

- 3) Requires ballots and two preaddressed envelopes with instructions on how to return ballots to be mailed by first-class mail or delivered by the association to every member no less than 30 days prior to the deadline for voting. Requires HOAs to use procedures used by California counties for ensuring confidentiality of vote by mail ballots, as specified.
- 4) Requires a quorum for elections of director and recall elections only if so stated in the HOA's governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.
- 5) Requires, for incorporated HOAs, a quorum at a meeting of members to be one-third of the voting power, represented in person or by proxy. Authorizes corporation bylaws to set a different quorum subject to specified restrictions.
- 6) For HOAs that require a quorum for elections of directors, and in the absence of a quorum, authorizes the board to call a subsequent meeting at least 20 days after a scheduled election if the quorum is not met, at which time the quorum will be 20% of the HOA's members voting in person, by proxy, or by secret ballot. The HOA is required to provide general notice of the meeting, which must include:
 - a) The date, time, and location of the meeting;
 - b) The list of all candidates;
 - c) A statement that 20% of the HOA present or voting by proxy or secret ballot will satisfy the quorum requirements for the election and that the ballots will be counted if a quorum is reached.

This bill:

- 1) Clarifies that if a subsequent meeting must be held for an election of directors due to failure to attain a quorum, the HOA (rather than the CID) may call a reconvened meeting to be held at least 20 days after the scheduled election.
- 2) Requires the general election notice sent to HOA members to include a statement that if a quorum is not attained, the HOA may call a reconvened meeting to be held at least 20 days after the initial meeting, which will require a quorum of 20% of the HOA's members voting in person, by proxy, or by secret ballot.

- 3) Provides that the requirements in (1) and (2) do not apply if the HOA's governing documents provide for a quorum of less than 20% of the HOA's members.
- 4) Clarifies that an HOA may call a reconvened meeting for an election of directors due to failure to attain a quorum, rather than being restricted to holding an election at a membership meeting.

COMMENTS:

- 1) *Author's statement.* "AB 2460 would clarify the correct vocabulary as defined by the California Department of Real Estate when it comes to proceeding with a Board of Directors election for a Homeowners Association."
- 2) *CID background.* CIDs are a type of housing with separate ownership of housing units that also share common areas and amenities. There are a variety of different types of CIDs, including condominium complexes, planned unit developments, and resident-owned mobilehome parks. In recent years CIDs have represented a growing share of California's housing stock. Data from 2019 indicates that there are an estimated 54,065 CIDs in the state made up of 5 million units, or about 35% of the state's total housing stock.

CIDs are regulated under the Davis-Stirling Act as well as the governing documents of the HOA, including the bylaws, declaration, and operating rules. Additionally, HOAs are governed by a board of directors elected by the membership. HOA boards have a number of duties and powers, including determining the annual assessments members must pay in order to cover communal expenses. The board enforces the community rules and can propose and make changes to those rules.

- 3) *HOA elections and quorum requirements.* HOAs are required to hold elections for directors when a seat becomes vacant and at least every four years. Quorum is the minimum number of HOA members that must be "present" – either in person or via mailed ballots – in order to make the proceedings of a meeting legally valid. Quorum requirements differ depending on the type of HOA that has been formed and on whether or not quorum is required by the HOA governing documents. In most cases, if quorum is required by an HOA's governing documents, the quorum is a "50% + 1" threshold of members. If an HOA has chosen to incorporate as a nonprofit corporation, state law establishes a quorum at 33% of membership.

According to the California Association of Community Managers (CACM) and the Community Associations Institute’s California Legislative Action Committee (CAI-CLAC), a significant number of HOAs reported having difficulty meeting quorum requirements for board elections. Regardless of quorum rules, board directors must remain in office “until a successor has been elected and qualified.” Existing law provided a variety of possible remedies to address this problem, including declaring an election by acclamation, abolishing a quorum requirement from the governing documents, holding multiple elections, or by having directors resign their seats to create vacancies that can be temporarily filled by appointment. Most or all of these remedies, however, were difficult, costly, or both, to implement. In response, these two organizations co-sponsored AB 1458 (Ta, Chapter 303, Statutes of 2023), which authorized a lower quorum requirement for CID elections of directors under specified circumstances.

CAI-CLAC states that this bill provides several needed clarifications to AB 1458. In addition to several technical changes, it clarifies who has the responsibility to call for the reconvened meeting, clarifies that the reconvened meeting does not have to be an annual membership meeting, and adds information about the requirement to call a reconvened meeting to the general election notice requirements. The author notes that this is cleanup language requested by the Governor’s Office on behalf of the state Department of Real Estate, which essentially defines the HOA board of directors election process as “reconvening” rather than calling for a new election.

4) *Opposition arguments.* The Center for Homeowner Association Law opposes this bill on the same grounds for which it opposed AB 1458, arguing that it restricts the right of homeowners to vote in board of directors elections. The Center states that this bill should be amended to increase notice requirements for reconvened meetings, require sealed ballots to remain unopened and in the custody of the elections inspector until the reconvened meeting, and limit the number of times a reconvened meeting can be held without calling a new election.

5) *Double referral.* This bill has also been referred to the Judiciary Committee.

RELATED LEGISLATION:

AB 2159 (Maienschein, 2024) — allows an HOA to conduct an election by electronic secret ballot, as specified. *This bill will also be heard in this committee today.*

AB 1458 (Ta, Chapter 303, Statutes of 2023) — authorized a lower quorum requirement for CID elections of directors under specified circumstances.

AB 502 (Davies, Chapter 517, Statutes of 2021) — removed the requirement that an HOA must have 6,000 or more units in order to use an election by acclamation procedure which allows HOAs to bypass a full election for board of directors if the number of nominees is not more than the number of vacancies to be filled.

SB 323 (Wieckowski, Chapter 848, Statutes of 2019) — enacted a series of reforms to the laws governing board of director elections in HOAs that seek to increase the regularity, fairness, formality, and transparency associated with such elections.

SB 754 (Moorlach, Chapter 858, Statutes of 2019) — provided that if nominees to an HOA board in a CID shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, June 12, 2024.)

SUPPORT:

Community Associations Institute - California Legislative Action Committee
(Sponsor)

OPPOSITION:

Center for Homeowner Association Law

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