
SENATE COMMITTEE ON HOUSING
Senator Nancy Skinner, Chair
2023 - 2024 Regular

Bill No: AB 2159 **Hearing Date:** 6/18/2024
Author: Maienschein
Version: 6/10/2024 Amended
Urgency: No **Fiscal:** No
Consultant: Erin Riches

SUBJECT: Common interest developments: association governance: elections

DIGEST: This bill allows a homeowner association (HOA) to conduct an election by electronic secret ballot, as specified.

ANALYSIS:

Existing law:

- 1) Establishes the Davis-Stirling Common Interest Development Act, which provides rules and regulations governing the operation of residential common interest developments (CIDs) and the rights and responsibilities of HOAs and HOA members.
- 2) Requires an HOA to hold elections, remove directors, adopt amendments to governing documents, or grant exclusive use of common areas, by secret ballot.
- 3) 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.

- 4) 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.
- 5) Requires HOAs to provide general notice of all of the following at least 30 days before ballots are distributed:
 - a) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections;
 - b) The date, time, and location of the meeting at which ballots will be counted;
 - c) The list of all candidates' names that will appear on the ballot;
 - d) Individual notice of (a)-(c) must be delivered pursuant to existing law if individual notice is requested by a member.
 - e) If a quorum for an election of directors is required, a statement that if a quorum is not met for the election, the board may call a subsequent meeting at least 20 days after a scheduled election, at which time the quorum will be 20% of the HOA's members voting in person, by proxy, or by secret ballot.
- 6) 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.
- 7) 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) Allows an HOA, notwithstanding the governing documents, to adopt an election operating rule allowing an HOA to utilize an inspector or inspectors of elections to conduct an election by electronic secret ballot, except for an election regarding regular or special assessments. (Civ. Code §5105(i))
- 2) Requires an election operating rule adopted pursuant to this bill to include, but not be limited to, the following purposes: (Civ. Code §5105(i)(1))
 - a) Allowing any member to opt out from voting by electronic secret ballot at least 90 days before an election and to instead vote by written secret ballot.

- b) Requiring the electronic secret ballot and a written ballot in an election to contain the same list of items being voted on.
 - c) Requiring the HOA to mail a written ballot only to a member who has opted out of voting by electronic secret ballot.
 - d) Requiring the HOA to maintain a voting list identifying which members will vote by electronic secret ballot and which members will vote by written ballot, and include information on the procedures to opt out of voting by electronic secret ballot in the annual statement required by existing law.
 - e) Requiring a member who votes by electronic secret ballot to provide a valid email address to the HOA.
 - f) Prohibiting nomination of candidates from the floor of membership meetings.
- 3) Requires the HOA to deliver individual notice of the electronic secret ballot to each member 30 days prior to the election that includes instructions on both of the following:
- a) How to obtain access to the internet-based voting system.
 - b) How to vote by electronic secret ballot. (Civ. Code §5105(i)(3)(A))
- 4) Provides that delivery of the individual notice in (3) above may be accomplished by electronic submission to an address, location, or system designated by the HOA member. (Civ. Code §5105(i)(3)(B))
- 5) Provides that a vote made by electronic secret ballot or a notice sent to a member voting by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by an inspector or inspectors of elections. (Civ. Code §5105(i)(4))
- 6) Provides that a vote made by electronic secret ballot shall not be revoked. (Civ. Code §5105(i)(5))
- 7) Provides that for purposes of determining a quorum, a member voting electronically shall be counted as a member in attendance at the meeting. Prohibits a substantive vote of the members from being taken on any issue other than the issues specifically identified in the electronic vote, once a quorum is established. (Civ. Code §5105(i)(6))
- 8) Defines “electronic secret ballot” as a ballot conducted by an electronic voting system that ensures the secrecy and integrity of a ballot pursuant to the requirements of this bill. (Civ. Code §5105(i)(7))

