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HOUSE BILL 2423

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State of Washington

64th Legislature

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

Read first time 01/13/16. Referred to Committee on Judiciary.

1 AN ACT Relating to the creation of an office of the homeowners'  
2 association ombuds; reenacting and amending RCW 64.38.010 and  
3 43.84.092; and adding new sections to chapter 64.38 RCW.

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

5 **Sec. 1.** RCW 64.38.010 and 2011 c 189 s 7 are each reenacted and  
6 amended to read as follows:

7 For purposes of this chapter:

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

10 (2) "Baseline funding plan" means establishing a reserve funding  
11 goal of maintaining a reserve account balance above zero dollars  
12 throughout the thirty-year study period described under RCW  
13 64.38.065.

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

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

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

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

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

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

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

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

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

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

39 (13) "Owner" means the owner of a lot, but does not include a  
40 person who has an interest in a lot solely as security for an

1 obligation. "Owner" also means the vendee, not the vendor, of a lot  
2 under a real estate contract.

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

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

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

12 (17) "Reserve study professional" means an independent person who  
13 is suitably qualified by knowledge, skill, experience, training, or  
14 education to prepare a reserve study in accordance with RCW  
15 (~~64.34.380 and 64.34.382~~) 64.38.065 and 64.38.070.

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

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

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

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

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

28 NEW SECTION. Sec. 2. A new section is added to chapter 64.38  
29 RCW to read as follows:

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

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

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

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

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

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.38  
4 RCW to read as follows:

5 The ombuds:

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

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

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

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

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

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

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.38  
19 RCW to read as follows:

20 The ombuds:

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

31 (2) Must assist homeowners' associations, the board of directors  
32 of homeowners' associations, individual owners in homeowners'  
33 associations, and other interested parties in understanding their  
34 rights and responsibilities and the processes available to them  
35 according to the law, rules, regulations, and documents governing  
36 their respective homeowners' associations. The ombuds is not the  
37 attorney for a homeowners' association, the board of directors of a  
38 homeowners' association, an individual owner in a homeowners'

1 association, or another interested party. An attorney-client  
2 relationship is not implied or established by the ombuds'  
3 communication with such persons, and the ombuds may not act as or  
4 appear to act as an attorney in a legal action brought by such  
5 persons;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (d) Legal developments impacting homeowners' associations;

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

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

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

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

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

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

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 64.38  
19 RCW to read as follows:

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

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

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

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

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

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

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

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

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

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 64.38  
4 RCW to read as follows:

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

10 **Sec. 7.** RCW 43.84.092 and 2015 3rd sp.s. c 44 s 107 and 2015 3rd  
11 sp.s. c 12 s 3 are each reenacted and amended to read as follows:

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

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

31 (3) Except for the provisions of RCW 43.84.160, the treasury  
32 income account may be utilized for the payment of purchased banking  
33 services on behalf of treasury funds including, but not limited to,  
34 depository, safekeeping, and disbursement functions for the state  
35 treasury and affected state agencies. The treasury income account is  
36 subject in all respects to chapter 43.88 RCW, but no appropriation is  
37 required for payments to financial institutions. Payments shall occur

1 prior to distribution of earnings set forth in subsection (4) of this  
2 section.

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

7 (a) The following accounts and funds shall receive their  
8 proportionate share of earnings based upon each account's and fund's  
9 average daily balance for the period: The aeronautics account, the  
10 aircraft search and rescue account, the Alaskan Way viaduct  
11 replacement project account, the brownfield redevelopment trust fund  
12 account, the budget stabilization account, the capital vessel  
13 replacement account, the capitol building construction account, the  
14 Cedar River channel construction and operation account, the Central  
15 Washington University capital projects account, the charitable,  
16 educational, penal and reformatory institutions account, the cleanup  
17 settlement account, the Columbia river basin water supply development  
18 account, the Columbia river basin taxable bond water supply  
19 development account, the Columbia river basin water supply revenue  
20 recovery account, the common school construction fund, the community  
21 forest trust account, the connecting Washington account, the county  
22 arterial preservation account, the county criminal justice assistance  
23 account, the deferred compensation administrative account, the  
24 deferred compensation principal account, the department of licensing  
25 services account, the department of retirement systems expense  
26 account, the developmental disabilities community trust account, the  
27 diesel idle reduction account, the drinking water assistance account,  
28 the drinking water assistance administrative account, the drinking  
29 water assistance repayment account, the Eastern Washington University  
30 capital projects account, the Interstate 405 express toll lanes  
31 operations account, the education construction fund, the education  
32 legacy trust account, the election account, the electric vehicle  
33 charging infrastructure account, the energy freedom account, the  
34 energy recovery act account, the essential rail assistance account,  
35 The Evergreen State College capital projects account, the federal  
36 forest revolving account, the ferry bond retirement fund, the freight  
37 mobility investment account, the freight mobility multimodal account,  
38 the grade crossing protective fund, the public health services  
39 account, the high capacity transportation account, the state higher  
40 education construction account, the higher education construction

