

Senate Bill 1529

Sponsored by Senator HANSELL (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits enforcement of residential irrigation requirements by homeowners association following finding or declaration of existing or likely drought conditions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to community water supply; amending ORS 94.572 and 94.630; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 94.630 is amended to read:

5 94.630. (1) Subject to [subsection (2)] **subsections (2) and (5)** of this section and except as otherwise provided in its declaration or bylaws, a homeowners association may:

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7 (a) Adopt and amend bylaws, rules and regulations for the planned community;

8 (b) Adopt and amend budgets for revenues, expenditures and reserves, and collect assessments from owners for common expenses and the reserve account established under ORS 94.595;

9 (c) Hire and terminate managing agents and other employees, agents and independent contractors;

10 (d) Defend against any claims, proceedings or actions brought against it;

11 (e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative proceedings in its own name and without joining the individual owners in the following:

12 (A) Matters relating to the collection of assessments and the enforcement of governing documents;

13 (B) Matters arising out of contracts to which the association is a party;

14 (C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;

15 (D) Matters, including but not limited to actions for damage, destruction, impairment or loss of use, relating to or affecting:

16 (i) Individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

17 (ii) Common property;

18 (E) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if:

19 (i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

20 (ii) Required to facilitate repair to any common property; and

21 (F) Any other matter to which the association has standing under law or pursuant to the dec-

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NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 laration or bylaws;
- 2 (f) Make contracts and incur liabilities;
- 3 (g) Regulate the use, maintenance, repair, replacement and modification of common property;
- 4 (h) Cause additional improvements to be made as a part of the common property;
- 5 (i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or
6 personal property, except that common property may be conveyed or subjected to a security interest
7 only pursuant to ORS 94.665;
- 8 (j) Grant easements, leases, licenses and concessions through or over the common property as
9 provided in ORS 94.665;
- 10 (k) Modify, close, remove, eliminate or discontinue the use of common property, including any
11 improvement or landscaping, regardless of whether the common property is mentioned in the decla-
12 ration, provided that:
- 13 (A) Nothing in this paragraph is intended to limit the authority of the association to seek ap-
14 proval of the modification, closure, removal, elimination or discontinuance by the owners; and
- 15 (B) Modification, closure, removal, elimination or discontinuance other than on a temporary
16 basis of any swimming pool, spa or recreation or community building must be approved by at least
17 a majority of owners voting on the matter at a meeting or by written ballot held in accordance with
18 the declaration, bylaws or ORS 94.647;
- 19 (L) Impose and receive any payments, fees or charges for the use, rental or operation of the
20 common property and services provided to owners;
- 21 (m) Adopt rules regarding the termination of utility services paid for out of assessments of the
22 association and access to and use of recreational and service facilities available to owners. The
23 rules must provide for written notice and an opportunity to be heard before the association may
24 terminate the rights of any owners to receive the benefits or services until the correction of any
25 violation covered by the rule has occurred;
- 26 (n) Impose charges for late payment of assessments and attorney fees related to the collection
27 of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines
28 for violations of the declaration, bylaws, rules and regulations of the association, provided that the
29 charge imposed or the fine levied by the association is based:
- 30 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
31 delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses
32 designated in writing by the owners; or
- 33 (B) On a resolution of the association or its board of directors that is delivered to each lot,
34 mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing
35 by the owners;
- 36 (o) Impose reasonable charges for the preparation and recordation of amendments to the decla-
37 ration;
- 38 (p) Provide for the indemnification of its officers and the board of directors and maintain li-
39 ability insurance for directors and officers;
- 40 (q) Assign its right to future income, including the right to receive common expense assess-
41 ments; and
- 42 (r) Exercise any other powers necessary and proper for the administration and operation of the
43 association.
- 44 (2) *[Notwithstanding subsection (1) of this section,]* A declaration may not impose any limitation
45 on the ability of the association to deal with a declarant that is more restrictive than the limitations

1 imposed on the ability of the association to deal with any other person, except during the period
 2 of declarant control under ORS 94.600.

