



have been foreseen, that require immediate attention and possible action by the board and which of necessity make it impracticable to provide notice. [CIV 4923]

- 5) Authorizes an HOA board to hold an emergency board meeting using electronic transmission if all directors consent in writing (including by email) to that action, and if the written consent is filed with the minutes of the board meeting. [CIV 4910]
- 6) Requires an HOA to provide notice of the time and place of a board meeting at least four days before a meeting, except for an emergency board meeting in (5). Requires an HOA to provide notice of the time and place of a non-emergency board meeting that is held solely in executive session, at least two days before the meeting. Requires an HOA to provide notice of a board meeting by general delivery. [CIV 4920]
- 7) Provides that any HOA member may attend a board meeting, except for executive session. Provides that any HOA member is entitled to attend a teleconference meeting, which shall be audible to the members in a location specified in the meeting notice. [CIV 4925]
- 8) Provides that other than the meeting to count the votes, an HOA election may be conducted entirely by mail unless otherwise specified in the governing documents. [CIV 5155]
- 9) Requires all votes to be counted and tabulated by the elections inspector in public at a properly notice open meeting of the board or members, as specified. Any candidate or other HOA member may witness the counting and tabulation of votes. [CIV 5120]

**This urgency bill:**

- 1) Authorizes HOA boards to meet by teleconference, without identifying a physical location where HOA members may attend, in an area affected by one or more of the following circumstances:
  - a) A state of disaster or emergency has been declared by the federal government.
  - b) A state of emergency has been proclaimed by the Governor.
  - c) A local emergency has been proclaimed by a local governing body or official.
- 2) Authorizes a board meeting or member meeting to be conducted entirely by teleconference, without any physical location being held open for the

attendance of any director or member, if all of the following conditions are satisfied:

- a) The meeting notice provides clear technical instructions on how to participate in the teleconference.
- b) The meeting notice provides the telephone number and email address of a person who can provide technical assistance with the teleconference process, both before and during the meeting.
- c) Every director and member has the same ability to participate in the meeting that would exist if the meeting were held in person.
- d) Any vote of the directors shall be conducted by a roll call vote.
- e) Any person entitled to participate in the meeting shall be given the option of participating by telephone.

## COMMENTS

- 1) *Author's statement.* "As we navigate natural disasters such as catastrophic wildfires and mudslides as well as other emergencies, we must expand emergency powers so that Common Interest Developments (CIDs) can safely and effectively work during emergencies. By expanding the Davis-Stirling Act to include these emergency powers, SB 391 will ensure that, even in the midst of extraordinary circumstances, CIDs can safely and effectively conduct business in a way that is transparent and accessible. Whether you work in local government, own a small company, or volunteer on a school board, being able to adapt during natural disasters to continue to conduct business remotely is crucial. As we have seen through the COVID-19 pandemic, we need to remove obstacles preventing organizations from safely meeting during emergencies. CIDs, which are the fastest growing form of housing in the world, are no exception to this."
- 2) *Background: CIDs.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-quarter of the state's housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents.

- 3) *HOA Meetings.* Existing law provides that any HOA member may attend a board meeting, at a physical location specified in the meeting notice, except for executive session. However, existing law authorizes emergency board meetings under certain circumstances, and authorizes these emergency meetings to be conducted using electronic transmission under certain circumstances. Any HOA member may attend a teleconference meeting, which shall be audible at a location specified in the meeting notice. Notice of the time and place of a board meeting must be provided at least four days in advance, except for an emergency board meeting. This bill would authorize an HOA board to conduct a teleconference meeting under certain circumstances without providing a physical location at which members could listen to the meeting.
- 4) *General versus individual notices.* Existing law requires HOAs to deliver some documents, such as notices of board meetings, by “general delivery” or “general notice;” this includes methods such as putting it in a newsletter or billing notice or posting it in a prominent location. Other documents must be provided by “individual delivery” or “individual notice,” such as by mail or email. However, an HOA member must provide all notices by individual delivery if a member requests it. Emergency meetings authorized under this bill would fall under the general delivery requirement.
- 5) *California Law Revision Commission.* The California Law Revision Commission is an independent state agency that assists the Legislature and Governor by examining California law and recommending needed reforms. When the Commission makes preliminary decisions on how to reform a law, it issues a tentative recommendation soliciting public comment. After considering public input, the Commission typically makes a final recommendation, which is delivered to the Legislature and Governor and then published. Over 90% of the Commission’s recommendations have been enacted into law, affecting more than 22,500 sections of the state’s statutory codes. This bill is based on a November 2020 recommendation by the Commission.
- 6) *Opposition concerns.* Opponents state several concerns:
  - a) *No requirement for individual meeting notice.* This bill provides for only “general delivery” of a notice for an emergency electronic meeting, unless an HOA member has already opted for individual notice. The author states that if HOA members want individual notice, they can opt in. Opponents state that this places the burden on the homeowner; moreover, there may not even be a physical location at which to post a notice if the subdivision has

