

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 432 (Wieckowski)
Version: February 12, 2021
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Fiscal: No
Urgency: No
TSG

SUBJECT

Common interest developments

DIGEST

This bill clarifies two things in relation to homeowner association (HOA) elections: (1) if the independent, third party inspector of an HOA board election appoints additional people to assist with verifying signatures and counting and tabulating votes, those additional people must meet the same specified criteria for third party independence as the inspector; and (2) an HOA may disqualify a member from running for the board of directors once that member has served the maximum allowable number of terms or sequential terms.

EXECUTIVE SUMMARY

Common interest developments (CIDs) are self-governing groups of dwellings that share common spaces and amenities. This self-governance is carried out through homeowners' associations (HOAs), whose membership is composed of all of the owners of the separate property within the CID. The HOA membership elects a board of directors to oversee management of the CID. Over the course of the past several years, the Legislature has engaged in a debate over how HOA board elections must be conducted. Ultimately, California enacted a series of reforms, including changes to who may, and who must, be allowed to run for the HOA board; limitations on the power of an HOA to disqualify members from voting; and stricter rules about who may serve as the required third-party, independent inspector of an HOA election. This bill clarifies two nuanced details left over from those reforms: (1) that an HOA can disqualify a member from running for the board once they have termed out; and (2) that assistant election inspectors must meet the same standard for third party independence as the primary inspector or inspectors.

The bill is author-sponsored. There is no support or opposition on file. The bill passed out of the Senate Housing Committee by a vote of 9-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes, within the Davis-Stirling Common Interest Development Act, rules and regulations governing the operation of a CID and the respective rights and duties of a homeowners association (HOA) and its members. (Civ. Code §§ 4000 *et seq.*)
- 2) Requires an HOA to hold elections for the board of directors by secret ballot. (Civ. Code § 5100(a)(1).)
- 3) Authorizes an HOA to disqualify an individual from running for the board of directors 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; or
 - e) less than a year of membership in the HOA. (Civ. Code § 5100(g)(3).)
- 4) Requires the HOA to adopt election rules that specify the following: among other things:
 - a) 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 themselves for election to the board.
 - b) 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. (Civ. Code § 5105.)
- 5) Provides that the inspector or inspectors of elections shall have the following duties:
 - a) determining the number of memberships entitled to vote and the voting power of each;
 - b) determining the authenticity, validity, and effect of proxies;
 - c) receiving votes and ballots;
 - d) determining all challenges and questions related to votes and ballots;
 - e) counting and tabulating all votes;
 - f) determining when the polls will close; and
 - g) determining the results of the election. (Civ. Code § 5110(c).)
- 6) Specifies that an independent third party HOA election inspector may not be:
 - a) a board director or candidate for director;
 - b) related to a board director or candidate for director; or

- c) an individual, business entity, or subdivision of a business entity who is currently employed or under contract to the HOA for any compensable services other than serving as an elections inspector. (Civ. Code § 5110(b).)

This bill:

- 1) Authorizes an HOA to disqualify a member from running for the board of directors if that individual has already served the maximum number of terms or sequential terms allowed by the HOA.
- 2) Specifies that any individual appointed by an HOA elections inspector or inspectors to assist with counting and tabulating votes must meet the same requirements for third party independence as the elections inspector or inspectors themselves.

COMMENTS

1. Background on homeowner association elections

Common interest developments (CIDs) are self-governing groups of dwellings that share common spaces and amenities. They come in a wide variety of physical layouts: condominium complexes, apartment buildings, and neighborhoods of detached, single-family residences, for example. Some consist of thousands of units. Others are made up of just a handful. Dwellings within common housing developments currently account for approximately a quarter of the state's overall housing stock, meaning that the laws governing such developments have a large impact on the population. In California, HOAs are primarily governed by the Davis-Stirling Act. (Civ. Code §§ 4000-6150.)

The Davis-Stirling Act sets forth a system for HOA self-governance. The owners of the separate properties within the HOA are the members of the HOA. Association members vote for the board of directors of the association that oversees operation of the HOA.

The board manages the HOA, frequently by hiring an individual or entity – the property manager – to do so on its behalf. The board determines the annual assessments – much like taxes – that members must pay in order to cover communal expenses. The board enforces the community rules and can propose and make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members, place liens on the offending member's property, and, if ultimately necessary, the power to foreclose. This array of responsibilities and powers has led multiple courts to observe that HOAs function in many ways almost “as a second municipal government, regulating many aspects of [the homeowners'] daily lives.” (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836 [citations omitted].)

Much like municipal governments, HOAs use elections to choose members to serve on the association's board of directors. The Davis-Stirling Act sets forth certain basic ground rules for these elections. (Civ. Code § 5100 *et seq.*) The HOAs conduct the elections through a paper and mail based balloting system that closely resembles California's vote-by-mail process. (Civ. Code § 5115.) Beyond these basic ground rules, however, the Davis-Stirling Act left many aspects of the association elections process to the discretion of the association, including the board itself, until 2019, when the Legislature passed SB 323 (Wieckowski, Ch. 848, Stats. 2019). That bill enacted a series of reforms to the laws governing HOA board of directors elections in common interest developments. In broad strokes, the reforms increased the regularity, fairness, formality, and transparency associated with such elections. As relevant to this bill, the reforms: (1) placed limitations on who an HOA may, and who an HOA must, disqualify from running for the board; and (2) tightened the requirements for the independence of people serving as HOA board elections inspectors.

