

**EXHIBIT A**

**TAHOE DONNER ELECTIONS COMMITTEE REPORT**

**ANALYSIS AND POTENTIAL COSTS OF INTERNET-BASED ELECTRONIC SECRET VOTING FOR COMMON INTEREST DEVELOPMENTS**

**Introduction**

AB 2159 (Electronic Secret Ballot Elections) was enacted into California law September 22, 2024, and is available for elections beginning January 1, 2025. The Tahoe Donner Board of Directors has requested that the Elections Committee provide it with an analysis of AB 2159 and explore its potential impact on the Board election process. This white paper begins with a description of the current election process, analyzes AB 2159 and discusses benefits and risks associated with electronic voting. Exhibit B contains information prepared by Tahoe Donner staff about the potential costs associated with electronic voting.

This white paper focuses on Director elections, those being the most common elections in the Association. The scope of AB 2159 specifically excludes assessments but would include other matters put to a vote of members.

**Current Tahoe Donner Board Election Process**

The Association’s elections are governed by the Bylaws and by the Davis-Stirling provisions of California law. The existing election processes are oriented around the two-envelope secret ballot system and comply with the Davis-Stirling requirements for concluding the election by acclamation where there are the same number or fewer candidates as open positions.

The vote counting process is the responsibility of the Inspector of Elections, who is appointed by the Association each year. Because of the volume of ballots, the Inspector works in coordination with a CPA firm that the Association has engaged who receives and counts the votes.

The major milestones of the Director election process are listed in the chart below, drawing from the 2025 election timeline as an example. Supporting these milestones are various communications to members to raise awareness of the election, solicit Director candidates and encourage voting. These member communications are in the form of Tahoe Donner News and Life articles, email communications, elections website updates and a campaign event.

<b>2025 Election Dates</b>	<b>Key Election Process Step</b>
January 13	Mailing to members of Initial Notice of candidate application due dates and procedures
March 13	Email solicitation for Board candidates Candidate applications available on website
April 15	Candidate application due date Electronic notification to members of candidate list, voting procedures, quorum requirements
May 27	Ballots mailed to members
June 27	Election ballot meeting (initial vote counting)

June 29	Annual meeting / conclusion of election
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**Analysis of AB 2159 (Maienschein, D, San Diego)**

AB 2159 was passed by the California Legislature on August 30, 2024, signed by the Governor on September 22, 2024, and is effective for elections beginning January 1, 2025. It establishes a framework by which common interest developments (HOAs) can conduct association elections by internet-based electronic secret ballot in addition to or instead of mailed ballots for

- Directors
- Recall elections, and
- Amendments to government documents.

Under the provisions of AB 2159, an association can adopt a rule that allows it to utilize an inspector(s) of elections to conduct an election by electronic secret ballot, notwithstanding the association’s governing documents. The inspector(s) are required to ensure that the electronic secret ballots provide a method to authenticate a member’s identity to the internet-based voting system and a method for the member to confirm that their electronic device can successfully communicate with it at least 30 days before the voting deadline. The internet-based voting system must be able to authenticate the member’s identity and the validity of each electronic secret ballot and to transmit a receipt to the member.

These provisions shift responsibility for ensuring the validity, secrecy and integrity of internet-based electronic secret ballots from the HOA to the inspector(s) of elections.

Depending on the HOA rule, members may either opt in or opt out of voting by electronic secret ballot no later than 90 days before an election. This request must be delivered in writing to the HOA. Mailed ballots will be sent to members who select that delivery method and those for whom the HOA does not have an email address. Members who choose to vote by electronic secret ballot must provide a valid email address. The HOA must maintain a list identifying which members select which voting method and provide information on procedures to opt in or opt out in the annual statement.

The association must deliver individual notice of the electronic secret ballot to each member 30 days before the election with instructions on how to obtain access to the internet-based voting system and how to vote. This notice can be submitted electronically. If the election rule permits members to opt out of voting by electronic secret ballot and instead vote by written ballot, individual notice on how to do so must be provided by least 30 days before the deadline. This notice must list the member’s current voting method, the applicable email address, an explanation of how the member can opt out of voting by electronic secret ballot to receive a written ballot, and the deadline. Conversely, the election rule may permit a member to opt into voting by electronic secret ballot. Both written and electronic ballots must contain the same list of items being voted on.

For purposes of determining a quorum, a member voting electronically is to be counted as a member in attendance at the meeting. Nomination of candidates from the floor of membership meetings is prohibited.

Existing law requires that an inspector of elections or their designee count and tabulate all votes at a properly noticed open meeting of the board or members. No one can open or review ballots before this time. This bill specifies that tally sheets of votes cast by electronic secret ballot are similarly restricted and remain in the custody of the inspector until after tabulation of the vote. Both records would be available for inspection and review by an association member or the member's authorized representative, upon written request, if there is a recount or other challenge to the election process. After the election process is completed, written ballots and tally sheets of secret ballots would become association records available for copying or review by an association member or the member's representative.

Under existing law, a member of an HOA can bring a cause of action in small claims court against the Association if the member can establish that election procedures were not followed.

Sponsor: This bill was sponsored by the Community Associations Institute—California Legislative Action Committee. The Author states that “the bill aims to offer associations an alternative voting method, cut costs, and boost voter participation.”

