



**** ALERT ****

Date: February 28, 2011

From: Community Association Legislative Watch Committee (CALWC) of Central Indiana Chapter---Community Associations Institute
To: All Indiana Residents

RE: Update for HB 1058, HB 1541 and SB 0104

Dear Indiana Homeowner:

The Community Association Legislative Watch Committee would like to update all homeowners in Indiana of bills pending in the Indiana Legislature for the 2011 session.

Currently there are 3 bills (HB 1541, HB1058 and SB 0104) in the 2011 Indiana Legislature that impact all Homeowner Associations and residents in Indiana. We recognize and support the intent of these bills; however, in 2 cases (HB1058 and SB 0104) the current implementation of the intent of these bills will have major adverse financial impact to the Homeowner Associations in Indiana.

HB 1541. We not only support this bill but also recognize its benefit to Homeowner Associations.

A suggested minor enhancement would be in Sec.2.(7):

- (A) a homeowners association *or its agent*;
- (B) a condominium association *or its agent*;
- (A) a cooperative association *or its agent*;
- (A) a mobile home association *or its agent*;

HB 1058. We support the intent of this bill to enable the Indiana Attorney General to find and bring action against a homeowners association's board member who knowingly or intentionally used their board position to commit fraud or a criminal act. However, since this bill applies to all homeowners associations, we feel Sec.8.(a).(1)'s wording ("misappropriated or diverted") exposes any/all homeowners associations to a resident who disagrees with the valid fiduciary activities of the board, being able to initiate complaints against a board member. This action by a resident would cause unnecessary legal expenses to be incurred by the board to respond to

complaints and result in special assessments to avoid diverting necessary already budgeted monies. Diverting monies is an accepted Board practice, such as have to divert funds from landscaping to offset expenses of snow plowing and salting on community roads. In order to protect well managed boards, we would support removal of Sec.8.(a)(1) or changing the wording to "by a board member for personal gain;" or similar language.

SB 0104. We especially laud the purpose of this bill regarding the safety of children to limit access to retention ponds and to reduce the likelihood that a vehicle will enter a retention pond. However, we have major concerns, not addressed by this bill, with how this bill is implemented.

- (a) Since these requirements only apply to homeowners associations, a lot of retention ponds are unaffected leaving the purpose of the bill only partially effective.
- (b) The cost to design and build said structures, assessed by the municipalities on any part or all of the association, could result in a financial burden that may not be recoverable for the residents since they are the members of the association.
- (c) The bill contains no specifications or guidelines as to the type, materials, design or location of these structures, allowing for inconsistent application by different municipalities in different location.
- (d) The bill does not differentiate different characteristics of the location of the retention pond. Specifically, some retention ponds are platted to not be a part of the resident's property, i.e. common ground; whereas, other retention ponds are a part of the plat belonging to the resident as an easement.
- (e) The works board can assess the cost for said structure which means that no notice or time frame is offered to residents to erect said structures to comply with the law, nor is there any provision for resident's participation during any phase of the process of concept to construction.
- (f) There is no mention of who is responsible to maintain and pay for the maintenance of said structures once constructed and left with the homeowners association.

The Community Association Legislative Watch Committee of Central Indiana Chapter of CAI realizes that each neighborhood is unique and that these bills may or may not create a problem for your particular community. However, we feel it is important that every homeowner be aware of pending legislation that could impact the use of your property or the protections provided by your current property covenants.

If you would like a copy of the proposed Bills or more information regarding how you can provide your input or suggestions regarding these Bills to your state legislature, please contact the Central Indiana Chapter of CAI at the phone number or email listed on this ALERT!

Thank you for your time and consideration.

Matt Englert, PCAM
Chairman, Community Association Legislative Watch Committee