

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1071

Citations Affected: IC 6-1.1-12.6-2.1; IC 32-25.5; IC 32-28-14.

Synopsis: Homeowners associations and model home taxation. Conference committee report for EHB 1071. Applies the model home property tax assessed value deduction to 2008 assessments of model homes. Applies the following provisions to a homeowners association (association) established after June 30, 2009, and allows an association established before July 1, 2009, to elect to be governed by the provisions: (1) Requires an association to maintain a current roster of all members of the association (members). (2) Requires the board of directors of the association (board) to hold a special meeting of the members if at least 10% of the members submit a written demand to the board to hold the meeting. (3) Requires an association to prepare an annual budget that must be approved by the members or by the board under certain circumstances. (4) Prohibits a board from entering into certain contracts without the approval of the affected members. (5) Prohibits an association from borrowing certain amounts of money on behalf of the association unless borrowing the money is approved by the affirmative vote of a majority of the members. (6) Provides that the governing documents of an association must include grievance resolution procedures. (7) Prohibits an association from suspending the voting rights of a member for nonpayment of annual assessments unless the assessments are delinquent for more than six months. Provides also that an association may enforce an association lien by filing a complaint in the circuit or superior court of the county where the real estate that is the subject of the lien is located if the complaint is not filed: (1) earlier than one year; and (2) later than five years; after the date the statement and notice of intention to hold a lien were recorded. Provides that an association lien is void if: (1) the owner of the real estate subject to the lien or any person or corporation having an interest in the real estate, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien; and (2) the owner or holder of the lien fails to file an action to foreclose the lien in the county where the real estate is located within one year after the date the owner or holder of the lien received notice of the lien. **(This conference committee report: (1) adds provisions concerning model home taxation; and (2) allows the board of directors to adopt an annual budget for the homeowners association in an amount that does not exceed 100% of the amount of the last approved homeowners association annual budget if the number of members of the homeowners association in attendance at a budget meeting does not constitute a quorum as defined in the governing documents of the homeowners association and 110% of the amount of the last approved homeowners association annual budget if the**

governing documents of the homeowners association allow the board to adopt an annual budget in an amount that does not exceed 110% of the amount of the last approved budget.)

Effective: Upon passage; July 1, 2009.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1071 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 6-1.1-12.6-2.1 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. (a) This section applies**
5 **only to a model residence that is first assessed as:**
6 **(1) a partially completed structure; or**
7 **(2) a fully completed structure;**
8 **for the assessment date in 2008 and was still a model residence on**
9 **January 1, 2009.**
10 **(b) Except as provided in subsection (c) and sections 4, 5, and 6**
11 **of this chapter, and subject to sections 7 and 8 of this chapter, an**
12 **owner of a model residence is entitled to a deduction from the**
13 **assessed value of the model residence in the amount of fifty percent**
14 **(50%) of the assessed value of the model residence for the 2008**
15 **assessment date. A deduction under this section counts as a**
16 **deduction for an assessment date for purposes of section 2 of this**
17 **chapter.**
18 **(c) A property owner that qualifies for the deduction under this**
19 **section must file a statement containing the information required**
20 **by subsection (d) with the county auditor to claim the deduction for**
21 **the 2008 assessment date in the manner prescribed in emergency**
22 **rules, which shall be adopted by the department of local**

1 government finance under IC 4-22-2. The township assessor shall
 2 verify each statement filed under this section, and the county
 3 auditor shall:

- 4 (1) make the deductions; and
- 5 (2) notify the county property tax assessment board of appeals
 6 of all deductions approved;

7 under this section. If the property taxes due for the 2008
 8 assessment date have been paid, the person that paid the property
 9 taxes is entitled to a refund of the amount that has been overpaid
 10 after applying the deduction under this section. A property owner
 11 is not required to apply for a refund due under this section. The
 12 county auditor shall, without an appropriation being required,
 13 issue a warrant to the property owner payable from the county
 14 general fund for the amount of the refund due the property owner.
 15 In the June or December settlement and apportionment of taxes,
 16 or both, immediately following a refund made under this section
 17 the county auditor shall deduct the amount refunded from the
 18 gross tax collections of the taxing units for which the refunded
 19 taxes were originally paid and shall pay the amount so deducted
 20 into the general fund of the county. However, the county auditor
 21 shall make the deductions and payments required by this
 22 subsection not later than the December settlement and
 23 apportionment.

