

Submitter: Michelle Da Rosa

On Behalf Of:

Committee: House Committee On Housing and Homelessness

Measure: SB503

I oppose SB 503. In a phrase: it's a bad idea. The current law protects against a majority of a planned community being able to force on their neighbor's higher assessment allocation by changing the basic formula to the sharing of common expenses without the affected lot owners' consent. This amendment would upend a tenet of association law that is important to ensuring that individual owners or small groups of owners are not preyed upon by a majority without recourse.

I am a lawyer specializing in association law and residential development. The Planned Community Act (PCA) requires that CCRs state the formula for the allocation of common expenses and the sharing of common profits (which are rare!). There are usually other tools available to the board of directors to balance assessments fairly among the owners in the association other than changing the basis for sharing common expenses. Sometimes a board may re-characterize an expense to be a limited common expense instead of a general common expense if only some lots benefit from the service or charge, for example.

There are outside incentives provided by the Internal Revenue Code that provides a safe harbor from income taxes for HOAs so long as whatever a lot owner is required to pay for "inures" to their benefit----no one can be forced to pay for another owner's service or benefit if the HOA wants to maintain its ability to have its operating funds untaxed.

The thrust of many housing bills this session is to tackle discrimination, both historical and present, to remove barriers to housing and homeownership. This amendment runs counter to that goal. Some of my nonprofit home developer clients have shared that their future homebuyers are often wary and afraid of homeowners' association---they already have a reputation of discrimination and retaliation against people of color. In trainings I offer about association law and HOA leadership to first time homeowners, I have heard this same concern first hand. This amendment would enable such discrimination to occur more readily about one of the most important facts of life in an HOA---folks have to share costs of taking care of their common property and should do so equitably.

This amendment unnecessary and would result in opening a big can of worms for any minority group in an HOA, whatever the basis of their minority status.