

AMENDED IN ASSEMBLY MARCH 18, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1726**

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**Introduced by Assembly Member Swanson**

February 3, 2010

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~~An act to amend Section 6258 of the Penal Code, relating to inmates.~~  
*An act to amend Section 1363.03 of the Civil Code, relating to common interest developments.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1726, as amended, Swanson. ~~Inmates: reentry.~~ *Common interest developments: ballots: quorums.*

*The Davis-Stirling Common Interest Development Act governs the establishment and management of common interest developments. These provisions require that a common interest development be managed by an association and that elections related to the governance or administration of the common interest development conform to specified requirements, including the establishment of a quorum. Existing law provides for votes on specified matters to be held by secret ballot and requires the ballots to be sent, with 2 preaddressed envelopes, to each member of the association, in accordance with the model used by California counties for ensuring confidentiality of "vote by mail" ballots.*

*This bill would clarify that the ballots are mailed in accordance with the model used by California counties for ensuring confidentiality of "voter absentee" ballots, and would specify that each ballot be placed into an inner envelope that is sealed and then placed into an outside mailing envelope addressed to the inspector for the election.*

*This bill would provide that, in the event there is not a quorum for a members meeting or for an election of directors, the meeting may be adjourned and that the subsequent members meeting or election of directors would require a quorum of 33% of the association membership entitled to vote. This bill would provide that these provisions do not apply to any other part of the act.*

*This bill would also make technical, clarifying changes to that provision.*

~~Existing law provides that the Secretary of Corrections and Rehabilitation may contract for the establishment and operation of community correctional reentry centers, as specified.~~

~~This bill would make nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1363.03 of the Civil Code is amended to  
2 read:

3 1363.03. (a) An association shall adopt rules, in accordance  
4 with the procedures prescribed by Article 4 (commencing with  
5 Section 1357.100) of Chapter 2, that do all of the following:

6 (1) Ensure that if any candidate or member advocating a point  
7 of view is provided access to association media, newsletters, or  
8 Internet Web sites during a campaign, for purposes that are  
9 reasonably related to that election, equal access shall be provided  
10 to all candidates and members advocating a point of view,  
11 including those not endorsed by the board, for purposes that are  
12 reasonably related to the election. The association shall not edit  
13 or redact any content from these communications, but may include  
14 a statement specifying that the candidate or member, and not the  
15 association, is responsible for that content.

16 (2) Ensure access to the common area meeting space, if any  
17 exists, during a campaign, at no cost, to all candidates, including  
18 those who are not incumbents, and to all members advocating a  
19 point of view, including those not endorsed by the board, for  
20 purposes reasonably related to the election.

21 (3) Specify the qualifications for candidates for the board of  
22 directors and any other elected position, and procedures for the

1 nomination of candidates, consistent with the governing documents.

2 ~~A~~

3 (4) A nomination or election procedure shall not be deemed  
4 reasonable if it disallows any member of the association from  
5 nominating himself or herself for election to the board of directors.

6 ~~(4)~~

7 (5) Specify the qualifications for voting, the voting power of  
8 each membership, the authenticity, validity, and effect of proxies,  
9 and the voting period for elections, including the times at which  
10 polls will open and close, consistent with the governing documents.

11 ~~(5)~~

12 (6) Specify a method of selecting one or three independent third  
13 parties as inspector, or inspectors, of election utilizing one of the  
14 following methods:

15 (A) Appointment of the inspector or inspectors by the board.

16 (B) Election of the inspector or inspectors by the members of  
17 the association.

18 (C) Any other method for selecting the inspector or inspectors.

19 ~~(6)~~

20 (7) Allow the inspector, or inspectors, to appoint and oversee  
21 additional persons to verify signatures and to count and tabulate  
22 votes as the inspector or inspectors deem appropriate, provided  
23 that the persons are independent third parties.

24 (b) Notwithstanding any other law or provision of the governing  
25 documents, elections regarding assessments legally requiring a  
26 vote, election and removal of members of the association board  
27 of directors, amendments to the governing documents, or the grant  
28 of exclusive use of common area property pursuant to Section  
29 1363.07 shall be held by secret ballot in accordance with the  
30 procedures set forth in this section. A quorum shall be required  
31 only if so stated in the governing documents of the association or  
32 other provisions of law. If a quorum is required by the governing  
33 documents, each ~~ballot~~ *outside mailing envelope completed*  
34 *pursuant to subdivision (f)* received by the inspector of elections  
35 shall be treated as a member present at a meeting for purposes of  
36 establishing a quorum. An association shall allow for cumulative  
37 voting using the secret ballot procedures provided in this section,  
38 if cumulative voting is provided for in the governing documents.

1 (c) (1) The association shall select an independent third party  
2 or parties as an inspector of election. The number of inspectors of  
3 election shall be one or three.

