

# SENATE BILL REPORT

## SB 5559

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As Reported By Senate Committee On:  
Financial Institutions, Housing & Consumer Protection, March 1, 2005

**Title:** An act relating to amendment of governing documents of a homeowners' association.

**Brief Description:** Revising procedures for amendment of governing documents for homeowners' associations.

**Sponsors:** Senators Pflug, Kline, Schmidt and Roach.

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Consumer Protection: 2/9/05, 3/1/05 [DPS].

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 5559 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Berkey, Vice Chair; Benton, Ranking Minority Member; Benson, Brandland, Delvin, Franklin, Keiser, Prentice, Schmidt and Spanel.

**Staff:** Jennifer Arnold (786-7471)

**Background:** Often amendment procedures for homeowners' association covenants are contained within the covenants themselves, in which event those procedures must be strictly followed. In cases where the covenant does not contain procedures for amendment, the covenant can only be amended by unanimous owner approval. Common law may also place legal restrictions on the scope and nature of covenant amendments.

Covenants are required to be recorded with the county in which the property is located in order to give notice of their existence.

**Summary of Substitute Bill:** New provisions, providing for the amendment of covenants, are added to the Homeowners' Association Act. If voting in favor of an amendment, condition, or restriction within the homeowners' association requires more than a 50 percent majority vote, then the association, or any owner, may opt to seek approval from the superior court to have the required percentage of affirmative votes for passing the vote reduced.

The court petition must include a description of the effort made to solicit the number of votes required under the covenant, the number of votes actually received, the number or percentage of affirmative votes required under the existing covenant to approve the amendment, and any other matters that the petitioner believes are relevant to the court's decision. Further, the petition must include copies of the governing documents, the text of the amendment, notice and solicitation materials used to solicit voter approval, the reason the amendment is needed,

and any other relevant documents. After a petition is filed, a hearing date and the means for providing notice will be determined.

The court may grant the petition for an amendment if it finds that all of the following conditions have been met: (1) the petitioner gave at least 60 days notice of the court hearing to all association members and any other entity required to receive notice under the terms of the existing covenant; (2) the balloting on the amendment followed the governing document rules; (3) a diligent effort was made for all eligible voters to participate; (4) the declaration was passed by more than two-thirds of the voters and a quorum was present ; (5) the amendment is consistent with the general plan of the development; and (6) granting the petition is not otherwise improper under the provisions of this bill. If the court finds that all six conditions have been met, the court may approve the amendment.

The court is not obligated to approve an amendment if the proposed amendment does any of the following: (1) provides that more than 50 percent of the votes in more than one class is required to approve an amendment, unless the amendment was approved by more than 50 percent of the required votes; (2) eliminates special rights, preferences, or privileges of an owner without consent; and (3) impairs a mortgagee or beneficiary's interest without specified approval.

An amendment made under these provisions is not effective until recorded, along with the court order, in every county in which the homeowners' association is located. A person may be designated to record the documents by either the covenant or association. After recording, an association is required to mail a copy of the amendment to each association member within a reasonable time.

**Substitute Bill Compared to Original Bill:** The length of the notice requirement provided to association members of the court hearing is increased from 15 to 90 days. The requirement that the proposed amendment was approved by 50 percent of the voters is increased to require approval by two-thirds of the voters and specifies that a quorum must be present. A new condition, for the court to consider when granting a petition, is added; the proposed amendment should be "consistent with the general plan of the development."

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** There needs to be a change because it is impossible to get 75 percent of the owners to even turn out for a vote, in which event outdated covenants stay in place. After a good faith effort, the owners should be able to make reasonable changes that help to preserve the intention of the conditions, covenants, and restrictions, yet make them more applicable to the modern world.

**Testimony Against:** These concerns can be resolved already by adopting bylaws or resolutions to solve the problem. This would substitute a judge's version of fairness with that

of a simple majority. Common law requires that changes to covenants are consistent with the general plan and do not significantly increase the burden on any member.

**Who Testified:** PRO: Senator Pflug, prime sponsor; Ed Jones, Fairwood Greens Homeowners' Association; Ole Brandal, Fairwood Greens Homeowners' Association.

OTHER: Terry Leahy, Washington State Community Association Institute.

CON: Robert Wilson-Hoss, attorney.