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Comments on HOA Budget Approval/Rejection: [HB 23-1131](#)

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*****Our Proposal for Budget Approval/Rejection Reform Begins on Page 3
Last Page is extract from CCIOA concerning HOA Budget Process

All homeowners, and not just a special group attending a meeting, should be able to vote/disapprove an HOA's proposed budget and other highly important HOA governance issues. A standardized and mandatory process for budget presentation and approval/disapproval is needed overriding any process in HOA governing documents.

An Overview of using Vote by Mail (VBM) for Budget Approval/Rejection:

A community vote by mail (VBM) on the budget should be mandatory and conducted similar to voting on Declaration changes and electing Board of Directors. This process accomplishes informing the homeowner on budget content prior to a vote; allows for homeowners to make an informed decision (vote) on the budget in the privacy of their home versus at an in-person vote in a community meeting. Such meetings are typically riddled with unorganized debate and/or dissension and are intimidating to most; VBM protects the privacy of one's vote vs having to publicly vote at a meeting to reject a budget; VBM is a familiar, proven and easily understood process vs that which is in State HOA law (CCIOA) and in governing documents; VBM can mitigate/end proxy hoarding or the practice of defaulting incorrectly completed proxies to a Board member (**there are no proxies**); VBM ensures the equal value of each homeowner's vote is preserved and represented in a referendum; VBM values the vote of each homeowner the same vs valuing the vote of a homeowner at a meeting more; VBM encourages participation and mitigates exclusion (see below) of the many who can't attend a meeting through no fault of their own.

The **current budget approval/rejection** process in State HOA law (CCIOA) and in HOA governing documents is completed with no standard practice throughout the 9,000 HOAs in the State. HOA governing documents allow for many deviations in the process which results in the rubber stamping of most HOA budgets. Current practices of budget presentation and the opportunity to reject a budget based on only those at a meeting and are highly exclusionary (see below). Homeowners understand VBM but don't understand why VBM is not used to approve a budget that is equally important to elections in which VBM is used; homeowners want to participate in highly valued issues of which the budget is unquestionably one and not have such participation decided on whether they can attend a meeting (you don't attend, you don't vote on budget matters); the current process is not one vote per homeowner but one vote per homeowner based on meeting attendance (exclusionary); encourages proxy hoarding; and is not well understood.

The current budget approval process is an issue that churns up divisiveness in the community. It is a process created in State law and/or in HOA governing documents that makes little sense: homeowners don't have to approve but can reject a budget at a meeting; rejecting it requires an in person vote at a meeting to reject the budget that is equal to half or more of the community homeowners (not half of those in attendance). The **process is highly exclusionary** to those that can't attend mostly through no fault of their own: the disabled, those working at the time the vote takes place, those out of town or are on vacation or serving in the military, those too ill to attend, residents who require but can't arrange transportation, bad weather conditions and other factors that influence who can participate or not when they could otherwise easily participate by

VBM. VBM can eliminate the issue of “quorum or no quorum” as no vote is taken at a meeting (the same as with election of Board member). Budget presentation and approval is an issue of a degree of importance with electing Board members and changes to the Declaration and deserves the same vote of approval process which is VBM. VBM standardizes the approval/rejection process via a mail-in ballot without having to complicate the process through alternative methods such as proxy or remote voting. Everyone thus has equal opportunity to vote or not in privacy and the HOA tally homeowner votes with few, if any, security issues. VBM for budget approval/rejection requires no new process expenses related to acquiring expertise, software or hardware and is easily and highly acceptable to homeowners. VBM increases participation in the community and a feeling of being included.

Note, permitting remote or voting by email requires acquiring a computer based application or cumbersome process, generally with the approval of HOA legal counsel, that most HOAs are not equipped to perform. It requires developing a new process for verifying and counting votes (if not already in place) and special skill sets of those involved in the referendum, poses security issues, tabulating and/or recounting a vote of in-person and remote votes can result in calamity and the process doesn't resolve much in resolving the issue of homeowner exclusion. Archiving and recreating a vote count for auditing is problematic and difficult if not impossible.

