

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 695 w/CS Corporate Affairs

**SPONSOR(S):** Representative Culp

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 592, HB 165

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Banking &amp; Securities (Sub)</u>	<u>6 Y, 0 N</u>	<u>Cutchins</u>	<u>Whitfield</u>
2) <u>Commerce</u>	<u>18 Y, 0 N w/CS</u>	<u>Cutchins</u>	<u>Whitfield</u>
3) <u>Business Regulation</u>	<u>28 Y, 0 N w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill makes numerous changes to existing law governing the affairs of condominiums, cooperatives, and homeowners' associations, including the following.

- Members of condominiums, cooperatives, and homeowners' associations may consent to receive notice of association meetings by electronic transmission, such as facsimile or email.
- Notice of condominium, cooperative, or homeowners' association meetings may be broadcast on a closed circuit cable television system serving the association in lieu of posting a conspicuous meeting notice on association property.
- Condominium associations, cooperative associations, and homeowners' associations are required to maintain the email addresses of their members.
- Condominium unit owners and cooperative shareholders may vote by limited proxy to waive financial reporting requirements of a condominium or cooperative association.
- The bill authorizes condominium and cooperative associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a condominium or cooperative unit.
- It amends the term "mortgage" to ensure that the dismissal of a foreclosure action to secure payment of liens created pursuant to the recorded covenants of a homeowners' association also acts to reinstate the mortgage.
- This bill gives civil immunity to a condominium or cooperative association or its agent if the association or agent provides information to persons, such as unit owners, potential buyers, or mortgage lenders, if the information is provided in good faith and accompanied by a disclaimer stating that the information might contain errors.
- This bill clarifies that corporations not for profit that operate homeowners' associations are governed by the provisions of chapter 617, F.S.
- The bill creates procedures for the domestication of foreign not-for-profit corporations.

The bill does not appear to have a fiscal impact on state or local governments; however, it does permit associations to charge a reasonable fee for certain expenses.

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

**STORAGE NAME:** h0695d.br.doc

**DATE:** April 18, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

The provisions of this bill statutorily require more notification requirements of condominium, cooperative, and homeowner's associations and establish specific parameters for the notification process. The bill makes numerous changes to existing law governing the affairs of condominiums, cooperatives, and homeowners' associations.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Domestication of Foreign Not For Profit Corporations**

Chapter 617, F.S., is known as the "Florida Not For Profit Corporation Act." Section 617.01401(5), F.S., defines a "Corporation not for profit" as "a corporation no part of the income or profit of which is distributable to its members, directors, or officers." Section 617.01401(6), F.S., defines a "Foreign corporation" as a corporation not for profit organized under laws other than the laws of this state."

Chapter 607, F.S., is known as the Florida Business Corporation Act. Section 607.1801, F.S., of that act provides for the domestication of foreign business corporations by filing with the Department of State an executed certificate of domestication and properly executed and recorded articles of incorporation. The current Florida Not For Profit Corporation Act does not include a similar provision for foreign corporations not for profit.

##### **Corporations Not For Profit**

Chapter 617, F.S., the "Florida Not For Profit Corporation Act," governs all Florida not for profit corporations including those not for profit corporations that are condominium associations, cooperative associations, and homeowners' associations. The term "mail" as used in ch. 617, F.S., "means the United States mail, facsimile transmissions, and private mail carriers handling nationwide mail services."<sup>1</sup> The term "electronic transmission" has not been defined in ch. 617, F.S. Written notice by a not for profit corporation to one of its members is effective when mailed.<sup>2</sup>

##### **Condominiums**

A condominium is that 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.<sup>3</sup> A condominium association may

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<sup>1</sup> Section 617.01401(8), F.S.

<sup>2</sup> Section 617.0141(3), F.S.

<sup>3</sup> Section 718.103(11), F.S.

be a corporation for profit or a corporation not for profit.<sup>4</sup> Among the records that a condominium association must maintain are the mailing addresses of its unit owners.<sup>5</sup> There is no requirement for the association to maintain email addresses or facsimile numbers of unit owners.