24 (d) The statement referred to in subsection (c) must be verified
 25 under penalties for perjury and must contain the following
 26 information:

- 27 (1) The assessed value of the real property for which the
 28 person is claiming the deduction.
- 29 (2) The full name and complete business address of the person
 30 claiming the deduction.
- 31 (3) The complete address and a brief description of the real
 32 property for which the person is claiming the deduction.
- 33 (4) The name of any other county in which the person has
 34 applied for a deduction under this section for that assessment
 35 date.
- 36 (5) The complete address and a brief description of any other
 37 real property for which the person has applied for a deduction
 38 under this section for the 2008 assessment date.

39 (e) This section expires January 1, 2011.

40 SECTION 2. IC 32-25.5 IS ADDED TO THE INDIANA CODE AS
 41 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 42 2009]:

43 **ARTICLE 25.5. HOMEOWNERS ASSOCIATIONS**

44 **Chapter 1. Applicability**

45 **Sec. 1. This article applies to the following:**

- 46 (1) A homeowners association established after June 30, 2009.
- 47 (2) A homeowners association established before July 1, 2009:
 - 48 (A) if a majority of the members of the homeowners
 49 association elect to be governed by this article; or
 - 50 (B) if the number of members required by the homeowners
 51 association's governing documents elect to be governed by

1 this article if a different number of members other than
2 the number established in clause (A) is required by the
3 governing documents.

4 **Chapter 2. Definitions**

5 **Sec. 1. The definitions in this chapter apply throughout this**
6 **article.**

7 **Sec. 2. "Board" refers to the board of directors of a**
8 **homeowners association.**

9 **Sec. 3. "Governing documents" includes:**

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

13 (2) any applicable declaration of plat.

14 **Sec. 4. "Homeowners association" means a corporation or**
15 **another entity that:**

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

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

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

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

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

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

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

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

34 **Sec. 5. "Subdivision" means the division of a parcel of land into**
35 **lots, parcels, tracts, units, or interests in the manner defined and**
36 **prescribed by a subdivision control ordinance adopted by a**
37 **legislative body under IC 36-7-4.**

38 **Chapter 3. Homeowners Associations**

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

40 (1) a current roster of all members of the association; and

41 (2) the mailing address and legal description for each member
42 of the association.

43 (b) The homeowners association shall also maintain any
44 electronic mail addresses or facsimile (fax) numbers of those
45 members who have consented to receive notice by electronic mail
46 or facsimile (fax). Electronic mail addresses and facsimile (fax)
47 numbers provided by a member to receive notice by electronic mail
48 or facsimile (fax) shall be removed from the association's records
49 when the member revokes consent to receive notice by electronic
50 mail or facsimile (fax). However, the association is not liable for an
51 erroneous disclosure of an electronic mail address or a facsimile

1 (fax) number for receiving notices.

2 (c) The mailing addresses and legal descriptions maintained by
3 a homeowners association under subsection (a):

4 (1) shall be made available to a member of the homeowners
5 association upon request;

6 (2) may be used by a member of the homeowners association
7 only for a purpose related to the operation of the homeowners
8 association; and

9 (3) may not be used by a member of the homeowners
10 association for personal reasons.

11 (d) Except as provided in subsection (c), a homeowners
12 association may not sell, exchange, or otherwise transfer
13 information maintained by the homeowners association under this
14 section to any person.

15 Sec. 2. (a) In addition to any other meeting held by a board, a
16 board shall hold a special meeting of the members of a
17 homeowners association if at least ten percent (10%) of the
18 members of the homeowners association submit to the board at
19 least one (1) written demand for the special meeting that:

20 (1) describes the purpose for which the meeting is to be held;
21 and

22 (2) is signed by the members requesting the special meeting.

