HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 27 Residential Properties
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Tanner	Cooper
2)	Civil Justice & Courts Policy Committee			
3)	General Government Policy Council			
4)	Finance & Tax Council			
5)	Policy Council			

SUMMARY ANALYSIS

A homeowners' association is a corporation responsible for the operation of a community in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments for violations of the governing documents. This bill:

- Revises the requirements for the inspection and copying of records for homeowners' associations.
- Requires additional disclosure to members of a homeowners' association if the association budget does not budget for deferred expenditures.
- Prohibits a director, officer or committee member of a homeowners' association from receiving compensation for service to the association. However, reimbursement for out of pocket expenses, recovery of insurance proceeds, or compensation authorized in advance by a majority vote of the owners are not prohibited.
- Provides that a fine greater than $1,000 by a homeowners' association against a parcel owner may become a lien on the property.
- Revises the procedure and requirements for board meetings and elections.
- Requires that an elected director of a condominium association or a homeowners' association must certify in writing within 30 days of being elected that he or she has read the governing documents of the association as well as the relevant statutes.
- Provides for additional disclosure to prospective purchasers.
- Provides for pre-suit mediation or pre-suit arbitration for disputes between homeowners' associations and a parcel owner or owners and parcel owners within the same homeowners' association before a complaint may be filed in court.
- Provides that three or more condominium associations may form a self-insurance fund to cover insurance deductibles applicable to insurance losses if the association is a not-for-profit corporation and meets certain criteria.

This bill does not appear to have a fiscal impact on state or local government revenues or expenditures.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

1. Background

Homeowners' association means a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1] Homeowners' associations are regulated under chapter 720, F.S.

2. Effect of Bill

Homeowners' Association -- Board Meetings

Current Law

Section 720.303(2), F.S., provides procedures for homeowners' association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for meetings between the board and its attorney relating to proposed or pending litigation. Members also have the right to attend all board meetings and speak for at least 3 minutes on any matter placed on the agenda by petition of the voting interests. However, a meeting between the board or a committee and the association's attorney held to discuss personnel matters is not open to the members.

Proposed Changes

This bill provides that board meetings are not open to board members when the meeting is between the board or a committee "to discuss proposed or pending litigation" with the association's attorney in addition to a discussion regarding personnel matters.

Homeowners' Association -- Records

Current Law

[1] Section 720.301(9), F.S.

Homeowners' associations must provide access to their records at all reasonable times within 10 business days of a written request for inspection or copying of the records. The failure of an association to provide access to records within 10 business days after receipt of a written request to do so creates a rebuttable presumption that the association willfully failed to comply.

Proposed Changes

This bill adds that the written request to see records must have been submitted by certified mail, return receipt requested. Therefore, unless the association receives a written request by certified mail, return receipt requested to inspect the official records, they will not be held to have willfully not complied. This bill further provides that if the copies exceed 25 pages then in addition to allowing an outside vendor to copy the records, association management company personnel can also copy the records. This bill provides that in addition to the actual costs of copying that the member may be charged, all reasonable costs, including personnel fees, may also be charged.

Homeowners' Association -- Budgets and Reserve Accounts

Current Law

Section 720.303, F.S., provides that, in addition to annual operating expenses, the association budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible, to the extent that the association's governing documents do not limit increases in assessments. An association is deemed to have provided reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves.

If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so by an affirmative vote of a majority of the total voting interests. Once established, the reserve accounts must be funded, maintained, or have their funding waived.[2] If the budget of the association does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in special assessments if reserves are not provided, then each financial report for the preceding fiscal year must contain a statement in conspicuous type.

Funding formulas for reserves can be based on either a separate analysis for each of the required assets or a pooled analysis of two or more of the required assets. If the association maintains a pooled account, then the amount of the contribution to the pooled reserve account must not be less than required to ensure the balance on hand at the beginning of the period for which the budget will go into effect, plus the projected annual cash inflows over the remaining estimated useful life of the assets. The projected annual cash inflows may include earning statements from investment principle.