The board of administration (board) of a condominium is the board of directors or other representative body which is responsible for the administration of the association.<sup>6</sup> Notices of board meetings must be conspicuously posted on the condominium property at least 48 hours before the meeting.<sup>7</sup> When the purpose of the meeting is to consider non emergency special assessments or amendments to rules regarding unit use notice must be mailed or delivered to all unit owners and posted conspicuously on the condominium property at least 14 days before the board meeting. The person providing this 14-day notice is required to execute an affidavit stating that the meeting was noticed in compliance with the law and file the affidavit in the records of the association. If the board has not designated a location on the condominium property to post notices, then all notices of board meetings must be mailed or delivered to condominium unit owners at least 14 days before the meeting.

Condominium unit owner meetings must take place at least once a year.<sup>8</sup> At meetings, unit owners have the right to vote on matters specified in the association's bylaws, to purchase any land or recreation lease, to elect members of the board of administration, to adopt a budget, to recall board members, to approve the transfer of a condominium unit and other decisions.<sup>9</sup> Notice of condominium unit owner meetings must be provided to a unit owner by mail or hand-delivery at least 14 days prior to the meeting.<sup>10</sup> The notice must also be posted conspicuously on the condominium property, if possible. When a condominium unit owner meeting is called to elect members of the board, the association must mail or deliver a notice of elections at least 60 days before the elections.<sup>11</sup> Thirty five days before the election, the association must mail or deliver a second notice of the election with a ballot listing all candidates. The person who provides notice of a condominium unit owner meeting must execute an affidavit stating that meeting notice was provided to unit owners in compliance with the law and file the affidavit in the records of the association.<sup>12</sup> Alternatively, a postal certificate of mailing must be filed in the records of the association to demonstrate that notice was provided in compliance with the law.

Condominium associations are required to make an annual financial report available to their members.<sup>13</sup> The types of financial reports required by law include: compiled financial statements; reviewed financial statements; audited financial statements; or a report of cash receipts and expenditures depending upon the amount of an association's revenue and number of units.<sup>14</sup> The law increases the financial reporting requirements of an association as the revenues of the association increase, unless the association has fewer than 50 units. Condominium unit owners, however, may vote to reduce the financial reporting requirements from audited financial statements, reviewed financial statements, or compiled financial statements to a report of cash receipts and expenditures.<sup>15</sup>

When unit owners vote by proxy, limited proxies must be used to waive or reduce reserve accounts for capital expenditures and deferred maintenance; to amend the declaration creating the condominium; to amend the bylaws or articles of incorporation; and to decide almost any other matter, including votes to reduce a condominium's financial reporting requirements.<sup>16</sup> A limited proxy form records how an owner

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<sup>4</sup> Sections 718.104(4)(i) and 718.111(1)(a), F.S.

<sup>5</sup> Section 718.111(12)(a)7., F.S.

<sup>6</sup> Section 718.103(4), F.S.

<sup>7</sup> Section 718.112(2)(c), F.S.

<sup>8</sup> Section 718.112(2)(d)1., F.S.

<sup>9</sup> See ss. 718.112(2)(d)4, 718.111(8), and 718.112(2)(d)1., (f), (i), and (j), F.S.

<sup>10</sup> Section 718.112(2)(d)2., F.S.

<sup>11</sup> Section 718.112(2)(d)3., F.S.

<sup>12</sup> *Supra* note 10.

<sup>13</sup> Section 718.111(13), F.S.

<sup>14</sup> Section 718.111(13)(a) and (b), F.S.

<sup>15</sup> Section 718.111(13)(d), F.S.

<sup>16</sup> Sections 718.112(2)(b)2. and 718.111(13)(d), F.S.

has decided to vote on an issue and does not authorize a proxy holder to decide how the owner's vote will be cast.<sup>17</sup>

Prior to the adoption of s. 52, ch. 2000-302, L.O.F., Florida law expressly required that limited proxies be used when voting by proxy to reduce a condominium's financial reporting requirements.<sup>18</sup> At that time, provisions existed in s. 718.112(2)(b)2., F.S. (1999), which stated that limited proxies are required for proxy votes "to waive financial statement requirements as provided by s. 718.111(14)." Section 718.111(14), F.S. (1999), required condominiums to make compiled, reviewed, or audited financial statements available to their members. Section 718.111(13), F.S. (1999), required a minimum level of financial reporting that could not be waived. Section 52, ch. 2002-302, L.O.F., largely combined the provisions of subsections (13) and (14) of s. 718.111, F.S. (1999), into a new subsection (13).<sup>19</sup> The language in s. 718.112(2)(b)2., F.S. (1999), requiring the use of limited proxies to vote by proxy to in effect reduce a condominium's financial reporting requirements was not amended to reflect the transfer of the substance of subsection (14) of s. 718.111, F.S., into subsection (13). The phrase "for votes taken to waive financial statement requirements as provided by s. 718.111(14)" was subsequently deleted from s. 718.112(2)(b)2., F.S. (2000), by a reviser's bill during the 2001 legislative session, apparently because s. 718.111(14), F.S., no longer applied to financial reporting.<sup>20</sup>

