

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2472**

As Agreed to March 24, 2010

Brief*

HB 2472 relates to several local government issues. The bill would (1) establish a new act entitled the Kansas Uniform Common Interest Owners Bill of Rights Act; (2) temporarily prohibit a municipality from requiring the installation of a multi-purpose sprinkler system in a residential structure; (3) modify several statutes dealing with rehabilitation of abandoned houses; and (4) expand the authority to establish a county land bank from only Wyandotte county to any county. Details of the bill follow.

Kansas Uniform Common Interest Owners Bill of Rights Act

Effective January 1, 2011, the bill would set uniform powers, duties and limitations for all common interest communities and their associations, bylaws, unit owners, boards of directors, meetings, records, and related items.

According to the bill, the purposes of the Act would be to establish uniform rules of law to clarify the rights and duties of unit owners and associations in all forms of common interest communities; provide for the effective operation of common interest communities in the interest of their owners and their residents; and address current and potential areas of conflict and tension between unit owners and associations, boards and managers in a comprehensive and balanced manner.

Definitions—The bill would define a number of terms. Among them, "common interest communities" would mean real estate described in a common interest community declaration regarding which unit owners are obligated to pay for a share of real estate taxes, insurance premiums, maintenance, improvements or services related to common portions of the real estate described in the declaration. Other terms defined by

the bill include "declarant," "declaration," "association," "board of directors," and "common elements."

Application Limited to Certain Common Interest Communities—The bill would limit the Act's application to communities that contain 12 or more units used for residential purposes, as follows:

- All such communities created in Kansas after the Act's effective date; and
- All such communities created in Kansas before the Act's effective date, but the Act would not apply with respect to actions or decisions of a community's association or board of directors concerning events and circumstances occurring before the Act's effective date.

The bill also specifies certain arrangements to which the Act would not apply, such as an arrangement between the associations for two or more common interest communities to share certain costs, or an arrangement between an association and the owner of real estate not included in the common interest community to share certain costs.

Powers and Duties of the Association—The bill would establish a number of powers and duties of the unit owners association, including:

- Shall adopt and may amend bylaws; may adopt and amend rules;
- Shall adopt and may amend budgets;
- Shall have the power to require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to court proceeding; and

- Shall have the power to suspend any right or privilege of a unit owner who fails to pay an assessment, with limitations - may not deny access to the owner's unit; may not suspend the right to vote except on issues involving assessments and fees; and may not withhold services if doing so would endanger the health, safety or property of any person.

Powers and Duties of the Board of Directors—The authority and responsibilities established in the bill would include that the board:

- Shall exercise degree of care and loyalty required of a trustee, if appointed by the declarant;
- Shall exercise degree of care and loyalty required of an officer or director of a corporation, if not appointed by the declarant;
- May **not** amend the declaration, except as provided by other statutes;
- May **not** amend the bylaws;
- May **not** terminate the common interest community;
- May **not** elect members of the board, but may fill vacancies for the unexpired term or until the next election, whichever is earlier; and
- May **not** determine qualifications, powers, duties or terms of office of board members.

What the Bylaws Must Do—Among other things, the bill would require that the bylaws provide for the number of members of the directors and for election of officers by the board.

Meeting Requirements—The bill would make provision for an annual meeting of the association, as well as special meetings under certain circumstances. During the period of declarant control, the board would be required to meet two times annually. After the declarant control period is terminated, meetings would have to be held in a convenient location unless the bylaws are amended to vary meeting locations. A special meeting would be required if the board president, a majority of board members or at least 25 percent (or lower percentage specified in the bylaws) of the association's voting members request a meeting.

"Open Meetings" and "Open Records" Requirements—The bill would provide for a form of open meetings requirements related to meetings of the board of directors and association committees, and open records requirements for materials distributed in board meetings. The bill also would require the association retain for five years a number of association records, including the following:

- Detailed receipt and expenditure records;
- Minutes of all meetings of unit owners and board of directors other than executive sessions;
- The names of unit owners and their addresses, with stipulations;
- Original or restated organizational documents, with stipulations, bylaws, and current rules;
- Financial statements and tax returns; and
- Several other types of records as specified in the bill.

The records required to be retained also must be made available for inspection and copying by a unit owner or the owner's agent, subject to a reasonable fee.

The bill also would repeal KSA 58-3830, which requires all meetings of nonprofit homeowner's association boards to be open to all homeowners, requires the association to adopt an annual budget, and requires a copy of the budget be made available to any association member requesting a copy.