1 account, the highway bond retirement fund, the highway infrastructure  
2 account, the highway safety fund, the high occupancy toll lanes  
3 operations account, the hospital safety net assessment fund, the  
4 industrial insurance premium refund account, the judges' retirement  
5 account, the judicial retirement administrative account, the judicial  
6 retirement principal account, the local leasehold excise tax account,  
7 the local real estate excise tax account, the local sales and use tax  
8 account, the marine resources stewardship trust account, the medical  
9 aid account, the mobile home park relocation fund, the motor vehicle  
10 fund, the motorcycle safety education account, the multimodal  
11 transportation account, the multiuse roadway safety account, the  
12 municipal criminal justice assistance account, the natural resources  
13 deposit account, the office of the homeowners' association ombuds  
14 account, the oyster reserve land account, the pension funding  
15 stabilization account, the perpetual surveillance and maintenance  
16 account, the public employees' retirement system plan 1 account, the  
17 public employees' retirement system combined plan 2 and plan 3  
18 account, the public facilities construction loan revolving account  
19 beginning July 1, 2004, the public health supplemental account, the  
20 public works assistance account, the Puget Sound capital construction  
21 account, the Puget Sound ferry operations account, the Puget Sound  
22 taxpayer accountability account, the real estate appraiser commission  
23 account, the recreational vehicle account, the regional mobility  
24 grant program account, the resource management cost account, the  
25 rural arterial trust account, the rural mobility grant program  
26 account, the rural Washington loan fund, the site closure account,  
27 the skilled nursing facility safety net trust fund, the small city  
28 pavement and sidewalk account, the special category C account, the  
29 special wildlife account, the state employees' insurance account, the  
30 state employees' insurance reserve account, the state investment  
31 board expense account, the state investment board commingled trust  
32 fund accounts, the state patrol highway account, the state route  
33 number 520 civil penalties account, the state route number 520  
34 corridor account, the state wildlife account, the supplemental  
35 pension account, the Tacoma Narrows toll bridge account, the  
36 teachers' retirement system plan 1 account, the teachers' retirement  
37 system combined plan 2 and plan 3 account, the tobacco prevention and  
38 control account, the tobacco settlement account, the toll facility  
39 bond retirement account, the transportation 2003 account (nickel  
40 account), the transportation equipment fund, the transportation fund,

1 the transportation future funding program account, the transportation  
2 improvement account, the transportation improvement board bond  
3 retirement account, the transportation infrastructure account, the  
4 transportation partnership account, the traumatic brain injury  
5 account, the tuition recovery trust fund, the University of  
6 Washington bond retirement fund, the University of Washington  
7 building account, the volunteer firefighters' and reserve officers'  
8 relief and pension principal fund, the volunteer firefighters' and  
9 reserve officers' administrative fund, the Washington judicial  
10 retirement system account, the Washington law enforcement officers'  
11 and firefighters' system plan 1 retirement account, the Washington  
12 law enforcement officers' and firefighters' system plan 2 retirement  
13 account, the Washington public safety employees' plan 2 retirement  
14 account, the Washington school employees' retirement system combined  
15 plan 2 and 3 account, the Washington state health insurance pool  
16 account, the Washington state patrol retirement account, the  
17 Washington State University building account, the Washington State  
18 University bond retirement fund, the water pollution control  
19 revolving administration account, the water pollution control  
20 revolving fund, the Western Washington University capital projects  
21 account, the Yakima integrated plan implementation account, the  
22 Yakima integrated plan implementation revenue recovery account, and  
23 the Yakima integrated plan implementation taxable bond account.  
24 Earnings derived from investing balances of the agricultural  
25 permanent fund, the normal school permanent fund, the permanent  
26 common school fund, the scientific permanent fund, the state  
27 university permanent fund, and the state reclamation revolving  
28 account shall be allocated to their respective beneficiary accounts.

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

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

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