

SENATE BILL REPORT

SB 5302

As of January 29, 2019

Title: An act relating to the creation of an office of the homeowners' association ombuds.

Brief Description: Creating an office of the homeowners' association ombuds.

Sponsors: Senators Rivers, Pedersen, Zeiger, Becker, Keiser and Kuderer.

Brief History:

Committee Activity: Law & Justice: 1/28/19.

Brief Summary of Bill

- Establishes the office of the homeowners' association ombuds (HOA ombuds) within the Office of the Attorney General and the HOA ombuds account in the state treasury.
- Directs the HOA ombuds to maintain a website, develop model business procedures for home owners' associations (HOA), investigate HOA-related complaints, and provide dispute resolution services to HOAs.
- Directs the HOA ombuds to establish an annual fee by rule, charged to each HOA in the state, to fund the services the HOA ombuds provides.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: An HOA is a legal entity whose members are the owners of residential real property within a development, subdivision, or other specified area. A land developer or builder of a residential development typically establishes an HOA pursuant to a declaration of covenants, conditions, and restrictions. The HOA may be formed as a corporation, unincorporated association, or other legal entity.

In general, the purpose of an HOA is to manage and maintain a residential development's common areas and structures, and to maintain architectural control in compliance with the development's covenants, conditions, and restrictions. A member-elected board of directors manages the HOA. The Washington's Homeowners' Association Act, the HOA's governing

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.

documents, and the laws governing the HOA's form of legal entity, define the HOA's powers and duties.

Under the Homeowners' Association Act, an HOA may adopt and amend:

- bylaws, rules, regulations, and budgets;
- engage in legal actions on the HOA's behalf;
- make contracts and incur liabilities;
- regulate the maintenance and use of common areas;
- acquire and convey property rights; and
- impose payments, fees, or charges for the maintenance and repair of common areas.

An HOA must hold a meeting at least annually and notify all its members about the meeting. The HOA must provide an approval process for the HOA's annual budget. The HOA must prepare annual financial statements, maintain its funds in a separate account in the HOA's name, and perform the other duties required by law. HOAs are encouraged to maintain a reserve account to fund major expenses. An HOA with significant assets must prepare and update a reserve study conducted by a reserve study professional, unless the study would impose an unreasonable hardship.

Summary of Bill: The HOA ombuds is established within the Attorney General's Office. The attorney general appoints the ombuds who must be a Washington state licensed attorney in good standing, with at least five years of law practice, experience in real estate law, homeowners' association law, and alternative dispute resolution.

The HOA ombuds develops procedures for HOA meetings, elections, and resolution of HOA disputes. The HOA ombuds must develop and maintain a website containing information about the services provided by the ombuds, its office contact information, educational materials, and other resources.

The HOA ombuds conducts outreach meetings to explain the laws, rules, processes, and documents that apply to HOAs, their boards of directors, and members. The HOA ombuds provides services, and assists HOAs and other interested parties, but does not provide legal representation or form attorney-client relationships by assisting homeowner associations or individuals.

The HOA ombuds must receive and investigate HOA-related complaints regarding potential violations of laws, rules, regulations, and governing documents. When an HOA or other party contacts the HOA ombuds, the office must collect specific information and documents. The HOA ombuds attends meetings, provides mediation, election oversight, and dispute resolution services when appropriate. The ombuds may also refer potential law violations to the attorney general or law enforcement agencies when warranted.

The HOA ombuds and its employee attorneys have authority to issue witness subpoenas, subpoenas to produce records, and other evidence. These attorneys may administer oaths and take sworn testimony.

The ombuds must establish an annual fee by rule for the services the HOA ombuds provides. Each HOA in Washington must pay this fee. The HOA ombuds adjusts the fee based on the

size of the HOA. The fees must be deposited in the HOA ombuds account established in the state treasury.

