

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 237
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Intergovernmental Relations
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Committee Report (Substituted)

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. This bill attempts to restore confidence in the HOA election process and to provide a uniform standard for amending a declaration.

C.S.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. C.S.S.B. 237 sets forth certain property owners' associations to which certain provisions of this Act do not apply. C.S.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, C.S.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 wholly or partly 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 computerized criminal history system maintained by the Department of Public Safety (DPS) and made available to the public through DPS's Internet website all criminal history record information relating to each person who declares a candidacy for a position on 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.

Sec. 209.0051. OPEN MEETINGS. Requires that each meeting of the board or a committee of a property owners' association be open to every member of the association and be held in a county in which the property to which the association relates is located.

(b) Requires a property owners' association to give written notice to every member of the property owners' association of the date, hour, place, and subject of each regular or special meeting of the board or a committee of the property owners' association. Requires that the notice include a written agenda that states in clear and precise language the item or items to be addressed and considered at the meeting and be posted at least 72 hours before the start of the meeting and in a conspicuous manner or place reasonably designed to provide notice to the association members.

(c) Requires a property owners' association to prepare and keep minutes or make a tape recording of each meeting of the board or a committee of the property owners' association. Requires the minutes to state the subject of each deliberation and indicate each vote, order, decision, or other action taken.

(d) Requires that the minutes of the board or a committee meeting of a property owners' association to be made available for inspection and copying by a member of the property owners' association not later than the seventh day after the date of the meeting.

SECTION 2. Amends Section 211.002(a), 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.