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**HOUSE BILL 2423**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Kilduff, Wylie, Muri, Harris, Stokesbary, Moeller, Jinkins, and Bergquist

AN ACT Relating to the creation of an office of the homeowners' association ombuds; reenacting and amending RCW 64.38.010 and 43.84.092; and adding new sections to chapter 64.38 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 64.38.010 and 2011 c 189 s 7 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Assessment" means all sums chargeable to an owner by an association in accordance with RCW 64.38.020.

(2) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW 64.38.065.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Contribution rate" means, in a reserve study as described in RCW ((~~64.34.380~~)) 64.38.065, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(7) "Effective age" means the difference between the estimated useful life and remaining useful life.

(8) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW 64.38.065, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(9) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of the reserve component by its effective age, then dividing the result by the reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(10) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(11) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(12) "Lot" means a physical portion of the real property located within an association's jurisdiction designated for separate ownership.

(13) "Owner" means the owner of a lot, but does not include a person who has an interest in a lot solely as security for an obligation. "Owner" also means the vendee, not the vendor, of a lot under a real estate contract.

(14) "Remaining useful life" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(15) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(16) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(17) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW ((~~64.34.380 and 64.34.382~~)) 64.38.065 and 64.38.070.

(18) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

(19) "Significant assets" means that the current replacement value of the major reserve components is seventy-five percent or more of the gross budget of the association, excluding the association's reserve account funds.

(20) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur.

(21) "Office" means the office of the homeowners' association ombuds.

(22) "Ombuds" means the homeowners' association ombuds.

NEW SECTION. **Sec.**  A new section is added to chapter 64.38 RCW to read as follows:

(1) There is established within the office of the attorney general an office of the homeowners' association ombuds.

(2) The attorney general must appoint the ombuds, consistent with the qualifications for the ombuds set forth in section 3 of this act.

(3) The ombuds must be the head of the office and is charged with managing the office consistent with the powers and duties vested in the ombuds under section 4 of this act within the amounts appropriated for the office.

(4) The ombuds must serve at the pleasure of the attorney general.

(5) A vacancy in the ombuds position must be filled in the same manner as the original appointment.

NEW SECTION. **Sec.**  A new section is added to chapter 64.38 RCW to read as follows:

The ombuds:

(1) Must be a member in good standing of the bar of this state;

(2) Must have at least five years of experience in the practice of law in this state;

(3) Must have experience in real estate law, including homeowners' association law;

(4) Must have experience in conflict and alternative dispute resolution;

(5) May not engage in any other business or profession that conflicts with the powers and duties of the position or the office; and

(6) Must comply with all restrictions on political activity applicable to office of the attorney general employees.

NEW SECTION. **Sec.**  A new section is added to chapter 64.38 RCW to read as follows:

The ombuds:

(1) Must contact homeowners' associations, the board of directors of homeowners' associations, individual owners in homeowners' associations, and other interested parties to inform them of the services available through the office. In addition to any other method used to publicize the office's services, the ombuds must maintain a web site containing information about the office, contact information, the services available through the office, any information required to be placed on the web site in accordance with this chapter, and any other information deemed appropriate by the ombuds;

(2) Must assist homeowners' associations, the board of directors of homeowners' associations, individual owners in homeowners' associations, and other interested parties in understanding their rights and responsibilities and the processes available to them according to the law, rules, regulations, and documents governing their respective homeowners' associations. The ombuds is not the attorney for a homeowners' association, the board of directors of a homeowners' association, an individual owner in a homeowners' association, or another interested party. An attorney-client relationship is not implied or established by the ombuds' communication with such persons, and the ombuds may not act as or appear to act as an attorney in a legal action brought by such persons;

(3) Must organize and conduct meetings to educate homeowners' associations, the board of directors of homeowners' associations, individual owners in homeowners' associations, and other interested parties about their rights and responsibilities and the processes available to them according to the law, rules, regulations, and documents governing their respective homeowners' association;

(4) Must prepare and publish educational and reference materials about homeowners' associations and to make these resources available in print and on the office's web site. The materials about homeowners' associations must include general information about the roles, rights, and responsibilities of the various parties, suggestions for the orderly operation of the homeowners' association, mechanisms for internal dispute resolution, or any other information deemed appropriate by the ombuds;

(5) Must develop and publicize procedures intended to result in fair elections for members and officers of a homeowners' association;