3 (3) A permit or authorization, or an amendment, modification, termination or other instrument
 4 affecting a permit or authorization, issued by the board of directors that is authorized by law, the
 5 declaration or bylaws may be recorded in the deed records of the county in which the planned
 6 community is located. A permit or authorization, or an amendment, modification, termination or
 7 other instrument affecting a permit or authorization, recorded under this subsection shall:

8 (a) Be executed by the president and secretary of the association and acknowledged in the
 9 manner provided for acknowledgment of instruments by the officers;

10 (b) Include the name of the planned community and a reference to where the declaration and
 11 any applicable supplemental declarations are recorded;

12 (c) Identify, by the designations stated or referenced in the declaration or applicable supple-
 13 mental declaration, all affected lots and common property; and

14 (d) Include other information and signatures if required by law, the declaration, bylaws or the
 15 board of directors.

16 (4)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative
 17 proceeding in which the association and an owner have an adversarial relationship, the party that
 18 intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution
 19 program available within the county in which the planned community is located that is in substan-
 20 tial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must
 21 be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in
 22 the records of the association, for the other party.

23 (b) If the party receiving the offer does not accept the offer within 10 days after receipt by
 24 written notice hand-delivered or mailed by certified mail, return receipt requested, to the address,
 25 contained in the records of the association, for the other party, the initiating party may commence
 26 the litigation or the administrative proceeding. The notice of acceptance of the offer to participate
 27 in the program must contain the name, address and telephone number of the body administering the
 28 dispute resolution program.

29 (c) If a qualified dispute resolution program exists within the county in which the planned
 30 community is located and an offer to use the program is not made as required under paragraph (a)
 31 of this subsection, litigation or an administrative proceeding may be stayed for 30 days upon a mo-
 32 tion of the noninitiating party. If the litigation or administrative action is stayed under this para-
 33 graph, both parties shall participate in the dispute resolution process.

34 (d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resol-
 35 ution process is not completed within 30 days after receipt of the initial offer, the initiating party
 36 may commence litigation or an administrative proceeding without regard to whether the dispute
 37 resolution is completed.

38 (e) Once made, the decision of the court or administrative body arising from litigation or an
 39 administrative proceeding may not be set aside on the grounds that an offer to use a dispute resol-
 40 ution program was not made.

41 (f) The requirements of this subsection do not apply to circumstances in which irreparable harm
 42 to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect
 43 assessments, other than assessments attributable to fines.

44 **(5) A provision of a planned community's declaration, bylaws, rules, regulations or land-**
 45 **scaping or architectural guidelines that imposes irrigation requirements on an owner shall**

1 **be void and unenforceable following:**

2 (a) **A declaration by the Governor that a severe, continuing drought exists or is likely**
3 **to exist;**

4 (b) **A finding by the Water Resources Commission that a severe or continuing drought**
5 **exists or is likely to occur; or**

6 (c) **Adoption by the governing body of a political subdivision within which the planned**
7 **community is located of an ordinance requiring conservation or curtailment of water use.**

8 **SECTION 2.** ORS 94.572 is amended to read:

9 94.572. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was
10 not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5)
11 to (9), 94.625, 94.626, 94.630 (1), (3), [and] (4) **and (5)**, 94.639, 94.640, 94.641, 94.642, 94.645, 94.647,
12 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,
13 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777
14 and 94.780 to the extent that those statutes are consistent with any governing documents. If the
15 governing documents do not provide for the formation of an association, the requirements of this
16 subsection are not effective until the formation of an association in accordance with paragraph (b)
17 of this subsection. If a provision of the governing documents is inconsistent with this subsection, the
18 owners may amend the governing documents using the procedures in this subsection:

19 (A) In accordance with the procedures for the adoption of amendments in the governing docu-
20 ments and subject to any limitations in the governing documents, the owners may amend the in-
21 consistent provisions of the governing documents to conform to the extent feasible with this section
22 and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3), [and] (4) **and (5)**, 94.639, 94.640,
23 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665,
24 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728,
25 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to
26 amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

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

28 (i) For an amendment to a recorded governing document other than bylaws, the owners may
29 amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590,
30 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,
31 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,
32 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777
33 and 94.780 by a vote of at least 75 percent of the owners in the planned community.

34 (ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the
35 bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1),
36 (3), [and] (4) **and (5)**, 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658,
37 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712,
38 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 by a vote of at least a
39 majority of the owners in the planned community.

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

43 (iv) An amendment to a recorded declaration shall be executed, certified and recorded as pro-
44 vided in ORS 94.590 (2) and (3) and shall be subject to ORS 94.590 (5). An amendment to the bylaws
45 and any other governing document shall be executed and certified as provided in ORS 94.590 (3) and

1 shall be recorded in the office of the recording officer of every county in which the planned com-
2 munity is located if the bylaws or other governing document to which the amendment relates were
3 recorded.