been destroyed by a disaster such as a fire. It seems reasonable to expect that some HOA members who have been disengaged, might want to opt in after a disaster, but are unsure how to do so. Nevertheless, if homes have been destroyed, requiring individual delivery to the physical address is not practical. **To address these concerns, the author will accept committee amendments to require an HOA to take reasonable steps, as is feasible under the particular circumstances, to provide individual notice of the first emergency electronic meeting, including information on how to opt into individual notice going forward.**

- b) *No requirement for a physical location for ballot counting.* Existing law lays out a number of requirements for HOA elections. This includes a requirement that all votes be counted and tabulated by the elections inspector in public, at a properly noticed open meeting, so that any candidate or member may witness it. This bill would instead allow ballot counting and tabulation to be conducted via teleconference. The author states that teleconferencing provides members access to elections while lessening the burden on the HOA in difficult circumstances. Opponents point out that some members may only have call-in access and therefore not be able to witness the vote counting. Since it is common for Internet access to be impacted by a disaster, it seems feasible that many members would participate in emergency electronic meetings by phone. Moreover, since elections only happen occasionally, requiring a physical location for ballot counting would not seem to be overly burdensome. *Moving forward, the author may wish to consider amending this bill to provide that ballot counting must be done at a physical location.*
- c) *No requirement to record meetings.* This bill does not require HOAs to record emergency electronic meetings for the record. Existing law does not require any HOA meetings, whether electronic or in person, to be recorded. The author states that since the intent of this bill is to facilitate meetings in difficult circumstances after a disaster, a requirement to record meetings would be onerous. Opponents state that if an emergency electronic meeting provided essential information such as how to obtain permits from the city to rebuild, a homeowner would have no way to access that information if they could not attend the meeting and it wasn't recorded. *Moving forward, the author may wish to consider amending this bill to require emergency electronic meetings to be recorded and made available to HOA members.*
- d) *No enforcement mechanism.* Existing law provides rules for enforcement of HOA meetings rules in court. As currently written, however, this bill does not fall under those rules. The author states that in order to fast-track the

bill, enforcement will be addressed in future legislation. Opponents state that bill should be amended to include the existing enforcement provisions of the Open Meetings Act. *Moving forward, the author may wish to consider this amendment.*

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

**RELATED LEGISLATION:**

**SB 392 (Archuleta, 2021)** — authorizes an HOA, when it is required to provide documents by individual delivery or individual notice, to provide them by email, as specified. *This bill will be heard in this committee in April.*

**SB 261 (Roth, Chapter 836, Statutes of 2018)** — provided that an HOA member may consent by email to receive HOA documents by electronic means. Also reduced the notice requirement of a proposed rule change by an HOA board from 30 days to 28 days.

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

**POSITIONS:** (Communicated to the committee before noon on Friday, March 12, 2021.)

**SUPPORT:**

California Association of Community Managers  
California Association of Realtors  
Community Associations Institute - California Legislative Action Committee

**OPPOSITION:**

California Alliance for Retired Americans  
Center for California Homeowner Association Law  
Habitat for Humanity California

**-- END --**