(6) Must provide monitors and vote counting services to homeowners' associations, intended to result in fair elections for members and officers of a homeowners' association, when fifteen percent of the total voting interests of a homeowners' association, or six owners, whichever is greater, petition the ombuds to do so;

(7) Must provide meetings, mediation, or other forms of alternative dispute resolution as requested by homeowners' associations, the board of directors of homeowners' associations, individual owners in homeowners' associations, or other interested parties;

(8) May receive complaints from homeowners' associations, the board of directors of homeowners' associations, individual owners in homeowners' associations, or other interested parties regarding potential violations of the law, rules, regulations, or documents governing their respective homeowners' associations;

(9) Must investigate any complaint received and, if meritorious and appropriate, provide meetings, mediation, or other forms of alternative dispute resolution to those parties involved to assist in the resolution of the complaint;

(10) May refer meritorious violations of existing law to the attorney general or other appropriate law enforcement agency for prosecution;

(11) May subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of books, papers, records, or other evidence needed for the exercise of the powers or the performance of the duties vested in the ombuds under this section. The power granted in this subsection may also be exercised by any other employee of the office who is a member in good standing of the bar of this state;

(12) Must establish and publish, in print and on the office's web site, procedural rules for meetings, mediation, or other forms of alternative dispute resolution organized under this section;

(13) Must establish and publish, in print and on the office's web site, procedures and forms for accepting complaints from homeowners' associations, the board of directors of homeowners' associations, individual owners in homeowners' associations, or other interested parties regarding potential violations of the law, rules, regulations, or documents governing their respective homeowners' associations;

(14) Must establish an annual fee by rule for: Meetings, mediation, or other forms of alternative dispute resolution; election monitoring; vote counting; or other services as provided by the ombuds under this section. The fee amount must be levied upon each homeowners' association in the state, be adjusted for each homeowners' association based on the size of the homeowners' association, and be deposited in the office of the homeowners' association ombuds account created in section 6 of this act;

(15) Must provide an annual report of the office's activities to the governor, attorney general, legislature, and chief justice of the supreme court by December 1st of each year. Each report must contain:

(a) Statistics on the number of inquiries and complaints handled by the office;

(b) Information on education and outreach efforts by the office;

(c) Concerns expressed to the office by homeowners' associations, the board of directors of homeowners' associations, individual owners in homeowners' associations, or other interested parties;

(d) Legal developments impacting homeowners' associations;

(e) Recommendations for changes to state law or rules of court procedure designed to improve the regulation and operation of homeowners' associations made by the ombuds; and

(f) Any other information deemed appropriate by the ombuds;

(16) May organize and hold public meetings as necessary to gain a comprehensive sense of the issues facing homeowners' associations in this state. When such meetings are held, (a) at least one meeting must be held in each county at a convenient place within each county, and (b) the information obtained from these meetings must be made a part of the report issued under subsection (15) of this section;

(17) May perform any other function necessary to fulfill the powers and duties outlined in this section;

(18) Must direct the work of the office consistent with the powers and duties established under this section; and

(19) May employ and supervise staff necessary to assist in carrying out the powers and duties established under this section within the amounts appropriated for the office.

NEW SECTION. **Sec.**  A new section is added to chapter 64.38 RCW to read as follows:

(1) When a homeowners' association, the board of directors of a homeowners' association, or individual owner in a homeowners' association contacts the office to make an inquiry, request services, or file a complaint, the homeowners' association, board of directors, or individual owner must provide the office with at least the following information regarding the homeowners' association at issue:

(a) The name, address, telephone number, and any other contact information for the homeowners' association;

(b) The name of the person engaged in property management for the homeowners' association or the name of the person who manages the property at the site of the homeowners' association;

(c) The name, mailing address, telephone number, and any other contact information for the board of directors of the homeowners' association;

(d) The governing documents for the homeowners' association;

(e) The annual budget adopted by the homeowners' association;

(f) The number of units in the homeowners' association; and

(g) The total annual assessment made by the homeowners' association.

(2) The ombuds may waive the requirements under subsection (1) of this section when appropriate.

NEW SECTION. **Sec.**  A new section is added to chapter 64.38 RCW to read as follows:

The office of the homeowners' association ombuds account is created in the state treasury. All receipts from fees collected under section 4(14) of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this act.

**Sec.**  RCW 43.84.092 and 2015 3rd sp.s. c 44 s 107 and 2015 3rd sp.s. c 12 s 3 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the electric vehicle charging infrastructure account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the office of the homeowners' association ombuds account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**--- END ---**