

BILL ANALYSIS

Senate Research Center
81R338 AJA-D

S.B. 237
By: West, Royce
Intergovernmental Relations
2/18/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Homeowners' associations (HOAs) are intended to maintain common areas in residential neighborhoods and to protect homeowners' investments in their property by enforcing certain aesthetic guidelines. In recent years, however, many homeowners have become dissatisfied with the operation of their associations. Many homeowners lack confidence in the conduct of board elections. Additionally, some HOAs operate under extremely cumbersome provisions for the amendment of their declarations. S.B. 237 attempts to restore confidence in the HOA election process and to provide a uniform standard for amending a declaration.

As proposed, S.B. 237 provides that a declaration may be amended on a vote of 67 percent of the total votes allocated to owners of property in the subdivision, unless the declaration creating the subdivision specified a lower percentage. It also establishes that the right to vote in board elections cannot be limited and states the conditions under which a person is disqualified from serving on the board. The bill requires the use of a neutral third party to count election ballots under certain circumstances and sets forth the requirements for the conduct of elections. S.B. 237 sets forth certain property owners' associations to which certain provisions of this Act do not apply. S.B. 237 prohibits a person from serving on the board of an HOA if the person has been convicted of certain offenses and requires an HOA to obtain criminal history information on candidates for HOA boards. Finally, S.B. 237 provides for the use and content of an association's bylaws.

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 Chapter 209, Property Code, by adding Sections 209.0041-209.0046, as follows:

- Sec. 209.0041. AMENDMENT OF DECLARATION. (a) Defines "development period."
- (b) Provides that this section applies only to a residential subdivision where property owners are subject to mandatory regular or special assessments.
- (c) Provides that this section applies to a declaration regardless of the date on which the declaration was created.
- (d) Provides that this section does not apply to the amendment of a declaration during a development period.
- (e) Provides that this section prevails to the extent of any conflict with another provision of this title.
- (f) Authorizes the declaration and any subsequently enacted declarations to be amended on a vote of 67 percent of the total votes allocated to owners of property in the subdivision unless a declaration creating a residential subdivision provides

a lower percentage. Provides that the percentage in the declaration controls if the declaration provides a lower percentage.

(g) Requires that all ballots cast in an election that results in the amendment of a declaration under this section be deposited in each county clerk's office in which the declaration is recorded and is subject to inspection by the public. Requires a county clerk to retain ballots deposited under this subsection until the fourth anniversary of the date the ballots were deposited. Prohibits a county clerk from charging a fee for the deposit of ballots under this subsection.

Sec. 209.0042. TABULATION OF VOTES. (a) Requires the property owners' association (association) to utilize a neutral third party to tabulate the votes in any matter subject to a vote of the members of the association under certain circumstances.

(b) Provides that a person, for the purposes of this section, is considered a neutral third party if the person is anyone other than a candidate for office, a current or former member or officer of the board of directors, an attorney who represents the association, or a representative of the association's management company, or a person related to one of those persons within the second degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code.

(c) Provides that this section does not apply to an association if membership in the association is mandatory for owners or a defined class of owners of private real property in a certain defined geographic area or a certain county, the association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments for capital improvements or mandatory regular assessments, and the amount of the mandatory special or regular assessments is or ever has been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20 (Fair Cash Market Value Not to Be Exceeded; Discounts for Advance Payment), Article VIII, Texas Constitution.

Sec. 209.0043. RIGHT TO VOTE. Provides that a provision of a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

Sec. 209.0044. BOARD MEMBERSHIP. (a) Provides that a provision of a dedicatory instrument that restricts a property owner's right to run for a position on the board of the association is void.

(b) Authorizes an association board to make information available to members of the association regarding a candidate for a position on the board regarding any amount owed to the association by the candidate that is six months or more overdue, any violation of a restrictive covenant of which notice was delivered to a board candidate under Section 209.006 (Notice Required Before Enforcement Action) more than 30 days before the date of the election, and any lawsuits to which both the association or any of its directors or agents and the board candidate are a party.

(c) Prohibits a person from serving as a board member of an association if the person has been convicted of an offense involving moral turpitude. Requires an association or its agent to obtain from the Department of Public Safety (DPS) or a private vendor approved by DPS and offering services comparable to the services offered by DPS all criminal history record information relating to each person who declares a candidacy for a position of the board.

(d) Prohibits an association board member from being elected to a term longer than three years.

Sec. 209.0045. CONDUCT OF ELECTION. Requires that, if a physical polling place is open for association members to vote, the polling place for an association election be open from 7 a.m. to 7 p.m. on any day on which an election is held on an issue on which all the members of the association are polled.

Sec. 209.0046. BYLAWS. (a) Provides that the administration and operation of an association are governed by the bylaws. Requires the bylaws to provide for the qualifications and number of directors of the association, which are prohibited from being less than three; the qualifications and titles of the officers of the association, which are required to include a president, secretary, and treasurer; terms of office for directors; the manner of electing and removing a board member or officer and of filling vacancies; the powers, if any, that the board or an officer is authorized to delegate to another person or to a managing agent; the method of amending the bylaws; and the manner of notice of meetings of the association.

(b) Prohibits the bylaws from expanding the powers of the association beyond those powers specifically granted in the dedicatory instrument.

SECTION 2. Amends Subsection (a), Section 211.002, Property Code, to provide that this chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision to which another chapter in this title that provides a procedure under which a subdivision's restrictions are authorized to be amended does not apply. Deletes existing text relating to this chapter applying only to a residential real estate subdivision or any unit or parcel of a subdivision located in whole or in part within an unincorporated area of a county if the county has a population of less than 65,000.

SECTION 3. (a) Provides that Sections 209.0043 and 209.0044(a), Property Code, apply to a deed restriction enacted before, on, or after the effective date of this Act.

(b) Makes application of Sections 209.0044(c) and (d), Property Code, of this Act prospective.

SECTION 4. Effective date: January 1, 2010.