Voting Provisions—The bill would authorize unit owners to vote at a meeting in person, by absentee ballot, by proxy, by secret ballot, or by electronic or paper ballot when a vote is conducted without a meeting. Other voting provisions would be established, including detail regarding proxy votes and the policy that a majority of votes cast determines the outcome of any action by an association unless otherwise required. As noted previously, an association would have the authority to suspend a unit owner's right to vote on issues involving assessments and fees.

Budget Requirements—The bill would require the board of directors to propose and adopt a budget at least annually. The bill would establish related notice and records availability requirements, and also would require that unit owners be given a reasonable opportunity to comment on the proposed budget prior to the board taking action. As noted previously, an existing statute related to budget requirements, KSA 58-3830, would be repealed by the bill.

Quorum Requirements—The bill would establish a quorum of unit owners as persons entitled to cast 20 percent of the votes in the association. A quorum of the board of directors would be established as a majority of those entitled to cast votes on the board.

Removal of a Board Member—The bill would establish a procedure for removal of a member of the board of directors.

Authority to Bring Court Action—The bill would authorize a declarant, association, unit owner, or any other person subject to the Act to bring an action to enforce a right granted or obligation imposed by the Act, the declaration, or the bylaws of an association. The bill would authorize the court to award

reasonable attorney fees and costs. According to the bill, remedies provided by the Act are required to be "liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed."

Other Legal Proceedings—The bill would require an association to promptly provide notice of legal proceedings to unit owners when the association is a party to the proceeding, except when the proceedings involve enforcement of rules, covenants or declarations of restrictions, or recovering unpaid assessments.

Delayed Effective Date—The bill would establish January 1, 2011, as the Act's effective date.

Multi-Purpose Sprinkler Systems

The bill would temporarily prohibit a municipality from requiring the installation of a multi-purpose sprinkler system in a residential structure. The term "residential structure" is defined in the bill as including a single-family dwelling, multi-family dwelling of two attached units or less, or any manufactured home. This provision would be repealed as of July 1, 2011.

Rehabilitation of Abandoned Houses

- The bill would revise the definition of "abandoned property" to decrease, from 180 to 90, the number of consecutive days the residential real estate would have to be unoccupied by the owner.
- The bill would limit, to an additional 90 days, the time the court may extend the 90-day period which the defendant in a court case involving temporary possession of an abandoned property could be granted to bring the property into compliance with applicable fire, housing and building codes and pay all delinquent property taxes. Current law authorizes the court to extend the original 90-day compliance period by an unspecified amount of time.

- The bill would reduce, from three years to two years, the amount of time a person must occupy a house when the person purchases the house from a nonprofit organization which has rehabilitated it.

County Land Banks

The bill would expand the authority to establish a county land bank to any county in Kansas. Current law allows only Wyandotte County to do so.

Conference Committee Action

In Conference Committee, the House conferees agreed to the Senate amendments to the bill, with the following exceptions, additions, and revisions:

- With respect to the Kansas Uniform Common Interest Owners Bill of Rights Act:
 - Reinserted language deleted by the Senate that would require officers and members of the board of directors appointed by the declarant to exercise the degree of care and loyalty to the association required of a trustee. The Senate had reduced the "degree of care and loyalty" of these officers and members to that required of an officer or director of a corporation.
 - Struck language added by the Senate that would have required the declarations to establish when the period of declarant control is terminated.
 - Reinserted language stricken by the Senate Committee on Local Government that would allow parties to a dispute arising under the Act, the declaration, or the bylaws to agree to resolve the

dispute by any form of binding or nonbinding alternative dispute resolution.

- Added a sunset provision to the prohibition against a municipality requiring the installation of a multi-purpose sprinkler system in a residential structure. Based on the Conference Committee amendment, this prohibition provision would terminate on July 1, 2011.
- Added the provisions of SB 561, as amended by the Senate Committee on Local Government, which would modify the law dealing with rehabilitation of abandoned houses and expand to all counties the authority to establish a county land bank.
- Made technical adjustments.

Background

Kansas Uniform Common Interest Owners' Bill of Rights Act

In 2009, the House Committee on Local Government considered HB 2253, related to homeowners' associations. The Committee referred the bill to the Kansas Judicial Council for review. The Judicial Council conducted a thorough review of the bill and, as a result, recommended the contents of HB 2472. The bill represents a Kansas-customized version of the Uniform Common Interest Owners Bill of Rights Act, which was developed by the National Conference of Commissioners on Uniform State Laws.

Senator Terrie Huntington and Representative Gene Rardin testified in favor of the bill, as did a representative of the Kansas Judicial Council. Others providing favorable testimony included a number of private citizens. Some of the supporters provided specific suggestions for improving the bill. Others testifying who provided specific comments or concerns included an attorney who practices in the area of homeowners' associations, several association representatives or

management firms, and representatives of the Kansas Bar Association and the Kansas Association of Realtors.