- 9) Requires, the inspector or inspector of elections, for an election conducted by electronic secret ballot, to ensure compliance with all of the following: (Civ. Code §5110(c)(4))
- a) That each member voting by electronic secret ballot is provided with all of the following:
 - i) A method to authenticate their identity to the internet-based voting system.
 - ii) A method to transmit an electronic secret ballot to the ~~online~~ internet-based voting system that ensures the secrecy and integrity of each ballot.
 - iii) A method to confirm, at least 30 days prior to the voting deadline, that the member's electronic device can successfully communicate with the online voting system.
 - b) That any internet-based voting system that is utilized shall have the ability to accomplish all of the following:
 - i) Authenticate the member's identity.
 - ii) Authenticate the validity of each electronic ~~vote~~ secret ballot to ensure the electronic secret ballot is not altered in transit.
 - iii) Transmit a receipt from the internet-based voting system to each member who casts an electronic secret ballot.
 - iv) Permanently separate any authentication or identifying information from the electronic secret ballot, rendering it impossible to connect an election ballot to a specific member.
 - v) Store and keep electronic secret ballots accessible to election officials or their authorized representatives for recount, inspection, and review purposes.
- 10) Requires the HOA, if conducting an electronic election, to include in its notice sent to members 30 days prior to the election, the date and time by which electronic secret ballots are to be transmitted to the internet-based voting system and preliminary instructions on how to vote by electronic secret ballot upon commencement of the voting period. (Civ. Code §5115(b)(2))
- 11) Provides, notwithstanding any provision in the governing documents, and excluding the meeting to count votes as required by existing law, that any election may be conducted entirely by mail or electronic secret ballot as authorized under this bill. (Civ. Code §5115(f))

- 12) Prohibits any individual, including a member of the HOA or an employment of the management company, from opening or otherwise reviewing any tally sheet of votes cast by the electronic secret ballots, prior to the time and place at which the ballots are counted and tabulated. (Civ. Code § 5120(c))
- 13) Updates references to votes and ballots in elections procedures requirements to include electronic secret ballots and the tally sheet of votes cast by electronic secret ballot. (Civ. Code §5120 and §5125)
- 14) Updates references to HOA election materials to include electronic secret ballots and the tally sheet of votes cast by electronic secret ballot. (CIV §5200)
- 15) Adds to the list of requests that must be submitted in writing to an HOA, a request to opt out of electronically voting by electronic secret ballot. (Civ. Code §5260)

COMMENTS:

- 1) *Author's statement.* "AB 2159 would allow homeowner associations (HOAs) to use electronic voting systems for a narrow list of association measures to include; approving governing documents and electing board members. The Davis-Stirling Act sets the rules for how HOAs should operate and outlines the association's and its members' rights and responsibilities. Currently, HOAs conduct elections using a paper and mail-based system similar to California's vote-by-mail process. This bill aims to offer associations an alternative voting method, cut costs, and boost voter participation."
- 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.* While an HOA's governing documents outline the HOA's elections procedures, statute places certain parameters on those procedures to help ensure election integrity and protect against manipulation, discrimination, and disenfranchisement. Legislation in recent years has addressed issues including qualifications for nominees to boards, procedures for election by acclamation, and reducing quorum requirements for elections. HOAs are required to hold elections for directors when a seat becomes vacant and at least every four years, and must hold elections to vote on amendments to certain governing documents and to levy certain assessments.
- 4) *Electronic voting.* Although 27 states allow HOAs to conduct electronic voting in at least some circumstances, California currently does not allow its HOAs to conduct elections electronically. This bill is sponsored by the Community Associations Institute – Legislative Action Committee (CAI-LAC), which represents HOA boards. According to CAI-LIC, the vote-by-mail process is a significant cost for most HOAs, particularly if a quorum is not achieved and the election must be repeated. These costs are borne by homeowners through monthly assessments. Technologies such as videoconferencing and electronic notification have been shown to increase participation. Electronic voting, which is currently authorized in 27 other states, is another tool intended to increase access.

This bill seeks to authorize electronic voting for HOAs in California. This bill would authorize an HOA conduct an election using electronic secret balloting, though it excludes elections regarding regular or special assessments. This bill imposes a number of security and accessibility requirements, which the sponsor notes align with procedures followed in other states.

- 5) *Trying again.* The most recent attempt to authorize HOAs to conduct electronic voting was more than a decade ago. AB 1360 (Torres, 2013), which would have allowed HOA members to opt in to voting electronically, was based on recommendations and criteria set for internet-based municipal voting by the California Internet Voting Task Force (convened by then Secretary of State Bill Jones). AB 1360 would have required HOAs and their electronic voting systems to meet a multitude of privacy- and security-related criteria before electronic voting would be authorized, and would have required any electronic voting system intended for HOA use to be certified by the Secretary of State. Opponents raised several concerns, including the lack of security and reliability of internet voting, whether current technology could truly maintain the integrity and secrecy of ballots cast and transmitted across the internet, and the expense of administering both electronic voting and printed and mailed ballots. AB

1360 failed passage in the Assembly Judiciary Committee. The sponsor notes that elections technology has advanced considerably since 2013 and that 27 other states have authorized electronic voting for HOAs.

