

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 547 w/CS Real Property Reform
SPONSOR(S): Prieguez, Arza, and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	17 Y, 0 N	Billmeier	Havlicak
2) Business Regulation	28 Y, 0 N w/CS	Livingston	Liepshutz
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review Florida statutes that relate to land sales, mandatory homeowners' associations, disclosure laws, and exemptions, which affect adult and residential subdivisions. OPPAGA's charge is to evaluate changes and additions, if any, to laws that may affect the interests of consumers and property owners.

The bill requires that public meetings be held in south Florida, central Florida, and in Jacksonville, Florida. The bill requires OPPAGA to submit a report by February 1, 2004, to the Governor, President of the Senate, and Speaker of the House of Representatives.

The bill is not anticipated to have a fiscal impact on state or local government as the project should be conducted within current resources.

The bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0547c.br.doc
DATE: April 15, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A homeowners’ association is “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.”¹ A community is defined as all real property that is or will be subject to a recorded declaration of covenants;² a declaration of covenants is, in turn, a “written instrument ... which subjects the land comprising the community to the jurisdiction and control of an association ... in which the owners of the parcels, or their association representatives, must be members.”³

Current laws relating to homeowners’ associations include chapter 720, F.S. Similar laws for condominium associations are governed by chapter 718, F.S. and cooperative associations are governed by chapter 719, F.S. Homeowner associations are not regulated by the state.

Section 720.301(6), F.S., defines the “[g]overning documents” of a community subject to a homeowners’ association as:

- (a) The recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- (b) The articles of incorporation and bylaws of the homeowners’ association, and any duly adopted amendments thereto.

Section 720.306, F.S., governs meetings of the members of a homeowners association. In general, s. 720.306(1)(b), F.S., provides that governing documents of a homeowners’ association may be amended by a vote of two-thirds of the total voting interests in the association, unless otherwise forbidden by law or by the governing documents themselves.

The governing documents must be available for inspection and copying by members at reasonable times and places within 10 business days after receipt of a written request for access. Failure to provide access to the records within 10 business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this provision. A member who is denied access to official records is entitled to the actual damages or minimum damages for the association’s willful failure to comply.⁴

¹ Section 720.301(7), F.S.

² See s. 720.301(3), F.S.

³ Section 720.301(4), F.S.

⁴ Section 720.303(5)(a) and (b), F.S.

An action may be brought by the association or any member of the association against the association itself; a member; or a director or officer of an association who willfully and knowingly fails to comply with these provisions; or a tenant, guest, or invitee occupying a parcel or using the common areas. The prevailing party in the action is entitled to reasonable attorney's fees and costs.⁵ Chapter 720, F.S., also provides an option to litigation. It provides that at any time after a complaint is filed relating to a dispute under chapter 720, F.S., the court may order mediation or arbitration.⁶

OPPAGA was established to perform independent examinations, program reviews, and other projects as provided by general law, as provided by concurrent resolution, or as directed by the Legislative Auditing Committee, and to provide recommendations, training, or other services to assist the Legislature.⁷

Effect of Proposed Changes

The bill requires OPPAGA to review and recommend appropriate changes in law affecting land sales, exemptions, and mandatory homeowners' associations and disclosure laws related to adult and residential subdivisions. OPPAGA is required to consider input from various sources, including, but not limited to, the Department of Business and Professional Regulation, homeowners and homeowners' associations, and developers. The bill requires OPPAGA to hold public meetings in south Florida, central Florida, and Jacksonville, Florida, to obtain input.

In addition, the bill requires OPPAGA to evaluate the need for statutory changes in areas including, but not limited to:

- control of homeowners' association operations;
- management and maintenance;
- disclosure of financial reports by developers or owners;
- disclosure of governing documents governing real property;
- penalties for noncompliance;
- oversight and funding for the protection of interests;
- alternative dispute resolution; and
- assistance in the formulation of rules to implement enforcement.

The bill requires OPPAGA to submit its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2004.

The bill provides that this act shall take effect on becoming a law

C. SECTION DIRECTORY:

Section 1. Requires OPPAGA to review and recommend appropriate changes in law affecting land sales, exemptions, and mandatory homeowners' associations and disclosure laws related to adult and residential subdivisions.

Section 2. Effective date - upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁵ Section 720.305(1)(a)-(d), F.S.

⁶ Section 720.311, F.S.

⁷ Section 11.51(1), F.S.

1. Revenues:

This bill does not appear to have an effect on state government revenues.

2. Expenditures:

This bill does not appear to have an effect on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an effect on local government revenue.

2. Expenditures:

This bill does not appear to have an effect on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

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, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to 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 noted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill w/CS eliminates the task force and directs the legislative research office, OPPAGA, to conduct the research project proposed in the original bill. The billw/CS removes the \$50,000 appropriation for the Task Force and allows OPPAGA to conduct the study within their budget.

The billw/CS also requires that in addition to their own research, OPPAGA, is required to conduct three (3) public hearings throughout the state. OPPAGA is required to submit their report by February 1, 2004.