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## Judiciary Committee

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### ESSB 5798

**Title:** An act relating to homeowners' associations.

**Brief Description:** Concerning homeowners' associations.

**Sponsors:** Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Fraser and Benton).

**Brief Summary of Engrossed Substitute Bill**

- Amends the Homeowners' Association Act with respect to associations' powers, boards of directors, budgets, and meetings.
- Adopts requirements for rulemaking by homeowners' associations.

**Hearing Date:** 3/17/11

**Staff:** Kelly Pfundheller (786-7289).

**Background:**

A homeowners' association (association) is 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 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. An association typically arises from a declaration of covenants, restrictions, and conditions recorded by a developer against property in a subdivision. In general, the purpose of an association is to manage and maintain a subdivision's common areas and structures, review design, and 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) the

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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 Business Corporation Act or Nonprofit Corporation Act. However, associations are not required to be incorporated.

#### Association Powers.

An association may: adopt and amend bylaws, rules and regulations; adopt and amend budgets; impose and collect assessments; employ managing agents and contractors; engage in litigation or administrative proceedings on matters affecting the association; make contracts and incur liabilities; regulate and maintain common areas; acquire and convey any right or interest in real or personal property; grant easements and licenses and impose and collect fees related to use of common areas; impose and collect charges for late payments and levy reasonable fines; and exercise any other powers conferred by the bylaws or other applicable statutes necessary and proper for the governance and operation of the association.

#### Boards of Directors.

Officers and members of the board shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under the Nonprofit Corporation Act. The Nonprofit Corporation Act requires a director to act in good faith and in the best interest of the corporation.

The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which quorum is present, may remove any members of the board of directors with or without cause.

#### Budgets.

The board must set a date for a meeting of the owners to consider ratification of the annual budget no less than 14 days and no more than 60 days after mailing copies of the budget to the owners.

#### Meetings.

A meeting of the association must be held at least once a year. Special meetings may be called by the president, a majority of the board of directors, or by owners having 10 percent of the votes of the association. Notice of the meeting must be provided at least 14 days in advance.

A quorum is present if 34 percent of the votes of the association are present in person or by proxy at the beginning of the meeting, unless the governing documents specify a different percentage.

#### **Summary of Bill:**

The definition of homeowners' association is amended to mean 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 and by virtue of membership the owner is obligated to pay assessments pursuant to the governing documents of the association.

The HOAA applies to all associations in the state regardless of when the declaration was recorded or the association was established. The bill also makes changes to the HOAA with respect to associations' powers, boards of directors, budgets, and meetings. Requirements for a rulemaking process are also created.

#### Association Powers.

An obligation of good faith is imposed in the performance and enforcement of all contracts, duties, and transactions involving declarants, associations, and their members. Good faith means honesty in fact and the observance of reasonable standards of fair dealing.

The association may exercise any powers conferred by the bylaws or other applicable statutes necessary and proper for the governance and operation of the association, provided that those powers are consistent with any duties imposed on an association by the HOAA.

An association may levy reasonable fines for violations of the governing documents if doing so is in accordance with a previously established schedule adopted by the board and furnished to the owners. An association may not impose a lien for unpaid fines. This requirement is retroactive and supersedes any inconsistent provisions in an association's governing documents.

#### Board of Directors.

The owners by a majority vote of the voting power in the association may remove a member of the board only if the owners are entitled to elect the member.

#### Budgets.

The board must set a date for a meeting of the owners to consider adoption of the annual budget no less than 10 days and no more than 60 days after mailing copies of the budget to the owners. Notwithstanding any contrary provision in the governing documents, the board must allow members to vote on the issue of adopting the budget either by mail-in ballot or at the meeting, in person or by proxy. This requirement is retroactive and supersedes any inconsistent provisions in an association's governing documents.

#### Meetings.

Notice of any meeting must be provided at least 10 days in advance. Special meetings must be held at a reasonable time and place. If a special meeting is called by the members of the association, the members may determine the first piece of business on the agenda and the board may put additional items on the agenda. The HOAA's provisions on special meetings supersede any conflicting provisions in an association's governing documents.

The presumption of open meetings and provision for closed sessions supersedes any conflicting provisions in the Business Corporation Act, Nonprofit Corporation Act, and an association's governing documents.

A quorum is present if 34 percent of the votes of the association are present in person or by proxy at the beginning of the meeting, unless the governing documents specify a lower percentage. Owners may vote in person, by proxy, or by any method permitted in the governing documents or the law applicable to the association's legal entity.

Unless the governing documents specify otherwise, all notices required in the HOAA must be delivered or sent by first class mail to the mailing address of each owner within the same time period required for notifying owners of meetings (10 days).

Rules.

"Rules" means the rules, regulations, and policies, irrespective of their designated name, that are adopted by the members of the board in accordance with the governing documents and that supplement, but do not contradict or contravene, the governing documents. The board must provide members with notice and an opportunity to comment on any proposed rule before it may be adopted or enforced. Proposed rules go into effect 30 days after notice is provided to the members, unless 20 percent of the owners sign a written petition requesting a ratification vote. Emergency rules are effective immediately, but are subject to the owners' right to request a ratification vote.

A rule adopted by the board is valid and enforceable if it is: (1) in writing, (2) required or authorized by law or the association's declaration, (3) consistent with the governing documents, and (4) adopted or amended in substantial compliance with the procedural requirements of the HOAA.

Definitions.

The bill amends the definition of governing documents, and adds definitions for the following terms: assessment; bylaws; community; cooperative; declarant; declaration; lot; owner; person; and rules.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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