

STORAGE NAME: h0383a.rpp
DATE: February 18, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Real Property and Probate
ANALYSIS**

BILL #: HB 383
RELATING TO: Homeowners' associations and cooperatives
SPONSOR(S): Representative J. Dudley Goodlette
COMPANION BILL(S): SB 814(s)

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

- | | | |
|-----|--|---------------|
| (1) | Real Property and Probate | YEAS 8 NAYS 0 |
| (2) | Business Regulation & Consumer Affairs | |
| (3) | General Government Appropriations | |
| (4) | | |
| (5) | | |

I. SUMMARY:

Five amendments were adopted by the Committee on Real Property and Probate and are traveling with the bill. See "Amendments or Committee Substitute Changes" Section VI, herein, for an explanation of the amendments.

This bill provides that a grantor, or if no grantor, then a beneficiary of an irrevocable inter vivos trust which owns a unit, parcel or mobile home, is to be deemed a member of the association, if association membership is restricted to owners of such unit, parcel or mobile home; and as such, is eligible to serve as a director of the corporation, or of the not-for-profit corporation, which governs the condominium association, cooperative association, homeowners' association or mobile homeowners' association, as applicable, when certain restrictions are met. This bill redefines "homeowners' association" within the Florida Not For Profit Corporation Act to include "mobil home subdivision."

In addition, this bill amends and creates certain provisions within the Cooperative Act to echo the provisions of the Condominium Act and provide the same rights to cooperative owners which are provided to condominium owners. In doing so, this bill defines "special assessment", "voting certificate" and "voting interest"; adds that all provisions in the cooperative document are enforceable equitable servitudes which run with the land and are effective upon termination; provides an exception to the bar against commingling funds and states that funds may be combined for investment purposes; and grants authority to the board of administration to grant, modify, move or vacate an easement under certain circumstances.

Moreover, this bill changes the total voting requirement from 75 percent to two-thirds vote, unless otherwise provided in the cooperative documents, articles of incorporation or bylaws, in order to: determine whether the acquisition of real property by the association and material alterations or substantial additions would be deemed to constitute a material alteration or modification of the appurtenances to the unit; materially alter, convert, lease or modify the common areas of the mobile home cooperative; change the configuration or size of a unit; or amend cooperative documents. No provision of a cooperative document is to be amended by reference to its title or number only. This bill further provides the procedure for amending the cooperative documents.

Furthermore, this bill provides that associations must maintain adequate insurance on all persons who control or disburse funds of the association, which include, but is not limited to: those persons who sign checks, and the president, secretary and the treasurer of the association. In addition, this bill provides for limited liability of unit owners in certain situations. For the purposes of property and casualty risk classification, the cooperatives are classified as residential property. Lastly, a cooperative association is included within the provisions of law regarding penny-ante games and bingo.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

See "Section-By-Section Analysis."

B. EFFECT OF PROPOSED CHANGES:

See "Section-By-Section Analysis."

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:

An agency or program is not eliminated or reduced.

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

N/A

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

N/A

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

N/A

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?

No.

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

No.

4. Individual Freedom:

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

No.

- 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:

This bill does not purport to provide services to families or children.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

No.

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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

This bill amends ss. 607.0802; 617.0802; 617.301; 719.103; 719.1035; 719.104; 719.1055; 719.106; 849.085 and 849.0931.

This bill creates ss. 719.115 and 719.116.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 607.0802, F.S.

Current Law

Section 607.0802, F.S., provides that directors of corporations must be natural persons at least 18 years of age or older. Directors need not be residents of this state or shareholders of the corporation, unless otherwise provided in the corporation's articles of incorporation or bylaws. Accordingly, if a homeowner transfers the deed to his or her home into an irrevocable inter vivos trust, the grantor or the beneficiary of the trust who occupies the unit, parcel, or mobile home, is not eligible to occupy a position on the board of directors because the property is held in trust and thus not considered to be held by a "natural person".¹ Section 607.0802, F.S., applies to homeowners' associations, condominium associations, cooperative associations and mobile homeowners' associations.

Effect of Proposed Changes

Provides that the text in s. 607.0802, F.S., is renumbered as s. 607.0802(1), F.S.