A condominium has the authority to make and collect assessments from unit owners to maintain, lease, or repair association property.<sup>21</sup> Assessments must be made against condominium units in an amount sufficient to pay the association's estimated current operating expenses and unpaid operating expenses previously incurred.<sup>22</sup> A unit owner is jointly and severally liable with a previous condominium unit owner for all unpaid assessments that came due before the purchase of the condominium unit.<sup>23</sup>

A condominium association has a lien on each condominium parcel to secure the payment of assessments.<sup>24</sup> To collect on a lien, a condominium association may foreclose on the lien and may also bring an action against a unit owner to recover a money judgment.<sup>25</sup> The law, however, offers protection to purchasers of condominium units against unknown liens. Upon the request of a person purchasing a condominium unit or a mortgagee, a condominium association must provide a certificate stating the status of assessments against a condominium unit.<sup>26</sup> All persons other than the owner of the condominium unit for which the certificate was issued are entitled to rely upon the certificate issued by the condominium.

## Cooperatives

A cooperative is a "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."<sup>27</sup> A cooperative may be a corporation for profit or a corporation not for profit.<sup>28</sup> Among the

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<sup>17</sup> See Department of Business and Professional Regulation, *General Information About Proxies*, which are instructions for BPR Form 33-033 Revised 11/23/93.

<sup>18</sup> See ss. 718.111(13) and (14), and 718.112(2)(b)2., F.S. (1999).

<sup>19</sup> See also House of Representatives, Committee on Real Property & Probate, *Final Analysis for CS/CS/HB 591, 1st Engrossed*, p. 36-37, July 26, 2000.

<sup>20</sup> Section 21, ch. 2001-64, L.O.F.

<sup>21</sup> Sections 718.103(1) and 718.111(4), F.S.

<sup>22</sup> Section 718.112(2)(g), F.S.

<sup>23</sup> Section 718.116(1)(a), F.S.

<sup>24</sup> Section 718.116(5)(a), F.S.

<sup>25</sup> Section 718.116(6)(a), F.S.

<sup>26</sup> Section 718.116(8), F.S.

<sup>27</sup> Section 719.103(12), F.S.

<sup>28</sup> Section 719.103(2), F.S.

records that cooperatives must maintain are the mailing addresses of its unit owners.<sup>29</sup> There is no requirement for cooperatives to maintain email addresses or facsimile numbers of unit owners.

The board of administration (board) is the board of directors or other representative body which is responsible for the administration of a cooperative association.<sup>30</sup> Notices of board meetings must be posted conspicuously on the cooperative property at least 48 hours before the meeting.<sup>31</sup> When the purpose of the meeting is to consider nonemergency special assessments or amendments to rules regarding unit use, however, notice must be mailed or delivered to all unit owners and posted conspicuously on the cooperative property at least 14 days before the board meeting.

Shareholder meetings must take place at least once a year.<sup>32</sup> At shareholder meetings, shareholders of a cooperative have the authority to vote on matters specified in the cooperative documents such as the cooperative's articles of incorporation or bylaws; to impose fees for the use of cooperative property; to purchase land or acquire a recreational lease; to modify a cooperative unit; to amend the cooperative documents; and to vote on other matters.<sup>33</sup> The cooperative association must provide notice of shareholder meetings including an agenda by mail to each unit owner at least 14 days before the meeting.<sup>34</sup> Notice of shareholder meetings must also be posted conspicuously on association property at least 14 days before a shareholder meeting. A person who provides notice of a shareholder meeting must execute an affidavit stating that meeting notice was provided to unit owners in compliance with the law and file the affidavit in the records of the association. Alternatively, a postal certificate of mailing must be filed in the records of the association to demonstrate that notice was provided in compliance with the law.

