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HOUSE JOINT RESOLUTION NO. 56

Offered January 12, 2022

Prefiled January 11, 2022

Directing the Joint Legislative Audit and Review Commission to study the overall efficiency and effectiveness of common interest communities, with special regard to the accountability structure available for the enforcement of the provisions in the governing documents of associations subject to the Property Owners' Association Act. Report.

Patron—Convirs-Fowler

Committee Referral Pending

WHEREAS, in 1999, the General Assembly enacted House Joint Resolution 645 requesting the Real Estate Board to study the efficiency and effectiveness of the remedies available for enforcement of the Property Owners' Association Act and the governing documents of property owners' associations; and

WHEREAS, in 2000, the Real Estate Board concluded that no changes should be made to the existing Property Owners' Association Act, but determined the following: (i) that there is undeniable evidence of the existence of executive organs of property owners' associations that are violating the Act, including the provisions governing disclosure, open meetings, and recordkeeping, and (ii) that the provisions of the existing Act clearly address such violations, and amending the law to include additional restrictions or requirements of associations or their governing bodies will not solve the problem; and

WHEREAS, in 2001, the General Assembly enacted legislation, House Bill 2429, that created the position of the Community Association Liaison and in 2003 began to shift its focus to the regulation of common interest community managers; and

WHEREAS, in 2007, the Virginia Housing Commission was tasked with addressing the issue of constituent complaints regarding common interest community associations, including the lack of a mechanism for the resolution of disputes between owners and their associations and the lack of regulation of common interest community managers; and

WHEREAS, in 2008, the General Assembly enacted House Bill 516 and Senate Bill 301 to create the Common Interest Community Board and the Common Interest Community Ombudsman; and

WHEREAS, in 2018, the Joint Legislative Audit and Review Commission conducted a study into the licensing process of common interest community managers by the Department of Professional and Occupational Regulation, found a record of only one violation committed by a common interest community manager in the preceding five years, and determined such licensing process to be ineffective; and

WHEREAS, membership in a property owners' association is mandatory and the governing documents of such association require the payment of a mandatory assessment fee to the association for the maintenance and upkeep of common areas for the overall good of the members of the association; and

WHEREAS, property owners' associations, through their member-elected boards of directors, operate as quasi-governmental bodies and are relied upon to act in the best interest of the association; and

WHEREAS, there are currently no education, accountability, oversight, or enforcement mechanisms in place for the board of directors of any property owners' association to protect the rights and public welfare of its members with regard to a board of directors or individual board member that misconstrues or runs afoul of their obligations and responsibilities to the association pursuant to the association's governing documents or the law; and

WHEREAS, although current law allows parties aggrieved by a property owners' association to petition a court for damages, injunctive relief, or any other remedy available at law or in equity, doing such is costly and is not the most effective way to resolve association disputes; and

WHEREAS, it is in the best interest of the Commonwealth to provide for the lawful operation and management of property owners' associations and to ensure the protection of the rights of individual members of such associations; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission be directed to study the overall efficiency and effectiveness of common interest communities, with special regard to the accountability structure available for the enforcement of the provisions in the governing documents of associations subject to the Property Owners' Association Act.

In conducting its study, the Joint Legislative Audit and Review Commission (JLARC) shall conduct public hearings and solicit input from a diverse group of interested parties on the scope and nature of

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59 the problems related to the enforcement of the Property Owners' Association Act, other applicable laws,
60 and the documents governing these associations. JLARC shall also conduct a case study of an existing
61 property owners' association, to be recommended by the General Assembly, in order to accurately assess
62 the issues plaguing these associations, both anecdotally and holistically.

63 All agencies of the Commonwealth shall provide assistance to JLARC for this study, upon request.

64 The Joint Legislative Audit and Review Commission shall complete its meetings by November 30,
65 2022, and the chairman shall submit to the Division of Legislative Automated Systems an executive
66 summary of its findings and recommendations no later than the first day of the 2023 Regular Session of
67 the General Assembly. The executive summary shall state whether the Joint Legislative Audit and
68 Review Commission intends to submit to the General Assembly and the Governor a report of its
69 findings and recommendations for publication as a House or Senate document. The executive summary
70 and report shall be submitted as provided in the procedures of the Division of Legislative Automated
71 Systems for the processing of legislative documents and reports and shall be posted on the General
72 Assembly's website.