Creates subsection (2) of s. 607.0802, F.S., and states that when eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners' association or mobile homeowners' association is restricted to membership in that association and membership is incident to ownership of a unit, parcel or mobile home, as applicable, a grantor of a trust as described in s. 733.707(3), F.S.,² or, if no grantor, a beneficiary as defined in s. 737.303(4)(b) F.S.,³ of a trust which owns a unit, parcel or mobile home is deemed to be member of the association and eligible to serve as a director of the condominium association, cooperative association, homeowners' association or mobile homeowners' association, as applicable, provided that the beneficiary occupies the unit, parcel or mobile home. See "Comments" section regarding this provision.

Section 2. Section 617.0802, F.S.

Current Law

Section 617.0802, F.S., sets forth the same provisions as s. 607.0802, F.S., except that s. 617.0802, F.S., applies to not-for-profit corporations.

Effect of Proposed Changes

Provides that the text in s. 617.0802, F.S., is renumbered as s. 617.0802(1), F.S.

¹ This issue may present some concerns since ss. 607.0802 and 617.0802, F.S., do not define "natural person" as it is used within these statutory sections. The definition of a "person" includes both individual and entity. Fla. Stat. §607.01401(18). By implication, the distinction between the terms may be that a "natural person" does *not* include entity.

² Section 733.707(3), F.S., refers specifically to a revocable trust where the decedent is the grantor, and states: "any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation ... is liable for the expenses of the administration of the decedent's estate and enforceable claims of the decedent's creditors to the extent the decedent's estate is insufficient to pay them as provided in s. 733.607(2)(providing that the personal representative is entitled to payment from the trustee as described in s. 733.707(3) if, after providing for statutory entitlements and all devises other than residuary devises, the assets of the decedent's estate are insufficient to pay the expenses of administration of the decedent's estate and enforceable claims of the decedent's creditors).

³ Section 737.303(4)(b), F.S., defines the term "beneficiary" to mean "all current income or principal beneficiaries, whether discretionary or mandatory; and all reasonably ascertainable remainder beneficiaries who would take if all income interests immediately terminated.

Creates subsection (2) of s. 617.0802, F.S., and states that when eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners' association or mobile homeowners' association is restricted to membership in that association and membership is incident to ownership of a unit, parcel or mobile home, as applicable, a grantor of a trust as described in s. 733.707(3), F.S.,⁴ or, if no grantor, a beneficiary as defined in s. 737.303(4)(b) F.S.,⁵ of a trust which owns a unit, parcel or mobile home is deemed to be member of the association and eligible to serve as a director of the condominium association, cooperative association, homeowners' association or mobile homeowners' association, as applicable, provided that the beneficiary occupies the unit, parcel or mobile home. See "Comments" section regarding this provision.

Section 3. Section 617.301, F.S.

Current Law

Section 617.301(7), F.S., defines "homeowners' association" or "association" to mean a Florida corporation responsible for the operation of a community in which: the voting membership is made up of parcel owners; membership is a mandatory condition of parcel ownership; and the corporation is authorized to impose assessments that if unpaid may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute. Associations operating a mobile home subdivision meet the definition of a "homeowners' association."

Effect of Proposed Changes

As a courtesy to mobile home subdivisions, s. 617.301(7), F.S., is amended to expressly include "mobile home subdivision" in the definition of "homeowners' association" or "association."

Section 4. Section 719.103, F.S., 1998 Supplement.

Current Law

Section 719.103(22), F.S., 1998 Supplement, defines "unit" as a part of the cooperative property which is subject to exclusive use and possession. As specified in the cooperative documents, a unit may be improvements, land or both.

Section 719.103(23), F.S., 1998 Supplement, defines "unit owner" or "owner of a unit" as "a person holding a share in the cooperative association and a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property."

The terms "special assessment", "voting certificate" and "voting interests" are not defined.

Effect of Proposed Changes

Subsections (22) and (23) of s. 719.103, F.S., 1998 Supplement, are renumbered as subsections (23) and (24), F.S., respectively.

A new subsection (22) defines "special assessment" to mean any assessment levied against unit owners except those assessments required by a budget adopted annually.

⁴ See footnote 1 above.

⁵ See footnote 2 above.

A new subsection (25) defines "voting certificate" as a document which designates the one who is authorized to vote on behalf of the a cooperative unit owned by one or more than one owner or by any entity.

A new subsection (26) defines "voting interests" to mean the voting rights of the association members as set forth in the Article of Incorporation.