Chapter 718, F.S., pertaining to condominiums, and ch. 719, F.S., pertaining to cooperatives, contain many similar and identical provisions. Both chapters also perform the same function of regulating an association. The provisions of s. 719.104(4), F.S., requiring cooperatives to make financial reports available to unit owners is nearly identical to the provisions of s. 718.111(13) and (14), F.S. (1999), requiring condominiums to make financial reports available to unit owners. Section 719.104(4)(b), F.S., like s. 718.111(13)(d), F.S., permits unit owners to vote to waive the requirements for the association to provide compiled, reviewed, or audited financial statements. Like s. 718.111(13), F.S., s. 719.104(4)(a), F.S., does not authorize cooperative unit owners to waive the requirement for the creation of a report of cash receipts and expenditures. Unlike the proxy voting procedures in ch. 718, F.S., before 2000, it appears that ch. 719, F.S., never expressly required the use of limited proxies to reduce a cooperative's financial reporting requirements.

A cooperative has the authority to make and collect assessments from unit owners to maintain, lease, or repair the cooperative's common areas.<sup>35</sup> Assessments must be made against cooperative unit owners in an amount sufficient to pay the cooperative's estimated current operating expenses and unpaid operating expenses previously incurred.<sup>36</sup> A unit owner is jointly and severally liable with a previous cooperative unit owner for all unpaid assessments that came due before the purchase of the cooperative unit.<sup>37</sup>

A cooperative association has a lien on each cooperative parcel to secure the payment of assessments.<sup>38</sup> To collect on a lien, a cooperative association may foreclose on the lien and may also

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<sup>29</sup> Section 719.104(2)(a)5., F.S.

<sup>30</sup> Section 719.103(3), F.S.

<sup>31</sup> Section 719.106(1)(c), F.S.

<sup>32</sup> Section 719.106(1)(d), F.S.

<sup>33</sup> See ss. 719.104(5) and (6), 719.1055(1), and 719.304(1), F.S.

<sup>34</sup> Section 719.106(1)(d), F.S.

<sup>35</sup> Sections 719.103(1) and 719.104(5), F.S.

<sup>36</sup> Section 719.106(1)(g), F.S.

<sup>37</sup> Section 719.108(1), F.S.

<sup>38</sup> Section 719.108(4), F.S.

bring an action against a unit owner to recover a money judgment.<sup>39</sup> The law, however, offers protection to persons such as purchasers who could be harmed by the existence of a lien on a cooperative unit. A certificate issued by a cooperative association detailing the status of assessments against a cooperative unit may be relied upon by all persons other than the owner of the cooperative unit.<sup>40</sup>

## **Homeowners' Associations**

A homeowners' association is "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."<sup>41</sup> Among the records that homeowners' associations are required to maintain are member addresses and parcel identifications.<sup>42</sup> There is no requirement for homeowners' associations to maintain the email addresses and facsimile numbers of their members.

Florida Statutes predating the 2000 legislative session clearly provided that homeowners' associations were corporations not for profit and subject to the provisions of ch. 617, F.S. According to s. 617.01401(4), F.S., the term "corporation" as used in ch. 617, F.S., is defined as a corporation not for profit, subject to the provisions of ch. 617. Section 617.301(7), F.S. (1999), defined "homeowners' association" as a Florida corporation.<sup>43</sup> When the provisions of ch. 617, F.S., relating to homeowners' associations were renumbered as sections of ch. 720, F.S., the provisions were not amended to reflect whether homeowners' associations would continue to be required to be corporations *not for profit* and subject to the provisions of ch. 617, F.S.<sup>44</sup>

The board of directors of a homeowners' association manages the affairs of the association.<sup>45</sup> Notice of meetings of the board of directors of a homeowners' association must be posted conspicuously in the community at least 48 hours in advance of the meeting or be mailed or delivered to each member of the association at least 7 days before the meeting.<sup>46</sup> The bylaws of communities with more than 100 members may publish a schedule of board meetings or provide for a reasonable alternative to posting or mailing notice of board meetings. Meetings of homeowners' associations and committees of homeowners associations with the power to spend funds or make architectural decisions must be noticed in the same manner as meetings of the board of directors.

