

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 2869  
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Intergovernmental Relations  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

This bill will narrowly apply to certain master mixed-use property owners' associations, notably, Las Colinas in Irving, Texas. Las Colinas is unique in that it includes commercial properties such as hotel and retail property. It also contains at least 10 incorporated residential or commercial property owners' associations, and a mix of single and multi-family properties. Traditional homeowners' association laws do not appropriately address the issues facing a master mixed-use property such as Las Colinas. H.B. 2869 establishes a new section of code that outlines board powers, proxy voting, and covenant enforcement for Las Colinas. This bill is intended to address the unique nature of the Las Colinas master mixed-use community.

H.B. 2869 amends current law relating to the powers and duties of certain master mixed-use property owners' associations.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 11, Property Code, by adding Chapter 215, as follows:

#### **CHAPTER 215. MASTER MIXED-USE PROPERTY OWNERS' ASSOCIATIONS**

Sec. 215.001. DEFINITIONS. Defines, in this chapter, "appraised value," "property owners' association" or "association," "dedicatory instrument," and "self-help."

Sec. 215.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies to a property owners' association that:

(1) includes:

(A) commercial properties, including hotel and retail properties, that constitute at least 35 percent of the total appraised property value of the mixed-use development governed by the association;

(B) single-family attached and detached properties that constitute at least 25 percent of the total appraised property value of the mixed-use development governed by the association; and

(C) multifamily properties that constitute at least 10 percent of the total appraised property value of the mixed-use development governed by the association;

(2) governs at least 6,000 acres of deed-restricted property;

(3) has at least 10 incorporated residential or commercial property owners' associations that are members of and subject to the dedicatory instruments of the master mixed-use property owners' association;

(4) has at least 3,400 platted and developed single-family residential properties and at least 400 separately platted commercial properties, including office, industrial, hotel, and retail properties, which together constitute at least 30 million square feet of building area available for rental; and

(5) participates in the maintenance of public space, including parks, medians, and lakefronts, owned by local, including county, or state governmental entities.

(b) Provides that this chapter applies to property that is:

(1) governed by a property owners' association described by Subsection (a);

(2) located in a master mixed-use development; and

(3) subject to a provision, including a restriction, in a declaration that:

(A) requires mandatory membership in the association; and

(B) authorizes the association to collect a regular or special assessment on all or a majority of the property in the development.

(c) Provides that, except as otherwise provided by this chapter, this chapter applies only to a master mixed-use property owners' association and not to the independent property owners' associations that are members of the master mixed-use property owners' association.

Sec. 215.003. **APPLICABILITY OF CHAPTER 209.** Provides that Sections 209.007 (Hearing Before Board; Alternate Dispute Resolution), 209.008 (Attorney's Fees), 209.011 (Right of Redemption After Foreclosure), and 209.012 (Restrictive Covenants Granting Easements to Certain Property Owners' Associations) apply only to single-family residential properties governed by a property owners' association subject to this chapter.

Sec. 215.004. **CONFLICTS OF LAW.** Provides that, notwithstanding any other provision of law, the provisions of this chapter prevail over a conflicting or inconsistent provision of law relating to independent property owners' associations.

Sec. 215.005. **BOARD POWERS.** Authorizes the association, acting through its board of directors, in addition to any other powers provided by applicable law and this chapter, and unless otherwise provided by the dedicatory instruments of the property owners' association, to:

(1) adopt and amend bylaws;

(2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from property owners;

(3) adopt reasonable rules;

(4) hire and terminate managing agents and other agents, employees, and independent contractors;

