

DRAFT

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

Provided by: Colorado HOA Forum www.coloradohoaforum.com

[Our Proposal for Budget Approval/Rejection Reform at end of this Document](#)

In brief, 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.

Overview and comments on current and proposed changes to HOA budget approval:

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 that is typically riddled with unorganized debate and/or dissension, is intimidating to most and their vote that is otherwise private with VBM becomes public; VBM ends 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; and 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 issue with budget approval is that it is completed with no standard practice throughout the 9,000 HOAs in the State. HOA governing documents allow for many deviations in the process and 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 are highly exclusionary (see below), don't allow for informed review and understanding of budgets prior to a vote, require unreasonable percentages of homeowners to be present at a meeting to veto a budget and the overall process is not well understood by residents. On the other hand, Vote by Mail (VBM), a typical process in most HOAs for elections can increase voter participation, is highly inclusionary and promotes a sense of community involvement, is easy to understand and is a proven and trusted means to approve or disapprove an HOA initiative or election. VBM totally resolves the issue of a few (at a meeting) deciding for the many, it is one vote per home, period.

The 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 equal to half or more of the community homeowners. 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. Budget presentation and approval is an issue of a degree of importance with electing Board members and changes to the Declaration: deserves the same vote of approval process which is VBM.

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, 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 at a meeting or otherwise can end up 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 and in society 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: bully Boards unwilling to let homeowners voice their opinions, never getting their questions answered, 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. Thus, 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 eliminated when using VBM. There is a budget presentation meeting requiring no quorum. There is no in-person vote or using proxies at any meeting as all voting is by mail-in ballot (the exception with submitting a ballot through a remote process must be explicitly permitted in the HOAs governing documents and be confirmed as a secured process)

We find no requirement in CCIOA or State law requiring a community vote by ballot. However, it is known that some HOAs use the ballot, others use the CCIOA guidelines and some use the process in their Declaration. Budget presentation and approval requires a standard process for all HOAs and a process that is acceptable, understandable and familiar to all HOAs. VBM is such a process.

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

VBM mitigates the rubber stamping and shot-gunning a budget approval through a public meeting process.

A few comments on HB 23-1131 in addressing the HOA Budget presentation and approval process. We suggest the Bill be simplified by endorsing Vote by Mail (VBM) in lieu of the Bill's proposal.

- The Bill should singularly focus on VBM for the reasons stated above and make it a mandate for all HOA budget approvals.
- The requirement 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 reasons previously stated. In particular, the process is exclusionary and allows for the few to decide for all.
- The Bill's concept of a small percentage of homeowners at a meeting deciding on approval or rejection of a budget is rejected and mostly mimics the current process.
- This is not a one vote for each housing unit proposal which is the process for issues of great importance in an HOA such as elections and changes to the Declaration. The budget is an issue of equal importance.
- The use of proxies and related problematic issues such as proxy hoarding and defaulting incorrectly completed proxies to a Board member will mostly be eliminated as proxies are not used with VBM.
- The Bill should preclude defaulting of any votes to a Board member.
- A VBM process, similar to that practiced in elections and governing document changes, results in better informed homeowners concerning a budget proposal that simply doesn't occur during a meeting. Three step: conduct a community meeting to debate the budget at which no vote is taken; mail out ballots with information packets explaining the budget; homeowners send in ballots, ballots counted and winner easily determined based on most votes.
- 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 identified in item 2 of this section and conducts a question-and-answer session and takes proposals for changes. The Board can vote on changes during the meeting or in a separate Board meeting open to the public. The changes will be noted in the budget information and ballot envelope mailed to all homeowners. 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. The budget presentation meeting date will be announced to homeowners no less than 30 days prior to the meeting presentation noting the purpose and restrictions concerning the budget presentation, that no voting on the budget will be conducted during the meeting and that the budget will be voted upon by ballot from all homeowners. Notification to homeowners of the presentation meeting will be completed by email and posting on the HOA website. A majority of Board members must be present in person or virtually for this meeting or it shall be rescheduled. The presentation meeting will not involve any vote of approval or rejection on the budget but the budget presented can be changed by a majority vote of the Board.

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. A statement in the packet indicating that no proxy votes will be used or accepted. A simple explanation of 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, current level of funding, last completed reserve fund study and recommendation, plans for funding and the impact on homeowners when this

account is underfunded; legal costs broken down by those incurred through ongoing law suits, cases settled, attorney fees related to collection efforts and those that are from routine operations; the amount of outstanding accounts; 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 assessment; 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.

Ballots mailed to all homeowners within 5 days after the budget presentation meeting. Homeowners have 2 weeks 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 the three-step process aforementioned.

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 that preclude duplicate voting; verify voter identification; archive voting activity; and vote confirm counting of 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.

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.