

- 5) Authorizes an HOA to disqualify an individual from nomination due to:
 - a) Lack of membership in the HOA at the time of nomination.
 - b) A past criminal conviction, as specified.
 - c) Failure to be current in payment of regular and special assessments, as specified.
 - d) Holding joint ownership with another person who would be serving on the board at the same time.
 - e) Less than a year of membership in the HOA.
- 6) Requires an HOA to disqualify an individual from nomination if he or she is not a member at the time of nomination, except as specified.
- 7) Prohibits an HOA from disqualifying an individual from nomination if the individual has not been given the opportunity to engage in internal dispute resolution, as specified.
- 8) Permits the nomination of candidates from the floor of membership meetings or nomination by any other manner, including by write-in.
- 9) Requires the HOA to adopt election rules as follows:
 - a) Ensure that any candidate and member advocating a point of view has equal access to association media, newsletters, or Web sites during a campaign, for purposes reasonably related to the election.
 - b) Ensure access to common-area meeting space to all candidates at no cost.
 - c) Specify the qualifications for candidates for the board and any other elected position, as well as 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 voting power of each member; 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.

- 10) Requires the HOA to select one independent third party or three independent third parties as inspector or inspectors of elections, as specified, and prescribes duties for the inspector or inspectors.
- 11) Permits a member of an HOA to bring a cause of action in small claims court against the HOA if the member can establish that election procedures were not followed, as specified.

This bill:

- 1) Authorizes HOAs to use an election by acclamation if both of the following conditions are met:
 - a) The HOA has held a regular election for directors within the last three years.
 - b) The HOA provides individual notice of the election, and of procedures for nominating candidates, at least 90 days and again at least 30 days prior to the deadline for nominations.

COMMENTS:

- 1) *Author's statement.* "California's HOAs have been hit especially hard during the COVID-19 pandemic. Many have had to alter their payment schedules and services provided to members due to numerous state and local regulations. As a result of decreased revenue, HOAs are being forced to potentially increase fees on members. One way we can reduce fees and resources needed to do basic business for HOAs is to allow all HOAs to conduct elections by acclamation. This process allows the filling of positions quicker and easier thus saving HOAs time and financial resources. AB 502 accomplishes this by removing the threshold of this process to allow any HOA, regardless of size, to take advantage of this procedure."
- 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 54,000 CIDs in California comprising 5.1 million housing units, or approximately 35% 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) *Precedent for election by acclamation.* Existing elections law for certain entities indicates precedent for making the election by acclamation change to CID law. For school districts, county boards of education, and special districts, if the number of candidates does not exceed the number of vacancies by the end of the nominating period, 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 must be appointed and seated as if elected. Similarly, for municipal elections, if the number of candidates does not exceed the number of vacancies by the end of the nominating period, the city elections official must inform the city's governing body that it may adopt one of the following courses of action: appoint the nominee, appoint an eligible individual if no one has been nominated, or hold an election. This bill is narrower than the above examples in that it does not allow for options such as a petition or an appointment of a non-nominee.
- 4) *Trying again.* Several HOA election by acclamation bills have been considered by the Legislature in recent years. The first to be signed by the Governor, SB 754 (Moorlach, 2020) established election by acclamation, but the final version of the bill applied only to HOAs of 6,000 or more units. SB 754 included several safeguards to help ensure against abuses:
 - a) Requires an HOA to hold an election for a seat on the board at the expiration of that director's term, and at least once every four years.
 - b) Requires an HOA to provide notice to its members of the election and the nomination procedure, at least 30 days prior to the close of nominations.
 - c) Requires an HOA to allow all qualified candidates to run if nominated.
 - d) Provides specific circumstances under which an HOA is authorized or required to disqualify an individual from nomination.

This bill would remove the 6,000-unit restriction and add to these guardrails that the HOA must have held a regular election in the last three years and must provide notice to its members of the election and of nomination procedures both 90 days and 30 days prior to the nomination deadline.

- 5) *Opposition concerns.* ACLU California Action (ACLU) states that this bill does harm to two of the most important rights held by HOA members – the right of the governed to vote and the right to run for a board seat – by empowering HOA boards “to dispense with elections altogether after cherry-picking their preferred candidates.”

The Center for California Homeowner Association Law (CCHAL) states that allowing board directors to be seated by acclamation, rather than through the balloting process, is essentially the cancellation of an election. CCHAL proposes a number of amendments:

- a) *Make the bill permissive.* As currently drafted, this bill requires seating by acclamation under specified conditions. Amending “shall” to “may” would give HOAs the option, if they wish, to hold an election regardless of whether the number of candidates exceed the number of vacancies on the board.
- b) *Confirm nominations.* CCHAL notes that, whether deliberate or accidental, nominations are sometimes lost in the process, which could potentially result in an election by acclamation. Requiring HOAs to provide a receipt for each nomination would help ensure that all nominations are recorded.
- c) *Require a declaration of election by acclamation.* CCHAL proposes requiring an HOA, if the number of nominations does not exceed the number of vacancies, to provide individual notice to its members of its intent to declare an election by acclamation at the next board meeting. This notice would include the names of all nominees and indicate any nominee who is not qualified under the election rules laid out in the governing documents.
- d) *Extend the nominations period.* CCHAL further proposes requiring an HOA to allow additional nominations at the board meeting where the election by acclamation is scheduled to be declared.

The author has agreed to accept a committee amendment make this bill permissive, rather than mandatory. The author will continue to work with the opposition on the remaining concerns as this bill moves to the next committee.

- 6) *Double referral.* This bill was also referred to the Senate Judiciary Committee.

RELATED LEGISLATION:

SB 754 (Moorlach, Chapter 858, Statutes of 2019) — provided that nominees to an HOA board shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board and the HOA is 6,000 or more units.

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

SB 1128 (Roth, 2018) — would have, among other things, provided that nominees to an HOA board shall be declared elected by acclamation if the number of nominees does not exceed the number of vacancies on the board, as specified. *This bill was vetoed.*

AB 1799 (Mayes, 2016) — would have exempted HOAs from election procedure requirements in uncontested elections. *The bill passed out of the Senate Transportation and Housing Committee but died in the Senate Judiciary Committee.*

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

POSITIONS: (Communicated to the committee before noon on Friday, June 11, 2021.)

SUPPORT:

Alicante Maintenance Corporation
BHE Management Corporation
California Association of Community Managers (CACM)
Community Associations Institute - California Legislative Action Committee

OPPOSITION:

ACLU California Action
California Alliance for Retired Americans
Center for California Homeowner Association Law
1 Individual