

Adopted Rejected

COMMITTEE REPORT

YES: 8
NO: 0

MR. SPEAKER:

*Your Committee on Judiciary, to which was referred House Bill 1071, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, delete lines 5 through 17, begin a new paragraph and insert:
- 2 **"Chapter 1. Applicability**
- 3 **Sec. 1. This article applies to the following:**
- 4 (1) **A homeowners association established after June 30, 2009.**
- 5 (2) **A homeowners association established before July 1, 2009:**
- 6 (A) **if a majority of the members of the homeowners**
- 7 **association elect to be governed by this article; or**
- 8 (B) **if the number of members required by the homeowners**
- 9 **association's governing documents elect to be governed by**
- 10 **this article if a different number of members other than**
- 11 **the number established in clause (A) is required by the**
- 12 **governing documents.**
- 13 **Chapter 2. Definitions**
- 14 **Sec. 1. The definitions in this chapter apply throughout this**

1 article.

2 Sec. 2. "Act in furtherance of a person's right of petition or free
3 speech under the Constitution of the United States or the
4 Constitution of the State of Indiana in connection with a public
5 issue" has the meaning set forth in IC 34-7-7-2.

6 Sec. 3. "Board" refers to the board of directors of a
7 homeowners association.

8 Sec. 4. "Governing documents" includes:

9 (1) the articles of incorporation and bylaws of a homeowners
10 association and all adopted amendments to the articles of
11 incorporation and bylaws; and

12 (2) any applicable declaration of plat.

13 Sec. 5. "Homeowners association" means a corporation or
14 another entity that:

15 (1) is organized and operated exclusively for the benefit of two

16 (2) or more persons who each own a dwelling in fee simple;

17 (2) acts, in accordance with the articles, bylaws, or other
18 documents governing the corporation or entity, to:

19 (A) acquire, transfer, manage, repair, maintain, or engage
20 in construction on or in the land and improvements on the
21 land related to the use of the dwellings owned by the
22 members of the corporation or entity;

23 (B) purchase insurance to cover a casualty or an activity
24 on or in the land and improvements on the land;

25 (C) engage in an activity incidental to an activity described
26 in clause (A) or (B); or

27 (D) engage in more than one (1) of the activities described
28 in clauses (A) through (C); and

29 (3) may be governed by a board that serves the purpose of
30 setting policy and controlling or otherwise overseeing the
31 activities or functional responsibilities of the corporation or
32 entity.

33 Sec. 6. "Subdivision" means the division of a parcel of land into
34 lots, parcels, tracts, units, or interests in the manner defined and
35 prescribed by a subdivision control ordinance adopted by a
36 legislative body under IC 36-7-4.

37 Chapter 3. Homeowners Associations

38 Sec. 1. (a) A homeowners association shall maintain:

- 1 **(1) a current roster of all members of the association; and**
2 **(2) the mailing address and parcel identification for each**
3 **member of the association.**

4 **(b) The homeowners association shall also maintain any**
5 **electronic mail addresses or facsimile (fax) numbers of those**
6 **members who have consented to receive notice by electronic mail**
7 **or facsimile (fax). Electronic mail addresses and facsimile (fax)**
8 **numbers provided by a member to receive notice by electronic mail**
9 **or facsimile (fax) shall be removed from the association's records**
10 **when the member revokes consent to receive notice by electronic**
11 **mail or facsimile (fax). However, the association is not liable for an**
12 **erroneous disclosure of an electronic mail address or a facsimile**
13 **(fax) number for receiving notices.**

14 **(c) The mailing addresses and parcel identifications maintained**
15 **by a homeowners association under subsection (a):**

- 16 **(1) shall be made available to a member of the homeowners**
17 **association upon request;**
18 **(2) may be used by a member of the homeowners association**
19 **only for a purpose related to the operation of the homeowners**
20 **association; and**
21 **(3) may not be used by a member of the homeowners**
22 **association for personal reasons.**

23 **(d) Except as provided in subsection (c), a homeowners**
24 **association may not sell, exchange, or otherwise transfer**
25 **information maintained by the homeowners association under this**
26 **section to any person.**

27 **Sec. 2. If more than fifty percent (50%) of the members of a**
28 **homeowners association petition the board to address an item of**
29 **business, including the amendment of any governing documents,**
30 **the board shall address the petitioned item on an agenda:**

- 31 **(1) at its next regular board meeting or at a special meeting of**
32 **the board; and**
33 **(2) not later than sixty (60) days after the receipt of the**
34 **petition.**

35 **Sec. 3. (a) A homeowners association shall prepare an annual**
36 **budget.**