- (5) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting a property governed by the association;
- (6) make contracts and incur liabilities relating to the operation of the association;
- (7) regulate the use, maintenance, repair, replacement, modification, and appearance of the property governed by the association;
- (8) make improvements to be included as a part of the common area;
- (9) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (10) purchase an investment property that is not part of the common area;
- (11) grant easements, leases, licenses, and concessions through or over the common elements;
- (12) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners;
- (13) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments;
- (14) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments;
- (15) adopt and amend rules regulating the collection of delinquent assessments;
- (16) impose reasonable charges for preparing, recording, or copying amendments to resale certificates or statements of unpaid assessments;
- (17) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary;
- (18) subject to the requirements of the provisions described by Section 1.008(d) (relating to the Texas Nonprofit Corporation Law), Business Organizations Code, and by majority vote of the board, indemnify a director or officer of the association who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director or officer;
- (19) if the restrictions vest the architectural control authority in the association:
  - (A) implement written architectural control guidelines for its own use, or record the guidelines in the real property records of the applicable county; and
  - (B) modify the guidelines as the needs of the development change;
- (20) exercise self-help with regard to property governed by the association;
- (21) exercise other powers conferred by the dedicatory instruments;
- (22) exercise other powers necessary and proper for the governance and operation of the association; and
- (23) exercise any other powers that may be exercised in this state by a corporation of the same type as the association.

Sec. 215.006. ANNUAL MEETING OF ASSOCIATION MEMBERS; NOTICE OF ANNUAL OR SPECIAL MEETING. (a) Requires that an annual meeting of members of a property owners' association be conducted in accordance with the association's dedicatory instruments.

(b) Provides that unless otherwise provided by a dedicatory instrument, an annual meeting of the property owners' association members is open to association members and is required to be held in a county in which all or part of the property governed by the association is located or in a county adjacent to that county.

(c) Requires the board to give members notice of the date, time, place, and subject of an annual or special meeting of the members, unless otherwise provided by a dedicatory instrument. Requires that the notice be delivered to each member not later than the 10th day and not earlier than the 60th day before the date of the meeting.

(d) Requires that a notice under Subsection (c) be posted in a conspicuous manner reasonably designed to provide notice to association members:

(1) in a place located outside the corporate offices of the association that is accessible by the general membership during normal business hours; or

(2) on any Internet website maintained by the association.

(e) Authorizes any number of the members to attend the meeting by use of videoconferencing or a similar telecommunication method for purposes of establishing full participation in the meeting unless otherwise provided by a dedicatory instrument.

Sec. 215.007. BOARD MEETINGS. (a) Requires that a meeting of the board of directors of a property owners' association be conducted in accordance with the association's dedicatory instruments.

(b) Provides that, unless otherwise provided by a dedicatory instrument, elected directors who represent the commercial and residential membership attend and conduct the business of the property owners' association at a meeting under this section.

(c) Provides that, in this section, a board meeting has the meaning assigned by a dedicatory instrument. Provides that, notwithstanding this subsection, the term does not include the gathering of a quorum of the board at any other venue, including at a social function unrelated to the business of the association, or the attendance by a quorum of the board at a regional, state, or national convention, workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

(d) Requires the board to keep a record of each regular, emergency, or special board meeting in the form of written minutes or an audio recording of the meeting unless otherwise provided by a dedicatory instrument. Requires that a record of a meeting state the subject of each motion or inquiry, regardless of whether the board takes action on the motion or inquiry, and indicate each vote, order, decision, or other action taken by the board. Requires the board to make meeting records, including approved minutes, available to a member for inspection and copying, at the member's expense, during the normal business hours of the association on the member's written request to the board or the board's representative. Requires the board to approve the minutes of a board meeting not later than the next regular board meeting.

(e) Requires the board to convene in a regular or special board meeting for which notice has been given as provided by this section before the board calls an executive session, unless otherwise provided by a dedicatory instrument. Authorizes the presiding board member, during that board meeting, to call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (f) and identifying the specific subdivision of Subsection (f) under which the executive session will be held. Prohibits a vote or other action item from being taken in executive session. Provides that an executive session is not subject to the requirements of Subsection (d).

(f) Authorizes a property owners' association board, unless otherwise provided by a dedicatory instrument, to meet in executive session to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the association's legal counsel;

(2) complaints or charges against or issues regarding a board member or an agent, employee, contractor, or other representative of the association;

(3) all financial matters concerning a specific property owner;

(4) a payment plan for an association member who has a financial obligation to the association;

(5) a foreclosure of a lien;

(6) an enforcement action against an association member, including for nonpayment of amounts due;

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

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

(9) matters involving the invasion of privacy of an individual owner;

(10) an employee matter; and

(11) any other matter the board considers necessary or reasonable to further assist the association's operation.

