

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3301

By COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

May 15

1 On page 1 of the printed A-engrossed bill, line 2, after “94.550” insert “, 94.572”.

2 On page 4, after line 22, insert:

3 “**SECTION 4.** ORS 94.572 is amended to read:

4 “94.572. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was
5 not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5)
6 to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652,
7 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695,
8 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and**
9 **section 3 of this 2013 Act** to the extent that those statutes are consistent with any governing
10 documents. If the governing documents do not provide for the formation of an association, the re-
11 quirements of this subsection are not effective until the formation of an association in accordance
12 with paragraph (b) of this subsection. If a provision of the governing documents is inconsistent with
13 this subsection, the owners may amend the governing documents using the procedures in this sub-
14 section:

15 “(A) In accordance with the procedures for the adoption of amendments in the governing docu-
16 ments and subject to any limitations in the governing documents, the owners may amend the in-
17 consistent provisions of the governing documents to conform to the extent feasible with this section
18 and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641,
19 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670,
20 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733,
21 94.770, 94.775, 94.777 and 94.780 **and section 3 of this 2013 Act**. Nothing in this paragraph requires
22 the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or
23 94.635.

24 “(B) If there are no procedures for amendment in the governing documents:

25 “(i) For an amendment to a recorded governing document other than bylaws, the owners may
26 amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590,
27 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647,
28 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680,
29 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and
30 94.780 **and section 3 of this 2013 Act** by a vote of at least 75 percent of the owners in the planned
31 community.

32 “(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the
33 bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1),
34 (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660,
35 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716,

1 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and section 3 of this 2013 Act** by a
2 vote of at least a majority of the owners in the planned community.

3 “(iii) An amendment may be adopted at a meeting held in accordance with the governing docu-
4 ments or by another procedure permitted by the governing documents following the procedures
5 prescribed in ORS 94.647, 94.650 or 94.660.

6 “(iv) An amendment to a recorded declaration shall be executed, certified and recorded as pro-
7 vided in ORS 94.590 (2) and (3) and shall be subject to ORS 94.590 (5). An amendment to the bylaws
8 and any other governing document shall be executed and certified as provided in ORS 94.590 (3) and
9 shall be recorded in the office of the recording officer of every county in which the planned com-
10 munity is located if the bylaws or other governing document to which the amendment relates were
11 recorded.

12 “(C) An amendment adopted pursuant to this paragraph shall include:

13 “(i) A reference to the recording index numbers and date of recording of the declaration or
14 other governing document, if recorded, to which the amendment relates; and

15 “(ii) A statement that the amendment is adopted pursuant to the applicable subparagraph of this
16 paragraph.

17 “(b)(A) If the governing documents do not provide for the formation of an association of owners,
18 at least 10 percent of the owners in the planned community or any governing entity may initiate the
19 formation of an association as provided in this paragraph. The owners or the governing entity ini-
20 tiating the association formation shall call an organizational meeting for the purpose of voting
21 whether to form an association described in ORS 94.625. The notice of the meeting shall:

22 “(i) Name the initiating owners or governing entity;

23 “(ii) State that the organizational meeting is for the purpose of voting whether to form an as-
24 sociation in accordance with the proposed articles of incorporation;

25 “(iii) State that if the owners vote to form an association, the owners may elect the initial board
26 of directors provided for in the articles of incorporation and may adopt the initial bylaws;

27 “(iv) State that to form an association requires an affirmative vote of at least a majority of the
28 owners in the planned community, or, if a larger percentage is specified in the applicable governing
29 document, the larger percentage;

30 “(v) State that to adopt articles of incorporation, to elect the initial board of directors pursuant
31 to the articles of incorporation or to adopt the initial bylaws requires an affirmative vote of at least
32 a majority of the owners present;

33 “(vi) State that if the initial board of directors is not elected, an interim board of directors shall
34 be elected pursuant to bylaws adopted as provided in subparagraph (C) of this paragraph;

35 “(vii) State that a copy of the proposed articles of incorporation and bylaws will be available
36 at least five business days before the meeting and state the method of requesting a copy; and

37 “(viii) Be delivered in accordance with the declaration and bylaws. If there is no governing
38 document or the document does not include applicable provisions, the owners or governing entity
39 shall follow the procedures prescribed in ORS 94.650 (4).

40 “(B) At least five business days before the organizational meeting, the initiating owners or
41 governing entity shall cause articles of incorporation and bylaws to be drafted. The bylaws shall
42 include, to the extent applicable, the information required by ORS 94.635.

43 “(C) At the organizational meeting:

44 “(i) Representatives of the initiating owners or governing entity shall, to the extent not incon-
45 sistent with the governing documents, conduct the meeting according to Robert’s Rules of Order as

1 provided in ORS 94.657.

2 “(ii) The initiating owners or governing entity shall make available copies of the proposed arti-
3 cles of incorporation and the proposed bylaws.

4 “(iii) The affirmative vote of at least a majority of the owners of a planned community, or, if a
5 larger percentage is specified in the applicable governing document, the larger percentage, is re-
6 quired to form an association under this paragraph.

7 “(iv) If the owners vote to form an association, the owners shall adopt articles of incorporation
8 and may elect the initial board of directors as provided in the articles of incorporation, adopt bylaws
9 and conduct any other authorized business by an affirmative vote of at least a majority of the
10 owners present. If the owners do not elect the initial board of directors, owners shall elect an in-
11 terim board of directors by an affirmative vote of at least a majority of the owners present to serve
12 until the initial board of directors is elected.