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

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

7 (ii) A statement that the amendment is adopted pursuant to the applicable subparagraph of this
8 paragraph.

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

14 (i) Name the initiating owners or governing entity;

15 (ii) State that the organizational meeting is for the purpose of voting whether to form an asso-
16 ciation in accordance with the proposed articles of incorporation;

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

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

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

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

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

29 (viii) Be delivered in accordance with the declaration and bylaws. If there is no governing doc-
30 ument or the document does not include applicable provisions, the owners or governing entity shall
31 follow the procedures prescribed in ORS 94.650 (4).

32 (B) At least five business days before the organizational meeting, the initiating owners or gov-
33 erning entity shall cause articles of incorporation and bylaws to be drafted. The bylaws shall in-
34 clude, to the extent applicable, the information required by ORS 94.635.

35 (C) At the organizational meeting:

36 (i) Representatives of the initiating owners or governing entity shall, to the extent not incon-
37 sistent with the governing documents, conduct the meeting according to Robert's Rules of Order as
38 provided in ORS 94.657.

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

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

44 (iv) If the owners vote to form an association, the owners shall adopt articles of incorporation
45 and may elect the initial board of directors as provided in the articles of incorporation, adopt bylaws

1 and conduct any other authorized business by an affirmative vote of at least a majority of the
2 owners present. If the owners do not elect the initial board of directors, owners shall elect an in-
3 terim board of directors by an affirmative vote of at least a majority of the owners present to serve
4 until the initial board of directors is elected.

5 (v) An owner may vote by proxy, or by written ballot, if approved, in the discretion of a majority
6 of the initiating owners or governing entity.

7 (D) Not later than 10 business days after the organizational meeting, the board of directors
8 shall:

9 (i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chapter
10 65;

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

13 (iii) Provide a copy of the notice of planned community to each owner, together with a copy of
14 the adopted articles of incorporation and bylaws, if any, or a statement of the procedure and method
15 for adoption of bylaws described in subparagraph (C) of this paragraph. The copies and any state-
16 ment shall be delivered to each lot, mailed to the mailing address of each lot or mailed to the
17 mailing addresses designated by the owners in writing; and

18 (iv) Cause a statement of association information to be prepared, executed and recorded in ac-
19 cordance with ORS 94.667.

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

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

29 (b) If the owners of lots in a Class I or Class II planned community elect to be subject to addi-
30 tional provisions of ORS 94.550 to 94.783, unless the notice of planned community otherwise required
31 or permitted under subsection (4) of this section includes a statement of the election pursuant to this
32 paragraph, the board of directors of the association shall cause the notice of planned community
33 described in subsection (4) of this section to be prepared, executed and recorded in accordance with
34 subsection (4) of this section.

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

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

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

43 (a) Titled "Notice of Planned Community under ORS 94.572";

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

45 (c) Recorded in the office of the recording officer of every county in which the property is lo-

1 cated.

2 (5) The notice of planned community shall include:

3 (a) The name of the planned community and association as identified in the recorded declaration,
 4 conditions, covenants and restrictions or other governing document and, if different, the current
 5 name of the association;

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

8 (c) Information identifying the recorded declaration, conditions, covenants and restrictions or
 9 other governing documents and a reference to the recording index numbers and date of recording
 10 of the governing documents;

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

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

16 (f) If an association is formed under subsection (1)(b)(A) of this section, a statement to that ef-
 17 fect.

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

20 (7) The county clerk may charge a fee for recording a statement under this section according
 21 to the provisions of ORS 205.320 (1)(d).

22 (8) The board of directors of an association not otherwise required to cause a notice of planned
 23 community described in subsection (4) of this section to be prepared and recorded under this section
 24 may cause a notice of planned community to be prepared, executed and recorded as provided in
 25 subsection (4) of this section.

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

29 (10) As used in this section:

30 (a) "Governing entity" means an incorporated or unincorporated association, committee, person
 31 or any other entity that has authority, under a governing document, to maintain commonly main-
 32 tained property, impose assessments on lots or to act on behalf of lot owners within the planned
 33 community on matters of common concern.

34 (b) "Recorded declaration" means an instrument recorded with the county recording officer of
 35 the county in which the planned community is located that contains conditions, covenants and re-
 36 strictions binding lots in the planned community or imposes servitudes upon the real property.

37 **SECTION 3. This 2016 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
 39 **on its passage.**

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