## **Effect of Proposed Changes**

**Section 1** amends, s. 617.01401, F.S., to define "electronic transmission" for use in chapter 617, F.S., the Florida Not For Profit Corporation Act. The term electronic transmission "means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers." This definition will apply to meeting notices by corporations not for profit that are condominiums, cooperatives, and homeowners' associations to their members by virtue of proposed s. 617.0141(2)(3), F.S., permitting notice by electronic transmission to members of corporations not for profit. (See section 2 of the bill.)

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<sup>39</sup> Section 719.108(5), F.S.

<sup>40</sup> Section 719.108(6), F.S.

<sup>41</sup> Section 720.301(7), F.S.

<sup>42</sup> Section 720.303(4)(g), F.S.

<sup>43</sup> See also s. 720.301(7), F.S. (defining "homeowners' association" as a Florida corporation).

<sup>44</sup> See ss. 44-51, ch. 2000-258, L.O.F.

<sup>45</sup> See s. 617.01401(2), F.S. (defining "board of directors" as used in ch. 617, F.S.).

<sup>46</sup> Section 720.303(2), F.S.

**Section 2** amends s. 617.0141, F.S., to provide that members of a not for profit corporation are authorized to consent to receive notice by specific forms of electronic communication. Consent to receive notice by electronic transmission may be revoked by the member upon notice to the not for profit corporation. Consent to receive notice by electronic transmission is revoked by operation of law when a corporation is unable to deliver notice on two consecutive occasions in the form electronic transmission authorized by the member. An inadvertent failure to deliver notice by another authorized means after consent to receive notice by electronic transmission does not invalidate any meeting or action for which notice was otherwise required by law. Section 2 of the bill also provides criteria to determine when notice to members of a not for profit corporation is effective for notices delivered by specified forms of electronic transmissions.

**Section 3** creates s. 617.1803, F.S., to provide procedures for the domestication of foreign not-for-profit corporations. The procedures in the bill are similar to the current procedures set forth in Section 607.1801, F.S., for the domestication of foreign business corporations.

**Section 4** amends the term “mortgage” in s. 702.09, F.S., to include “liens created pursuant to the recorded covenants of a homeowners’ association as defined in s. 712.01”. This ensures that the dismissal of a foreclosure action to secure payment of liens created pursuant to the recorded covenants of a homeowners’ association also acts to reinstate the mortgage.

**Section 5** amends s. 718.111, F.S., to specify requirements for what portions of condominium buildings must be insured by associations and what portions must be insured by unit owners. The bill is “intended to establish the property and casualty insuring responsibilities of the association and those of the individual unit owner”. The bill requires that insurance obtained by the association will exclude coverage for areas and items within an individual owner’s unit such as floor, wall, and ceiling coverings, water filters, countertops and window treatments, and all air conditioning compressors that serve only an individual unit. Anything not excluded from coverage by the association is to be insured by the unit owner. The bill’s requirements apply to policies issued or renewed after January 1, 2004.

The bill requires a report to be prepared by the Office of Insurance Regulation of the Department of Financial Services relating to insurance coverage of condominiums.

Under this bill, a condominium association or its agent is not required to provide information to a prospective purchaser or lienholder except for the information that is required to be provided under law. If the association opts to give information other than information required by law, it may do so. If the association provides information in good faith and accompanies the information with a disclaimer noting that the information is provided without warranty or certification and encouraging the person seeking the information to attempt to obtain the information from other sources, this bill gives the association immunity from civil liability if the information is later found to be inaccurate. This bill does not provide protection against lawsuit based on information that is not given in good faith.

This bill also permits the association to charge a reasonable fee, not to exceed \$150, costs, and attorney’s fees, for its time in supplying the requested information.

The bill amends subsection (12) of s. 718.111, F.S., to require condominiums to maintain electronic mailing addresses of condominium unit owners, except for unit owners who request in writing that their electronic mailing addresses be omitted from the records of the condominium association. Condominium associations are immune from liability for inadvertent disclosures of unit owner email addresses and facsimile numbers unless such disclosure is made in reckless disregard of the private nature of the electronic mail address or number.

**Section 6** amends s. 718.112, F.S., relating to the required and optional bylaw provisions, respectively, for condominium associations.

