

By: Gattis

H.B. No. 3254

A BILL TO BE ENTITLED

AN ACT

relating to property owners' association meetings and records.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 209, Property Code, is amended by amending Section 209.005 and adding Sections 209.0051, 209.0052, and 209.0053 to read as follows:

Sec. 209.005. ASSOCIATION RECORDS AND MEETINGS: CERTAIN BYLAWS REQUIRED; JUDICIAL RELIEF. (a) The board of a property owners' association that is subject to Sections 209.0051, 209.0052, and 209.0053 shall adopt bylaws to implement those sections.

(b) A member of a property owners' association who is denied access to or copies of association records to which the member is entitled under this section may file a petition with the justice court of a justice precinct in which all or part of the property that is governed by the association is located, requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace shall order the association to:

(1) provide the access or copies requested by the member; and

(2) pay the court costs and the member's reasonable attorney's fees.

(c) A member of a property owners' association denied access to a meeting in violation of Section 209.0052 or 209.0053 may file a

1 petition with the justice court of a justice precinct in which all
2 or part of the property that is governed by the association is
3 located for injunctive or other equitable relief.

4 Sec. 209.0051. ASSOCIATION RECORDS. (a) This section does
5 not apply to a property owners' association that is subject to
6 Chapter 552, Government Code, by application of Section 552.0036.

7 (b) A property owners' association shall make the books and
8 records of the association, including financial records, open to
9 and reasonably available for examination by [to] an owner [in
10 accordance with Section B, Article 2.23, Texas Non-Profit
11 Corporation Act (Article 1396-2.23, Vernon's Texas Civil
12 Statutes)]. An owner is entitled to copies of information
13 contained in the books and records. A property owners' association
14 may charge an owner for copies of the information in an amount that
15 reasonably includes all costs related to reproducing the
16 information, including costs of materials, labor, and overhead.

17 (c) [(a-1) A property owners' association described by
18 Section 552.0036(2), Government Code, shall make the books and
19 records of the association, including financial records,
20 reasonably available to any person requesting access to the books
21 or records in accordance with Chapter 552, Government
22 Code. Subsection (a) does not apply to a property owners'
23 association to which this subsection applies.

24 [(b)] An attorney's files and records relating to the
25 association, excluding invoices requested by an owner under Section
26 209.008(d), are not:

- 27 (1) records of the association;

1 (2) subject to inspection by the owner; or

2 (3) subject to production in a legal proceeding.

3 Sec. 209.0052. BOARD MEETINGS. (a) In this section, "board
4 meeting" means a deliberation between a quorum of the voting board
5 of the property owners' association, or between a quorum of the
6 voting board and another person, during which property owners'
7 association business or policy over which the board has
8 responsibility is discussed or considered, or during which the
9 board takes formal action. The term does not include the gathering
10 of a quorum of the board at a social function unrelated to the
11 business of the association, or the attendance by a quorum of the
12 board at a regional, state, or national convention or workshop,
13 ceremonial event, or press conference, if formal action is not
14 taken and any discussion of association business is incidental to
15 the social function, convention, workshop, ceremonial event, or
16 press conference.

17 (b) This section does not apply to a property owners'
18 association that is subject to Chapter 551, Government Code, by
19 application of Section 551.0015.

20 (c) Except as provided by this subsection, a meeting of the
21 property owners' association board or a committee or subcommittee
22 of the board is open to members of the property owners' association.
23 An executive session of the board is not required to be open to
24 members of the association.

25 (d) The board shall keep a record of each regular or special
26 board meeting in the form of written minutes or an audio recording
27 of the meeting. A record of a meeting must state the subject of each

1 deliberation and indicate each vote, order, decision, or other
2 action taken by the board. The board shall make meeting records
3 available to a member for inspection and copying on the member's
4 written request to the board secretary or to a person the secretary
5 designates.

6 (e) The board shall give members written notice of the date,
7 hour, place, and subject of a regular or special board meeting at
8 least 72 hours before the scheduled time of the meeting.

9 (f) If the board recesses a regular or special board meeting
10 to continue the following regular business day, the board is not
11 required to post notice of the continued meeting if the recess is
12 taken in good faith and not to circumvent this section. If a
13 regular or special board meeting is continued to the following
14 regular business day, and on that following day the board continues
15 the meeting to another day, the board shall give written notice as
16 required by this section of the meeting continued to that other day.

