

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 754 (Moorlach) – As Amended June 24, 2019

SENATE VOTE: 38-0

SUBJECT: Common interest developments: board members: election by acclamation

SUMMARY: Creates a process for homeowners associations (HOAs) in common interest developments (CID) to approve board members by acclamation. Specifically, **this bill:**

- 1) Requires an HOA to hold elections for members of the board of directors every four years.
- 2) Provides that once members of the HOA have been nominated for the board of directors if the number of nominees is equal to the number of vacancies on the board the nominees shall be elected by acclamation if all of the following are true:
 - a) The HOA includes 6,000 units or more;
 - b) The HOA provided individual notice of the election and procedure for nominating candidates at least 30 days before the close of the nomination;
 - c) The HOA permits all candidates to run if nominated.
 - d) The HOA permits all candidates to run if nominated except for the following:
 - i. If the person is not a member of the HOA at the time of the nomination; and
 - ii. If within the past 20 years, the person has been convicted of a felony involving accepting, giving, or offering to give a bribe, the embezzlement of money, the extortion or theft of money, perjury or conspiracy to commit any of those crimes.
 - e) Allows a HOA through its bylaws or election operating rules to disqualify a person from nomination as a candidate if any of the following are true:
 - i. If a nominee is not current in the payment of regular assessments. Allows an HOA to require a sitting director to be current on payment of regular assessments;
 - ii. If a person who if elected would be serving on the board with another person who holds a joint ownership in the same separate interest as the person or person nominated or an incumbent director;
 - iii. If the person has been a member of the HOA for less than a year; and,
 - iv. A person for not paying regular assessments, but may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. Provides that a person may be not disqualified for failure to be current in payment of regular assessments if either of the following circumstances are true:

- a. The person has paid the regular assessment under protest;
- b. The person entered into a payment plan; and,
- c. Prohibits an HOA from disqualifying a person who has not been offered an opportunity to engage in internal dispute resolution.

EXISTING LAW:

- 1) Requires the election and removal of directors, amendments to governing documents, or the grant of exclusive use of common areas, to be held by secret ballot.
- 2) Provides that directors shall not be required to be elected if the governing documents provide that one member from each separate interest (e.g., unit or lot) is a director.
- 3) Requires the HOA to adopt election rules that do the following:
 - a) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or websites during a campaign, and that equal access shall be provided to all candidates and members, for purposes reasonably related to the election.
 - b) Ensure access to common area meeting space at no cost to all candidates.
 - c) Specify the qualifications for candidates for the board and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents. A rule shall not be deemed reasonable if it disallows any member from nominating himself or herself for election to the board.
 - d) Specify the qualifications for voting; the voting power of each membership; the authenticity, validity, effect of proxies; and the voting period for elections. This includes the times at which polls will open and close, consistent with the governing documents.
 - e) Specify a method for selecting one or three independent third parties as inspector or inspectors of elections. Inspectors may appoint or oversee additional independent third-party persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate.
- 4) Requires the inspector of elections to be one or three individuals who have the following duties:
 - a) Determine the number of memberships entitled to vote and the voting power of each;
 - b) Determine the authenticity, validity, and effect of proxies;
 - c) Receive votes and ballots and hear and determine all challenges and questions;
 - d) Count and tabulate all votes;

- e) Determine when the polls will close; and
 - f) Determine the results of the election.
- 5) Permits the nomination of candidates from the floor of membership meetings or nomination by any other manner.
 - 6) Permits a member of an association to bring a cause of action in small claims court against the HOA if the HOA restricts access to association resources by a candidate or member advocating a point of view; the receipt of the ballot by a member; or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after the tabulation.
 - 7) Requires the HOA board to provide notice of a proposed rule change, as specified, at least 30 days prior to making the rule change.
 - 8) Provides that if an HOA must deliver a document by “individual delivery” or “individual notice,” it may deliver the document by email, fax, or other electronic means if the recipient has consented in writing to that method of delivery.

FISCAL EFFECT: Unknown.

COMMENTS:

Purpose of the bill: According to the author, “Elections are very expensive for large HOAs. Laguna Woods Village, the sponsor of this bill, serves more than 18,500 members, the vast majority of which are of modest means, living on fixed incomes. When an election is uncontested, it is a terrible and unnecessary drain on people with limited incomes. Laguna Woods Village has spent \$60,000 on uncontested elections each year in the last two years alone. Most of Laguna Woods Village elections are uncontested, despite the best efforts of HOA leadership to recruit candidates. Yet the HOA board must hire elections officials, print and mail ballots, and conduct costly elections, shifting precious resources away from other important community needs. This bill seeks to remedy this situation by providing a process through which a board may initiate an election by acclamation when the number of candidates does not exceed the number of available seats on the board. This bill assures transparency, requiring that each individual voter receive notice of a pending election and be given the opportunity to nominate candidates no less than 30 days prior to the close of nominations.”

Background: There are over 52,000 CIDs in the state that comprise over six million housing units, or approximately one quarter of the state's housing stock. CIDs include condominiums, community apartment projects, housing cooperatives, and planned unit developments. They are characterized by a separate ownership of dwelling space coupled with an undivided interest in a common property, restricted by covenants and conditions that limit the use of common area and the separate ownership interests, and the management of common property and enforcement of restrictions by a HOA. CIDs are governed by the Davis-Stirling Act (the Act) as well as the governing documents of the HOA, including bylaws, declaration, and operating rules. The Act requires elections to conform to an extensive process, including double stuffed ballots and the selection of one or three independent third parties as an inspector or inspectors of elections. AB 569 (Chau), Chapter 661, Statutes of 2014, exempted HOAs from these procedures in cases where their bylaws require all of the members to serve on the board of directors.