Proposed Changes

This bill provides that if reserve accounts are not initially provided by the developer or elected by the membership, then reserve accounts are limited to the extent that the governing documents limit increases in assessments, including reserves. This bill further provides that if the reserve accounts are created initially by a developer or elected by the membership majority, then the reserves will be determined, maintained, and waived according to s. 720.303(6), F.S.

This bill declares that it does not preclude termination of a reserve account upon approval of a majority of the association voting interests. Upon such approval, this bill provides that the reserve account must be removed from the budget.

[2] Section 720.303(6)(d), F.S.

This bill also provides that if the budget of the association does not provide for reserve accounts created or established initially by the developer or elected by the majority of the voting interests, then there must be a statement in bold print on each financial report for the preceding fiscal year which states in part that the association does not provide reserve accounts for capital expenditures and owners may select to provide for reserve accounts themselves by a majority vote at a meeting or by a majority of the voting interests who provide written consent.

The bill provides that if the budget provides for funding of accounts for deferred expenditures, then each financial report for the preceding fiscal year must contain a statement in conspicuous type that states in part that the budget does provide for limited, voluntary deferred expenditure accounts and that those funds are not subject to the restrictions on use of funds set forth in that statute.

In addition to the projected annual cash inflows which may include earning statements from investment principle, this bill provides that accounts receivable, minus the allowance for doubtful accounts, may be included in the projected annual cash inflow.

This bill provides that a director, officer or committee member may not receive any salary or compensation from the association for the performance of his or her duties and may not benefit in any other way financially from service to the association. This bill provides that this does not prohibit:

- Participation in a financial benefit accruing to all or a significant number of members as a result of lawful actions taken by the board including in part maintenance or repair of community assets;
- Reimbursement for out-of-pocket expenses subject to approve in accordance with procedures established by the governing documents;
- Recovery of insurance proceeds which are derived from a policy of insurance maintained by the association for the benefit of its members;
- Any fee or compensation authorized in the governing documents; or
- Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by a proxy at the meeting of the members.

Homeowners' Association -- Remedies at Law

Current Law

Section 720.305, F.S., provides members and their tenants, guests and invitees must adhere to association rules and that the association may take action at law for failure or refusal to comply. The prevailing party in such litigation is entitled to attorney's fees and costs.

The association may levy a fine for each day a violation is continued and must provide only a single notice and opportunity to be heard. The fine cannot exceed $1,000, unless otherwise provided by the governing documents. A fine cannot become a lien against a parcel.

Proposed Changes

This bill provides that liens less than $1,000 cannot become a lien on the parcel. Therefore, a lien by the association which exceeds $1,000 may become a lien against a parcel.

Homeowners' Association -- Meetings and Elections

Current Law

Section 720.303(2), F.S., provides procedures for association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for those meetings between the board and its attorney relating to proposed or pending litigation.

Directors may not vote by proxy or secret ballot at board meetings, except that secret ballots may be used in the election of officers. This also applies to meetings of any committee or similar body when a final decision will be made regarding the spending of association funds. Proxy voting or secret ballots are not allowed when a final decision will be made on approving or disapproving architectural decisions with respect to a specific parcel of residential property owned by a member of the community.[3]

Elections of the board of directors must be conducted as provided in an association's governing documents. All members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself. The board of directors must be elected by plurality of votes. Any election dispute must be submitted to mandatory arbitration if it is between the association and a member.

Proposed Changes

The bill provides that if secret ballots are permitted under the governing documents, then an absentee ballot must be inside a blank inner envelope and mailed or delivered to the association inside another envelope with the required information on the outer envelope, which includes the name of the owner, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting the ballot. Once the eligibility to vote is verified and it is confirmed that there are no other ballots submitted for that lot or parcel, the inner envelope must be removed and added to the ballots of members who voted personally and must be opened when the ballots are counted. If there is more than one ballot submitted for a lot or parcel, the ballots for that lot or parcel are disqualified. This bill provides that no ballots received after the close of balloting by a vote of the membership will be considered.