4 (2) For the purposes of this section, an independent third party  
5 includes, but is not limited to, a volunteer poll worker with the  
6 county registrar of voters, a licensee of the California Board of  
7 Accountancy, or a notary public. An independent third party may  
8 be a member of the association, but may not be a member of the  
9 board of directors or a candidate for the board of directors or related  
10 to a member of the board of directors or a candidate for the board  
11 of directors. An independent third party may not be a person,  
12 business entity, or subdivision of a business entity ~~who~~ *that* is  
13 currently employed *by* or under contract ~~to~~ *with* the association  
14 for any compensable services unless expressly authorized by rules  
15 of the association adopted pursuant to paragraph ~~(5)~~ (6) of  
16 subdivision (a).

17 (3) The inspector or inspectors of election shall do all of the  
18 following:

19 (A) Determine the number of memberships entitled to vote and  
20 the voting power of each.

21 (B) Determine the authenticity, validity, and effect of proxies,  
22 if any.

23 (C) Receive ballots.

24 (D) Hear and determine all challenges and questions in any way  
25 arising out of or in connection with the right to vote.

26 (E) Count and tabulate all votes.

27 (F) Determine when the polls shall close, consistent with the  
28 governing documents.

29 (G) Determine the tabulated results of the election.

30 (H) Perform any acts as may be proper to conduct the election  
31 with fairness to all members in accordance with this section, the  
32 Corporations Code, and all applicable rules of the association  
33 regarding the conduct of the election that are not in conflict with  
34 this section.

35 (4) An inspector of election shall perform his or her duties  
36 impartially, in good faith, to the best of his or her ability, and as  
37 expeditiously as is practical. If there are three inspectors of election,  
38 the decision or act of a majority shall be effective in all respects  
39 as the decision or act of all. Any report made by the inspector or

1 inspectors of election is prima facie evidence of the facts stated in  
2 the report.

3 (d) ~~(1)~~ For purposes of this section, the following definitions  
4 shall apply:

5 ~~(A)~~

6 (1) "Proxy" means a written authorization signed by a member  
7 or the authorized representative of the member that gives another  
8 member or members the power to vote on behalf of that member.

9 ~~(B) "Signed"~~

10 (2) "*Sign or signed*" means the placing of the member's name  
11 on the proxy (whether by manual signature, typewriting, telegraphic  
12 transmission, or otherwise) by the member or authorized  
13 representative of the member.

14 ~~(2)~~

15 (e) Proxies shall not be construed or used in lieu of a ballot. An  
16 association may use proxies if permitted or required by the bylaws  
17 of the association and if those proxies meet the requirements of  
18 this article, other laws, and the association's governing documents,  
19 but the association shall not be required to prepare or distribute  
20 proxies pursuant to this section.

21 ~~(3) Any section. Any instruction given in a proxy issued for an~~  
22 ~~election that directs the manner in which the proxyholder proxy~~  
23 ~~holder is to cast the vote shall be set forth on a separate page of~~  
24 ~~the proxy that can be detached and given to the proxyholder proxy~~  
25 ~~holder to retain. The proxyholder proxy holder shall cast the~~  
26 ~~member's vote by secret ballot. The proxy may be revoked by the~~  
27 ~~member prior to the receipt of the ballot by the inspector of~~  
28 ~~elections as described in Section 7613 of the Corporations Code.~~

29 ~~(e)~~

30 (f) Ballots and two preaddressed envelopes with instructions on  
31 how to return ballots shall be mailed by first-class mail or delivered  
32 by the association to every member not less than 30 days prior to  
33 the deadline for voting. In order to preserve confidentiality, a voter  
34 may not be identified by name, address, or lot, parcel, or unit  
35 number on the ballot. The association shall use as a model those  
36 procedures used by California counties for ensuring confidentiality  
37 of ~~vote by mail voter absentee~~ ballots, including all of the  
38 following:

39 (1) The ballot itself is not signed by the voter, but is inserted  
40 into an *inner* envelope that is sealed. ~~This~~ The envelope is inserted

1 into ~~a second~~ *an outside mailing* envelope that is sealed. In the  
 2 upper left-hand corner of the ~~second~~ *outside mailing* envelope, the  
 3 voter shall sign his or her name, ~~indicate his or her name,~~ and  
 4 indicate the address or separate interest identifier that entitles him  
 5 or her to vote.

6 (2) The ~~second~~ *outside mailing* envelope is addressed to the  
 7 inspector or inspectors of election, who will be tallying the votes.  
 8 The envelope may be mailed or delivered by hand to a location  
 9 specified by the inspector or inspectors of election. The member  
 10 may request a receipt for delivery.