This bill now proposes two further refinements to those rules. First, the bill specifies that an HOA can disqualify a member from running for the board once that member has served the maximum number of terms permitted by the HOA. Second, the bill provides that assistant election inspectors must meet the same standard for third party independence as the primary inspector or inspectors.

2. Disqualification of board candidates who have termed out

SB 323 (Wieckowski, Ch. 848, Stats. 2019) required HOAs to disqualify any candidate running for the HOA board of directors who is not a member of the HOA at the time they are nominated. (Civ. Code § 5105(b).) SB 323 also gave HOAs the discretion to disqualify candidates if they had specified past criminal convictions, if they were behind on the payment of regular and special assessments, if a co-owner of their separate property is already on the board, or if they had been a member of the HOA for less than a year. (Civ. Code § 5105(c).)

SB 323 did not include the expiration of term limits among the grounds for which an HOA could disqualify a member from running for the HOA board of directors. As a result, SB 323 had the practical effect – whether intentional or not – of overriding any term limits that HOAs had enacted.

This bill adds the expiration of term limits to the list of allowable grounds on which an HOA can disqualify a member from running for the HOA board of directors. It thereby restores to HOAs the ability to impose term limits on service on their board of directors, should the HOA choose to do so.

3. Establishing standards for HOA elections inspectors' assistants

HOA elections must be run by an HOA elections inspector or a group of three inspectors. (Civ. Code § 5110.) The elections inspector is supposed to, among other things, manage the voting process, resolve challenges and questions relating to the votes, count the votes, and determine the outcome of the election. (Civ. Code § 5110(c).)

The HOA election inspector can be a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. (Civ. Code § 5110(b).) The election inspector may be a member of the HOA, but may not be a director or a candidate for director or be related to a director or to a candidate for director. (*Ibid.*) People or entities that are currently employed or under contract to the HOA for any compensable services are not eligible to serve as the elections inspector, though prior to the enactment of SB 323, the HOA could waive this requirement. (*Ibid.*)

Existing law also allows the election inspector or inspectors to use assistants to help carry out some of the election inspector's duties. This bill simply clarifies that if an election inspector chooses to utilize an assistant, that assistant must also meet the same standards for independence as the election inspector themselves. In other words, under this bill, the assistant to the election inspector may be a member of the HOA, but cannot be: a director or a candidate for director; related to a director or to a candidate for director; or currently employed or under contract to the HOA for any compensable services.

4. Arguments in support of the bill

According to the author:

SB 432 is a clean-up bill to SB 323 (2019) which sought to bolster the right to vote and run for a board seat in HOA elections. SB 432 again permits HOAs to have term limits if term limits are contained in the bylaws or election rules. The bill also requires that anyone whom the inspector of election appoints to oversee the verification of signatures and tabulation of votes also meets the requirements of neutrality that are already applied to the inspector [...].

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 969 (Wieckowski, 2020) was identical to this bill. SB 969 died in the Senate Judiciary Committee.

SB 323 (Wieckowski, Ch. 848, Stats. 2019) enacted a series of reforms to the laws governing homeowners' association board of directors elections in common interest developments. In broad strokes, the reforms increased the regularity, fairness, formality, and transparency associated with such elections. As relevant to this bill, the reforms: (1) placed limitations on who an HOA may, and who an HOA must, disqualify from running for the board; and (2) tightened the requirements for the independence of people serving as HOA board elections inspectors.

SB 1128 (Roth, 2018), among a series of changes to the HOA elections and governing procedures, would have allowed for the board of directors to be seated by acclamation, without holding an election, if the number of available seats is equal to or greater than the number of candidates, provided that certain procedures are followed. In his message vetoing SB 1128, then Governor Brown wrote that: "[t]his bill takes a once-size-fits-all approach, but not all homeowner associations are alike. If changes to an election process are needed, they should be resolved by the members of that specific community."

SB 1265 (Wieckowski, 2018) would have enacted a series of reforms to the laws governing the conduct of HOA board elections. In broad strokes, the reforms increased the regularity, fairness, formality, and transparency associated with such elections. In his message vetoing SB 1265, then Governor Brown wrote that: "[t]his bill takes a one-size-fits-all approach, but not all homeowner associations are alike. If changes to an election process are needed, they should be resolved by the members of that specific community."

AB 1426 (Irwin, 2017) would have allowed the board of directors of an HOA to be seated by acclamation if the election was uncontested, meaning, among other things, that there are at least as many board seats available as there are candidates. AB 1426 died in the Assembly Committee on Housing and Community Development.

AB 1799 (Mayes, 2016) would have allowed the board of directors of an HOA to be seated by acclamation if the election is uncontested, as defined, and would have provided a procedure for an election to be declared uncontested. In addition, AB 1799 would have ensured a member in good standing who meets specified qualification requirements is not denied the right to vote or the right to be a candidate for director. AB 1799 died in the Senate Committee on Judiciary.

PRIOR VOTES:

Senate Housing Committee (Ayes 9, Noes 0)