This bill also provides that within 30 days of being elected to the board of directors, the director must certify in writing to the association secretary that he or she has read the governing documents[4] and that he or she will uphold and discharge the fiduciary responsibility of the members to the best of his or her ability. The bill provides that if the statement is not filed timely, then it will automatically disqualify the member from serving on the board of directors. The bill provides that the association secretary must keep the certification for 5 years after he or she is elected. However, the bill provides that failure to keep it on file does not affect the validity of any appropriate action.

Homeowners' Association -- Prospective Purchaser Disclosure

Current Law

Prospective parcel owners must be given a disclosure summary before the contract for sale is executed. It must be substantially similar in form to the one provided in s. 720.401, F.S. Statements on the form must declare in part that:

- A purchaser will be required to be a member of the homeowners' association;
- There are restrictive covenants;
- The purchaser will have to pay assessments;
- The purchaser may have to pay special assessments;
- Failure to pay assessments could result in a lien; and
- The developer may have the right to amend restrictive covenants without association approval.

Proposed Changes

This bill adds language that must be on the disclosure form. This bill adds that if the association is still under developer control, then the developer may have the right to amend restrictive covenants without association approval. The bill further provides that the disclosure form must state that there may be an

[3] Section 720.303(2)(c)3, F.S.

[4] The documents that must be certified in writing to have read are as follows: association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies.

obligation to pay assessments to a community development district for the purpose of retiring bond obligations used to construct the infrastructure or other improvements. This bill also provides that the declaration must state that the purchaser is jointly and severally liable with the previous owner for all unpaid assessments up to the time of the title transfer.

Homeowners' Association – Pre-suit Mediation and Pre-suit Arbitration

Current Law

Current law provides that a party is subject to pre-suit mediation initiated by an aggrieved party but not pre-suit arbitration before a dispute between a homeowners' association and a parcel owner may be filed in court. There is no provision for pre-suit arbitration of such disputes.

Proposed Changes

This bill provides for mandatory pre-suit mediation and mandatory pre-suit arbitration for disputes between a homeowners' association and an owner or owners and between parcel owners within the same homeowners' association when a suit is brought. However, the parties may mutually agree to pre-suit mediation and pre-suit arbitration prior to filing a suit.

This bill repeals s. 720.311, F.S., for disputes subject to dispute resolution by the department after the effective date of this act, and creates ss. 720.501, 720.502, 720.503, 720.504, F.S., 720.505, F.S., 720.506, F.S., 720.507, F.S., 720.508, F.S., 720.509, F.S., and 720.510, F.S., related to pre-suit dispute resolution in homeowners' associations. This bill provides that these sections may be cited as the "Home Court Advantage Dispute Resolution Act (HCADRA)."

Types of Disputes

This bill provides that mandatory mediation and arbitration is limited to disputes between homeowners' associations and a parcel owner or owners and between parcel owners in the same homeowners' association regarding:

- The use of or changes to the parcel or common areas;
- Other disputes regarding violations of the declaration of covenants or other governing documents;
- Disputes regarding the enforcement of governing documents or amendments; or
- Access to official records.

Certain disputes are not subject to pre-suit mediation and pre-suit arbitration. These are:

- Disputes concerning title to any parcel or common area;
- Interpretation or enforcement of a warranty;
- Levy of a fee or assessment;
- Collection of an assessment levied against a party;
- Eviction or other removal of a tenant;
- Alleged breaches of fiduciary duty by a director; or
- Any action to collect mortgage indebtedness or foreclose on a mortgage

This bill also provides that disputes involving recall of any member of the board or the election of the board of directors, which occurs after the effective date of this bill, is not subject to pre-suit mediation but is subject to pre-suit arbitration.

