

SUBJECT: Changing how property owners' associations grant contracts

COMMITTEE: Business and Industry — committee substitute recommended

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

WITNESSES: For — Jason Delgado, Spectrum Association Management; Shana Schaffler; (*Registered, but did not testify:* Daniel Gonzalez, Texas Association of Realtors; Emily Rickers, Alliance for Texas Families)

Against — David Smith, Texas Neighborhoods Together

On — Judi Phares, Texas Community Association Advocates; Susan Wright, Texas Association of Builders

BACKGROUND: Property Code, ch. 209 is the Texas Residential Property Owners Protection Act.

Government Code, ch. 573, subch. B defines relatives within the third degree of consanguinity as including a parent, child, sibling, grandparent, grandchild, great-grandparent, great-grandchild, aunt, uncle, nephew, or niece. Relatives within the third degree of affinity include spouses or spouses of relatives consanguine within the third degree.

DIGEST: CSHB 503 would allow a property owners' association to enter into contracts with:

- a current board member;
- a person related to a board member by the third degree of consanguinity or affinity;
- a company in which a current board member has an interest of at least 51 percent; and
- a company in which a person related to a board member by the third degree of consanguinity or affinity has an interest of at least 51 percent.

To contract with any of the parties listed above, the board would have to:

- receive at least two other bids for the contract from a bidder not connected to the board member in question, if one was reasonably available; and
- prevent the board member in question from accessing the other bids participating in board contract discussions, or voting on the contract.

The facts regarding any relationship or interest between a board member and a bidder would have to be disclosed to the board, which could authorize the contract with an affirmative vote of the majority of board members who had no relationship with or interest in the contract. The same board members also would have to certify that these requirements were satisfied by passing a resolution by majority vote.

These provisions would not apply to a contract entered into during the “development period” of a neighborhood administered by a property owners’ association, which the bill would define as the period of time specified in the homeowners association’s recorded documents during which the association may facilitate the development, construction, and marketing of the subdivision and direct the size, shape, and composition of the subdivision.

The bill would take effect September 1, 2013, and would apply to contracts entered into on or after that date.

**SUPPORTERS
SAY:**

CSHB 503 would amend the law governing property owners’ associations to address a board member’s conflict of interest in seeking or awarding a contract bid. It would allow an avenue for associations to take advantage of services that might be provided at excellent cost and value by a company in which a board member had an interest or relationship while still taking precautions against possible abuse. In many rural property owners’ associations, a board member or a board member’s relative may offer vital services unavailable from another unconnected party.

The bill would provide property owners’ association boards with clear guidelines that would prevent conflicts of interest from developing. The bill would create transparency by requiring board members to disclose any interest in a bidder prior to discussing or awarding the contract, and the only board members allowed to vote on awarding the contract would be

those members who had no interest in it.

Business Organizations Code, sec. 22.230 governs the awarding of contracts for nonprofit corporations. This law sets a much lower standard than the one proposed in CSHB 503, requiring only disclosure of interest by a board member, while still allowing that member to participate in voting to award the contract. Property owners' associations should be held to a higher standard regarding conflicts of interest as the governing entity for local communities.

OPPONENTS
SAY:

CSHB 503 is unnecessary. Board members of property owners' associations are democratically elected. If board members abuse their positions, residents are free to vote them out of office. Furthermore, property owners' associations incorporated as nonprofit entities are subject to Texas nonprofit corporation law, which spells out rules regarding how these entities may award contracts to companies connected with the board of directors.

OTHER
OPPONENTS
SAY:

Property owners' association boards should not award contracts to companies that belong to board members or their family members. This would encourage board members to leverage their influence and authority to enrich themselves, which constitutes an abuse of power.