Apathy is surely an issue in HOAs when it comes go governance. Low attendance at HOA meetings is too easy to blame on apathy alone. Many homeowners have just been worn out and quit attending meetings due the happenings during their previous attendance such as: bully Boards unwilling to let homeowners voice their opinions, homeowner questions rarely answered and mostly deflected, the meetings become unruly, being insulted by the Board or others in attendance and often the lack of rules of order at a meeting simply don't allow for productive conversation. Homeowner apathy has risen and attending any meeting for any reason is met negatively. Thus, conducting budget voting or elections in a public meeting makes no sense. VBM resolves this issue.

VBM mostly resolves the issue of proxy hoarding and the need to validate proxies. Under VBM there are no proxies.,

The issue of quorums is simplified with VBM: a one issue budget presentation meeting is conducted to share budget justification and related explanations. No voting is completed by the Board or homeowners. It allows for public debate and suggestions for change which the Board can subsequently consider prior to distributing their final version to homeowners. A budget presentation at a meeting, such as a year-end meeting or at a meeting in which other business is to be on the agenda and can result in Board action, will require a quorum. No in person voting on a budget will take place as voting is only through VBM.

We find no requirement in CCIOA or State law requiring or discussing VBM in the budget process nor is there a standard process among all HOAs.

VBM does not interfere with the Boards ability to resubmit a budget upon rejection and conducting a subsequent vote on any revised budget.

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VBM mitigates the rubber stamping of proposed budgets.

A few comments on HB 23-1131 in addressing the HOA Budget presentation and approval process. We suggest the Bill be changed to require Vote by Mail to be the standard process replacing CCIOA requirements and that which is in HOA Governing documents.

- The Bill should singularly focus on VBM for the reasons stated above and make it a mandate for all HOA budget approvals.
- The requirement in this Bill for 50% of homeowners and proxies to be in attendance at the budget presentation meeting will result in a high number, if not most, HOAs not being able to meet the threshold and roadblock the approval or rejection process.
- The concept of accepting or rejecting a budget via a meeting vs referendum is rejected by our organization for exclusionary reasons previously stated: a few should not decide for all in highly important issues.
- The Bill's concept of homeowners at a meeting deciding on approval or rejection of a budget is rejected and mostly mimics the current process.
- The use of proxies and related problematic issues such as proxy hoarding and defaulting incorrectly completed proxies to a Board member will continue under this Bill's proposal.
- The Bill should preclude defaulting of any votes for any reason to a Board member.
- The current budget presentation and approval/rejection process in CCIOA is an antiquated process making little sense in basing voting on the capability to attend a meeting; it ignores the updated and approved VBM method; it was and is structured to ensure the rubber stamping of budgets presented; and is highly exclusionary. This Bill closely follows the current process.
- There is no good argument to not use VBM for budget approval.

Proposed manner to approve or disapprove a budget for this Bill: A three step process to be implemented by all HOAs:

1) **Conduct a budget presentation meeting** at which the Board presents the budget and provides explanations on line entries; conducts a question-and-answer session and takes proposals for changes. No homeowner voting takes place.

The budget meeting will be announced to all homeowners using U.S. mail and an email and posted on the HOA website. The announcement will indicate that the purpose of the meeting is to present the proposed budget, allow for homeowner questions and proposed changes and that no homeowner voting will occur to approve or reject the budget, that such action will be completed only using VBM; and that within 30 days after this informational meeting a ballot package will be sent to all homeowners for casting their vote. A copy of the proposed budget will be included in this budget meeting announcement and in such a format and detail that the reader is able to discern each line item of income and expense and balance sheet lines entries.

The Board can make changes to the proposed budget at this meeting, providing all members are present and gain a majority vote, or in a subsequent Board meeting open to homeowners. Changes to the original budget proposal will be noted in the budget information and ballot envelope mailed to all homeowners with an explanation and reason for change. No quorum is required if this is a special budget meeting at which no other business is to be conducted. A quorum will be required if the budget is presented as part of the agenda at a meeting in which

other business is conducted. No approval or rejection of the budget is completed at the presentation meeting: this is only completed by VBM.