Furthermore, this bill provides that any dispute subject to pre-suit mediation or pre-suit arbitration may file a motion for temporary injunctive relief without complying with pre-suit mediation or pre-suit arbitration if emergency relief is required. This bill provides that once the issues relating to temporary relief are resolved, then the court may refer the parties to mediation administered by the courts or require mediation or arbitration according to HCADRA.

Notice of Violation

This bill provides that the aggrieved party must first provide written notice of the alleged violation to the alleged violator prior to giving statutory notice to proceed under pre-suit mediation or pre-suit arbitration. The notice of violation must be delivered by certified mail, return receipt requested[5] or hand delivered and the person who delivers must file their notice of mediation with proof of the receipt of mailing or an affidavit stating the date and time of the hand delivery. This bill provides that if the violator refuses delivery of the certified mail, return receipt requested, then the notice will be considered delivered.

Furthermore, this bill provides that the notice must state with specificity the nature of the violation alleged including the date, time, and location of each violation and the action requested to correct the violation. The notice must also include the text of any provision in the governing documents that has allegedly been violated.

This bill provides that the party receiving the notice has 10 days from the date of receipt to correct the violation, unless the parties have agreed to a longer period in writing. If the violation is not fixed within 10 days or the time period agreed to by the parties, then the party alleging the violation may proceed. This bill provides that a copy of the notice, the text of the provision in the governing documents or rules and regulations that is allegedly violated, and proof of service must be included as exhibits to any mediation or arbitration demand under HCADRA.

Pre-suit Mediation

This bill provides that disputes between an association and a parcel owner or owners and between parcel owners of the same homeowners' association must be submitted to pre-suit mediation before the dispute may be filed in court. The party who initiates the suit may also submit the dispute to pre-suit arbitration before the dispute may be filed in court.

Statutory Notice of Pre-suit Mediation

This bill provides for a written notice to participate in pre-suit mediation entitled "Statutory Notice of Pre-suit Mediation." The notice must be in substantially the same form as s. 720.505(1), F.S., and must be served on the responding party. This bill provides that service of the notice must be by personal service according to ch. 48, F.S., or by certified mail, return receipt requested. Furthermore, this bill provides that a copy of the notice must be sent by first-class mail to the responding party's address as it last appears in the association records, or if not available, then as it last appears in the official records of the county property appraiser.

A copy of the prior notice of violation must be attached along with the applicable provisions of the governing documents believed to apply to the notice. The aggrieved party must select five certified mediators from a list of eligible qualified mediators. This bill provides that the responding party then has the right to select one of the five mediators. The parties must share the cost of the mediation equally, including any reasonable advance deposits unless they agree otherwise, but the parties are responsible for their own attorney's fees.

This bill provides that the responding party will have 20 days to respond in writing to the notice. The responding party must provide a list of at least three dates and times when he or she is available to participate in mediation which must be within 90 days of the postmarked date of the mailing of the notice of pre-suit mediation or 90 days after the date the party is served with a copy of the notice. Furthermore, this bill provides that if the responding party does not provide a list of dates and times,

[5] Currently the price for a certified letter, return receipt requested is $5.32. Current postage for a first-class mail letter is $0.42; current cost for certified mail of a letter is $2.70; current cost for return receipt requested of a letter is $2.20. See www.usps.com. (Last acceded on January 28, 2009.)

then the mediator may schedule a mediation without taking the responding party's schedule into consideration.

Process of Pre-suit Mediation

Within 10 days of selecting a mediator, the mediator must coordinate with the parties and notify the parties in writing of the date, time, and place of the mediation. This bill provides that the mediation cannot be later than 90 days after the notice of pre-suit mediation was served unless all parties agree. Once the parties have agreed on a mediator, though, the mediator may reschedule the mediation after the 90 day period upon mutual written agreement by the parties. This bill provides that if the mediation is not completed within the required time limits, then the mediator must declare an impasse

