

STORAGE NAME: h0113a.ca
DATE: February 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 113

RELATING TO: Homeowners' Associations

SPONSOR(S): Representative Sublette

STATUTE(S) AFFECTED: Sections 617.303, 617.305, and 617.306, Florida Statutes

COMPANION BILL(S): CS/SB 104 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
- (2) REAL PROPERTY & PROBATE
- (3)
- (4)
- (5)

I. SUMMARY:

House Bill 113 amends statutory provisions governing mandatory homeowners' associations. Specifically, the bill:

- * Deletes the existing requirement that the meetings of any committee be duly noticed and open to all association members;
- * Deletes the \$50 per violation cap on fines an association board may impose;
- * Deletes the prohibition against suspending a member's voting rights;
- * Prohibits voting for directors by proxy but allows voting for directors by absentee ballot.

The bill has no fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The 1995 Legislature enacted sections 617.301 - 617.312, Florida Statutes (Chapter 95-274, Laws of Florida), to govern the operations of mandatory homeowners' associations. Prior to this legislation, these associations were regulated under the general provisions of chapter 617, Florida Statutes, relating to not for profit corporations.

Section 617.301, Florida Statutes, defines "homeowners' association" to mean:

"a Florida corporation responsible for the operation of a community 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 . . ."

Section 617.302, Florida Statutes, states that the purposes of sections 617.301 - 617.312, Florida Statutes, are:

"to give statutory recognition to corporations that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions."

Open Meetings

Subsection (2) of section 617.303, Florida Statutes, requires that all meetings of an association board be open to all members and unless the association has more than 100 members, such meetings be posted 48 hours in advance or mailed to each member 7 days in advance. Committees of an association board also are subject to these open meeting requirements. Where an association contains more than 100 members, the statute allows for the association's bylaws to provide a reasonable alternative.

Penalties for Violation of Governing Documents

Subsection (2) of section 617.305, Florida Statutes, authorizes an association to levy reasonable fines, not to exceed \$50 per violation, against any member or any tenant, guest, or invitee. Associations are prohibited from suspending the voting rights of a member.

Election of Board of Directors/Proxy Voting

Subsection (2) of section 617.306, Florida Statutes, requires associations to hold a meeting of its members annually. The election of the board of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting or as provided in the association's governing documents. Subsection (6) of section 617.306, Florida Statutes, provides that unless provided otherwise in this subsection or the association's governing documents, association members have the right to vote in person or by proxy.

B. EFFECT OF PROPOSED CHANGES:

This bill:

- * Deletes the existing requirement that the meetings of any committee be duly noticed and open to all association members;
- * Deletes the \$50 per violation cap on fines an association board may impose;
- * Deletes the prohibition against suspending a member's voting rights;
- * Prohibits voting for directors by proxy but allows voting for directors by absentee ballot.

The bill has no fiscal impact on state or local governments.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

Not applicable.

2. Lower Taxes:

Not applicable.

3. Personal Responsibility

Not applicable.

4. Individual Freedom:

As noted in the previous section and the subsequent section, the bill deletes current restrictions on association activities. The bill prohibits the current right of members to vote by proxy for directors of an association.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Subsection (2) of section 617.303, F.S., is amended to delete the requirement that the meetings of any committee be duly noticed and open to all members.

Section 2. Subsection (2) of section 617.305, F.S., is amended to delete the \$50 per violation cap on fines the board may impose for violations of governing documents. The subsection also is amended to delete the prohibition against suspending a member's

voting rights as punishment for violating the association's governing documents. This section may have constitutional implications. See the "Comments" section.

Section 3. Subsection (2) of subsection 617.306, F.S., is amended to provide that association members may not vote for association board directors by proxy but may vote for directors by absentee ballot.

Section 4. An effective date of July 1, 1997, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Homeowners' associations would no longer incur costs associated with noticing meetings of committee meetings or architectural review boards.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require expenditures by counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the revenue raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

Section 2 of this bill repeals the current prohibition against suspending a member's voting rights. This provision may face scrutiny under Article I, Section 10, Florida Constitution, which states: "No bill of attainder, ex post facto law, or **law impairing the obligation of contracts** shall be passed."

Membership in a mandatory homeowner's association arises from purchase of declaration-encumbered or deed restricted property. Generally, deed restrictions are covenants or agreements arising out of a contract that affect a property owner's use or their land. Since deed restrictions are contractual relationships, any proposed legislation concerning such restrictions is subject to the application of Article I, Section 10, Florida Constitution.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor indicates that an amendment will be offered to conform the bill to the Senate companion, CS/SB 104. The amendment, which will be a strike-everything-after-the-enacting-clause amendment, will make the following changes to the bill:

Provides that the notice procedures applicable to board meetings also applies to committee meetings where a final decision is made regarding an expenditure of association funds, and restores the application of the notice procedures to meetings of architectural review boards.

Increases the limit on fines assessed by homeowners' associations from \$50 to \$100 per violation, rather than striking the limit altogether. The amendment also authorizes an association to levy a fine for each day of a continuing violation, not to exceed \$1,000 in the aggregate.

Provides an exception to, rather than deleting altogether, the statutory prohibition against suspending the voting rights of an association member. An association is authorized to suspend a member's voting rights for failure to pay regular annual assessments that are more than 90 days past due.

Deletes language in the original bill that would prohibit members from voting for directors by proxy and allow members to vote for directors by absentee ballot.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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