- 6) *Election costs.* Although the sponsor states that this bill will reduce the cost of HOA elections, it is a bit unclear how this will be achieved in light of the fact that an HOA would potentially have to hold simultaneous electronic and paper elections. Further, if a quorum is not achieved – though the sponsor notes that quorums should be easier to achieve with electronic voting – another two-track election would have to be held. Finally, this bill was amended in the Assembly Judiciary Committee to prevent electronic voting from being used for votes on regular or special assessments. This could potentially create confusion for members who opt to vote electronically in a board of directors election, but then have to switch back to a written ballot for an assessment vote.
- 7) *Opt-in v opt-out.* While this bill allows for voting by written ballot in an otherwise electronic election, it makes electronic voting the default. Specifically, this bill requires the HOA’s election operating rules to allow any member to opt out from voting by electronic secret ballot at least 90 days before an election if they would prefer to vote by written secret ballot. In addition, it requires a member to submit a request in writing to the HOA to opt out of voting by electronic secret ballot. This raises a potential concern that if a member wants a written ballot, but does not realize they need to submit a written request for one, they could be disenfranchised.

Existing law (SB 392, Archuleta, Chapter 640, Statutes of 2021) requires HOAs to deliver specified documents to their members in the manner requested by the member, or by paper copy if the member does not indicate a preferred delivery mechanism. In other words, existing law makes paper documents the default and requires members to “opt out” if they want electronic delivery. In addition, as noted above, AB 1360 of 2013 would have made written ballots the default and allowed HOA members to “opt out” if they wanted to vote electronically. The author and sponsor are working with election services companies to clarify how members can indicate their preferred voting method to the HOA and plan to amend this bill moving forward. However, they plan to maintain electronic voting as the default voting method. **Moving forward, the author may wish to consider amending this bill to make written ballots the default voting method and allow members to “opt out” to instead vote electronically.**

- 8) *Opposition arguments.* The Center for Homeowner Association Law, which represents HOA members, notes that the Legislature, the California courts, and the Office of Administrative Law have all established HOAs as another level of

government impacting the lives and property of millions of Californians. Accordingly, statutes have established explicit requirements for HOA elections, including secret ballots, a neutral third party manager (*e.g.*, the inspector or inspectors of elections), and allowing HOA members to witness the tabulation of ballots and to challenge election procedures and outcomes in small claims court. According to the Center, even with these existing law protections, elections are the second most frequently reported issue reported to them (after assessment collections); complaints filed commonly include improper vote counts.

The Center and other opponents raise numerous concerns, including the potential to hack secret ballots, the difficulty of auditing non-paper ballots, and the feasibility of HOA members to witness tabulation of electronic votes.

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

RELATED LEGISLATION:

AB 2460 (Ta, 2024) — clarifies requirements for common interest development (CID) board of director elections that must be rescheduled due to failure to achieve a quorum. *This bill will also be heard in this committee today.*

AB 648 (Valencia, Chapter 203, Statutes of 2023) — authorized an HOA to conduct a board or member meeting entirely by teleconference without any physical location, if certain conditions are met.

AB 502 (Davies, Chapter 517, Statutes of 2021) — removed the requirement that a homeowner association (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 392 (Archuleta, Chapter 640, Statutes of 2021) — required CIDs to deliver specified documents to their members in the manner requested by the member, or by paper copy if the member has not indicated a preferred delivery mechanism.

SB 323 (Wieckowski, Chapter 848, Statutes of 2019) — enacted a series of reforms to the laws governing board of director elections in common interest developments, commonly referred to as homeowners associations or 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 a homeowner association (HOA) board in a common interest development (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)
California Association of Community Managers (CACM)
Flanagan Law, APC
One Woman No Cry
Pro Elections LLC
Walters Management

OPPOSITION:

California Alliance for Retired Americans
Center for Homeowner Association Law
Verified Voting

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