The bill was assigned to a subcommittee of the House Committee on Local Government. After reviewing all concerns and suggestions made on the bill, the Subcommittee made the following recommendations for amendment, which the House Committee adopted:

- Acquisition of Loans—Remove the association's authority to borrow money.
- Special Meeting of Unit Owners—Reduce from 25 percent to 10 percent the proportion of unit owners who must request that the board of directors call a special meeting, in order for the board to be required to hold such a meeting at the owners' request.

During the hearing and discussion on the bill, concern was mentioned that the bill might affect volunteer activity on associations. The House Committee on Local Government requested that information be provided in the supplemental note on the bill regarding KSA 60-3611. That statute provides immunity from liability for volunteers of certain nonprofit homeowners organizations, with some limitations.

The Senate Committee on Local Government amended the bill as follows:

- It added a definition for the term "common elements," to mean those portions of a common interest community not owned individually, but in which an indivisible interest is held by all unit owners. The term is referred to in the definition of "common interest community."
- It added another exception to the requirement that the association provide notice to unit owners of legal proceedings in which the association is a party. In addition to the bill's current exceptions – *i.e.*, proceedings

involving enforcement of rules or to recover unpaid assessments—the Senate Committee added the exception of proceedings involving enforcement of covenants or declarations of restrictions.

- The Committee reversed the exception to the prohibition against an association denying a unit owner or other occupant the right to vote. Under the amendment, the association would have the power to suspend a unit owner's right to vote with respect to issues involving assessments and fees.
- It reduced the "degree of care and loyalty" to the association which must be exercised by members of an association's board of directors who are appointed by the declarant. The amendment changed this from that required of a trustee to that required of an officer or director of a corporation.
- The Committee added a requirement that the declarations establish when the period of declarant control is terminated.
- It added that the association bylaws may provide for an election oversight committee.
- It reduced, from four to two, the number of times a board of directors must meet annually during the period of declarant control. Additionally, the Committee clarified that only post-declarant control board meetings must be held in a convenient location.
- It added the ability for unit owners to vote by secret ballot.
- The Committee authorized members of the board of directors to cast undirected proxy votes representing more than 15 percent of the votes in the association. The bill still would prohibit any other person from doing so.

- It deleted language authorizing parties to a dispute arising under the Act, the declaration, or the bylaws to agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution.
- It eliminated a new section of law that would have required consideration be given to the need to promote uniformity of the law when applying the Act.

Multi-Purpose Sprinkler Systems

The Senate Committee of the Whole added the contents of HB 2515, as amended by the House Committee on Local Government, regarding multi-purpose sprinkler systems. It further changed this bill's contents by revising the definition of "residential structure" to include a dwelling of two, instead of four, attached living units. This made the provisions identical to SB 573.

HB 2515 was supported by representatives of the Kansas Association of Realtors, the Home Builders Association of Greater Kansas City, the Kansas Manufactured Housing Association, and the Kansas Building Industry Association. Proponents indicated the bill's purpose was to prevent the imposition of a sprinkler mandate by municipalities because such a mandate could reduce the availability of affordable housing. Other reasons were mentioned as well.

Opponents of HB 2515 included representatives of an insurance company, the League of Kansas Municipalities and several cities, the Kansas Association of Counties, the State Fire Marshal, state fire chiefs, fire marshals and fire education associations, the National Fire Protection Association, the International Code Council, and several municipal fire departments. Opponents' concerns centered around safety, the costs of residential fires, and the issue of local control, among other items.

The House Committee on Local Government amended HB 2515 by adding "any manufactured home" to the definition of "residential structure."

Rehabilitation of Abandoned House; County Land Banks

A representative of the City of Wichita testified in favor of the original version of SB 561, stating the bill would assist the City in addressing the problem of blighted properties. No opponents testified.

The Senate Committee on Local Government amended the bill as follows:

- Regarding the amount of time a person must occupy a house when the person purchases the house from a nonprofit organization which has rehabilitated it, the Committee increased the amount proposed in the original bill from one year to two years.
- The Committee expanded to all counties the authority to establish a county land bank.

Fiscal Notes

According to the fiscal note for HB 2472, the bill would have no fiscal effect on the state budget.

According to the fiscal note for HB 2515, there would be no fiscal effect to cities resulting from the bill's passage. Furthermore, it was noted sprinkler systems might diminish the number of fires, thereby saving government costs associated with fire fighting.

According to the fiscal note for SB 561, the League of Kansas Municipalities stated passage of the original bill could result in a small and inestimable increase in property tax revenues resulting from acceleration of abandonment proceedings leading to a property's rehabilitation and resale.