Almost identical definitions of these same terms can be found in s. 718.103, F.S., of the Condominium Act.

Section 5. Section 719.1035, F.S., 1998 Supplement.

Current Law

Section 719.1035, F.S., 1998 Supplement, provides that the date of the cooperative's origination is the same date upon which the cooperative association's corporate existence commenced under s. 607.0203, F.S. Before any property is conveyed to the cooperative, the cooperative documents must be recorded in the county in which the cooperative is located. All persons having any mortgage encumbering the interest in the land being submitted to cooperative ownership must either join in the execution of the cooperative documents or execute and record a consent or an agreement subordinating their interest to the cooperative documents. Upon creation of the cooperative, the developer or association must file the recording information with the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation within 30 working days.

Effect of Proposed Changes

The present text in s. 719.1035, F.S., 1998 Supplement, is set forth in s. 719.1035(1), F.S.

Subsection (2) of s. 719.1035, F.S., is created and provides that all provisions in the cooperative documents are deemed to be enforceable equitable servitudes⁶ which run with the land and are effective until the cooperative is terminated. This provision mirrors existing language in s. 718.104(7), F.S., of the Condominium Act.

Section 6. Section 719.104, F.S., 1998 Supplement.

Current Law

Section 719.104(7), F.S., 1998 Supplement, provides that with respect to cooperative associations all funds must be maintained separately in the association's name. More specifically, the association's reserve and operating funds are not to be commingled. In addition, no manager or business entity required to be licensed under s. 468.432, F.S., or an agent, employee, officer or director of a cooperative association may commingle any association funds with his is her own funds or with the funds of any other cooperative or community association.

Subsection (9) of s. 719.104, F.S., 1998 Supplement, provides for powers and duties of the association.

Effect of Proposed Changes

⁶ "Equitable servitudes" mean "building restrictions and restrictions on the use of land which may be enforced in equity. If there is a scheme in their creation, a subsequent owner may enforce them by injunctive relief against another subsequent owner. Such are broader than covenants running with the land because they are interests in land." Black's Law Dictionary at 539 (6th ed. 1990).

Subsection (7) of s. 719.104, F.S., 1998 Supplement, is amended to allow the commingling of funds for investment purposes. The amendatory language expressly states that it is not meant to prohibit prudent investment of association funds if they are combined with operating or other reserve funds of the same association. Nonetheless, combined funds must be accounted for separately and the combined account balance may not be less than the amount identified as reserve funds in the combined account. This provision mirrors the existing language in s. 718.111(15), F.S., of the Condominium Act.

The present subsection (9) of s. 719.104, F.S., 1998 Supplement, is renumbered to (10), F.S., and a new subsection (9) is created.

The new subsection (9) creates authority in the board of administration, without joinder of any unit owner, unless prohibited by the cooperative documents, to grant, modify or move any easement which is part of or crosses the common areas of the property. This subsection does not authorize the board of administration to modify, move, vacate or cross any easement created for the use or benefit of someone other than the unit owners, or crossing the property of anyone other than the unit owners, without consent of those other persons having the use or benefit of the easement, as required by law or by the instrument creating the easement. This provision is unclear as to the rights of a servient tenement⁷ who is a nonunit owner and does not receive the use or benefit of the easement. This provision mirrors the existing language in s. 718.111(10), F.S., of the Condominium Act.

Section 7. Section 719.1055, F.S.

Current Law

Section 719.1055(2), F.S., provides that the acquisition of real property by a cooperative association and material or substantial alterations to the property made by that association are not material alterations or modifications of appurtenances to the unit, if such action is approved by seventy-five percent of the total voting interests of the cooperative, unless a lower number is set forth in the cooperative documents or unless such action is expressly prohibited in the cooperative association's articles of incorporation or bylaws.

Section 719.1055(3)(a), F.S., asserts that the cooperative association may materially alter, convert, lease or modify the common areas of the mobile home cooperative by seventy-five percent of the total voting interests, unless otherwise set forth in the cooperative documents or such action is expressly prohibited in the cooperative association's articles of incorporation or bylaws.

Section 719.1055(3)(b), F.S., provides that the association may change the configuration or size of a unit only if the action is approved by the affected unit owners and by seventy-five percent of the total voting interests of the cooperative.

