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**SUBSTITUTE SENATE BILL 6616**

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

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

AN ACT Relating to reserve studies and special assessments for homeowners' associations; amending RCW 64.38.025 and 64.38.065; reenacting and amending RCW 64.38.010; and adding a new section 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) "Special assessment" means any assessment levied against an owner other than the assessment required by a budget adopted annually.

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

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

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

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

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

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

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

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

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

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

~~(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;~~

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

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

~~(5)~~)) 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 a quorum is present, may remove any member of the board of directors with or without cause.

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

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

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

(2) The budget must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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