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BILL



ANALYSIS

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Senate Bill 1256 (Substitute S-2 as reported)  
Sponsor: Senator Jason E. Allen  
Committee: Local, Urban and State Affairs

Date Completed: 6-29-10

### **RATIONALE**

Under the Condominium Act, the developer or co-owner of a condominium project may impose reasonable restrictions or covenants running with the land upon a unit in the project, in addition to the reasonable restrictions and covenants that may be contained in the condominium documents, as long as they are not otherwise prohibited by law and are consistent with the condominium documents (i.e., the master deed and any other instrument referred to in the master deed or bylaws that affects the rights and obligations of a co-owner). The restrictions and covenants may include provisions governing the joint or common ownership of units in the project and the basis upon which the use of the unit or units may be shared from time to time by the joint or common owners.

These provisions evidently can be problematic in cases of condominium complexes whose developers no longer have ties to the project. In these situations, the co-owners are bound by potentially undesirable deed restrictions put in place years earlier. It has been suggested that, when a developer is no longer involved with a condominium development, co-owners should be able to amend such restrictions and covenants by a majority vote.

### **CONTENT**

The bill would amend the Condominium Act to allow an association of condominium co-owners to modify by a majority of those voting restrictions or covenants if they were imposed by a developer who was no longer in business or who no longer had a financial interest in the association. The bill also

provides that a restriction or restrictive covenant that was part of the condominium bylaws could be modified in this way.

MCL 559.146 & 559.153

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Over the years, condominium co-owners have faced problems associated with deed restrictions imposed by developers who are no longer involved with the project. The law should provide a mechanism by which association members could revise condominium documents containing obsolete or otherwise unwanted restrictions and covenants. The Lakes of the North condominium association, in particular, has raised concerns over its inability to change the documents through the democratic process; the bill would help this association and others whose developers are long gone to amend their documents as they see fit.

#### **Opposing Argument**

The bill would conflict with an existing provision of the Condominium Act requiring the vote of two-thirds of the co-owners and mortgagees to amend bylaws, the master deed, and the condominium subdivision plan. A two-thirds vote rather than a simple majority is appropriate with regard to significant amendments, such as those that could have an impact on home values.

**Response:** In the case of Lakes of the North, a particularly large condominium association, some members have other residences in other locations, including foreign countries; thus, it can be difficult for two-thirds of the co-owners to vote in person. While people who cannot vote in person may designate proxies to vote on their behalf, the Lakes of the North association would like to discontinue the use of proxies. In the absence of a proxy system, the two-thirds requirement could make conducting association business nearly impossible; thus, the change to a majority vote would be necessary.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.