

Research Plan: House Bill 2070, Homeowners Associations

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Purpose:

The Local Government Subcommittee of the House sent **House Bill 2070** by Farmer to the Commission for study. The bill as introduced would have required sellers to disclose whether their property is located in a planned unit development (PUD), and if so, if the PUD is complete. An amendment adopted by the Senate State and Local Government Committee (drafting code 014164) added a section to its Senate companion, **Senate Bill 2110** by Bowling, that would have directed TACIR to complete a comprehensive study on the laws and regulations, or lack thereof, regarding homeowners associations (HOAs) in Tennessee. The study was to include looking at issues involving taxes, structure, administration, and accounting practices of HOAs. The same amendment was proposed but not adopted by the House subcommittee. The bill was calendared but never taken up on the floor of the Senate.

The study called for by the amendment will meet the intent of **House Resolution 170**, referred to the Commission by the 107th General Assembly, which called for TACIR to study the responsibility of HOAs to insure their obligations and HOAs' rules and regulations. This study will also consider issues raised by **Senate Bill 2198** by Johnson, **House Bill 2060** by Durham, which would have prevented HOAs from placing restrictions on parking on public streets without the approval of the city or county legislative body, banning political signs on private property, and imposing fines in excess of the monthly dues owed by property owners within the HOA.

There is no general law on HOAs except with respect to condominiums. HOAs in general are governed only by contract law and by the Tennessee Nonprofit Corporation Act, which has nothing in it specific to HOAs. Condominiums have had a specific statutory framework since 1963 in the Horizontal Property Act and for condominiums created after January 1, 2009, the Tennessee Condominium Act of 2008, which was developed by the Real Estate Committee of

the Tennessee Bar Association from the Uniform Condominium Act of the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission).

Background

Homeowners associations were created to make and enforce rules for properties in subdivisions, planned communities, or condominiums, and are in many ways small, private governments. Not only can they administer rules, they can also charge monthly fees or dues to pay for the upkeep of common spaces and can levy special assessments on property owners to pay for unexpected repairs and other expenses. Many HOAs govern communities that began as planned unit developments (PUD), which are large, integrated developments adhering to comprehensive plans that are located on a single tract of land or on two or more tracts of land separated by a street or other right of way.

The first HOA in America was created in 1844 for maintaining a park at the center of Louisburg Square in Boston. HOAs were not used extensively until after World War II. At that time, high land prices threatened to force middle class homebuyers out of the market. PUDs with commonly owned open areas managed and by HOAs solved this problem by allowing developers to leave some open space while building houses on smaller lots but sometimes created other problems. For example, as has happened when a developer defaults before the development is complete—something that became common because of the recent economic downturn.

Step 1. Define the Problem

A number of issues prompted the introduction of the legislation included in this study.

- House Bill 2070 (Senate Bill 2110) was a response to stalled developments started before the bust of the housing bubble where roads and other basic infrastructure still have not been completed. In many cases, the developers have gone out of business and construction bonds have been allowed to expire, leaving homeowners and their associations with no recourse for completing the construction except through local governments and potentially taxpayers.
- Senate Bill 2198, House Bill 2060, was introduced because an HOA required a homeowner to remove a political sign from her yard.
- House Resolution 170 resulted from complaints by condominium owners whose property was damaged by the 2010 Nashville flood, and whose HOA did not have adequate insurance to cover the damage to the exterior of the building. The sponsor had also received complaints that HOAs were not responsive to their members.

Step 2. Assemble Some Evidence

- Review House Bill 2070, House Resolution 170, and Senate Bill 2198 and related statutes to determine what the bills do, including any that deal with
 - Property owners' rights with respect to HOAs
 - Unfinished development and insolvent developers
 - Creation of HOA
 - Elections, duties, and responsibilities of board members
 - Meeting requirements
 - Transfer of HOA from developer to owners
 - HOA authority
 - Board members
 - Dispute resolution
 - Liability of board members
 - Abuse of power by board members
 - Rules, regulations, and bylaws
 - Transparency
 - Maintenance of private infrastructure such as roads and sewer systems
 - Parking regulations
 - Assessments
 - Governance of common areas
 - HOA requirements
 - Insurance
 - Reserves
 - Taxes and other financial requirements
 - Oversight by governments
 - Bonding
 - Construction standards
 - Other
 - Licensing requirement for property management companies

- Review and summarize committee hearings on the bills, including comments and concerns of committee members, the bill sponsors, and others speaking for or against the bills and
- Interview the bill sponsors and other stakeholders to determine what is driving these issues.
- Review how Public Chapter 766, Acts of 2008 (The Tennessee Condominium Act of 2008) was developed by the Tennessee Bar Association.
- Review the laws in other states governing HOAs.
- Review literature and what experts have said about HOA laws.
- Interview relevant interest groups to determine what they think about problems with HOAs and how to solve them.

Step 3. Construct Alternatives

Alternatives will be based on

- current law
- proposed changes to the current law, and
- any additional alternatives drawn from the research and analysis in Step 2.

Each alternative will be described specifically enough to project outcomes in Step 5.

Step 4. Select Criteria

Preliminary criteria for evaluating the alternatives generated in Step 3 include

- cost
- effectiveness
- fairness and equity
- political feasibility
- constitutionality

Step 5. Project Outcomes

For each alternative constructed in Step 3, the staff will

- determine how effectively it solves the problems listed above
- determine how equitable it is to different interest groups
- identify any constitutional issues

- estimate costs to
 - property owners
 - development industry
 - state and local governments
- estimate the receptiveness of
 - property owners
 - development industry
 - state and local governments

Step 6. Confront Trade-offs

- What are the pros and cons of the potential solutions?
- What are the “best bets” for this particular situation?

Step 7. Decide which alternatives to present to the Commission

Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem.

Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission.

Revisit Steps 5-8.

- Revise and edit the draft to reflect comments of the Commission
- Submit final report to the Commission for approval