37 **(b) The annual budget must reflect:**

- 38 **(1) the estimated revenues and expenses for the budget year;**

1 **and**
2 **(2) the estimated surplus or deficit as of the end of the current**
3 **budget year.**

4 **(c) The homeowners association shall provide each member of**
5 **the homeowners association with:**

- 6 **(1) a copy of the proposed annual budget; or**
- 7 **(2) a written notice that a copy of the proposed annual budget**
- 8 **is available upon request at no charge to the member;**
- 9 **before the homeowners association meeting held under subsection**
- 10 **(d).**

11 **(d) Subject to subsection (e), a homeowners association budget**
12 **must be approved at a meeting of the homeowners association**
13 **members at which at least fifteen percent (15%) of the members of**
14 **the homeowners association are in attendance.**

15 **(e) If at least fifteen percent (15%) of the members of the**
16 **homeowners association do not attend a meeting held under**
17 **subsection (d), the homeowners association budget may be**
18 **approved at a second or subsequent meeting of the homeowners**
19 **association members held under this section if at least ten percent**
20 **(10%) of the members of the homeowners association are in**
21 **attendance.**

22 **Sec. 4. (a) A board may not enter into any contract that would**
23 **result in a new assessment or the increase in an existing assessment**
24 **payable by the affected members of the homeowners association in**
25 **the amount of more than five hundred dollars (\$500) per year for**
26 **each member of the homeowners association unless:**

- 27 **(1) the board holds at least two (2) homeowners association**
- 28 **meetings concerning the contract; and**
- 29 **(2) the contract is approved by the affirmative vote of at least**
- 30 **two-thirds (2/3) of the affected members of the homeowners**
- 31 **association.**

32 **(b) A board shall give notice of the first homeowners association**
33 **meeting held under subsection (a):**

- 34 **(1) to each member of the homeowners association; and**
- 35 **(2) at least seven (7) calendar days before the date the meeting**
- 36 **occurs."**

37 Page 2, delete lines 1 through 6.

38 Page 2, line 8, after "liability" insert "**during any calendar year**".

1 Page 2, line 9, delete "five thousand dollars (\$5,000) during" and
2 insert **"the greater of:**

3 **(1) five thousand dollars (\$5,000) during any calendar year;**

4 **or**

5 **(2) if the homeowners association operated under an annual**
6 **budget in the previous calendar year, an amount equal to at**
7 **least ten percent (10%) of the previous annual budget of the**
8 **homeowners association;".**

9 Page 2, line 10, delete "any calendar year".

10 Page 2, line 10, beginning with "unless" begin a new line blocked
11 left.

12 Page 2, between lines 19 and 20, begin a new line blocked left and
13 insert:

14 **"However, the developer of the subdivision may cast one (1) vote**
15 **under this section for each lot, parcel, tract, or unit in the**
16 **subdivision that is owned by the developer.".**

17 Page 2, delete lines 27 through 42, begin a new paragraph and
18 insert:

19 **"Sec. 6. (a) The governing documents must include grievance**
20 **resolution procedures that apply to all members of the**
21 **homeowners association and the board.**

22 **(b) The procedures described in subsection (a) must provide for**
23 **the final and binding resolution of disputes concerning the**
24 **administration of the homeowners association and interpretation**
25 **of the governing documents.**

26 **Sec. 7. (a) The governing documents must include provisions**
27 **that allow the termination of the homeowners association:**

28 **(1) if at least ninety percent (90%) of the members of the**
29 **homeowners association agree to the termination; and**

30 **(2) if at least forty percent (40%) of the lots, parcels, tracts, or**
31 **units in the subdivision are subject to mortgage agreements,**
32 **if one hundred percent (100%) of the mortgage lenders that**
33 **hold mortgages on a lot, parcel, tract, or unit in the**
34 **subdivision agree to the termination.**

35 **(b) The approval of a termination under subsection (a) must be**
36 **evidenced by an agreement:**

37 **(1) signed by:**

38 **(A) at least ninety percent (90%) of the members of a**

1 homeowners association; and
 2 **(B) if applicable, one hundred percent (100%) of the**
 3 **mortgage lenders that hold mortgages on a lot, parcel,**
 4 **tract, or unit in the subdivision; and**
 5 **(2) filed with the clerk of the circuit court that has jurisdiction**
 6 **in the county in which the real property governed by the**
 7 **homeowners association is located.**

8 **(c) The provisions described in subsection (a) must provide that,**
 9 **after an agreement is filed with the clerk of the circuit court under**
 10 **subsection (b), the homeowners association remains in existence**
 11 **only:**

12 **(1) to wind up the association's affairs; and**
 13 **(2) until all the liabilities and obligations of the association**
 14 **have been discharged.**

