

SUBJECT: Allowing an HOA board to fill a vacancy by appointment

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman
0 nays

WITNESSES: For — none

Against — Xina Togba, Lakeville Homeowners in Katy, TX

BACKGROUND: Property Code, ch. 209, the Texas Residential Property Owners Protection Act, applies to all mandatory homeowners' associations (HOAs) and establishes requirements for association records, board meetings, voting, attorneys' fees, foreclosing on property, and other procedures.

Sec. 209.00593 requires elections for board members and allows an appointment by a board only to fill a vacancy caused by resignation, disability, or death. An appointed board member serves the unexpired term of the preceding member.

DIGEST: HB 3176 would allow an HOA board covered under chapter 209 of the Property Code to appoint a board member to fill a vacancy on the board, irrespective of resignation, disability, or death.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: HB 3176 would correct an unintended consequence of a provision the 82nd Legislature added in 2011. The intent of the legislation, HB 2761 by Garza, was to add rules governing when an HOA board could appoint a member to fill a vacancy. The unintended consequence, however, was that the provision prohibited boards from filling vacancies because of a lack of anyone running for office when the election was held. A vacancy caused in such a way is a real problem for boards since the position cannot be filled until the end of its term. Vacancies cause problems for board proceedings and reduce representation for homeowners.

By allowing a board to appoint a member to fill a vacancy for any reason, HB 3176 would ensure that boards could function as required without changing the requirement for an election.

**OPPONENTS
SAY:**

Allowing HOA boards to fill a vacancy by appointment would be an invitation to the types of abuses that the Legislature strived to contain in 2011. It is preferable to hold elections for all seats, especially if an HOA's deed restrictions call for elections in the event of a vacancy. HB 3176 would supersede those HOAs with this election requirement.