Opposition: Concerns include the potential to hack internet-based secret ballots, the difficulty of auditing non-paper ballots, and the inability of HOA members to witness tabulation of electronic votes. Malware on home computers and service interruptions are other concerns.

### **Potential Impact on Tahoe Donner Elections**

The approach taken in AB 2159 is to preserve the paper ballot voting preference for any member who wants it. Accordingly, this requires a two-track process that limits some of the streamlining and cost savings that could otherwise have been accomplished with electronic only voting.

As noted above in the analysis of the bill; to implement electronic voting the Association must update the existing election rules and in doing so must decide whether to implement the new electronic voting election rule as:

- Opt-in: default paper ballot and a member who wants electronic voting communicates that preference in writing to the Association
- Opt-out: default electronic voting and a member who wants a paper ballot communicates that preference in writing to the Association

Once the member's voting method preference is established, it is retained for subsequent elections but can be changed by the member no later than 90 days before the election.

Because of the two-track process and the continuing Davis-Stirling requirement for an Inspector of Elections (one or three) it seems likely that a single firm would need to be engaged to serve as the Inspector both for purposes of electronic voting and paper ballots and that firm would manage and attest to the final vote result. The existing outside service provider costs the Association incurs now with the Inspector and the CPA firm would be replaced with the cost of

the new full-service Inspector firm. The Inspector would need to have electronic voting software that would meet the security requirements specified in the California legislation, including that:

- Member can confirm their device communicates with the voting system at least 30 days before voting deadline
- Voting system can authenticate the member's identity and the validity of the electronic ballot
- Voting system transmits a receipt to the member
- Voter anonymity is maintained

From the perspective of the member voting electronically, the actual voting process may look something like:

1. Prior to 30 days before the election member receives an email that proves an opportunity to test a link to the voting software from their computer/device
2. When voting opens, member receive an email from the Inspector firm with a link to a voting site
3. Member clicks on the link to go to the voting website
4. On the voting website, the member views the candidate list and candidates' Director Election Statements and votes for their preferred candidate(s) by clicking their name(s)
5. Member receives a second email with an authentication number
6. Member inputs the authentication number on the voting website to finalize their vote
7. Member sees a confirmation/record of their vote on the voting website

There could be variations in these steps depending on how the software handles the member authentication.

### **Benefits**

Some of the positive potential impacts of electronic voting include:

- Modernized election process
- Higher voter participation as each member chooses the voting method most convenient for them
- Cost savings from fewer paper ballots printed and mailed
- Cost savings and efficiency gains from fewer paper ballots to count

### **Risks/Concerns**

Because California's HOA electronic voting variation is new there are some issues present which could be expected to be clarified/resolved after there is an electronic voting track record:

- Opting out of whichever default method is established in the election rule requires action on the part of the member. For example, if the member preferred a paper ballot and the election rule default was electronic, but the member didn't opt out by the deadline, the member would be forced into electronic voting if they wanted to vote.
- Some members may have trouble with online voting, e.g. can't find emails from Inspector, email went to spam folder, difficulty in navigating voting website, etc.
- If there is an Inspector firm that handles the electronic and paper ballots, and the member has questions/issues does the member contact that firm for assistance or do they contact Association staff?
- Because of the two-track approach, the cost of developing the paper ballot package, whether the work is done by Association staff or the Inspector firm, would still be incurred.

- Unclear whether / how hand delivered paper ballots (permitted per the Bylaws) would be handled. Would the Inspector / representative be on-site on day of the Annual Meeting and how is that coordinated with the conclusion of electronic voting and reporting the final results?
- Under Davis-Stirling, members advocating a point of view relating to an election are allowed equivalent access to Association owned media as candidates and it's not clear how that would work in an electronic election. Is the Inspector's voting website treated as Association media and would there be a location for non-candidate members' Director Election Statements on it?
- Increased costs and effort, whether of Association staff or the Inspector, in managing the list of members' voting preferences and in mailing out custom individual notices informing each member of their current voting preference and informing them of the method/deadline of changing it. The customized notice with each member's existing voting preference must be sent out by individual notice 120 days before the election. This accelerates the communications related to the election process (back to approximately February 1). It's not clear if/how this impacts the existing timing of the individual notice that meets the requirements of Davis-Stirling Sec. 5103 and enables concluding the election by acclamation if there are the same or fewer candidates as open positions.

### **Security Considerations**

Some organizations with election expertise have expressed concerns with electronic voting due to the possibility of security risks, hacking, technical problems, etc. Safeguards are required in AB 2159 that address security concerns. Some members may view positively the electronic confirmation they will get that their online vote has been received, compared to putting an envelope in the mail. Overall, how Tahoe Donner members view the security of the electronic voting would likely vary by individual and be impacted by their degree of confidence in the Inspector firm and software being used for electronic voting.

### **Potential AB 2159 Amendment**

Annie Rosenfeld advised the Elections Committee that at a recent California Association of Community Managers law seminar she learned that an AB 2159 clean-up bill is in process which would amend some of the language of AB 2159. If the clean-up bill goes forward, the law revisions would not be passed until September 2025. Also, the consensus of the legal panel at the meeting was that they are encouraging associations to wait before implementing electronic voting.