According to the bill's provisions, the responding party may either provide a notice of opting out and demand arbitration or sign the agreement. If the responding party does not respond within 20 days after the date of the notice, fails to provide available dates or times, fails to agree to at least one mediator, fails to pay or prepay the mediator one-half of the costs, or fails to appear and participate in mediation, then the aggrieved party may proceed with a lawsuit without further notice. This bill also provides that the aggrieved party may seek an award of attorney's fees related to the attempted mediation. This bill provides that the response must be served by certified mail, return receipt requested to the aggrieved party within 20 days of the postmark of the notice or within 20 days after the date the responding party was served with the notice. This bill also provides that a copy of the response must be sent by first-class mail to the address shown on the statutory notice.

This bill provides that if a party does not respond to pre-suit mediation within 20 days, the parties do not agree on a mediator, the responding party does not list dates and times when he or she is available to participate in mediation, or a party fails to appear for a scheduled mediation with the approval of the mediator, then this constitutes a failure or refusal to participate and constitutes an impasse entitling the other party to file a lawsuit and seek an award of costs and attorney's fees association with the mediation.

This bill provides that a person or persons who do not participate in mediation may not collect attorney's fees. This bill provides that a party who is served with a notice of pre-suit mediation may opt out of the mediation and demand that the dispute go to non-binding arbitration instead. To do this, the responding party does not need to respond to the pre-suit mediation but may serve the aggrieved party a notice of opting out of mediation instead.

Pre-suit Arbitration

A party that elects to pre-suit arbitration must serve the responding party a written notice of pre-suit arbitration which is substantially the same form as the statutory notice of pre-suit arbitration provided in s. 720.507(1), F.S. This bill provides that the statutory notice of pre-suit arbitration must be served by personal service according to ch. 48, F.S., or by certified mail, return receipt requested. This bill further provides that an additional copy must be sent by first-class mail to the responding party's address as it appears on the official records of the association, or if not available, as it appears on the official records for the county appraiser.

This bill provides that the responding party must respond in writing within 20 days after the postmarked date of the certified mailing of the statutory notice for pre-suit arbitration or 20 days after the responding party is personally served with the notice. This bill provides that the parties must share the costs of the pre-suit arbitration equally, including any reasonable advance payments. Each party is responsible for his or her own attorney's fees if he or she chooses to employ an attorney for the pre-suit arbitration. The responding party must sign the pre-suit arbitration notice and indicate which arbitrator is acceptable from a list provided by the aggrieved party. Furthermore, this bill provides that the responding party must provide three dates and times when he or she is available to participate in the arbitration within 90 days after the date the responding party was served with the pre-suit arbitration notice.

Process of Pre-suit Arbitration

This bill provides that the arbitrator must schedule the arbitration at a mutually convenient time and place, unless the responding party does not provide a list of times and dates available. This bill provides that within 10 days from the designation of the arbitrator, the arbitrator must notify the parties in writing of the date, time and place of the arbitration.

The arbitration may not be held later than 90 days after the notice of pre-suit arbitration was first served unless all parties mutually agree in writing. This bill provides that if the arbitration is not completed in the required time, then the arbitrator may issue an arbitration award. If the responding party does not respond within 20 days after the date of statutory notice of pre-suit arbitration, fails to agree to at least one arbitrator on the list, fails to pay or prepay the arbitrator one-half of the costs, or fails to appear and participate in the arbitration, then the aggrieved party may proceed with a request for an arbitration award. Furthermore, this bill provides that the failure of any party to respond to the statutory notice of pre-suit arbitration, the failure of a party to select one of the five arbitrators listed by the aggrieved party, the failure to provide a listing of dates and times when a party is available, the failure to pay fees and costs, or the failure to appear for an arbitration without the arbitrator's approval entitles the other party to request an arbitration award including an award of reasonable costs and attorney's fees associated with the arbitration. This bill provides that persons who fail or refuse to participate are not entitled to attorney's fees in any subsequent litigation between the same parties relating to the same dispute.

