

HOUSE BILL REPORT

ESB 6744

As Reported by House Committee On:

Judiciary
Appropriations

Title: An act relating to homeowners' associations.

Brief Description: Concerning homeowners' associations.

Sponsors: Senators Fraser and Fairley.

Brief History:

Committee Activity:

Judiciary: 2/26/08, 2/28/08 [DP];

Appropriations: 3/3/08 [DPA].

Brief Summary of Engrossed Bill (As Amended by House Committee)

- Directs the Department of Community, Trade and Economic Development (CTED) to conduct a study of improved dispute resolution processes for issues related to homeowners' associations, and appoint an advisory committee to assist with the study.
- Directs CTED to create a task force to: (1) provide recommendations; (2) draft model homeowners' association declarations; and (3) draft proposed legislation to establish an effective method for the distribution of information about homeowners' associations to prospective buyers.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Lara Zarowsky (786-7123).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Homeowners' Associations

A homeowners' association (association) is a legal entity with membership comprised of the owners of residential real property located within a development or other specified area. An association typically arises from restrictive covenants recorded by a developer against property in a subdivision, and is managed by a board of directors, elected by the members, once the developer relinquishes control. In general, the purpose of an association is to manage and maintain a subdivision's common areas and structures, to review design, and to maintain architectural control.

The Homeowners' Association Act (HOAA) was enacted by the Legislature in 1995 to "provide consistent laws regarding the formation and legal administration of homeowners' associations." Associations are governed by: (1) the HOAA, which identifies the duties and powers of an association; (2) restrictive covenants pursuant to which an association is established; and (3) bylaws, rules, and regulations adopted by a particular association. In addition, depending on how a particular association is legally organized, its activities and management may be governed by the state Business Corporation Act or Nonprofit Corporation Act. However, the HOAA does not require an association to be incorporated.

Homeowners' Association Act Committee (HOAAC)

The Homeowners' Association Act Committee (HOAAC) was established by the Legislature in 2006 to study current issues related to homeowners' associations, and to review the HOAA and the federal Uniform Common Interest Ownership Act. In addition to other relevant issues, the HOAAC was directed to consider: the method and manner of amending restrictive covenants; voting provisions; alternative dispute resolution mechanisms; communication between an association's board and its members; the budget ratification process; and provisions of other laws governing associations that conflict with the HOAAC.

The HOAAC submitted a final report to the Legislature in December 2007. The report recommended, among other things, a study to determine whether an ombudsman program should be established to address issues not readily resolved by legislation, litigation, or mediation.

Summary of Bill:

The Department of Community, Trade and Economic Development (CTED) is directed to: (1) conduct a study of improved processes for dispute resolution between members of a homeowners' association (association) and its board of directors; and (2) create a task force to provide recommendations on model declarations and a method for distributing information about associations to potential buyers.

The **study** must evaluate the feasibility of creating either: (1) a state or local appeals board; or (2) a state or local ombudsman office to provide dispute resolution services and information related to associations. The CTED is directed to appoint an advisory committee of up to 12 members to assist with the study, two of whom may be legislators appointed by the Speaker of the House and the President of the Senate.

The study must include:

- an explanation of trends related to the number of people living in communities or cooperatives subject to the HOAA;
- the estimated number of association members and boards of directors likely to utilize the services of an appeals board or ombudsman;
- the estimated expense of providing such services and potential sources of funding; and
- a recommendation as to whether an appeals board or ombudsman services should be provided, and if so, how such services should be funded.

The **task force** must recommend model declarations, and propose a method to distribute to potential buyers information on associations. The task force may be comprised of up to 13 members and shall include: two board members from two different associations; three homeowners whose primary residences are in communities or cooperatives governed by the HOAA; two attorneys with expertise in association formation; a representative from the CTED; and a representative of city governments.

The task force must:

- draft one or more model declarations for the formation of associations, based on declarations currently in use in this and other states; and
- draft proposed legislation establishing an effective method for information about the association governing a particular parcel to be distributed to a potential buyer.

The advisory committee and task force must report recommendations to the Legislature and to the Governor by December 10, 2008.

The provisions of the bill expire on December 31, 2008.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The issue of disclosures about homeowners' associations to the potential buyer is one that needs more work. The task force recommended an extensive set of information be required to be given to a prospective purchaser. Over concern that this would result in unintended consequences, specifically a negative impact on sales, changes to Form 17 were included instead of other disclosures. Basic disclosures are required under the more comprehensive homeowners' association bill, but this bill has three important studies. One study is on dispute resolution, one directs the development of optional model declarations, and finally one study is established to find the best way to distribute information to potential buyers. These studies are really important and they should be supported.

(Opposed) None.

Persons Testifying: Senator Fraser, prime sponsor; Marion Morganstern; David Harrison; and Marco de Sa e Silva, Real Property, Probate, and Trust Section of the Washington Bar Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended. Signed by 25 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist, Sullivan and Walsh.

Minority Report: Do not pass. Signed by 9 members: Representatives Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Hinkle, Kretz, McDonald, Ross and Schmick.

Staff: Mark Matteson (786-7145).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) None.

(With concerns) The Homeowners' Association Act Committee established by the 2006 Legislature to study current issues relating to homeowners' associations. When they finished their work, two bills were proposed: one that embodied all of the substantive recommendations of the committee; and another that required a further study and task force. What you have before you is the study bill. The striker will take the main study out and insert the noncontroversial recommendations of the committee. The committee had worked for almost two years and many recommendations were noncontroversial, and the desire was to move these forward.

The striker provides clarity to associations throughout the state. Disclosure is also provided. Many people don't know that when they purchase homes they are buying into homeowners

associations. Prospective homeowners will be notified and receive a frequently-asked-questions pamphlet.

(Opposed) None.

Persons Testifying: Kathryn Hedrick, Community Associations Institute; and Mike Ryherd, Save Our Homes.

Persons Signed In To Testify But Not Testifying: None.