### *Financial Reports*

The text of the bill suggests that condominium unit owners may vote by limited proxy to waive the condominium association's financial reporting requirements. Under existing law, a unit owner may vote by limited proxy to *reduce* the condominium association's financial reporting requirements. Under prior law, when voting by proxy, a unit owner was expressly required to vote by limited proxy to reduce a condominium association's financial reporting requirements.

#### *Meeting Notices*

Notices of meetings of the board of administration, unit owner meetings, and other meetings may be delivered by electronic transmission if authorized in a condominium association's bylaws and upon the consent of a unit owner. Meeting notices may be broadcast on a closed-circuit cable television system serving the condominium association in lieu of posting a conspicuous meeting notice on condominium property.

#### *Rulemaking*

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation is required to adopt rules establishing procedures for delivering notice of condominium meetings by electronic transmission.

The bill amends s. 718.112(2)(b)2., F.S., to require the use of limited proxies, as opposed to general proxies, for votes taken to waive the financial reporting requirements of s. 718.111(13), F.S. The bill does not prohibit in-person voting.

**Section 7** amends subsection (8) of s. 718.116, F.S., to authorize condominium associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a condominium unit.

**Section 8** amends s. 718.303(1), F.S., to provide that actions under those sections are not actions for specific performance. Therefore, actions under those sections would not be governed by the one year statute of limitations in s. 95.11(5)(a), F.S.

**Section 9** amends s. 719.104, F.S., relating to cooperatives. Pursuant to the bill, cooperative associations will have the same protection from civil liability as condominium associations if the association provides the information in good faith and provides a similar disclaimer. Cooperative associations will have the same ability to charge fees, costs, and attorney's fees for the time spent supplying the requested information. This bill does not change insurance requirements for cooperatives.

The bill amends s. 719.104, F.S., to require cooperatives to maintain electronic mailing addresses of cooperative unit owners, except for unit owners who request in writing that their electronic mailing addresses be omitted from the records of the cooperative association. Cooperative associations are immune from liability for inadvertent disclosures of unit owner email addresses and facsimile numbers unless such disclosure is made in reckless disregard of the private nature of the electronic mail address or number.

**Section 10** amends s. 719.106, F.S., relating to the mandatory and optional bylaw provisions, respectively, for cooperative associations.

#### *Financial Reports*

The text of the bill suggests that cooperative unit owners may vote by limited proxy to waive the cooperative association's financial reporting requirements. Under existing law, a unit owner may vote by limited proxy to *reduce* the cooperative association's financial reporting requirements. Under prior law relating to condominiums which is similar to existing law relating to cooperatives, when voting by proxy, a unit owner was expressly required to vote by limited proxy to reduce the condominium association's financial reporting requirements.



### *Meeting Notices*

Notices of meetings of the board of administration, shareholder meetings, and other meetings may be delivered by electronic transmission if authorized in a cooperative association's bylaws and upon the consent of a unit owner. Meeting notices may be broadcast on a closed-circuit cable television system serving the cooperative association in lieu of posting a conspicuous meeting on cooperative property.

### *Rulemaking*

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation is required to adopt rules establishing procedures for delivering notice of cooperative meetings by electronic transmission.

**Section 11** amends subsection (6) of s. 719.108, F.S., to authorize cooperative associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a cooperative unit.

**Section 12** amends s. 719.303(1), F.S., to provide that actions under those sections are not actions for specific performance. Therefore, actions under those sections would not be governed by the one year statute of limitations in s. 95.11(5)(a), F.S.

**Section 13** amends subsection (1) of s. 720.302, F.S., to attempt to clarify that corporations not for profit that operate homeowners' associations are governed by the provisions of chapter 617, F.S. Chapter 617, F.S., governs all not for profit corporations. This bill does not change other provisions of statute so homeowners' associations operated by corporations not for profit would still be subject to other statutes relating to homeowners' associations. This bill states that the intent is to clarify existing law.

**Section 14** subsections (2) and (4) of s. 720.303, F.S., relating to board meetings and official records, of homeowner's associations.

### *Meeting Notices*

Meetings of the board of directors and committee meetings of a homeowners' association may be delivered by electronic transmission if authorized by the association's bylaws and upon the consent of an association member. Meeting notices may be broadcast on a closed-circuit cable television system serving the association in lieu of posting a conspicuous notice of a meeting on association property.