This bill provides that the arbitrator may not consider any unsuccessful mediation in the arbitration proceeding. Furthermore, this bill provides that an arbitrator may shorten discovery or limit discovery in order to promote an expeditious alternative dispute resolution procedure. This bill provides that at the request of any party, the arbitrator must issue subpoenas for witnesses, the production of books, records, documents, and other evidence. This bill provides that subpoenas must be served and are enforceable as provided by the Florida Rules of Civil Procedure.

This bill provides that the final arbitration award must be sent to the parties in writing no later than 30 days after the date of the arbitration hearing, unless there are extraordinary circumstances, and an arbitration award is final when the parties have mutually agreed to be bound. An arbitration award is final unless a lawsuit seeking a trial de novo is filed within 30 days after the date of the award. This bill provides that the prevailing party in an arbitration must be awarded the costs of the arbitration and reasonable attorney's fees as determined by the arbitrator.

Furthermore, this bill provides that the party which files for a trial de novo must be assessed the other party's arbitration costs, court costs, and other reasonable costs which include attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration if the trial de novo is not more favorable than the arbitration award.

Procedure for Pre-suit Mediation and Pre-suit Arbitration

This bill provides that pre-suit mediation and pre-suit arbitration must be conducted according to the Florida Rules of Civil Procedure and ch. 44, F.S., regarding mediations and arbitrations. This bill provides that the HCADRA controls in the case of any conflict with other applicable rules or statutes. This bill provides that persons who are not parties to the dispute may not attend the pre-suit mediation without the consent of all parties, except for attorneys. This bill further provides that pre-suit mediations under HCADRA do not constitute a board meeting. This bill provides that attendance at mediation by the board of directors does not require notice or participation by non-board members. This bill provides that settlement agreements which result from a mediation or arbitration do not have precedential value in proceedings which involve other parties. However, this bill provides that arbitration awards by an arbitrator do have precedential value in other proceedings involving the same association or with respect the same parcel owner.

This bill further provides that mailing a statutory notice of pre-suit mediation or pre-suit arbitration tolls the statute of limitations for the extent of the mediation or arbitration and 30 days after the conclusion of

either proceeding beginning on the filing of the mediator's notice of impasse or the arbitrator's written arbitration award. If the parties mutually agree to participate in both pre-suit mediation and arbitration, then the tolling of the statute of limitations will be consecutive. This bill provides that a person may conduct mediation or arbitration under HCADRA if he or she has been certified as a circuit court civil mediator pursuant to s. 44.106, F.S., is a member in good standing with the bar, and otherwise meets all the requirements of ch. 44, F.S.

This bill provides that a mediation settlement may be enforced through the county or circuit court. This bill further provides that if a complaint is filed for a trial de novo, then the arbitration award must be stayed and a petition to enforce the award may not be granted. However, the award is admissible in the court proceeding seeking the trial de novo.

Condominium Associations – Self-insurance Fund

Current Law

Section 624.462, F. S., provides that a group of persons may form a commercial self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any commercial property.

A "commercial self-insurance fund" means a group of members, operating individually and collectively through a trust or corporation that must be established by certain defined means. One method is a not-for profit group comprised of one or more community associations responsible for operating at least 50 residential parcels or units created and operating under chapter 718 which restricts its membership to community associations only and which has been organized and maintained in good faith for the purpose of pooling and spreading liabilities of its groups members.[6] Current law also allows for self-insurance funds created by community associations operating under chapter 719 (cooperatives), chapter 720 (homeowners' associations), chapter 721 (vacation and timeshare plans), and chapter 723 (mobile home park tenancies).

Proposed Law

This bill provides that three or more condominium associations may form a self-insurance fund for the purpose of pooling and spreading the liabilities arising from the deductible provisions of the commercial lines residential property insurance policies of the participants applicable to hurricane losses. Current law states that the not-for-profit group is to be comprised of one or more community associations responsible for operating at least 50 residential units, whereas the proposed law has no such limitation on the number of units. This bill is also limited to deductible losses in association with hurricane damage, whereas current law pertains to different types of insurance.