CID elections procedures: Under existing law, CID elections must be held by secret ballot and, among other things, an association must adopt rules around campaigning, specifying the qualifications for candidates for the board, qualifications for voting, and the method for selecting independent third-party inspectors. Ballots and two preaddressed envelopes with instructions for returning the ballot are mailed to every member not less than 30 days prior to the deadline for voting. The ballot is inserted into an envelope, which is placed in a second envelope and mailed to the inspectors. The votes are tabulated by the inspectors in public at a properly noticed open meeting of the board or members. The tabulated results must be promptly reported to the board and be recorded in the minutes of the next meeting. Additionally, within 15 days of the election, the board must give general notice to all members of the results of the election.

Acclamation: In HOAs with 6,000 separate interests or more, this bill would all an election to be made by acclamation. Once the nominations for the board of directors are complete, if the total number of nominees equals the number of open board seats, the election could be conducted by acclamation. This would bypass the election procedure in existing law. The HOA would be required to provide notice to the members 30 days prior to the nominations of the procedure for nominating candidates and all qualified candidates would be permitted to run. This bill is narrower than past bills in that it is limited to HOAs of 6,000 separate interests or more.

Precedent for election by acclamation: Existing law relating to elections for school district boards, county boards of education, special district boards, and city councils indicates precedent for making the election-by-acclamation change to CID law:

- a) School districts, county boards of education, and special districts: If, by the end of the nominating period, the number of candidates does not exceed the number of vacancies, and no one has filed a petition signed by 10% of the voters or 50 voters (whichever is greater) requesting that an election be held, the nominees shall be appointed and seated as if elected.
- b) Municipal elections: If, by the end of the nominating period, the number of candidates is less than or does not exceed the number of vacancies, the city elections official shall inform the city's governing body that it may adopt one of the following courses of action: appoint the nominees, appoint an eligible individual if no one has been nominated, or hold the election.

Qualifications of board members: HOAs are required to adopt operating rules that govern the elections including qualifications for candidates for the board of directors. This bill would require an HOA to disqualify a candidate for the board if he or she is not a member of the HOA or if the person has been convicted of a felony in the last 20 years. HOAs would not be allowed to disqualify a candidate who has owned in the CID for less than one year. An HOA could also disqualify a person who is delinquent on regular assessments, except that the person has to have been offered a payment plan, the person may pay the assessment under protest, or if the person was not given an opportunity to participate internal dispute resolution. Board members could also not serve on the board if delinquent on regular assessments. Regular assessments are payments made by the membership of the HOA to pay for the basic operations of the CID. CIDs also can approve special assessments necessary to pay for larger expenses like significant construction or renovations of the CID. This bill would only allow an HOA to prevent a member from serving on the board if he or she is delinquent on regular assessments. The committee may wish to consider including special assessments in this prohibition. Board members will be required to take actions against members who are delinquent on both regular and special

assessments, a board member should be current on their own assessments, both regular and special, if they are enforcing on another member.

The provisions in this bill regarding qualifications of a board member are identical to the provisions in SB 323 (Wieckowski) which this committee voted to approve 5-1 on June 19, 2019.

Arguments in opposition: The Community Associations Institute's California Legislative Action Committee is supportive of giving HOAS the option of voting by acclamation when the number of candidates equals the number of open board seats; however, they are opposed to establish qualifications for board members in statute and believe it should be left up to individual HOAs to determine those qualifications.

Committee amendment: Consistent with the amendment this committee requested of a similar bill, the committee may wish to consider requiring that a candidate and a member of the board of directors to be current on special assessments, in addition to regular assessments, in order to run for and serve on the board of directors of a CID.

Related legislation:

SB 323 (Wieckowski, 2019) enacts a series of reforms to the laws governing board of director elections in CIDs to increase the regularity, fairness, formality and transparency of HOA elections. *This bill passed out of this committee and is pending hearing in Assembly Judiciary Committee.*

Previous legislation:

SB 261 (Monning) Chapter 836, Statutes of 2018 authorized an HOA in a CID to provide a document by electronic means if the recipient has consented by email and reduces the notice requirement of a proposed rule change by the HOA board from 30 days to 28 days.

SB 1128 (Roth, 2018) would have authorized an HOA in a CID to provide a document by electronic means if the recipient has consented by email; reduce the notice requirement of a proposed rule change by the HOA board from 30 days to 28 days; and provide that the nominees to a board shall be declared elected by acclamation if the number of nominees does not exceed the number of vacancies on the board, as specified. *The bill was vetoed.*

SB 1265 (Wieckowski, 2018) would have made several changes to the elections process held in CIDs, as well as making changes in the process for handling disputes between a member and an HOA. *The bill was vetoed.*

REGISTERED SUPPORT / OPPOSITION:

Support

Laguna Woods Village (Sponsor)
Laguna Woods Residents (50)

Opposition

Community Associations Institute's California Legislative Action Committee

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