Effect of Proposed Changes

Subsection (2) of s. 719.1055, F.S., is amended to provide that acquisition of real property by the cooperative association, and material alterations or substantial additions to the property by the cooperative association are not considered a material alteration or modification to the appurtenances to the unit if such action is approved by *two-thirds* of the total voting interest (instead of the previous 75 percent voting requirement), unless a lower number is provided for in the cooperative documents, articles of incorporation or bylaws. This provision is somewhat

⁷ A "servient tenement" is the person whose land is subject to an easement. Black's Law Dictionary at 1369 (6th ed. 1990).

similar to s. 718.110(4), F.S., of the Condominium Act. However, the Condominium Act provides for a voting requirement of not less than a majority.⁸

Subsection (3)(a) of s. 719.1055, F.S., is amended to provide that, the vote requirement is two-thirds, instead of seventy-five percent of the total voting interest, in order to materially alter, convert, lease or modify the common areas of the mobile home cooperative. The Condominium Act allows the common elements designated by the declaration to be enlarged by an amendment to the declaration as approved by not less than two-thirds of the units. Fla. Stat. §718.110(6) and (1)(a).

Subsection (3)(b) of s. 719.1055, F.S., is amended to provide that the vote requirement is two-thirds, instead of seventy-five percent of the total voting interest, to change or reconfigure the size of a unit. The Condominium Act provides that no amendment to a declaration may change the configuration or size of any condominium unit in any material fashion unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless all the record owners of all other units approve the amendment, unless otherwise provided in the declaration as originally recorded. The Condominium Act further provides that a declaration recorded after April 1, 1992, *may not require less than a majority of total voting interests for amendments under this subsection*, unless required by any governmental entity. Fla. Stat. 718.111(4).

Subsection (4)(a) of s. 719.1055, F.S., is created and provides that unless the cooperative documents provide otherwise, the documents may be amended as to all matters, except those described in subsection (1)⁹ with a vote of not less than two-thirds of the units. This provision is identical to s. 718.111(1)(a), F.S., of the Condominium Act.

Subsection (4)(b) of s. 719.1055, F.S., is created and states that proposals to amend the cooperative documents must contain the full text of the provision to be amended. Any new words to be inserted in the text are to be underlined and any words to be deleted are to be lined through with hyphens, unless the changes would be so extensive that this procedure would hinder rather than assist the members, and in that case, a notation is to be inserted immediately preceding the amendment with the following language: "Substantial rewording of document. See provision ____ for present text." No provision is to be revised by reference to its title or number only. This provision is identical to s. 718.111(1)(b), F.S., of the Condominium Act.

Subsection (4)(c) of s. 719.1055, F.S., is created and provides that nonmaterial errors or omissions will not invalidate an otherwise properly promulgated amendment. This provision is identical to s. 718.111(1)(c), F.S., of the Condominium Act.

⁸ The Condominium Act sets forth the following provision: "The acquisition of property by the association, and material alterations or substantial additions to such property or the common elements by the association in accordance with s. 718.111(7) or s. 718.113, shall not be deemed to constitute a material alteration or modification of the appurtenances to the units." This section continues to state: "A declaration recorded after April 1, 1992, *may not require less than a majority of total voting interests for amendments under this subsection*, unless required by any governmental entity." Fla. Stat. §718.110(4)(emphasis added).

⁹ Subsection (1) of s. 719.1055, F.S., states that "[u]nless otherwise provided in the original cooperative documents, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel share the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units approve the amendment. Cooperative documents for cooperatives created after July 1, 1994, may not require less than a majority of total voting interests for amendments under this section, unless required by any governmental agency."

Section 8. Section 719.106, F.S., 1998 Supplement.

Current Law

Section 719.106(1)(k), F.S., 1998 Supplement, requires certain mandatory provisions to be included in the cooperative bylaws or other cooperative documents. Paragraph (k) of subsection (1) states that the association must obtain and maintain adequate fidelity bonding of all "persons who control or disburse the funds of the association." "Persons who control or disburse funds of the association" means those persons who are authorized to sign checks and the president, secretary, and treasurer.

If an association has annual gross receipts under \$100,000, then the bond must not be less than \$10,000 for each person. If an association has annual gross receipts over \$100,000, but less than \$300,000, then the bond must be in the amount of \$30,000 for each person. If an association's annual gross receipts are greater than \$300,000, then the bond must be in an amount not less than \$50,000 for each person. The association is to bear the cost of the bonding.