17 (g) In the event of an emergency or urgent necessity that
18 requires immediate board action to meet a reasonably unforeseeable
19 situation, notice may be given in the manner prescribed by
20 Subsection (e) at least two hours before a regular or special board
21 meeting is convened, in order to:

- 22 (1) call an emergency board meeting; or
23 (2) add a subject to the agenda of a previously
24 scheduled board meeting.

25 (h) Notice under Subsection (g) shall clearly identify the
26 emergency or urgent necessity for which the notice is given. If the
27 board adds a subject to the agenda of a previously scheduled regular

1 or special board meeting, the board secretary or person the
2 secretary designates shall post a copy of the revised agenda on the
3 association's Internet website, if the association maintains a
4 website, and physically post a copy in accordance with bylaws
5 adopted under Section 209.005, not less than two hours before the
6 meeting convenes.

7 (i) If, at a regular or special board meeting, a member
8 makes an inquiry regarding a subject for which notice has not been
9 given as required by this section, the notice provisions of this
10 section do not apply to:

11 (1) a statement by the board of specific factual
12 information given in response to the inquiry; or

13 (2) a recitation of existing policy in response to the
14 inquiry.

15 (j) Any deliberation of or decision relating to the subject
16 of an inquiry made under Subsection (i) shall be limited to a
17 proposal to place the subject on the agenda for a subsequent board
18 meeting.

19 (k) Before the board calls an executive session, the board
20 shall convene in a regular or special board meeting for which notice
21 has been given as provided by this section. During that board
22 meeting, the presiding director may call an executive session by
23 announcing that an executive session will be held to deliberate a
24 matter described by Subsection (n) and identifying the specific
25 subdivision of Subsection (n) under which the executive session
26 will be held.

27 (l) A final action, decision, or vote on a matter

1 deliberated in an executive session may only be made in a regular or
2 special board meeting for which notice has been given as provided by
3 this section.

4 (m) The board may hold an executive session to which the
5 members do not have access to deliberate:

6 (1) anticipated or pending litigation, settlement
7 offers, or interpretations of the law with the association's legal
8 counsel and with any other person the board considers necessary;

9 (2) the purchase, exchange, lease, or value of real
10 property, if the board determines in good faith that deliberation
11 in an open board meeting may have a detrimental effect on the
12 association;

13 (3) business and financial issues relating to the
14 negotiation of a contract, if the board determines in good faith
15 that deliberation in an open board meeting may have a detrimental
16 effect on the position of the association;

17 (4) personnel issues, and complaints or charges
18 against a board member or association employee or consultant,
19 unless the board member or employee who is the subject of the
20 deliberation requests a public hearing; or

21 (5) issues related to security, including security
22 personnel, security devices, and security audits.

23 (n) The board secretary or a person the secretary designates
24 shall make and keep a written or audio record of each executive
25 session. The secretary shall preserve the record for at least two
26 years following the session. The record must include:

27 (1) a statement of the subject matter of each

1 deliberation;

2 (2) a record of any further action taken; and

3 (3) an announcement by the presiding director at the
4 beginning and end of the session indicating the date and time.

5 Sec. 209.0053. MEMBERSHIP MEETINGS. (a) This section does
6 not apply to a property owners' association that is subject to
7 Chapter 551, Government Code, by application of Section 551.0015.

8 (b) For an annual meeting of the association membership or
9 any other meeting at which association members will be able to vote
10 on association business, the board shall give members notice of the
11 date, hour, place, and agenda, and a summary of each proposal to be
12 voted on at the meeting, at least seven days before the date of the
13 meeting unless earlier notice is required by the bylaws.

14 (c) Notice under this section must be provided in the manner
15 prescribed by the bylaws.

16 (d) If proxy voting of members is permitted at the meeting,
17 a copy of the proxy voting form must be provided to each member with
18 a copy of the notice of the meeting unless the form is available to
19 be downloaded from an Internet website of the association.

20 SECTION 2. Not later than December 31, 2009, a property
21 owners' association shall adopt all bylaws necessary to comply with
22 Section 209.005, Property Code, as amended by this Act.

23 SECTION 3. This Act takes effect January 1, 2010.