

SENATE BILL REPORT

SB 5223

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 2, 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: Senators Benton, Fraser and Hobbs.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/25/11, 2/02/11 [DP, w/oRec].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

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

Minority Report: That it be referred without recommendation.

Signed by Senator Haugen.

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

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reserve account balance for 30 years; and 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.

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.

Homeowner's 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: The terms of reserve studies and reserve accounts are revised in the Condominium Act (Condos) and added to the Homeowners's Association Act (HOAA) as follows:

Condominiums. Budget. The Board of Directors must disclose, as part of the summary of the annual budget information regarding reserve studies, such as: the current amount of regular assessments budgeted for contribution from the reserve account; any regular or special assessments and the date of such assessments; whether current reserves are sufficient for the next 30 years; if not, then what assessment might be required; and project balances of the reserve account at the end of each of the next five budget years.

Reserve Study. The component list is expanded to clarify that a reserve component list is to include roofing, painting, 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 reserve funding is not recommended for these components, the reserve study is to include a statement supporting this recommendation.

Homeowners Associations. The existing reserve study and account statutes, as well as proposed changes, are extended to homeowner's associations with significant assets. "Significant assets" means that the current replacement value of the major reserve component is 50 percent or more of the gross budget of the association, excluding the association's reserve account funds.

The public offering statement or resale certificate reserve study requirements for condominiums do not apply to HOAs as HOAs do not provide public offering statements or resale certificates.

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.

Staff Summary of Public Testimony: PRO: Many condos were reaching the 20-30 year mark and not planning properly resulting in special assessments which prompted reserve study legislation a few years ago. The reserve study statute is working well. This bill would strengthen it and extend the same requirements to HOA's. Notice would go to all HOA members not just prospective members like current requirement in the condo act. A HOA can have lots of common elements but fail to plan properly, and if you don't plan the consequences can be harsh. For example, one special assessment was for \$90,000 due in 60 days or you lose your home. While this might mean fewer loans in the future, the benefit is that it will offset lots of trauma on homeowners.

Persons Testifying: PRO: Kathryn Hedrick, Beth Dunham, Samantha Hamilton, Community Associations Institute; Alan Crandall, Mutual of Omaha Bank.