11 ~~(f)~~  
 12 (g) All votes shall be counted and tabulated by the inspector or  
 13 inspectors of election or his or her designee in public at a properly  
 14 noticed open meeting of the board of directors or members. Any  
 15 candidate or other member of the association may witness the  
 16 counting and tabulation of the votes. No person, including a  
 17 member of the association or an employee of the management  
 18 company, shall open or otherwise review any ballot prior to the  
 19 time and place at which the ballots are counted and tabulated. The  
 20 inspector of election, or his or her designee, may verify the  
 21 member's information and signature on the ~~outer~~ *outside mailing*  
 22 envelope prior to the meeting at which ballots are tabulated. Once  
 23 a secret ballot is received by the inspector of elections, it shall be  
 24 irrevocable.

25 ~~(g)~~  
 26 (h) The tabulated results of the election shall be promptly  
 27 reported to the board of directors of the association and shall be  
 28 recorded in the minutes of the next meeting of the board of  
 29 directors and shall be available for review by members of the  
 30 association. Within 15 days of the election, the board shall  
 31 publicize the tabulated results of the election in a communication  
 32 directed to all members.

33 ~~(h)~~  
 34 (i) The sealed ballots at all times shall be in the custody of the  
 35 inspector or inspectors of election or at a location designated by  
 36 the inspector or inspectors until after the tabulation of the vote,  
 37 and until the time allowed by Section 7527 of the Corporations  
 38 Code for challenging the election has expired, at which time  
 39 custody shall be transferred to the association. If there is a recount  
 40 or other challenge to the election process, the inspector or

1 inspectors of election shall, upon written request, make the ballots  
2 available for inspection and review by an association member or  
3 his or her authorized representative. Any recount shall be conducted  
4 in a manner that preserves the confidentiality of the vote.

5 ~~(i)~~

6 (j) After the transfer of the ballots to the association, the ballots  
7 shall be stored by the association in a secure place for no less than  
8 one year after the date of the election.

9 ~~(j)~~

10 (k) Notwithstanding any other provision of law, the rules adopted  
11 pursuant to this section may provide for the nomination of  
12 candidates from the floor of membership meetings or nomination  
13 by any other manner. Those rules may permit write-in candidates  
14 for ballots.

15 ~~(k)~~

16 (l) Except for the meeting to count the votes required in  
17 subdivision (f), an election may be conducted entirely by mail  
18 unless otherwise specified in the governing documents.

19 ~~(l)~~

20 (m) The provisions of this section apply to both incorporated  
21 and unincorporated associations, notwithstanding any contrary  
22 provision of the governing documents.

23 ~~(m)~~

24 (n) The procedures set forth in this section shall apply to votes  
25 cast directly by the membership, but do not apply to votes cast by  
26 delegates or other elected representatives.

27 ~~(n)~~

28 (o) In the event of a conflict between this section and the  
29 provisions of the Nonprofit Mutual Benefit Corporation Law (Part  
30 3 (commencing with Section 7110) of Division 2 of Title 1 of the  
31 Corporations Code) relating to elections, the provisions of this  
32 section shall prevail.

33 ~~(o) The amendments made to this section by the act adding this~~  
34 ~~subdivision shall become operative on July 1, 2006.~~

35 (p) (1) *In the event there is not a quorum for a members meeting*  
36 *or for an election of directors the meeting may be adjourned. The*  
37 *quorum required for the subsequent meeting or election of directors*  
38 *shall be 33 percent of the association membership entitled to vote.*

39 (2) *The provisions of paragraph (1) shall only apply to this*  
40 *section and are not applicable to any other provision in this title.*

1 SECTION 1. ~~Section 6258 of the Penal Code is amended to~~  
2 ~~read:~~  
3 ~~6258. (a) The Secretary of Corrections and Rehabilitation may~~  
4 ~~contract for the establishment and operation of separate community~~  
5 ~~correctional reentry centers for men and women, provided that the~~  
6 ~~per-inmate cost for operating these facilities under contract will~~  
7 ~~be less than the per-inmate cost of maintaining custody of the~~  
8 ~~inmates by the department.~~  
9 ~~(b) The purpose of the community correctional reentry center~~  
10 ~~is to provide an enhancement program to increase the likelihood~~  
11 ~~of a successful parole. The objective of the program is to make~~  
12 ~~the inmates aware of their responsibility to society, and to assist~~  
13 ~~the inmates with educational and employment training to ensure~~  
14 ~~employability once on parole.~~  
15 ~~(c) A community correctional reentry center shall prepare the~~  
16 ~~inmate for reintegration into society. These centers shall provide~~  
17 ~~counseling in the areas of drug and alcohol abuse, stress,~~  
18 ~~employment skills, victim awareness, and shall, in general, prepare~~  
19 ~~the inmate for return to society. The program shall also emphasize~~  
20 ~~literacy training and utilize computer-supported training so that~~  
21 ~~the inmate can read and write at least at a ninth grade level.~~  
22 ~~(d) In awarding contracts pursuant to this section, the secretary~~  
23 ~~may entertain proposals for the establishment and operation of~~  
24 ~~community correctional reentry centers from public and private~~  
25 ~~entities and shall give preference to community correctional reentry~~  
26 ~~centers located near large population centers.~~