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My comments on
House Bill 2722

Representative A. Richard Vial should honestly state his conflict of interest rather than sponsor these homeowners associations bills: [HB 2722](#), [HB3056](#), [HB3057](#), [HB3058](#), [HB3059](#), and [HB 3094](#). He is an example of the revolving door between government and the industries governed.

If House Bill 2722 merely restrained a homeowners association (HOA) from requiring homeowners to water their yards during a drought, I would be in favor of it. But HB 2722 gives HOA boards of directors the new power to reduce or cut off irrigation even when there is **no** declaration of drought by the Governor, Water Resources Commission, or other governing body. Conversely, HB 2722 does **not** require anybody to reduce irrigation when there **is** a declaration of drought. It gives HOA boards the power to require landscape plan approval. It lets HOA boards mandate the removal of homeowners' existing landscape, based on the subjective and possibly arbitrary claim that it is not water-conserving. The new things the board can require are vague, creating new opportunities for fining, litigation, and foreclosure:

*Require the use of **best practices** (specifically?) and **industry standards** (what standards?) to **reduce the landscaped areas** (how reduced? reduced to rubble?) and **minimize** (to zero?) irrigation of existing landscaped general common elements where **turf is necessary for the function** (what function?) of the general common elements.*

With new control of a homeowner's yard, the HOA board can dictate major changes like tree removal. The time required to recover from the landscape damage caused by a bad board, such as the time for replacement trees to mature, is so long that a board can effectively make a homeowner miserable and move out. This is typical of what HOA boards do to target dissent. There are no checks and balances in HOA government. There is only one branch of government, the board. This governing scheme for HOAs was established by Oregon legislation.

The trade association [Community Associations Institute](#), and law firms / collection agencies such as [Vial Fotheringham](#), profit from creating and enforcing new rules, to the detriment of the consumers of housing, the homeowners.

The Oregon [Bill of Rights](#), Section 21, says "*No ex-post facto law, or law impairing the obligation of contracts shall ever be passed*". House Bill 2722 should not be exempt. The Bill of Rights preserves our rights and obligations contained in the HOA founding documents: the Declaration of Ownership and Bylaws. Historically, the wealthy with more political influence have been able to use the law to escape their contractual obligations. Throughout the United States, the Community Associations Institute lobbies state legislators to override HOA governing documents to give HOA boards more power. They claim that the contractually required process for changing the HOA's governing documents by getting homeowner approval is too difficult. But when individual homeowners similarly want to override the governing documents, the HOA industry makes the opposite argument, that homeowners need to go through the contractual process for changing the governing documents. This argument double standard is occurring right here in Oregon, right now. On April 6, 2017, the HOA industry argued both ways nearly simultaneously. They argued in favor of HB2722, which lets HOA boards override HOA governing documents. Less than 20 minutes later, they opposed Senate Bill 470, saying the homeowners need to amend their governing documents by a vote of the homeowners, not through legislation.

They argued in favor of HB2722, which lets HOA boards override HOA governing documents...

House Committee On Energy and Environment

Public Hearing [3/6/2017 3:00 PM](#), HR D

[HB 2722](#) Relating to governing documents of housing associations; declaring an emergency.

Eugene Grant [written testimony](#), Condominium/HOA Legislative Working Group "LC 1074 expressly allows the board to override the old landscaping requirements without a 75% approval of the association membership, an approval percentage exceedingly difficult to achieve."

0:08:06 **Representative A. Richard Vial**: "Virtually all new housing that is built today is contained in some kind of homeowners association"

0:08:34 "In many of those projects, the Declaration, that set of covenants that tells folks what their rights and liabilities are, contains in the very declaration itself a requirement to water your yard. And so if someone wants to change that declaration and there's a 75% vote required to change the declaration, it may be impossible for the board of directors to a program like that that Representative McLain just described to us."

0:12:21 "It also gives the boards of directors the ability to change those requirements without having to go out and get a vote. So you can get changes to the CC&Rs without having to get the 75% vote for the future, including the installation of xeriscaping."

0:13:48 **Representative Susan McLain** "What this does is go one step further and allow that board to be proactive in conservation and actually allow, and actually go forward with some more pro-conservation activity, and right now they have to reach a 75% actual vote from their membership to do anything, and so this gives a little bit more power to their leadership to allow them still to have, the folks that they actually decide to have on their board, have a little bit more opportunity to be conservation minded."

Then they opposed Senate Bill 470, saying the homeowners need to amend their governing documents by a vote of the homeowners, not through legislation...

Senate Committee On Business and Transportation

Public Hearing [3/6/2017 3:00 PM](#), HR B

[SB 470](#) Prohibits provision in instrument conveying real property that restricts use of real property as certified family child care home.

0:28:50 **Greg Coxey**: "I'm a partner with the law firm Vial Fotheringham. I'm actually here on the behalf of the Community Associations Institute Legislative Action Committee here in Oregon dealing with legislation for homeowners associations, as well as the Oregon Washington Community Association Managers, and the ad hoc Condo-HOA Working Group. Between these organizations, we have representation of thousands of homeowners associations in the state of Oregon."

0:29:54 "Most governing documents do prohibit a business type entity, however the individual associations can amend their governing documents and provide for that sort of thing and it's up to each one of those associations to do so."