

SENATE BILL REPORT

ESHB 1309

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, March 22, 2011

Title: An act relating to reserve accounts and studies for condominium and homeowners' associations.

Brief Description: Concerning reserve accounts and studies for condominium and homeowners' associations.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Roberts, Appleton, Rodne, Springer, Hasegawa, Ryu, Eddy, Green, Kagi and Kelley).

Brief History: Passed House: 3/03/11, 93-5.

Committee Activity: Financial Institutions, Housing & Insurance: 3/15/11, 3/22/11 [DPA].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass as amended.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen, Keiser and Litzow.

Staff: Alison Mendiola (786-7483)

Background: Condominiums and Reserve Studies. Under legislation passed in 2008 (SB 6215), condominium associations (association) are encouraged to establish a reserve fund account to pay for major repairs or replacement of common elements. The purpose of a reserve account is to fund components that are in need of repair or replacement within 30 years. An association may withdraw funds from the reserve account for unforeseen expenses as long as notice is given to unit owners and a repayment schedule is set up.

Associations must conduct and update reserve studies annually. A reserve study includes a reserve component list; the date of the study and the type of reserve study performed; the association's reserve account balance; the percent of the fully funded balance that is funded; special assessments already implemented or planned; interest and inflation assumptions; current reserve account contribution rate; recommended reserve contribution rate; a projected reserve account balance for 30 years; a funding plan to pay for projected costs without a reliance on future unplanned special assessments; whether the study was conducted by a reserve study professional; and a disclosure as required by statute.

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.

The initial reserve study must be based on a visual site inspection conducted by a reserve study professional. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional. Reserve studies must include detailed information on projected expenditures and current reserve account information.

If an association has not conducted a reserve study prepared by a professional in the past three years, one may be demanded if 20 percent or more of the unit owners agree. An association may refuse the demand if conducting the study would impose an unreasonable economic hardship on the association. An unreasonable hardship exists if preparing the study would cost more than 10 percent of the association's annual budget.

Public offering statements and seller's disclosures must include either (1) a copy of the association's current reserve study; or (2) a disclosure informing the buyer that there is no current reserve study and the possible risks that the buyer faces because of the lack of a current study.

Homeowners' Associations. A homeowners' association (HOA) is an organization consisting of the homeowners and property owners within a residential development. HOAs are usually created by a land developer or builder of a planned residential development pursuant to a declaration of covenants, conditions, and restrictions.

HOAs may be organized in different ways, including incorporation under the Business Corporation Act or the Nonprofit Corporation Act, or as an unincorporated association. The duties and powers of an HOA are defined by the Homeowners' Association Act (HOAA), the HOA's declaration and other governing documents, and the law governing the HOA's legal entity (e.g., nonprofit corporation law).

Powers. Under the HOAA, an HOA may exercise the following powers: adopt and amend bylaws and rules; adopt and amend budgets; impose assessments on homeowners; involve itself in litigation; enter into contracts; improve and maintain the common areas; acquire and convey property; levy reasonable fines on members for late payment of assessments or violations of rules; and any other power necessary and proper to carry out its duties. However, these powers may be supplemented or superseded by an HOA's governing documents and by the law governing the HOA's legal entity.

HOA's officers and directors must carry out the following duties: provide homeowners with notice and a ratification process for the annual budget; keep sufficient records; prepare annual financial statements; provide homeowners with notice and an opportunity to be heard before levying a fine. Other duties may be required by the HOA's governing documents and the law governing the HOA's legal entity.

HOA's are not required by statute to conduct reserve studies or have reserve accounts.

Summary of Bill (Recommended Amendments): The requirements of condominium associations concerning reserve components and summaries of annual budgets are amended. Reserve study and reserve account requirements are adopted with respect to HOAs.

Condominium Associations. A condominium association is required to comply with the reserve study requirement if the association has significant assets. For the purposes of condominium associations, significant assets means that the current total cost of major maintenance, repair, and replacement of the reserve components is 50 percent or more of the gross budget of the association, excluding reserve account funds.

A reserve study's reserve component list must include roofing, painting, paving, decks, siding, plumbing, windows, and any other building component that would cost more than 1 percent of the annual budget for major maintenance, repair, or replacement. If one of the components is not included, the study must explain the basis for the exclusion.

The board of directors must disclose information to owners regarding reserve studies with the summary of the annual budget. The list of required information is set forth and includes:

- the current amount of regular assessment budgeted for contribution from the reserve account;
- any regular or special assessments and the date of such assessments;
- the sufficiency of reserve funds for the next 30 years, and if the funds are insufficient, notice of a possible assessment; and
- the projected balances of the reserve account at the end of the next five budget cycles.

Homeowners' Associations. Homeowners' associations with significant assets are required to prepare an initial reserve study based upon a visual site inspection conducted by a reserve study professional. The study must be updated annually and must include a visual site inspection every three years by a reserve study professional.

When more than three years have passed since the date of the most recent reserve study prepared by a professional, the owners to which at least 35 percent of the votes in the association are allocated may demand that a reserve study be conducted in the next budget year. The board of directors must provide the owners with reasonable assurance that a study will be conducted if the next budget is not rejected by a majority of the owners in the association.

An HOA is not required to comply with the reserve study requirements if the cost of the reserve study exceeds 5 percent of the HOA's annual budget, if the HOA does not possess significant assets, or if there are ten or less homes in the association. For the purposes of HOAs, significant assets means that the current replacement value of the major reserve components is 75 percent or more of the HOA's gross budget, excluding reserve account funds.

Homeowners' associations are encouraged to establish reserve accounts, supplemental to the annual operating budget, to fund major maintenance, repair, and replacement of common elements. Similar to the new requirement for condominium associations, HOAs must disclose information to owners regarding reserve accounts and reserve studies with the summary of the annual budget.

Monetary damages or any other liability may not be awarded against the association, the officers, or board of directors, or those who may have provided assistance to the association for failure to (1) establish a reserve account, (2) have a reserve study prepared or updated, or (3) make reserve disclosures.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Amendments): A homeowners' association with ten or less homes is not required to comply with the reserve study requirements. The effective date of the bill is changed from August 1, 2012, to January 1, 2012.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2012.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: People used to live in neighborhoods, now they live in associations. The bill provides increased transparency so each homeowner knows what it means to keep the property up to standard. Even small associations need to plan for future costs. Many people mistakenly believe their dues cover all the costs of living in the association, but they don't, which is why reserve studies and properly funded accounts are so important. The implementation date should be moved up.

Persons Testifying: PRO: Representative Roberts, prime sponsor; Kathryn Hedrick, Beth Dunham, Jim Talaga, Community Associations Institute of Washington.