Pursuant to the bill, the self-insurance fund must be a not-for-profit corporation pursuant to chapter 617, F.S. The bill states that the fund must be implemented through contracts among the participating associations, or through contracts between the participating associations and another legal entity created for and limited to establishing and implementing the fund program. This bill provides that the liability of the fund for claims is limited to funds available for the payment of claims.

This bill provides that the contract provided to a participating association must clearly disclose the obligations of the participants in the fund and the obligations of the fund, including the limited liability of the fund. The contract must specify a reasonable date for payment of claims and before execution of the contract, the association or its representative must provide a separate disclosure form specifying the limited liability of the fund and all administrative fees and estimated expenses. The association must also provide examples of the manner in which available funds will be allocated among claimants if claims exceed the funds available for the payment. The disclosure must be signed by a representative of the participating association before or at the time of execution of the contract.

[6] Sections 624.460-624.488, F.S.

This bill provides that the contributions charged for participating in the fund must be established by the fund and calculated as a percentage of the participant's hurricane deductible dollar amount. The fund may determine the method and timing of payment of contributions.

Also, the bill provides that all members of the governing board of the fund must be participating associations in the fund, and the governing body shall have all powers necessary to establish and administer the fund as authorized participants in the fund. All decisions of the fund shall be based upon a vote of the majority of the board.

This bill provides that the fund must use a properly licensed general lines insurance agent who is a Florida resident for the purpose of soliciting participation in the fund. The fund cannot prevent any applicant in the fund from selecting an agent of choice. The fund must also not favor one or more agents over another agent. The organizational documents, the contract, and notices of disclosure must be filed with the Office of Insurance Regulation not less than 45 days prior to solicitation by the fund.

A time frame for auditing is established by the bill. It states that the fund is to be audited by an independent auditor no less frequently than every 2 years. This bill also provides that the fund may accumulate funds or periodically distribute excess funds to its participants on a pro rata basis.

Furthermore, this bill provides that the fund participants must have a deductible in an amount not exceeding 10 percent of the insured value.[7] The self-insurance fund will not be subject to licensure requirements or regulation pursuant to the Florida Insurance Code, except for part IX of chapter 626, F.S., which may be enforced by the Office of Insurance Regulation or the Department of Financial Services. The self-insurance funds are not subject to any fees, taxes, or assessments related to the writing or transaction of insurance in Florida.

B. SECTION DIRECTORY:

Section 1 amends s. 718.112 F.S., relating to new board of directors.

Section 2 amends s. 720.303, F.S., relating to association powers and duties.

Section 3 amends s. 720.305, F.S., relating to obligations of members, remedies at law or in equity, levy of fines and suspension of use rights.

Section 4 amends s. 720.306, F.S., relating to meetings of members.

Section 5 amends s. 720.401, F.S., relating to prospective purchasers subject to association membership requirement.

Section 6 amends s. 34.01, F.S., relating to the jurisdiction of the county court.

Section 7 amends s. 720.302, F.S., relating to the purpose, scope and application regarding homeowners' associations.

Section 8 repeals s. 720.311, F.S., relating to dispute resolution

Section 9 adds ss. 720.501, F.S., 720.502, F.S., 720.503, F.S., 720.504, F.S., 720.505, F.S., 720.506, F.S., 720.507, F.S., 720.508, F.S., 720.509, F.S., and 720.510, F.S., relating to the Home Court Advantage Dispute Resolution Act.

Section 10 provides notwithstanding any other provisions of law, any three or more condominium associations may form a self-insurance fund for the purposes of pooling and spreading the liabilities of its participant associations arising from the deductible provisions of the commercial lines residential property insurance policies of participants applicable to hurricane losses.

[7] Section 627.701(8), F. S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In addition to administrative costs which will be incurred by homeowners' associations, there will be costs associated with the pre-suit arbitration and mediation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES