

SENATE BILL REPORT

SB 6064

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

Title: An act relating to homeowners' associations.

Brief Description: Limiting the powers of homeowners' associations.

Sponsors: Senators Benton and Fairley.

Brief History:

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

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6064 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: Homeowners' associations generally levy and collect assessments, manage and maintain common property for the benefit of the residents, and enforce covenants that govern developments. The authority to carry out these functions comes from governing documents, such as the declaration of covenants, conditions, and restrictions.

Restrictive covenants are recorded in property deeds and may regulate such broad issues as the architectural designs of homes, schemes of landscaping, the size of mailboxes, and the placement of satellite dishes or antennas. A person who purchases property within a subdivision governed by a homeowners' association, and subject to restrictive covenants, becomes a member of the association and generally must abide by the restrictive covenants.

Both the state and federal Constitutions provide that no state can 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 contract is substantially impaired, it may not be unconstitutional if it was reasonable and necessary to achieve a legitimate public purpose. A court will compare the level of impairment with the public purpose advanced by the law.

A retroactive statute is unconstitutional under the due process or contract clauses if the statute is unfair or unreasonable. The test of the constitutionality of retroactive legislation is whether a party has changed position in reliance upon the previous law or whether the retroactive law defeats the reasonable expectations of the parties.

Summary of Substitute Bill: A homeowners' associations' governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or

resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs. This prohibition applies retroactively to any existing governing documents.

Substitute Bill Compared to Original Bill: The original bill was not considered.

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: We need this bill for people that have signed away their freedom of expression in their homeowners' association covenants. Political speech, and free speech in general, must be protected.

Testimony Against: None.

Who Testified: PRO: Senator Benton, prime sponsor.