The HOA ombuds submits an annual report on its activities during the year by December 1st to the Governor, attorney general, Legislature, and Washington Supreme Court. The report must include statistics and information about outreach, educational efforts, legal developments, and concerns expressed by HOA boards and members.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Volunteers who serve on HOA boards have a difficult time figuring out the complexity of the laws pertaining to HOAs. An ombuds will help all parties better understand the laws. As a ten-year homeowner and member of an HOA, I have worked with two other homeowners to investigate the use of HOA funds by our association over maintenance and repair of the water system. I see income not accounted for, requests for copies of documents stonewalled by the board, and many other management issues. An ombuds office would be very helpful. The board does not pick up registered mail. We get excuses from the board, assessments for the water system placed into our water bills without notice. The name has changed on the bills of the companies managing our water system has changed three times, and assessments have been rolled into the base water rates without letting anyone know. I support enactment of this legislation. Our association could really benefit from the assistance of an independent ombuds who could be an effective mediator.

CON: We do not know what problems this bill is attempting to solve. HOAs relationships are contracts formed under the covenants. Nothing in this bill would usurp the court's jurisdiction to address the legal contract issues in HOA disputes. All this bill would do is add cost, complexity, and confusion. The subpoena power of the ombuds chills the willingness for volunteer unpaid managers to service on an HOA board. In a study produced through the Community Associations Institute, looking at states that have enacted similar ombuds bills, the outcomes are mixed at best. The bill is broad and we are concerned that people will see in the bill what they want to see. Ombuds' responsibilities under the bill contains some drafting challenges. For example, the bill indicates the ombuds may receive complaints, but must investigate complaints. It appears to propose a complicated and costly process which requires the ombuds to impose a fee by administrative regulation and also charge fees for services such as monitoring and counting votes during HOA elections. Homeowners would expect the ombuds to do things they cannot do. Although on its face it says the ombuds does not provide legal advice, helping owners and boards understand their legal rights and responsibilities sounds like legal advice. Our organization is changing its previous position of support for the bill. We had hoped the bill would provide a more workable alternative dispute resolution (ADR) process, but the proposal seems to complicate the ADR process given the number of HOAs and the breadth of issues that may come up.

The fiscal note at \$3.2 million may be too low given the amount of work that homeowners feel they need to pursue. Although the bill is well intentioned, the costs may be enormous. The bill does not apply to condo owners or even all HOAs and there are other laws that apply to all homeowners' associations. The ombuds could offer mediation for a fee but professional mediation services would be more experienced and could potentially mediate a dispute for less cost. Of the six states that have ombuds programs, they cost more than expected and fail to live up to expectations. The mandatory duties of the ombuds in the bill would produce significant costs. HOAs do not need to register and there is no requirement for them to incorporate so it is difficult to find them all and develop a yearly assessment. There are other, more effective and cost-effective processes than creating this office. The ADR process should be put in the governing documents, and other options for ADR services are available. Based on experience with HOAs, consider the realities. Many neighbor to neighbor disputes are brought to HOAs because the neighbors will not speak directly to each other. These disputes may come to the ombuds. The bill may exacerbate the problem of finding willing volunteer to serve on an HOA board of directors. HOA are political entities with built-in due process rights. If a board is not doing its job, the members can recall the board members and replace them. There are already many ways to address problems that develop with HOAs. This bill may be pushed forward by a few HOAs that have had bad experiences, but that is not the majority of HOAs; many perform their duties well.

Persons Testifying: PRO: Senator Ann Rivers, Prime Sponsor; Elliott Libman, citizen.

CON: Annie Fitzsimmons, Real Property, Probate and Trust; Chris Osborn, Northwest Multiple Listing Service and Washington REALTORS; Bob Mitchell, Washington REALTORS; Kathryn Hedrick, Washington State Chapter of Community Associations Institute; Greg Coxey, Washington State Chapter of Community Associations Institute.

Persons Signed In To Testify But Not Testifying: No one.