

HB 281 Crossover Support Letter.pdf

Uploaded by: Karen Straughn

Position: FAV

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March 26, 2024

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Karen S. Straughn
Consumer Protection Division

Re: House Bill 281 – Cooperative Housing Corporations, Condominiums and Homeowners Associations – Funding for Reserve Accounts (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support of House Bill 281 submitted by Delegate Marvin E. Holmes, Jr. This bill would extend the length of time to meet reserve study funding requirements from 3 years after the initial study was completed to 5 years and would not require deposit of the funds until the last day before the end of the association's fiscal year.

Legislation passed during the 2022 session requires Condominium and Homeowners' associations to conduct a reserve study to determine what maintenance is required and to fund the reserves of the association in accordance with that study. In the past, many associations had not been properly funding their reserves, either due to the inability to obtain the votes required to approve large increases or the simple inability to afford the increases necessary. As a result, the infrastructure of many of these associations has deteriorated and associations are now forced to incur substantial increases or face penalties for failing to address the deteriorating conditions of the community.

In many common ownership communities, the infrastructure includes roads, storm water management ponds, sewers, parks, sidewalks and other elements that are the sole responsibility of the association and its members. The failure to maintain the infrastructure can result in both physical danger to the community members as well as depressed property values and eventually, communities in crisis. Despite this, many communities have expressed concerns about the ability to meet the funding requirements of the law. This bill would extend the requirement to fund the maintenance needs identified in the studies from 3 years after the initial reserve study to 5 years. It would also clarify that the funds need not be deposited with the reserve account on or before the last day of each fiscal year. These provisions would each give additional time to permit associations to comply with the law.

For these reasons, we ask that the Judicial Proceedings Committee return a favorable report on this bill.

cc: The Honorable Marvin E. Holmes, Jr.
Members, Judicial Proceedings Committee

HB 281x - CIC Reserves - FAV - REALTORS.pdf

Uploaded by: Lisa May

Position: FAV



House Bill 281 – Cooperative Housing Corporations, Condominiums, and Homeowners Associations – Funding of Reserve Accounts

Position: Support

Maryland REALTORS® supports HB 281, as amended by the House of Delegates, to extend the deadline for Common Interest Communities to fund their reserve accounts and provide needed clarity on the terms of that funding commitment.

In 2022, the General Assembly passed a statewide requirement that all condominium and homeowner’s associations regularly conduct a reserve study, which evaluates the association’s ability to pay for future financial obligations like maintenance and repairs. Since then, REALTORS® have heard of some associations which have imposed sharp increases in fee amounts charged to homeowners, due to the large unmet capital needs of these communities.

These fee amounts can be difficult for those on fixed incomes to absorb, especially during this time of higher-than-average inflation. What is more, there is concern that associations which are not able to meet necessary reserve amount funding by the statutory deadline will face difficulties in obtaining mortgages or insurance coverage for residential units within the community.

Other measures introduced in the 2024 Session included exemptions for developments under a certain number of units. However, even small developments may have facilities impacting the health and safety of residents, including stormwater retention facilities or retaining walls, which if not maintained can place them at risk. HB 281 does not contain those exemptions, which REALTORS® believe is the correct approach.

Giving associations additional time to fully fund their reserve accounts will moderate these increases for residents while still ensuring that the communities remain financially and structurally sound. REALTORS® recommend a favorable report on HB 281.

**For more information contact lisa.may@mdrealtor.org or
christa.mcgee@mdrealtor.org**

MBIA Letter of Support HB281.pdf

Uploaded by: Lori Graf

Position: FAV

March 26, 2024

The Honorable William C. Smith Jr.
Chairman, Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: HB 281 Cooperative Housing Corporations, Condominiums, and Homeowners Associations – Funding of Reserve Accounts

Dear Chairman Smith,

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **HB 281 Cooperative Housing Corporations, Condominiums, and Homeowners Associations – Funding of Reserve Accounts. MBIA Supports the Act as it was passed by the House of Delegates.**

This bill requires that certain funds for the reserve account of a cooperative housing corporation, a residential condominium, or a homeowner's association be deposited on or before the last day of each fiscal year. It also extends the amount of time from 3 to 5 years that cooperative housing corporations, condominiums, and homeowners associations have to attain the annual reserve funding level recommended in the initial reserve study. This bill will benefit our industry because it gives these housing entities more time to fund their reserve accounts. Requiring an updated reserve study will save time and expenses during crisis periods by making the state of housing corporations' financials well understood.