23 (b) If a board does not send out a notice of the date, time, and
24 the place for a special meeting not more than thirty (30) days after
25 the date the board receives a valid written demand for the special
26 meeting under subsection (a), a member of the homeowners
27 association who signed the written demand may:

28 (1) set the date, time, and place for the special meeting; and

29 (2) send out the notice for the special meeting to the other
30 members.

31 Sec. 3. (a) A homeowners association shall prepare an annual
32 budget.

33 (b) The annual budget must reflect:

34 (1) the estimated revenues and expenses for the budget year;
35 and

36 (2) the estimated surplus or deficit as of the end of the current
37 budget year.

38 (c) The homeowners association shall provide each member of
39 the homeowners association with:

40 (1) a:

41 (A) copy of the proposed annual budget; or

42 (B) written notice that a copy of the proposed annual
43 budget is available upon request at no charge to the
44 member; and

45 (2) a written notice of the amount of any increase or decrease
46 in a regular annual assessment paid by the members that
47 would occur if the proposed annual budget is approved;

48 before the homeowners association meeting held under subsection
49 (d).

50 (d) Subject to subsection (f), a homeowners association budget
51 must be approved at a meeting of the homeowners association

1 members by a majority of the members of the homeowners
 2 association in attendance at a meeting called and conducted in
 3 accordance with the requirements of the homeowners association's
 4 governing documents.

5 (e) For purposes of this section, a member of a homeowners
 6 association is considered to be in attendance at a meeting if the
 7 member attends:

8 (1) in person;

9 (2) by proxy; or

10 (3) by any other means allowed under:

11 (A) state law; or

12 (B) the governing documents of the homeowners
 13 association.

14 (f) If the number of members of the homeowners association in
 15 attendance at a meeting held under subsection (d) does not
 16 constitute a quorum as defined in the governing documents of the
 17 homeowners association, the board may adopt an annual budget
 18 for the homeowners association for the ensuing year in an amount
 19 that does not exceed one hundred percent (100%) of the amount of
 20 the last approved homeowners association annual budget.
 21 However, the board may adopt an annual budget for the
 22 homeowners association for the ensuing year in an amount that
 23 does not exceed one hundred ten percent (110%) of the amount of
 24 the last approved homeowners association annual budget if the
 25 governing documents of the homeowners association allow the
 26 board to adopt an annual budget under this subsection for the
 27 ensuing year in an amount that does not exceed one hundred ten
 28 percent (110%) of the amount of the last approved homeowners
 29 association annual budget.

30 **Sec. 4. (a)** This section does not apply to a contract entered into
 31 by a board that would resolve, settle, or otherwise satisfy an act of
 32 enforcement against a homeowners association for violating a state
 33 or local law.

34 (b) A board may not enter into any contract that would result
 35 in a new assessment or the increase in an existing assessment
 36 payable by the affected members of the homeowners association in
 37 the amount of more than five hundred dollars (\$500) per year for
 38 each affected member of the homeowners association unless:

39 (1) the board holds at least two (2) homeowners association
 40 meetings concerning the contract; and

41 (2) the contract is approved by the affirmative vote of at least
 42 two-thirds (2/3) of the affected members of the homeowners
 43 association.

44 (c) A board shall give notice of the first homeowners association
 45 meeting held under subsection (b):

46 (1) to each member of the homeowners association; and

47 (2) at least seven (7) calendar days before the date the meeting
 48 occurs.

49 **Sec. 5. (a)** This section does not apply to money borrowed by a
 50 homeowners association that is needed to:

51 (1) resolve, settle, or otherwise satisfy an act of enforcement

1 **against the homeowners association for violating a state or**
 2 **local law; or**
 3 **(2) address an emergency that affects the public health, safety,**
 4 **or welfare.**

5 **(b) A homeowners association may not borrow money during**
 6 **any calendar year on behalf of the homeowners association in an**
 7 **amount that exceeds the greater of:**

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

10 **(2) if the homeowners association operated under an annual**
 11 **budget in the previous calendar year, an amount equal to at**
 12 **least ten percent (10%) of the previous annual budget of the**
 13 **homeowners association;**

14 **unless borrowing the money is approved by the affirmative vote of**
 15 **a majority of the members of the homeowners association voting**
 16 **under this section.**

