

HOUSE BILL REPORT

SSB 6064

As Passed House - Amended:

April 15, 2005

Title: An act relating to homeowners' associations.

Brief Description: Limiting the powers of homeowners' associations.

Sponsors: By Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Benton and Fairley).

Brief History:

Committee Activity:

Judiciary: 3/31/05 [DPA].

Floor Activity:

Passed House - Amended: 4/15/05, 50-47.

Brief Summary of Substitute Bill (As Amended by House)

- Prohibits homeowners' associations from banning political yard signs before an election.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 6 members: Representatives Flannigan, Vice Chair; Williams, Vice Chair; Campbell, Kirby, Springer and Wood.

Minority Report: Do not pass. Signed by 4 members: Representatives Lantz, Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; and Serben.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

A homeowners' association is an organization consisting of the homeowners and property owners within a residential development. Homeowners' associations may impose and collect assessments on property owners, manage and maintain common areas, and enforce restrictive covenants that govern the community.

Restrictive covenants can be as specific as regulating the architectural designs of homes, the size of mailboxes, and the placement of satellite dishes. The homeowners' associations may impose fines for violations of its covenants.

The First and Fourteenth Amendments of the federal Constitution protect a person's freedom of speech by limiting the laws government may enact that abridge speech. With certain exceptions, the First Amendment does not apply to private parties. However, at least one district court in Florida found that judicial enforcement of private agreements within a restrictive covenant constituted state action, thereby making the parties' private conduct subject to the First Amendment. In that case, a private condominium rule restricted residents from flying the American flag except under certain circumstances.

In 2004, the Legislature enacted a law prohibiting homeowners' associations from banning its residents from displaying the American flag and from installing flagpoles on their property. The law allows for reasonable restrictions on the placement and manner of display.

Both the state and federal Constitutions provide that no state shall pass a law impairing the obligation of contracts. A contract is impaired if the statute alters its terms, imposes new conditions, or lessens its value. Even if a substantial impairment of contract occurs, it may not be unconstitutional if it was reasonable and necessary to achieve a legitimate public purpose.

Generally, statutes are prospective unless it is clear the law is to be retroactive. A retroactive statute is unconstitutional under the due process or contract clauses only if the statute is unfair or unreasonable.

Summary of Amended Bill:

A homeowners' association's governing documents may not prohibit the outdoor display of political yard signs by an owner or resident before any primary or general election. This provision applies retroactively to homeowners' associations' governing documents that are in effect at the effective date of the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Homeowners' associations should not be able to take away people's constitutional right to free speech. Every election year, homeowners are surprised to find out that their associations do not allow them to display signs. They should have the same ability to participate in the democratic process as other homeowners. Homeowners should be able to place reasonable limitations on people, but they should not be able to completely ban political signs.

Testimony Against: None.

Persons Testifying: Senator Benton, prime sponsor; and Jennifer Shaw, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.