
SUBSTITUTE SENATE BILL 6616

State of Washington

64th Legislature

2016 Regular Session

By Senate Financial Institutions & Insurance (originally sponsored by Senator Benton)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to reserve studies and special assessments for
2 homeowners' associations; amending RCW 64.38.025 and 64.38.065;
3 reenacting and amending RCW 64.38.010; and adding a new section to
4 chapter 64.38 RCW.

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

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

8 For purposes of this chapter:

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

11 (2) "Baseline funding plan" means establishing a reserve funding
12 goal of maintaining a reserve account balance above zero dollars
13 throughout the thirty-year study period described under RCW
14 64.38.065.

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

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

20 (5) "Common expense" means the costs incurred by the association
21 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) "Special assessment" means any assessment levied against an
24 owner other than the assessment required by a budget adopted
25 annually.

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

28 **Sec. 2.** RCW 64.38.025 and 2011 c 189 s 8 are each amended to
29 read as follows:

30 (1) Except as provided in the association's governing documents
31 or this chapter, the board of directors shall act in all instances on
32 behalf of the association. In the performance of their duties, the
33 officers and members of the board of directors shall exercise the
34 degree of care and loyalty required of an officer or director of a
35 corporation organized under chapter 24.03 RCW.

36 (2) The board of directors shall not act on behalf of the
37 association to amend the articles of incorporation, to take any
38 action that requires the vote or approval of the owners, to terminate
39 the association, to elect members of the board of directors, or to

1 determine the qualifications, powers, and duties, or terms of office
2 of members of the board of directors; but the board of directors may
3 fill vacancies in its membership of the unexpired portion of any
4 term.

5 ~~(3) ((Within thirty days after adoption by the board of directors
6 of any proposed regular or special budget of the association, the
7 board shall set a date for a meeting of the owners to consider
8 ratification of the budget not less than fourteen nor more than sixty
9 days after mailing of the summary. Unless at that meeting the owners
10 of a majority of the votes in the association are allocated or any
11 larger percentage specified in the governing documents reject the
12 budget, in person or by proxy, the budget is ratified, whether or not
13 a quorum is present. In the event the proposed budget is rejected or
14 the required notice is not given, the periodic budget last ratified
15 by the owners shall be continued until such time as the owners ratify
16 a subsequent budget proposed by the board of directors.~~

17 ~~(4) As part of the summary of the budget provided to all owners,
18 the board of directors shall disclose to the owners:~~

19 ~~(a) The current amount of regular assessments budgeted for
20 contribution to the reserve account, the recommended contribution
21 rate from the reserve study, and the funding plan upon which the
22 recommended contribution rate is based;~~

23 ~~(b) If additional regular or special assessments are scheduled to
24 be imposed, the date the assessments are due, the amount of the
25 assessments per each owner per month or year, and the purpose of the
26 assessments;~~

27 ~~(c) Based upon the most recent reserve study and other
28 information, whether currently projected reserve account balances
29 will be sufficient at the end of each year to meet the association's
30 obligation for major maintenance, repair, or replacement of reserve
31 components during the next thirty years;~~

32 ~~(d) If reserve account balances are not projected to be
33 sufficient, what additional assessments may be necessary to ensure
34 that sufficient reserve account funds will be available each year
35 during the next thirty years, the approximate dates assessments may
36 be due, and the amount of the assessments per owner per month or
37 year;~~

38 ~~(e) The estimated amount recommended in the reserve account at
39 the end of the current fiscal year based on the most recent reserve
40 study, the projected reserve account cash balance at the end of the~~

1 ~~current fiscal year, and the percent funded at the date of the latest~~
2 ~~reserve study;~~

3 ~~(f) The estimated amount recommended in the reserve account based~~
4 ~~upon the most recent reserve study at the end of each of the next~~
5 ~~five budget years, the projected reserve account cash balance in each~~
6 ~~of those years, and the projected percent funded for each of those~~
7 ~~years; and~~

8 ~~(g) If the funding plan approved by the association is~~
9 ~~implemented, the projected reserve account cash balance in each of~~
10 ~~the next five budget years and the percent funded for each of those~~
11 ~~years.~~

12 (5)) The owners by a majority vote of the voting power in the
13 association present, in person or by proxy, and entitled to vote at
14 any meeting of the owners at which a quorum is present, may remove
15 any member of the board of directors with or without cause.

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

18 (1)(a) Within thirty days after adoption of any proposed budget
19 for the association, the board must provide a copy of the budget to
20 all owners and set a date for a meeting of the owners to consider
21 ratification of the budget neither less than fourteen nor more than
22 fifty days after providing the budget. Unless at that meeting the
23 owners of lots to which a majority of the votes in the association
24 are allocated or any larger percentage specified in the declaration
25 reject the budget, the budget and the assessments against the owners
26 included in the budget are ratified, whether or not a quorum is
27 present.

28 (b) If the proposed budget is rejected or the required notice is
29 not given, the periodic budget last ratified by the owners continues
30 until the owners ratify a subsequent budget proposed by the board.

31 (2) The budget must include:

32 (a) The projected income to the association by category;

33 (b) The projected common expenses and the specially allocated
34 expenses that are subject to being budgeted, both by category;

35 (c) The amount of the assessments per lot and the date the
36 assessments are due;

37 (d) The current amount of regular assessments budgeted for
38 contribution to the reserve account;

1 (e) A statement of whether the association has a reserve study
2 and, if so, the extent to which the budget meets or deviates from the
3 recommendations of that reserve study; and

4 (f) The current deficiency or surplus in reserve funding
5 expressed on a per lot basis.

6 (3)(a) The board, at any time, may propose a special assessment.
7 The assessment is effective only if the board follows the procedures
8 for ratification of a budget described in subsection (1) of this
9 section and the owners do not reject the proposed assessment. The
10 board may provide that the special assessment may be due and payable
11 in installments over any period it determines and may provide a
12 discount for early payment.

13 (b) The specific purpose or purposes of any special assessment
14 must be set forth in a written notice of the assessment sent or
15 delivered to each owner. The funds collected pursuant to a special
16 assessment must be used only for the specific purpose or purposes set
17 forth in the notice. Upon completion of the specific purpose or
18 purposes, any excess funds must be returned to the owners or applied
19 to assessments then due.

20 **Sec. 4.** RCW 64.38.065 and 2011 c 189 s 9 are each amended to
21 read as follows:

22 (1) An association is encouraged to establish a reserve account
23 with a financial institution to fund major maintenance, repair, and
24 replacement of common elements, including limited common elements
25 that will require major maintenance, repair, or replacement within
26 thirty years. If the association establishes a reserve account, the
27 account must be in the name of the association. The board of
28 directors is responsible for administering the reserve account.

29 (2) Unless doing so would impose an unreasonable hardship, an
30 association with significant assets shall prepare and update a
31 reserve study, in accordance with the association's governing
32 documents and this chapter. The initial reserve study must be based
33 upon a visual site inspection conducted by a reserve study
34 professional.

35 (3) Unless doing so would impose an unreasonable hardship, the
36 association shall update the reserve study annually. At least every
37 three years, an updated reserve study must be prepared and based upon
38 a visual site inspection conducted by a reserve study professional.

1 (4)(a) The decisions relating to the preparation and updating of
2 a reserve study must be made by the board of directors in the
3 exercise of the reasonable discretion of the board. The decisions
4 must include whether a reserve study will be prepared or updated, and
5 whether the assistance of a reserve study professional will be
6 utilized.

7 (b) Before hiring a reserve study professional to complete an
8 initial reserve study, the board of directors must obtain three
9 competing bids.

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