

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 796

INTRODUCER: Senator Evers

SUBJECT: Financial Reporting

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 796 deletes the provision that permits condominium, cooperative, and homeowners' associations operating fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of financial statements based on the amount of annual revenue.

II. Present Situation:

Condominium

A condominium is a "form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."⁴ A declaration of condominium may be amended as provided in the declaration.⁵ If the declaration does not

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.104(5), F.S.

⁵ See s. 718.110(1)(a), F.S.

provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁶ Condominiums are administered by a board of directors referred to as a “board of administration.”⁷

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁸

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.⁹

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, 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.”¹⁰ Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.¹¹

Homeowners’ associations are administered by a board of directors whose members are elected.¹² The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.¹³

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(4), F.S.

⁸ *See* ss. 719.106(1)(g) and 719.107, F.S.

⁹ *See* s. 720.302(1), F.S.

¹⁰ Section 720.301(9), F.S.

¹¹ Section 720.302(5), F.S.

¹² *See* ss. 720.303 and 720.307, F.S.

¹³ *See* ss. 720.301 and 720.303, F.S.

Financial Reporting for Community Associations

Sections 718.111(13), 719.104(4), and 720.303(7), F.S., set forth the financial reporting responsibilities of condominium, cooperative, and homeowners' associations. Associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

If the association has a total annual revenue of \$150,000 or more, but less than \$300,000, the association must prepare compiled financial statements.¹⁴ If the association has a total annual revenue of at least \$300,000 and not less than \$500,000, the association must prepare reviewed financial statements.¹⁵ If the total annual revenue is \$500,000 or more, the association must prepare audited financial statements.¹⁶ If the total annual revenue is less than \$150,000, then a report of cash receipts must be prepared.¹⁷

An association having fewer than 50 units ("parcels" for homeowners' associations), regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.¹⁸

In a condominium association, the board may use a higher level of reporting without a meeting or approval of the membership. It may not use a lower level of reporting without a majority of the voting interests present at a properly called meeting of the association.¹⁹

In cooperative and homeowners' association, upon a petition by 20 percent of the voting interests in the association, the level of reporting may be increased or decreased after a majority vote of the voting interests.²⁰

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with ch. 718, F.S., and ch. 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer

¹⁴ A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with Generally Accepted Accounting Principles (GAAP). Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

¹⁵ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

¹⁶ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

¹⁷ Sections 718.111(13)(a), 719.104(4)(b), and 720.303(7)(a), F.S.

¹⁸ Sections 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S.

¹⁹ Sections 718.111(13)(c) and (d), F.S.

²⁰ Sections 719.104(4)(d) and (e), and 720.303(7)(c) and (d), F.S.

control.²¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association, pursuant to s. 718.301, F.S., and s. 719.301, F.S., respectively.²² After control of the condominium or cooperative is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.²³

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., and s. 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

The division's jurisdiction regarding homeowners' associations is limited to conducting binding arbitration upon a petition resolve election recall disputes.²⁴

III. Effect of Proposed Changes:

The bill repeals the provisions in ss. 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S., which provide that an association operating fewer than 50 units ("parcels" for homeowners' associations), regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures in lieu of the financial statements based on the amount of annual revenue.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²¹ Section 718.501(1), F.S., s. 719.501(1), F.S.

²² *Id.*

²³ *Id.*

²⁴ *See* ss. 720.303(10)(d) and 720.311(1), F.S.

B. Private Sector Impact:

Condominium, cooperative, and homeowners' associations of 50 units or parcels may incur additional expense if required to prepare financial statements based on the amount of annual revenue instead of a report of cash receipts.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 719.104, and 720.303.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.