As amended in the House of Delegates, HB281 provides much needed clarification on the Reserve Study requirements and, we believe will create some relief for Homeowners Associations and Condominium Associations throughout the State.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the Senate Judicial Proceedings Committee

HB 281 testimony to Senate JPR FINAL.03252024.pdf

Uploaded by: Scott Silverman

Position: FWA

Vicki Caine, Chair
Steve Dunn, Esq., Member, Vice Chair
Brenda Wakefield, CMCA, AMS, Secretary

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John Taylor, Member
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March 25, 2024

will.smith@senate.state.md.us
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Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice-Chair
Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: House Bill 281
Cooperative Housing Corporations, Condominiums
and Homeowners Associations –
Funding of Reserve Accounts
Hearing Date: March 26, 2024
Position: Support with Amendment

Dear Chairman Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee:

We write on behalf of the Maryland residents statewide who reside in common ownership communities to offer our support for the above-referenced legislation, with further amendments, as discussed below. The bill, which has already passed the House with significant amendments, and it is scheduled for hearing before your Committee on March 26, 2024.

Page 2, House Bill 281
Community Associations Institute

In the time that's passed since the passage of legislation mandating the funding of replacement reserve accounts statewide, we have had many interactions with community association board members and professional managers regarding the intricacies of compliance with the new law. In the course of our conversations, several important concerns emerged, some of which are addressed by the proposed HB 281, while the bill, as amended in the House, adds provisions to the proposed legislation which are, in our view, not necessarily calculated to advance the objectives we have sought to accomplish by the passage of this bill.

The first concern, which has been addressed adequately in the proposed HB 281, has been that those communities obtaining initial reserve studies have found themselves confronted with the urgent need to increase assessments precipitously in order to meet the funding requirements recommended by their reserve specialists. Those increases, when combined with current inflationary pressure, have prompted our constituents to ask if the 3-year grace period in the current statute might be expanded to 5 years. HB 281 does, in fact, incorporate a new provision extending the "grace period" to 5 years. In so doing, the proposed legislation will blunt negative fiscal impact, as well as enhance the opportunity for compliance.

The second concern, which HB 281, as amended, also addresses to our satisfaction, is one raised by professional managers, accountants, auditors and attorneys. The current statewide mandatory replacement reserve laws requires only that a community association's annual budget includes reserve account contributions. *However, existing law lacks any requirement that such contributions actually be made.* This is a significant issue during years when operating expenses in excess of those projected would cause a budgeted reserve contribution to become impossible to make without requiring owners to pay a special assessment or to forgo services. Because the current statute allows a board of directors to budget for reserves, and to increase assessments as needed without having to obtain owner approval, there is no reason not to require also—as does HB 281—that amounts budgeted to be contributed to reserves *actually be deposited* into the community association's reserve accounts.

However, following HB 281's February 6th hearing before the House Environment & Transportation Committee, prior to crossover, significant amendments to HB 281 were made in the House.

1. There is a new definition for an "updated reserve study", pursuant to which any such document would be required to include:
 - a. an analysis of work performed since the issuance of the previous reserve study;
 - b. revised estimates of replacement cost, remaining life and useful life; and,
 - c. identification of work performed and amounts spent and whether maintenance contracts are in place.
2. There is a provision that would limit the obligation to obtain a reserve study or updated reserve study to condominium and cooperative communities for which total estimated replacement cost exceeds \$10,000. This change is, presumably, intended to achieve

Page 3, House Bill 281
Community Associations Institute

parity with the laws governing homeowners associations, in which a \$10,000 threshold already exists.

3. There is a new provision that would require, in addition to obtaining a reserve study (or update), that the governing body of the community association work with the reserve specialist to develop a “funding plan”. As amended, the statute does not require that the funding plan utilize a specific method, but rather allows for utilization of any method accepted by GAAP. Furthermore, once developed, the funding plan is required to be reviewed annually, for progress, at the association’s annual meeting; and, notably, the requirement to do so is *in addition to* the requirement that the association’s governing body review its reserve study, annually, for accuracy.

While we cannot disagree with the effort to make updated reserve studies more informative, the expanded definition of an updated reserve study will almost certainly increase their cost, such that it will soon approach the cost of an initial reserve study. The Committee should keep that in mind when considering the bill as amended in the House.

The new explicit requirement to develop a funding plan represents, in our view, nothing more than an express articulation of what was presumed to have been implied in the pre-amendment proposed HB 281. Although we are concerned by the apparent disinclination to prescribe a specific method of funding reserve accounts, it is anticipated that most associations and reserve specialists will discern whether the cash-flow or component (or other) method is best. However, the requirement to review annually the association’s progress toward achieving the funding plan is not accompanied by any requirement to confirm progress via a vote of the owners or Board, nor is there any mention of what happens if it’s determined that progress has not been sufficient. Furthermore, there appears in HB 281, as amended, a new requirement to “review the study annually for accuracy”. Although the intended language would achieve parity with Section 5-6B-26.1 of the Maryland Cooperative Housing Act, which already includes the same language, we are concerned that a community association, which is governed by lay volunteers, would not possess the capability to determine whether a replacement reserve study prepared by a qualified professional, as required by current law, was accurate. Moreover, the introduction of an undefined standard of accuracy is problematic and opens up new possibilities for liability that are unintended in the context of a statute aimed at requiring community associations to do the right thing, unlike what happened in Florida when there was no such requirement. Alternatively, **we propose that HB 281 be amended further to omit the undefined term “accuracy” in favor of language that would require only that community associations “cause the reserve study to be reviewed annually.”** This language would alleviate any burden on lay volunteers by allowing them the option to retain a third party to conduct the required annual review for accuracy, or to delegate that function to a professional management agent.

Provided that the revisions referenced herein are made, we request a **favorable** recommendation by this Committee. Thank you for your time and attention to this important legislation.

Page 4, House Bill 281
Community Associations Institute

We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones (410-366-1500 or lisa.jones@mdlobbyist.com) or Grason Wiggins (912-687-5745 or Grason.wiggins@mdlobbyist.com), lobbyists for the MD-LAC, or Scott Silverman (410-707-6363 or ssilverman@schildlaw.com) or Vicki Caine (vcaine1@gmail.com) of the MD-LAC.

Sincerely,

Scott J. Silverman

Scott J. Silverman, Esq.
Member, CAI MD-LAC

Vicki Caine

Vicki Caine
Chair, CAI MD-LAC

HB281 Senate Testimony - Nancy Costello 3.25.24 (1

Uploaded by: Nancy Costello

Position: UNF

Please vote NO for HB281.

My name is Nancy Costello and I am a long-time citizen of Baltimore County. I am also a newly elected President of our HOA board for Kings Court Townhouse #2 Association, and have served on the board for four years. I and our board have several concerns about HB281 becoming law. HB281 in its amended version will have a negative impact on our 222 community homes and families. HOAs are very different from Condos and Coops. I did give testimony on HB281 on February 6, 2024 in ENT.

HB281: Cooperative Housing Corporations, Condominiums, and Homeowners Associations - Funding of Reserve Accounts

For 45 years and now being one of the first HOAs in Baltimore County, **KCTHA2 (501c4 nonprofit)** has been managing its community without support or a mandate from the State. We have a Reserve Account. They are necessary. However, the **board and property management company should decide the amount of a reserve account and NOT BE MANDATED** through a requirement by a law from the State of Maryland.

KCTHA2 reserve study amount approaches \$1million! This is not a possible mandated amount for this HOA to collect from 222 homeowners regardless of a change to 5 years. Many homeowners are already in arrears with increased HOA fees and special assessments/lawyers and could default with the higher fees our HOA will have to apply to meet the requirement of this proposed law.

***The State of Maryland does NOT regulate 501c3 nonprofits with a mandate to have a reserve account and a required amount by a certain date in the fiscal year. It should be no different for a 501c4 and HOAs.**

***Although we met the requirement for having the Reserve Study, the unexpected cost of \$2,500 has to be paid from our repair fund line. The HOA could have used that money elsewhere as projects were determined. Our HOA board is informed and aware of what needs to be done in the community.**

***An HOA should not be bound to the same laws, operation, and reserve requirements as a Condo. HOAs do not have the same risk management concerns/issues that Condos have relating to the need and timing of structural improvements of a building where residents live.**

***Although it may be in the future (HB280) that an HOA could apply to their County for assistance for capital projects, our HOA believes that the County(ies) may not approve creating the fund. Many Counties are struggling with the financing of the Kerwin school bill and other issues. It may take a long time before any County wants to take on what HB280 is stating. What happens if they do not want to create the fund?**

PLEASE VOTE NO TO HB281 with its new amendments.

HOAs should not be “MANDATED” to have a RESERVE ACCOUNT with A CERTAIN AMOUNT” to be deposited by the end of a fiscal year. HOA Boards have the responsibility to determine this based on their annual plans and financial circumstances. One size does not fit all. The study done in 2005 is twenty years old and now outdated—and, this law should not be based on what Prince Georges County has done.

Sincerely,

Nancy Costello, KCTHA Board President

Updated Opposition to HB 281 - S. Fleming 2nd oppo

Uploaded by: Sheldon Fleming

Position: UNF

Updated Opposition to HB 281

I am still in strong opposition to HB281

I've written a testimony for this before and want to further reiterate my reasoning for why HB281 should not pass. We do not agree with being required to have a mandated amount for our reserve study.

Many of us are experiencing hardships already with the bills we pay already. For some of us, including myself, our own HOA fees are tough to pay as is. The amount in a reserve study should be based on what the HOA decides themselves. Only our HOA knows what is best for our HOA because we are the ones living here. It wouldn't be logical for an outside entity to make those decisions. Our reserve study amount would be about 1 million dollars. This is NOT something we can accomplish especially with a change to 5 years.

For myself, I do not make nearly as much money as I would like, even with me being a young black male teacher in BCPS. I struggle to pay bills myself and have had to take out loans at times. I have to pay money up front that is hard to get just to pay for grad school classes. I have to help take care of my mother. BCPS has also made changes in which teachers still wonder how they will be impacted career wise and financially. My situation, while similar to others, should be a reason why I and my residents should not have to pay more money on top of what we already pay in our HOA fees. It's not fair and it's not right.

Adding on to this, we have a good chunk of residences that don't pay already as they are in arrears with the current HOA fees. The board has made decisions many of times, some that have impacted our own finances negatively, to make up for this. Again HB 281 would further make problems for us.

While I'm aware that this would be helpful for some, it is not helpful for everyone. Each HOA should be treated differently, and no decision should be made without the agreement of the HOA members and residents.

As a fairly new homeowner, I did not expect to experience things like this as I'm already struggling.

Again, I am in strong opposition to HB 281 even with changes made. Please vote NO to this bill!

Sincerely,

Sheldon Fleming

KCTHA2 Board Member

HB281 - Opposition - Socha - Senate Hearing 3.26.

Uploaded by: Sonia Socha

Position: UNF

Vote NO for HB281 as Amended

This bill as written should not be passed into law with its present requirements for HOAs.

- 1. There is no law in Maryland mandating nonprofitw (501©3, 4, or 6) to be required to have a reserve account of a certain amount by a certain date. *Legislating the finances of HOAs and Condos is over-stepping into the business of a nonprofit board.***
2. Having a reserve account is a must—but this does not need to be “mandated” in legislation. A nonprofit board can decide when and how much is required for its account based on the needs of each organization/property and the reserve study. One size does not fit all!
3. The state is attempting to legislate the finances and plans of these nonprofit organizations without having enough information about each group. As the bill’s fiscal/policy note states, none of the 7000+ organization are registered with the state because no system has been set up.
4. The state should not be passing a reserve account model based on what is being used in Prince George’s County. Every jurisdiction is different—every HOA and condo is different based on its age, developer agreements and reserve account components.
5. County and state officials, and cooperative properties should be meeting and reviewing their agreements regularly and what components that were originally set forth. If HB280 passes, there will hopefully be a way to offer support to HOAs and condos for capital needs.
6. Older HOAs have four times as many components to maintain than newer HOAs. HB281 will hurt these older communities and not help them. Fees will have to be raised so high that it could become more than a second mortgage for each homeowner.
7. The reserve study provided to KCTHA2 was not favorably received by our board. For us to raise almost \$1million from our homeowners is not prudent in this community. It will cause more homeowners to not pay their HOA fees. Since 2008 and through COVID our list of outstanding HOA fees due has more than doubled. Passing HB281 will make it much worse.

Please amend HB281 to remove the requirement of mandating a certain reserve amount by the end of each fiscal year for HOAs.

As a previous Executive Director and/or board member for a 501c3s, our boards never allocated funds to the reserve amount until a few months after the close of a fiscal year—and sometimes, we could not meet our planned goal depending on our financial position. *Delegate Holmes indicated in our meeting with him, that HOAs would have to borrow money to meet the state’s mandate if our homeowners could not pay. This is not right.*

Let us see how HB280 does with funding in each county first before making HB281 a law. Perhaps there will be a new way of constructing the intention of this reserve account bill. Thank you.

Sincerely

Sonia Socha, KCTHA VP/Treasurer