Sec. 215.008. VOTING. (a) Provides that the number of votes to which an individual or corporation who is a member of a property owners' association is entitled is determined by the dedicatory instruments of the association.

(b) Authorizes each corporation or individual who is a member of the property owners' association to vote by proxy as provided for nonprofit corporations under Sections 22.160(b) (relating to authorizing a member to vote in person, or unless otherwise provided by the certificate of formation or bylaws, by proxy executed in writing by the member or the member's attorney-in-fact) and (c) (relating to providing that a proxy is revocable and expires 11 months after the date of its execution, unless otherwise provided by proxy, and prohibiting a proxy from being irrevocable for longer than 11 months), Business Organizations Code.

(c) Authorizes a member vote on any matter to be conducted by mail, by facsimile transmission, by e-mail, or by any combination of those methods,

notwithstanding any provision of the certificate of formation or bylaws to the contrary.

Sec. 215.009. RESTRICTIVE COVENANTS. (a) Authorizes a property owners' association to enforce its restrictive covenants as follows:

(1) by exercising discretionary authority relating to a restrictive covenant unless a court has determined by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory; and

(2) by initiating, defending, or intervening in litigation or an administrative proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of property subject to the association's dedicatory instruments.

(b) Authorizes the association to recover reasonable attorney's fees and costs incurred if the association prevails in an action to enforce restrictive covenants.

(c) Authorizes an association to use self-help to enforce its restrictive covenants against a residential or commercial property owner as necessary to prevent immediate harm to a person or property, or as otherwise reasonable. Provides that the association is not required to provide a property owner with advance notice before the association implements self-help if the property owner commits a subsequent repeat violation of the restrictive covenants within 12 months of the initial violation.

(d) Provides that, for purposes of Subsection (c), an advance, annual notice of maintenance requirements is considered notice to the extent notice is required.

Sec. 215.010. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION. Entitles the prevailing party to reasonable attorney's fees, costs, and actual damages in an action based on breach of a restrictive covenant.

Sec. 215.011. COMMON AREAS. Authorizes a property owners' association to adopt reasonable rules regulating common areas.

Sec. 215.012. RESALE CERTIFICATES. Requires a property owners' association to provide resale certificates only for residential properties and in the manner provided by Section 207.003 (Delivery of Subdivision Information to Owner).

Sec. 215.013. MANAGEMENT CERTIFICATE. (a) Requires a property owners' association to record in each county in which any portion of the development governed by the association is located a management certificate, signed and acknowledged by an officer of the association, stating:

(1) the name of the development;

(2) the name of the association;

(3) the recording data for the declaration and all supplementary declarations;

(4) the applicability of any supplementary declarations to residential communities;

(5) the name and mailing address of the association; and

(6) other information the association considers appropriate.

(b) Requires a property owners' association to record an amended management certificate not later than the 30th day after the date the association has notice of a change in information in the recorded certificate required by Subsection (a).

(c) Provides that the association and its officers, directors, employees, and agents are not liable to any person or corporation for delay in recording or failure to record a management certificate unless the delay or failure is willful or caused by gross negligence.

Sec. 215.014. **PRIORITY OF PAYMENTS.** Requires that a payment received by a property owners' association from the owner be applied to the owner's debt in the following order of priority unless otherwise provided in writing by the property owner at the time payment is made:

- (1) any delinquent assessment;
- (2) any current assessment;
- (3) any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) any fines assessed by the association;
- (5) any attorney's fees incurred by the association that are not subject to Subdivision (3); and
- (6) any other amount owed to the association.

Sec. 215.015. **FORECLOSURE.** Prohibits a property owners' association from foreclosing an association assessment lien unless the association first obtains a court order of sale.

SECTION 2. Effective date: September 1, 2011.