Effect of Proposed Changes

Section 719.106(1)(k), F.S., is amended and adds that an association in lieu of bonding can obtain and maintain adequate insurance. This provision states that the insurance policy or the fidelity bond must be in an amount sufficient to cover the maximum funds that will be in the custody of the association, or its agents, at any one time and eliminates the requirements that the bonds are to be in specific dollar amounts. This provision also adds to the definition of "persons who control or disburse funds of the association" the language "includes, but is not limited to" with regard to who can sign the checks. This provision mirrors the existing language in s. 718.111(1)(d), F.S., of the Condominium Act.

The amendatory language fails to expressly require that the association bear the cost of insurance.

Section 9. Section 719.115, F.S.

Current Law

Section 719.115, F.S., currently does not exist.

Effects of Proposed Changes

Subsection (1) of s. 719.115, F.S., is created and states that the liability of a unit owner for common expenses is limited to that amount which is assessed to him or her in accordance to Chapter 719, F.S., the cooperative documents and the bylaws. This provision mirrors the language in s. 718.119(1), F.S., of the Condominium Act.

Subsection (2) of s. 719.115, F.S., is created and provides that a unit owner may be held personally liable for acts or omissions of the association in relation to the use of common areas. A unit owner's liability is limited to the extent of his or her pro rata share of the liability as measured by the same percentage of his or her designated portion of the common expenses. In no case will the liability exceed the value of the owner's unit. This provision is similar to the language in s. 718.119(2), F.S., of the Condominium Act. See "Comments" section herein for technical concerns regarding this provision.

Subsection (3) of 719.115, F.S., is created and asserts that if a legal action exposes the association to liability in excess of its insurance coverage, the association will give notice of the exposure within a reasonable amount of time to all unit owners, and the unit owners will

have the right to intervene and defend. This provision is similar to the language in s. 718.119(3), F.S., of the Condominium Act. See "Comments" section herein for technical concerns regarding this provision.

Section 10. Section 719.116, F.S.

Current Law

Section 719.116, F.S., currently does not exist.

Effect of Proposed Changes

Section 719.116, F.S., is created and states that for purposes of property and casualty insurance risk classification, the cooperative is to be classified as residential property. This provision mirrors the language in s. 718.1256, F.S., of the Condominium Act.

Section 11. Section 849.085, F.S.

Current Law

Section 849.085(1), F.S., provides that it is not a crime for a person to participate in a "penny-ante game". A "penny-ante game" means a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes or mah-jongg in which the winnings do not exceed \$10 in value to any player in a single round, hand or game. Fla. Stat. §849.085(1)(a). A penny-ante game is not illegal if, among other things, it is conducted in a "dwelling." Fla. Stat. §849.085(3)(a).

Section 849.085(2)(b), F.S., defines "dwelling" as the: residential premises owned or rented and occupied by a participant in a penny-ante game; the common elements or recreational areas of a condominium or mobile home park of which a participant of the penny-ante game is a unit owner; the facilities of an organization which is tax exempt under s. 501(c)(7)¹⁰ of the IRS Code; college dormitory room; or the common recreational areas of a college dormitory or a publicly owned community center.

Section 849.085(5), F.S., states that the conduct of any penny-ante game, as set forth immediately above, creates no civil liability for damages arising out of the game, on behalf of the condominium association, mobile homeowners' association, dwelling owner, municipality, county or any unit owner.

Effect of Proposed Change

Subsection (2)(b) of s. 849.085, F.S., is amended to include the common areas of cooperatives in the definition of a "dwelling."

Subsection (5) of s. 849.085, F.S., is amended and states that cooperative associations are also not liable for civil damages arising from any penny-ante game.

¹⁰ Section 501(c)(7) of the Internal Revenue Code provides that the following organizations are exempt from taxation, unless denied exemption under 26 U.S.C. §§ 502 or 503: "Clubs organized for pleasure, recreation and other non-profitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder." 26 U.S.C. § 501(c)(7)(1990)(Section 502 of the 1990 IRS Code states that an organization operated for the primary purpose of carrying on a trade or business for profit is not exempt from taxation under s. 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under s. 501. Section 503 of the 1990 IRS Code provides that certain organizations are not exempt from taxation under s. 501(a) if they have engaged in prohibited transactions after a specified date, e.g., lends any part of its income without the receipt of adequate security, or pays any compensation in excess of a reasonable allowance for salaries.)

