

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 687

(Senator Brochin)

Judicial Proceedings

Courts - Nonprofit Associations and Homeowners Associations - Standing

This bill grants a “nonprofit association” or “homeowners’ association” standing in its own name as a party in court under specified conditions.

Fiscal Summary

State Effect: The current number of nonprofit associations and homeowners’ associations in the State is unknown. Since the number of appeals that might be brought because of the bill cannot be accurately estimated, any effect on the workload of the Judiciary cannot be reliably estimated at this time, but could be significant and require additional resources.

Local Effect: Since the number of appeals that might be brought because of the bill cannot be accurately estimated, any increase in workload or costs attributable to the defending appeals cannot be reliably estimated, but could be significant in a particular county. Likewise, the bill’s effect on local planning and zoning cannot be reliably predicted.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a “homeowners’ association” as a nonprofit association, corporation, or other organization comprised of property owners in a subdivision or a group of subdivisions whose purpose is to represent the mutual interests of the property owners regarding the construction, protection, and maintenance of the commonly owned or used property and improvements. The bill defines a “nonprofit association” as an

association, corporation, or other organization that is eligible for exemption under § 501(c)(3) or (4) of the Internal Revenue Code.

The bill's provisions with respect to standing apply to a nonprofit association or homeowners' association that • has at least 25 adult members who pay dues on at least an annual basis and are joined by mutual consent to promote a common, nonprofit purpose; • has a recognized group name; • in the case of a corporation, is in good standing; • has been in existence for at least one year; and • has a designated resident agent whose consent to serve as a resident agent is filed with the State Department of Assessments and Taxation in accordance with State law. The association is also required to possess a publicly available charter, bylaws, constitution, or other governing document that defines • the area of interest or the geographic boundaries of the association; and • the process by which the association makes decisions in the management of its business and affairs.

The bill's provisions may apply to an organization that is composed of more than one eligible association if each association meets the requirements of the bill.

The bill grants standing to a nonprofit association or homeowners' association in court if the association alleges and shows proof that • at least one member of the association is an individually named party in the case; • the interests that the association seeks to protect are germane to its purposes; • at least 25 adult members of the association pay dues on at least an annual basis; and • the process by which the association makes decisions in the management of its business and affairs was established in a charter, bylaws, constitution, or other governing document that is publicly available, and was followed in the case.

Under the bill, the standing of a nonprofit association or homeowners' association in court vests at the conclusion of the individually named party's case, and is limited to claims asserted and relief requested that do not require the participation of the individually named member through whom the association gained standing. The association may not assert standing under the bill's provisions if the individually named party is found to lack standing to assert a claim or appeal. In order to have standing in matters involving zoning regulations or building permits, the association is required to have appeared at the hearing, if any, preceding the decision or action being appealed to the circuit court, unless the association's appearance was not permitted by the laws and regulations governing the hearing.

The bill's provisions may not be construed to grant standing for an association to • assert a claim that one of its members may not assert individually; or • assert a claim for damages.

The bill states that it may only apply prospectively and may not be applied or interpreted to have any effect on or application to any governmental proceeding instituted before the

bill's effective date. In addition, the bill states that it may not be construed to change the existing standards for review of a zoning action of a local legislative body or alter the standing rights of an association granted by other State or local statutes or the common law.

Current Law/Background: Generally, a party to a civil action must be authorized to participate in the action, either by statute or by having common law "standing." Standing means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy. The question is whether the plaintiff is the proper party to the case and not about the merits of the case. The Court of Appeals has held that an association lacks standing to sue where it has no property interest of its own, distinct from that of its individual members. *Citizens Planning & Housing Ass'n. v. County Executive*, 273 Md. 333 (1974). In *Medical Waste Ass'n. v. Maryland Waste Coalition*, 327 Md. 596 (1992), the Court of Appeals stated that if an individual or organization is seeking to redress a public wrong, the individual or organization has no standing unless the wrong suffered is different in character and kind from that suffered by the general public.

By statute, a community association may bring an action to abate a nuisance based on the existence of specified controlled dangerous substances if the nuisance is located within the association's boundaries. In Baltimore City, a community association may bring an action to abate a nuisance based on the existence of specified code violations. The definitions of "community association" differ slightly under these provisions.

Additional Information

Prior Introductions: Similar bills were introduced in 2007. HB 31 received an unfavorable report from the House Judiciary Committee, and SB 65 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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mcp/jr

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