 1126  
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As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, property owners' attempts to participate in the operation of their property owners' association (POA) can be stymied by lack of access to POA records. Furthermore, there is no direct prohibition against POA votes that may represent a conflict of interest for any of the parties involved. Finally, the concept of "one person, one vote" is missing from the POA process.

As proposed, S.B. 1126 amends the Property Code in an attempt to improve the operation of POAs and strengthen the relationship between property owners and their POAs.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 209.005, Property Code, by amending Subsections (a) and (a-1) and adding Subsections (c) and (d), as follows:

(a) Requires a property owners' association (POA) to make the books and records of the association, including financial records and invoices, reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, V.T.C.S.).

(a-1) Requires a POA described by Section 552.0036(2) (relating to certain conditions under which a POA is subject to this chapter in the same manner as a governmental body), Government Code, to make the books and records of the association, including financial records and invoices, reasonably available to any person requesting access to the books or records in accordance with Chapter 552 (Public Information), Government Code. Provides that Subsection (a) does not apply to a POA to which this section applies.

(c) Requires a POA, in addition to the requirements of Subsection (a), to maintain a copy of the association's books and records, including financial records and invoices, at a location:

(1) on property commonly owned by the association within the boundaries of the subdivision governed by the association; or

(2) if there is no commonly owned association property within the subdivision, at a location in a municipality or extraterritorial jurisdiction of a municipality in which all or part of the subdivision is located or in whose extraterritorial jurisdiction the subdivision is located, or if the subdivision is not located in a municipality or extraterritorial jurisdiction of a municipality, in a county in which all or part of the subdivision is located.

(d) Requires that documents maintained under Subsection (c) be readily available for review without charge or time limitation during regular business hours by any member of the association. Provides that a member is entitled to copies of the documents for a reasonable charge that does not exceed five cents for each page.

SECTION 2. Amends Section 209.0055, Property Code, as follows:

Sec. 209.0055. New heading: VOTING RIGHTS IN CERTAIN ASSOCIATION ELECTIONS. (a) Provides that in addition to applying to a POA that is subject to this chapter under Section 209.003 (Applicability of Chapter), this section applies to a POA, rather than applying only to a POA, that provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with or in a county adjacent to a county with a population of 2.8 million or more, and is a corporation that is governed by a board of trustees authorized to employ a general manager to execute the association's bylaws and administer the business of the corporation, does not require membership in the corporation by the owners of the property within the defined area, and was incorporated before January 1, 2006. Makes a nonsubstantial change.

(b) Prohibits a POA from barring a property owner from voting in an association election solely based on the fact that there is a pending enforcement action against the property owner, or the property owner owes the association any delinquent assessments, fees, or fines.

SECTION 3. Amends Chapter 209, Property Code, by adding Section 209.0056, as follows:

Sec. 209.0056. ALLOCATION OF VOTES. (a) Provides that before a majority of lots in a subdivision have been sold or otherwise conveyed by the developer, the allocation of votes on any particular issue or motion in a regular or specially called POA election is governed by the dedicatory instrument or by any other applicable provision of this title.

(b) Provides that after a majority of the lots in the subdivision have been sold or otherwise conveyed by the developer, the allocation of votes on any particular issue or motion in a regular or specially called POA election is subject to the following:

(1) a property owner is prohibited from casting more than one vote, regardless of the number of lots or percentage of subdivision property owned by the property owner;

(2) if more than one person owns an interest in a lot, the owners are authorized to cast only one vote for that lot; and

(3) a person is not entitled to vote in the election solely by virtue of holding a lien on property in the subdivision governed by the association.

(c) Provides that after the provisions of Subsections (b)(1), (2), and (3) become applicable to the allocation of votes, the reacquisition by the developer of a majority of the lots in the subdivision does not affect the applicability of those provisions.

SECTION 4. Amends Chapter 209, Property Code, by adding Sections 209.014 and 209.015, as follows:

Sec. 209.014. CONFLICTS OF INTEREST PROHIBITED. Prohibits a member of a governing board of a POA, or a subcommittee or other body granted authority by the board, from voting on a matter before the board, subcommittee, or other body in which the outcome has the effect of financially benefiting that member, a business in which that member has an interest, a person related to that member within the third degree of consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, or that member's employer or a person who employed the member for any period during the one-year period before the date of the vote.

Sec. 209.015. EXPANSION OR TRANSFER OF ASSOCIATION POWERS PROHIBITED. (a) Prohibits the bylaws of a POA from expanding the powers of the association beyond the powers specifically granted in the dedicatory instrument creating the association.

(b) Prohibits the board of a POA from transferring any power of the board to amend covenants or restrictions governing the subdivision to an individual or any other entity.

SECTION: Effective date: September 1, 2009.