13 “(v) An owner may vote by proxy, or by written ballot, if approved, in the discretion of a ma-
14 jority of the initiating owners or governing entity.

15 “(D) Not later than 10 business days after the organizational meeting, the board of directors
16 shall:

17 “(i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chap-
18 ter 65;

19 “(ii) Cause the notice of planned community described in subsection (4) of this section to be
20 prepared, executed and recorded in accordance with subsection (4) of this section;

21 “(iii) Provide a copy of the notice of planned community to each owner, together with a copy
22 of the adopted articles of incorporation and bylaws, if any, or a statement of the procedure and
23 method for adoption of bylaws described in subparagraph (C) of this paragraph. The copies and any
24 statement shall be delivered to each lot, mailed to the mailing address of each lot or mailed to the
25 mailing addresses designated by the owners in writing; and

26 “(iv) Cause a statement of association information to be prepared, executed and recorded in
27 accordance with ORS 94.667.

28 “(E) If the owners vote to form an association, all costs incurred under this paragraph, including
29 but not limited to the preparation and filing of the articles of incorporation, drafting of bylaws,
30 preparation of notice of meeting and the drafting, delivery and recording of all notices and state-
31 ments shall be a common expense of the owners and shall be allocated as provided in the appropri-
32 ate governing document or any amendment thereto.

33 “(2)(a) The owners of lots in a Class I or Class II planned community that are subject to the
34 provisions of ORS chapter 94 specified in subsection (1) of this section may elect to be subject to
35 any other provisions of ORS 94.550 to 94.783 upon compliance with the procedures prescribed in
36 subsection (1) of this section.

37 “(b) If the owners of lots in a Class I or Class II planned community elect to be subject to ad-
38 ditional provisions of ORS 94.550 to 94.783, unless the notice of planned community otherwise re-
39 quired or permitted under subsection (4) of this section includes a statement of the election pursuant
40 to this paragraph, the board of directors of the association shall cause the notice of planned com-
41 munity described in subsection (4) of this section to be prepared, executed and recorded in accord-
42 ance with subsection (4) of this section.

43 “(3)(a) The owners of lots in a Class III planned community created before January 1, 2002, may
44 elect to be subject to provisions of ORS 94.550 to 94.783 upon compliance with the applicable pro-
45 cedures in subsection (1) of this section.

1 “(b) If the owners of lots in a Class III planned community elect to be subject to provisions of
2 ORS 94.550 to 94.783, the board of directors of the association shall cause the notice of planned
3 community described in subsection (4) of this section to be prepared, executed and recorded in ac-
4 cordance with subsection (4) of this section.

5 “(4) The notice of planned community required or permitted by this section shall be:

6 “(a) Titled ‘Notice of Planned Community under ORS 94.572’;

7 “(b) Executed by the president and secretary of the association; and

8 “(c) Recorded in the office of the recording officer of every county in which the property is lo-
9 cated.

10 “(5) The notice of planned community shall include:

11 “(a) The name of the planned community and association as identified in the recorded declara-
12 tion, conditions, covenants and restrictions or other governing document and, if different, the cur-
13 rent name of the association;

14 “(b) A list of the properties, described as required for recordation in ORS 93.600, within the ju-
15 risdiction of the association;

16 “(c) Information identifying the recorded declaration, conditions, covenants and restrictions or
17 other governing documents and a reference to the recording index numbers and date of recording
18 of the governing documents;

19 “(d) A statement that the property described in accordance with paragraph (b) of this subsection
20 is subject to specific provisions of the Oregon Planned Community Act;

21 “(e) A reference to the specific provisions of the Oregon Planned Community Act that apply to
22 the subject property and a reference to the subsection of this section under which the application
23 is made; and

24 “(f) If an association is formed under subsection (1)(b)(A) of this section, a statement to that
25 effect.

26 “(6) An amended statement shall include a reference to the recording index numbers and the
27 date of recording of prior statements.

28 “(7) The county clerk may charge a fee for recording a statement under this section according
29 to the provisions of ORS 205.320 (4).

30 “(8) The board of directors of an association not otherwise required to cause a notice of planned
31 community described in subsection (4) of this section to be prepared and recorded under this section
32 may cause a notice of planned community to be prepared, executed and recorded as provided in
33 subsection (4) of this section.

34 “(9) Title to a unit, lot or common property in a Class I or Class II planned community created
35 before January 1, 2002, may not be rendered unmarketable or otherwise affected by a failure of the
36 planned community to be in compliance with a requirement of this section.

37 “(10) As used in this section:

38 “(a) ‘Governing entity’ means an incorporated or unincorporated association, committee, person
39 or any other entity that has authority, under a governing document, to maintain commonly main-
40 tained property, impose assessments on lots or to act on behalf of lot owners within the planned
41 community on matters of common concern.

42 “(b) ‘Recorded declaration’ means an instrument recorded with the county recording officer of
43 the county in which the planned community is located that contains conditions, covenants and re-
44 strictions binding lots in the planned community or imposes servitudes upon the real property.”.

45 In line 23, delete “4” and insert “5”.

- 1 On page 7, line 16, delete “5” and insert “6” and delete “6” and insert “7”.
- 2 In line 18, delete “6” and insert “7”.
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