

Date of Hearing: June 13, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 1128 (Roth) – As Amended May 15, 2018

**SENATE VOTE:** 36-1

**SUBJECT:** Common interest developments: governance

**SUMMARY:** Make changes to the election procedures for common interest developments. Specifically, **this bill:**

- 1) Specifies that an owner may consent by email to have a document delivered by the homeowners association (HOA) via email, fax, or other electronic means.
- 2) Requires a HOA board to provide general notice, pursuant to existing law, of a proposed rule change at least 28 days, rather than 30 days, before making the rule change.
- 3) Provides that if, at the close of nominations, the inspector or inspectors of elections determines that the number of nominees is not more than the number of vacancies on the board, the nominees shall be considered elected by acclamation.
- 4) Requires for nominees to be elected by acclamation, the HOA to provide individual notice of the election and the procedure for nominating candidates at least 30 days prior to the close of nominations.

**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:** None.

**COMMENTS:**

*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.

*Purpose of this bill:* According to the author, "SB 1128 is imperative particularly for larger CID's to gain minor efficiencies that can ultimately save tens of thousands of dollars for residents – many of whom have modest means. The bill would allow where required documents, such as the annual budget, can be more efficiently sent to residents via electronic means. The bill would also allow a very slightly lower notice requirement (from 30 days to 28 days) for proposed rule changes, which will alleviate delays of up to two months for a rule change to be considered once it is noticed. Shorter months (February, June, September and November) create delays in important decisions. In a 12 month period, 8 meetings did not meet the 30-day requirement for two of Laguna Woods Village's Boards; for the third Board, 9 meetings did not meet the 30-day requirement. Further, this CID has spent tens of thousands of dollars on elections (approximately \$20,000 per election; three elections per year in 2017) in which there the candidates were equal to or less than the number of board seats available. This financial burden shifts finances away from other important needs – to elections without the possible benefit of a different outcome."

*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.

*Arguments in support:* Supporters argue that the election provision of the bill would provide significant costs savings in larger HOAs. Laguna Woods Village, sponsor of the bill, has found that owners are not willing to run for office and yet they are required to conduct full-on elections. In 2017, they report spending \$60,000 on elections that had an equal number of candidates running for open board positions.

*Arguments in opposition:* Opponents are opposed to the provision of the bill that allows elections with an equal number of open seats to candidates to be made by acclamation. They argue that the bill takes away the constitutional right to vote. They further argue that the problem with soliciting owners to run for office is not a lack of owners willing to run, but rather the qualifications that the CID requires in order to run for a seat on the board.

*Committee amendments:* To avoid a circumstance in which potentially all elections are made by acclamation, the committee may wish to limit an HOA to holding every other election by acclamation. The committee also may wish to require the HOA to have adopted election rules as required under existing law, which includes a procedure for nominations, in order to use the election by acclamation option.

### **Related legislation:**

SB 1265 (Wieckowski) makes changes to the election process in CIDs and the process for handling disputes between owners and the HOA. *This bill was double referred to this committee and the Committee on Judiciary. It will be heard in this committee on June 20, 2018.*

**Double-referred:** This bill was also referred to the Committee on Judiciary where it will be heard should it pass out of this committee.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

Laguna Woods Village (sponsor)  
California Association of Community Managers  
Community Associations Institute of California  
Congress of California seniors  
Rossmoor Walnut Creek  
Individuals (69)

#### **Opposition**

California Alliance For Retired Americans  
California Land Title Association  
Center for California Homeowner Association  
Greater Sacramento Urban League  
Individuals (1)

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