### *Records*

Homeowners' associations must maintain electronic mailing addresses of their members, except for members who request in writing that their electronic mailing addresses be omitted from the records of the association. Homeowners' associations are immune from liability for inadvertent disclosures of member email addresses and facsimile numbers unless such disclosure is made in reckless disregard of the private nature of the electronic mail address or number.

**Section 15** provides that the bill takes effect upon becoming a law.

### C. SECTION DIRECTORY:

**Section 1** amends, s. 617.01401, F.S., to define "electronic transmission" for use in chapter 617, F.S., the Florida Not For Profit Corporation Act.

**Section 2** amends s. 617.0141, F.S., to provide that members of a not for profit corporation are authorized to consent to receive notice by specific forms of electronic communication.

**Section 3** creates s. 617.1803, F.S., to provide procedures for the domestication of foreign not-for-profit corporations.

**Section 4** amends s. 702.09, F.S., relating to mortgages and foreclosures.

**Section 5** amends s. 718.111, F.S., relating to liability of condominium associations; allowing associations to charge a reasonable fee and to require condominiums to maintain electronic mailing addresses of certain condominium unit owners.

**Section 6** amends s. 718.112, F.S., relating to the required and optional bylaw provisions, respectively, for condominium associations, proxy voting, and electronic transmissions.

**Section 7** amends subsection (8) of s. 718.116, F.S., to authorize condominium associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a condominium unit.

**Section 8** amends s. 718.303, F.S., relating to civil actions involving condominium associations.

**Section 9** amends s. 719.104, F.S., to require cooperatives to maintain electronic mailing addresses of certain cooperative unit owners: liability of cooperative associations; and permitting associations to charge a reasonable fee.

**Section 10** amends s. 719.106, F.S., relating to the mandatory and optional bylaw provisions, respectively, for cooperative associations and electronic transmissions.

**Section 11** amends subsection (6) of s. 719.108, F.S., to authorize cooperative associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a cooperative unit.

**Section 12** amends s. 719.303, F.S., relating to civil actions involving cooperative associations.

**Section 13** amends subsection (1) of s. 720.302, F.S., to provide that homeowners' associations are corporations not for profit, governed by ch. 617, F.S.

**Section 14** subsections (2) and (4) of s. 720.303, F.S., relating to board meetings and official records, of homeowner's associations.

**Section 15** provides that this act will take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

Condominium and cooperative association members will incur additional costs if their association chooses to charge a reasonable fee for issuing certificates detailing the status of assessments against a condominium or cooperative unit.

Condominium associations, cooperative associations, and homeowners' associations may save on the costs to provide meeting notices by mail by delivering meeting notices by electronic transmissions.

The bill permits the association to charge a fee to prospective purchaser, lien holder or the current unit owner for providing requested information.

D. FISCAL COMMENTS:

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation must adopt rules establishing procedures for condominium associations, cooperative associations, and homeowners' associations to deliver meeting notices by electronic transmission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Commerce adopted a Committee Substitute (CS) with title, that provides additional conditions for immunity from liability for information disclosure. The bill provides that condominium associations, cooperative associations, and homeowners' associations are immune from liability for inadvertent disclosure of members' email addresses and facsimile numbers. The CS provides this immunity unless such disclosure is made in reckless disregard of the private nature of the electronic mail address or number.

The Committee on Business Regulation adopted two amendments at its meeting on April 14, 2003 and passed the bill favorably with a committee substitute. The bill w/CS differs from the original bill in the following areas.

- Specifies procedures for the domestication of foreign not-for-profit corporations.
- Incorporates a substantial number of the provisions contained in HB 165 w/CS: amends the term "mortgage" to ensure that the dismissal of a foreclosure action to secure payment of liens created pursuant to the recorded covenants of a homeowners' association also acts to reinstate the mortgage; clarifies what areas of a condominium must be covered under a condominium association insurance policy and what areas must be covered by an individual unit owner's policy; requires the use of limited proxies, rather than general proxies, for votes taken to waive the financial reporting; provides that actions involving condominium or cooperative associations are not actions for specific performance;

and clarifies that not for profit corporations that operate homeowners' associations are governed by the provisions of chapter 617, F.S.