15 **Sec. 8. (a) A regular annual assessment:**

16 **(1) that is imposed by a homeowners association on a member**
 17 **of the homeowners association; and**
 18 **(2) that is unpaid by the member;**

19 **is enforceable as a lien on real property owned by the member as**
 20 **provided in IC 32-28-14 only after the homeowners association has**
 21 **failed to collect the annual assessment in a civil action brought**
 22 **under section 9 of this chapter and IC 32-28-14-8.**

23 **(b) An assessment that is not described in subsection (a):**

24 **(1) that is imposed by a homeowners association on a member**
 25 **of the homeowners association; and**
 26 **(2) that is unpaid by the member;**

27 **is not enforceable as a lien on real property owned by the member**
 28 **but may be enforced in a civil action brought under section 9 of**
 29 **this chapter.**

30 **Sec. 9. (a) If an assessment described in section 8(a) or 8(b) of**
 31 **this chapter is unpaid by a member of the homeowners association**
 32 **and the homeowners association attempts to collect the assessment**
 33 **in a civil action, the homeowners association must bring the civil**
 34 **action in the name of the homeowners association as follows:**

35 **(1) Before bringing the civil action, the homeowners**
 36 **association shall:**

37 **(A) provide the member with written notice of the intent of**
 38 **the homeowners association to bring the action; and**

1 **(B) provide the member with a reasonable time to pay the**
2 **assessment.**

3 **(2) If the member fails to pay the assessment within the time**
4 **period described in subdivision (1)(B), the homeowners**
5 **association may bring the civil action as follows:**

6 **(A) The action shall be filed on the small claims docket of**
7 **the circuit court or superior court that has jurisdiction in**
8 **the county in which the member's real property is located**
9 **if the amount of the assessment is within the jurisdiction of**
10 **the small claims docket.**

11 **(B) If the amount of the assessment is not within the**
12 **jurisdiction of the small claims docket, the action may be**
13 **filed in any court that has jurisdiction.**

14 **(b) The procedures described in subsection (a) must be included**
15 **in the governing documents.**

16 **Sec. 10. A homeowners association may not suspend the voting**
17 **rights of a member for nonpayment of regular annual assessments**
18 **unless:**

19 **(1) the governing documents provide for suspension; and**
20 **(2) the assessments are delinquent for more than one (1) year.**

21 **Sec. 11. (a) If a homeowners association brings a civil action**
22 **against a member of the association involving an act in furtherance**
23 **of the person's right of petition or free speech under the**
24 **Constitution of the United States or the Constitution of the State of**
25 **Indiana in connection with a public issue, the defense established**
26 **by IC 34-7-7 is available to the member in that action.**

27 **(b) A homeowners association may not expend association**
28 **money prosecuting a civil action described in subsection (a) against**
29 **a member.**

30 **Sec. 12. If the governing documents contain a provision**
31 **concerning the display of yard signs in a subdivision, the provision**
32 **may not be more restrictive than any applicable local ordinance**
33 **concerning the display of:**

34 **(1) politically related yard signs; or**
35 **(2) yard signs concerning the sale of real property.**

36 **SECTION 2. IC 32-28-14-8, AS ADDED BY P.L.135-2007,**
37 **SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
38 **JULY 1, 2009]: Sec. 8. (a) A homeowners association may enforce**

1 **a homeowners association lien under this chapter only after the**
 2 **homeowners association has failed to collect the unpaid common**
 3 **expenses by bringing a civil action:**
 4 **(1) in any court with jurisdiction; or**
 5 **(2) if applicable, under the procedures described in**
 6 **IC 32-25.5-3-9.**
 7 **(b)** A homeowners association may enforce a homeowners
 8 association lien by filing a complaint in the circuit or superior court of
 9 the county where the real estate that is the subject of the lien is located.
 10 The complaint must be filed not later than ~~one (1) year~~ **five (5) years**
 11 after the date the statement and notice of intention to hold a lien was
 12 recorded under section 6 of this chapter.
 13 ~~(b)~~ **(c)** If a lien is not enforced within the time set forth in subsection
 14 ~~(a)~~, **(b)**, the lien is void.
 15 ~~(c)~~ **(d)** If a lien is foreclosed under this chapter, the court rendering
 16 judgment shall order a sale to be made of the real estate subject to the
 17 lien. The officers making the sale shall sell the real estate without any
 18 relief from valuation or appraisal laws."
 19 Delete page 3.
 20 Renumber all SECTIONS consecutively.
 (Reference is to HB 1071 as introduced.)

and when so amended that said bill do pass.

Representative Lawson L