A majority of Board members must be present in person or virtually for this meeting or it shall be rescheduled.

It is suggested that DORA develop a form and instructional material to be included in the budget presentation announcement mailed to all homeowners, post it on their website and email it to all HOAs notifying them that this is now the required process under CCIOA for approving the budget.

2) Mail ballots (no proxy voting) and information packets including the budget to all homeowners accompanied by instructions for completion and critical dates for completion and submission of ballots. Ballots are only mailed after the presentation meeting and after all changes have been completed by the Board. The budget mailed with the ballot will indicate that it is the **Final Proposed Budget**. A statement in the packet indicating that no proxy votes will be used or accepted. A simple explanation indicating that the result of the referendum will be decided by counting YES or NO votes with the most votes resulting in either acceptance or rejection of the budget. The information packet will include explanations of specific budget line items: Reserve Fund use, planned funding levels, current level vs recommended level in latest reserve fund study or other identified source, a brief statement on the impact of underfunded reserves and any plans through assessment increases or special assessments to fund the reserve fund; active and approved capital improvement project(s) status to include description, amount estimated vs actual, estimated completion date; legal costs broken down by those incurred through ongoing law suits, attorney fees related to collection, lien and foreclosures; the amount of HOA assessments in delinquency; comparative presentation between last year's and proposed budget; any line item that has increased or decreased by 10% or more will be noted and explained; planned special assessments; a statement on homeowner assessments for the coming year; revenue from any legal settlements and how such funds will be used and segregated in the financial records; and a statement indicating the impact on the community if the budget is not passed such as service cutbacks and delayed maintenance and repair.

It is suggested that DORA develop a form and instructional material to be included in the budget informational-ballot packet mailed to all homeowners, post it on their website and email it to all HOAs and notify HOAs that this is now the required process under CCIOA for approving the budget.

Ballots mailed to all homeowners within 15 days after the budget presentation meeting. Homeowners have 20 days to send in or drop off ballots. The HOA will send out via email and post on the website a reminder to complete and send in ballots one week prior to the deadline to receive ballots. Ballots can be mailed in or dropped off at a community ballot box.

3) Votes are counted and the highest vote count, YES or NO, decides acceptance or rejection. If the budget is rejected the previous year's budget will be adopted. The Board can resubmit any rejected budget plan within 60 days for homeowner consideration after completing another budget presentation meeting (item 1) and mailing out ballots-information packets (item 2).

If the three-step process is not completed the proposed budget will be considered invalid and requires the previous year's budget to be utilized. The Board can resubmit a budget upon rejection or due to non-compliance with this Act and must complete this within 60 days from the beginning of the HOAs fiscal year. Only one revised budget proposal can be considered for a vote in any one fiscal year.

Remote, on-line or other method for casting ballots will only be acceptable if such a process is used in elections and can be evidenced to ensure security controls, internal controls preclude duplicate or fraudulent voting; verify voter identification; archive voting activity; and a reliable process to count or recount votes.

The practice of defaulting incorrectly completed ballots to a Board member or anyone else is precluded. The HOA will retain all ballots that are questionable or incorrectly completed but such votes are not counted and the HOA is not required to contact the voter when their ballot is completed incorrectly.

The mandates in this Bill apply to all HOAs and replace applicable budget presentation, approval and rejection procedures in CCIOA or in an HOA's governing documents. No taxpayer general funds required. All costs to implement acquired from HOA registration fees.

Extracted from State HOA Law (CCIOA):

38-33.3-303. Executive board members and officers - powers and duties - reserve funds - reserve study – audit

(4) (a) (I) Within ninety days after adoption of a proposed budget for the common interest community, the executive board shall mail, by first-class mail, or otherwise deliver, including posting the proposed budget on the association's website, a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the bylaws. ~~The executive board shall give notice to the unit owners of the meeting as allowed for in the bylaws.~~ (II) (A) Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specified in the declaration, whether or not a quorum is present. If the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.