17 **(c) A person who owns a lot, parcel, tract, unit, or interest in**
 18 **land in a subdivision may cast one (1) vote under this section for**
 19 **each lot, parcel, tract, unit, or interest in land in the subdivision**
 20 **that is owned by the person unless the governing documents**
 21 **provide for a different voting procedure.**

22 **(d) A vote held under this section must be conducted by paper**
 23 **ballot.**

24 **(e) A homeowners association shall distribute paper ballots to**
 25 **persons eligible to vote under this section at least thirty (30) days**
 26 **before the date the votes are to be opened and counted.**

27 **(f) Votes cast under this section shall be opened and counted at**
 28 **a public meeting held by the homeowners association.**

29 **Sec. 6. The governing documents must include grievance**
 30 **resolution procedures that apply to all members of the**
 31 **homeowners association and the board.**

32 **Sec. 7. A homeowners association may not suspend the voting**
 33 **rights of a member for nonpayment of any assessments unless:**

34 **(1) the governing documents provide for suspension; and**
 35 **(2) the assessments are delinquent for more than six (6)**
 36 **months.**

37 **SECTION 3. IC 32-28-14-8, AS ADDED BY P.L.135-2007,**
 38 **SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 39 **JULY 1, 2009]: Sec. 8. (a) A homeowners association may enforce a**
 40 **homeowners association lien by filing a complaint in the circuit or**
 41 **superior court of the county where the real estate that is the subject of**
 42 **the lien is located. The complaint:**

43 **(1) may not be filed earlier than one (1) year; and**
 44 **(2) must be filed not later than ~~one (1)~~ year five (5) years;**

45 **after the date the statement and notice of intention to hold a lien was**
 46 **recorded under section 6 of this chapter.**

47 **(b) If a lien is not enforced within the time set forth in subsection**
 48 **(a), the lien is void.**

49 **(c) If a lien is foreclosed under this chapter, the court rendering**
 50 **judgment shall order a sale to be made of the real estate subject to the**
 51 **lien. The officers making the sale shall sell the real estate without any**

1 relief from valuation or appraisal laws.

2 SECTION 4. IC 32-28-14-9, AS ADDED BY P.L.135-2007,
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2009]: Sec. 9. (a) A homeowners association lien under this
5 chapter is void if both of the following occur:

6 (1) The owner of the real estate subject to the homeowners
7 association lien or any person or corporation having an interest in
8 the real estate, including a mortgagee or a lienholder, provides
9 written notice to the owner or holder of the lien to file an action
10 to foreclose the lien.

11 (2) The owner or holder of the lien fails to file an action to
12 foreclose the lien in the county where the real estate is located
13 within ~~thirty (30) days~~ **one (1) year** after the date the owner or
14 holder of the lien received the notice described in subdivision (1).

15 However, this section does not prevent the claim from being collected
16 as other claims are collected by law.

17 (b) A person who gives notice under subsection (a)(1) by registered
18 or certified mail to the owner or holder of the homeowners association
19 lien at the address given in the recorded statement may file an affidavit
20 of service of the notice to file an action to foreclose the lien with the
21 recorder of the county in which the real estate is located. The affidavit
22 must state the following:

23 (1) The facts of the notice.

24 (2) That more than ~~thirty (30) days~~ **have one (1) year** has passed
25 since the notice was received by the owner or holder of the lien.

26 (3) That an action for foreclosure of the lien is not pending.

27 (4) That an unsatisfied judgment has not been rendered on the
28 lien.

29 (c) The recorder shall record the affidavit of service in the
30 miscellaneous record book of the recorder's office. When the recorder
31 records the affidavit under this subsection, the real estate described in
32 the homeowners association lien is released from the lien.

33 (d) An affidavit recorded under subsection (c) must cross reference
34 the lien.

35 SECTION 5. **An emergency is declared for this act.**

(Reference is to EHB 1071 as reprinted April 15, 2009.)

Conference Committee Report
on
Engrossed House Bill 1071

Signed by:

Representative Cheatham
Chairperson

Senator Boots

Representative Hinkle

Senator Lewis

House Conferees

Senate Conferees