

HOUSE BILL REPORT

ESHB 1471

As Amended by Senate

Title: An act relating to homeowners' associations.

Brief Description: Regulating homeowners' associations.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Padden and Appelwick).

Brief History:

Committee Activity:

Law & Justice: 2/10/95, 2/15/95 [DPS].

Floor Activity:

Passed House: 3/9/95, 82-13.

Senate Amended.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; Morris; Robertson; Sheahan; Smith; Thibaudeau and Veloria.

Minority Report: Do not pass. Signed by 1 member: Representative McMahan.

Staff: Edie Adams (786-7180).

Background: A homeowners' association is an organization formed in a planned unit community or given homeowners' area to provide management and maintenance for common areas in the community, such as parks, lakes, roads, and community centers. Often these associations are formed by the land developer or the builder of planned unit developments pursuant to a restrictive covenant or a contract. Homeowners' associations typically impose and collect assessments on each owner of property in the community for the maintenance and repair of the common areas. In addition, homeowners' associations may adopt rules and regulations concerning property use in the community and impose fines for violations of those rules.

Currently, there is no statutory law that specifically addresses the organization, management, and powers of homeowners' associations. Homeowners' associations

may organize as nonprofit associations governed by their own rules and procedures. In addition, homeowners associations may organize as nonprofit corporations.

Nonprofit corporations are managed by a board of directors and officers. The powers of a nonprofit corporation include the power to sue and be sued, engage in property transactions, lend money, make contracts, and incur liabilities. A nonprofit corporation may not issue stock, make income disbursements to members, officers, or directors, or make loans or advance credit to directors or officers. If provided in the articles of incorporation, a nonprofit corporation may make and collect assessments based on the value of the property owned by members of the corporation.

Summary of Bill: A new chapter is created governing the formation and administration of homeowners' associations. A "homeowners' association" is a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction and who is obligated to pay real property taxes, insurance premiums, maintenance costs, or improvement costs for real property other than that which is owned by the member. The membership of an association consists exclusively of the owners of all real property over which the association has jurisdiction.

"Governing documents" is defined as the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument which authorizes the association to exercise powers over property under its jurisdiction..

The powers of an association include the power to: (1) adopt and amend bylaws, rules, and regulations; (2) adopt and amend budgets and impose and collect assessments for common expenses from owners; (3) make contracts and incur liabilities; (4) regulate the use, maintenance, repair, replacement, and modification of common areas; (5) acquire, hold, encumber, and convey interests in real property; and (6) impose and collect charges for late payments of assessments and levy reasonable fines for violation of the bylaws, rules, and regulations of the association.

An association may only impose fines for violations of the bylaws, rules, and regulations of the association after notice and an opportunity to be heard.

Officers and directors of an association shall act in all instances on behalf of the association and shall exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation. The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors.

Any budget adopted by the board of directors must be approved by the owners of the association. The owners may remove any member of the board of directors with or without cause by a majority vote at a meeting at which a quorum of the owners is present.

The bylaws shall provide for: (1) the number, qualifications, powers and duties, terms of office, and manner of election of the board of directors; (2) the manner of election of the officers by the board of directors; (3) which powers the officers or directors may delegate to a managing agent; and (4) the method of amending the bylaws.

The association must hold at least one meeting per year, and special meetings may be called by the president, a majority of the board of directors, or by owners having 10 percent of the votes in the association. Notice of the special meetings must be mailed at least 10 days, and no more than 60 days, in advance of the meeting and must contain the time, place and purpose of the meeting.

All meetings of the board of directors must be open for observation by all owners of record and their authorized agents. The board may meet in closed executive session to consider certain matters upon an affirmative vote in open session. All actions passed or agreed to in closed session become effective only after the board reconvenes and votes on the action in open meeting.

The association is required to keep financial records and prepare an annual financial statement. All records of the association are available for examination by all owners, holders of mortgages on the lots, and their respective agents on reasonable advance notice. The association may not release the unlisted telephone number of any owner.

A violation of the act entitles an aggrieved party to any available legal or equitable remedy and, if appropriate, an award of reasonable attorney's fees.

EFFECT OF SENATE AMENDMENT(S):

An association may not institute, defend, or intervene in litigation or administrative proceedings on behalf of owners involved in disputes that are not the responsibility of the association. The association is not required to refund or credit surplus monies to the owners. An owner may vote either in person or by proxy to remove a member of the board, to reject the budget, or to waive the required annual audit. All claims must be brought within six months from the occurrence of the violation.

The association's annual financial statement does not have to be prepared in accordance with generally accepted accounting principles. The annual audit

required for an association with annual assessments of \$50,000 or more must be prepared by an "independent" certified public accountant.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill is needed to deal with common complaints received from members of homeowners' associations. The bill provides a set of basic rules and procedures by which homeowners' associations must operate in order to protect individual association members. The board of directors of some homeowners' associations currently do not provide members notice of their actions and imposition of assessments. The board needs to be accountable to the members of the association and needs to make decisions based on the association's interests.

Testimony Against: None.

Testified: Ralph Munro, Secretary of State (pro); Jim Coffey, citizen (pro); Gary Ackerman, citizen (with concerns); and Ron Wagner (with questions).

Votes on Final Passage:

Yeas 82; Nays 13; Excused 3

Nays: Benton, Fuhrman, Goldsmith, Hargrove, Koster, Lisk, McMahan, McMorris, Mitchell, Mulliken, Pennington, Sherstad, Stevens

Excused: Blanton, Brumsickle, Ebersole