

STORAGE NAME: h0113s1.rpp
DATE: March 4, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
REAL PROPERTY & PROBATE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 113

RELATING TO: Homeowners' Associations

SPONSOR(S): Committee on Community Affairs and Representative Sublette

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

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

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

- (1) COMMUNITY AFFAIRS YEAS 6 NAYS 0
- (2) REAL PROPERTY & PROBATE
- (3)
- (4)
- (5)

I. SUMMARY:

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

- * Amends the existing requirement that the meetings of any committee be duly noticed and open to all association members to provide that notice provisions applicable to association board meetings are applicable only to meetings of committees when a final decision will be made regarding the expenditure of association funds. Application of such notice procedures to meetings of architectural review boards also is retained;
- * Increases from \$50 to \$100 per violation the cap on fines an association board may impose. The bill authorizes an association to levy a fine for each day of a continuing violation, and caps those fines at \$1,000 in the aggregate;
- * Amends the current prohibition against suspending the voting rights of an association member to authorize an association to suspend a member's voting rights for failure to pay annual assessments that are more than 90 days past due.

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 notice procedure.

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.

B. EFFECT OF PROPOSED CHANGES:

This bill:

- * Amends the existing requirement that the meetings of any committee be duly noticed and open to all association members to provide that notice provisions applicable to association board meetings are applicable only to meetings of committees when a final decision will be made regarding the expenditure of association funds.

Application of such notice procedures to meetings of architectural review boards also is retained;

- * Increases from \$50 to \$100 per violation the cap on fines an association board may impose. The bill authorizes an association to levy a fine for each day of a continuing violation, and caps those fines at \$1,000 in the aggregate;
- * Amends the current prohibition against suspending the voting rights of an association member to authorize an association to suspend a member's voting rights for failure to pay annual assessments that are more than 90 days past due.

See Comments section for constitutional implications.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

As noted in the previous section and the subsequent section, the bill reduces current restrictions on association activities.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Subsection (2) of section 617.303, Florida Statutes, is amended to revise the requirement that the meetings of any committee be duly noticed and open to all association members to provide that notice provisions applicable to association board meetings are also applicable to meetings of committees when a final decision will be made regarding the expenditure of association funds. Application of these notice procedures to meetings of architectural review boards is retained.

Section 2. Subsection (2) of section 617.305, Florida Statutes, is amended to increase the current \$50 per violation cap on fines an association board may impose to \$100 and to authorize an association to levy a fine for each day of a continuing violation, with a single notice and opportunity for a hearing, and caps those fines at \$1,000 in the aggregate.

This section also amends the current prohibition against suspending the voting rights of an association member. The section authorizes an association to suspend a member's voting rights for failure to pay annual assessments that are more than 90 days past due.

Section 3. An effective date of July 1, 1997, is provided.

See Comments section for constitutional implications.

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 when a final decision will not be made regarding the expenditure of association funds.

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 amends the current prohibition against suspending a member's voting rights. The section authorizes an association to suspend a member's voting rights for failure to pay annual assessments that are more than 90 days past due.

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 of 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:

On February 12, 1996, the Committee on Community Affairs adopted a strike-everything-after-the-enacting-clause amendment to HB 113 and passed the bill as a CS/HB 113.

HB 113 deleted the existing requirement that the meetings of any committee be duly noticed and open to all association members. CS/HB 113 provides that the notice procedures applicable to board meetings also apply 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.

HB 113 deleted the \$50 per violation cap on fines an association board may impose. CS/HB 113 increases the limit on fines assessed by homeowners' associations from \$50 to \$100 per violation, rather than striking the limit. CS/HB 113 also authorizes an association to levy a fine for each day of a continuing violation, not to exceed \$1,000 in the aggregate.

HB 113 deleted the statutory prohibition against suspending the voting rights of an association member. CS/HB 113 authorizes an association board to suspend a member's voting rights for failure to pay regular annual assessments that are more than 90 days past due.

HB 113 prohibited members from voting for directors by proxy and allowed members to vote for directors by absentee ballot. This provision is not included in CS/HB 113.

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VII. SIGNATURES:

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