Section 12. Section 849.0931, F.S.

Current Law

Section 849.0931(4), F.S., provides that the right of a mobile home owners' association, a condominium association and a group of residents of a mobile home park to conduct bingo is conditioned upon the return of net proceeds from the games to players in the form of prizes after having deducted the actual business expenses for such games. Any proceeds remaining less prizes and expenses, are to be donated by the association to a charitable, nonprofit or veterans' organization which is tax exempt under s. 501(c)¹¹ of the IRS Code.

Effect of Proposed Changes

Subsection (4) of s. 849.0931, F.S., is amended to authorize cooperative associations to conduct bingo games.

Section 13 provides an effective date of upon becoming a law.

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.

¹¹ Section 501 of the IRS Code provides a list of organizations which are exempt from taxation, e.g., any corporation organized under Act of Congress which is an instrumentality of the United States (under certain conditions), or corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount to an organization. 26 U.S.C. § 501(c)(1990).

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

The Department of Insurance has determined that classifying cooperatives as residential property for the purposes of property and casualty insurance risk may increase the cost of insurance for office buildings owned by a cooperative. Residential cooperatives, which are already classified as commercial residential property, would not be effected.¹²

2. Direct Private Sector Benefits:

None.

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 counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

V. COMMENTS:

¹² Department of Insurance, February 9, 1999, report on HB 383.

Proponents of this bill assert that it was drafted to make certain provisions relating to cooperatives the same as the provisions of the Condominium Act, Chapter 718, F.S.,¹³ and allow cooperative associations the same rights as homeowners' associations.¹⁴

In order for certain provisions in this bill to be identical to the Condominium Act, however, the following changes may need to be made:

- ① Section 9. In s. 719.115(2), F.S., "designated portion of" should be deleted on page 9, line 21, and the phrase "interest in" inserted in its place. Compare s. 718.119(2), F.S.
- ② Section 9. In s. 719.115(2), F.S., "expenses" should be deleted on page 9, line 21, and the term "elements" inserted in its place. Compare s. 718.119(2), F.S.
- ③ Section 9. In s. 719.115(3), F.S., a comma should be inserted on page 9, line 27, after the word "owners." Compare s. 718.119(3), F.S.

Section 1 and Section 2. In s. 607.0802(2), F.S., on page 3, line 4, and in s. 617.0802(2), F.S., on page 3, line 26, the phrase "if no grantor," should be deleted because by the express cross reference to s. 733.707(3), F.S., the grantor would be deceased, but nevertheless would have existed.

Section 8. Paragraph (k) of subsection (1) of s. 719.106, F.S., fails to add the requirement that the association bear the cost of insurance. Current law requires the association to bear the cost of bonding.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 16, 1999, the Committee on Real Property and Probate adopted five amendments to HB 383, which are traveling with this bill. The amendments are as follows:

- ① The first amendment removes "if no grantor" from page 3, lines 4 and 26, because there is *always* a grantor in a trust situation. See "Comments" section above.
- ② The second amendment is a title amendment and clarifies the scope of the bill by adding "condominium associations, mobile homeowners' associations, and cooperative associations."
- ③ Under this bill, the cooperative may obtain insurance in lieu of bonding. Under current law, the association bears the cost of bonding. The third amendment requires the association to bear the cost of insurance when chosen in lieu of bonding.
- ④ The fourth amendment creates a new subsection (7) of s. 617.0601, F.S., which makes void any provision in a not-for-profit corporation's bylaws, articles of incorporation or other regulations that would disallow property owners from being members in the corporation, provided that such property owner, once admitted to membership, complies with the terms and conditions of membership. This amendment also changes the title of the bill to include the same.

¹³ Telephone conference with Pete Dunbar, Esq., in Tallahassee, Fl. (February 8, 1999).

¹⁴ Telephone conference with Janet Mabry, Lobbyist with Federation of Manufactured Housing Association, in Tallahassee, Fl (February 8, 1999).

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- ⑤ The fifth amendment adds residential subdivisions and cooperatives and respectively homeowners' associations, as defined in s. 617.301, F.S., and cooperative associations within the purview of the penny-ante game and Bingo laws.

VII. SIGNATURES:

COMMITTEE ON Real Property and Probate:

Prepared by:

Staff Director:

Christine Hoke, J.D.

J. Marleen Ahearn, Ph.D., J.D.