

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 695 Corporate Affairs

SPONSOR(S): Representative Culp

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Banking & Securities (Sub)</u>	<u>6 Y, 0 N</u>	<u>Cutchins</u>	<u>Whitfield</u>
2) <u>Commerce</u>	<u></u>	<u></u>	<u></u>
3) <u>Business Regulation</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill makes the following changes to existing law governing the affairs of condominiums, cooperatives, and homeowners' associations:

- 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. The associations are not liable for the inadvertent disclosure of their members' email addresses and facsimile numbers.
- Condominium unit owners and cooperative shareholders may vote by limited proxy to waive financial reporting requirements of a condominium or cooperative association.

Additionally, 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.

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

STORAGE NAME: h0695a.com.doc

DATE: March 17, 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:

The provisions of this bill statutorily require more notification requirements of condominium, cooperative, and homeowner’s associations and establish very specific parameters for the notification process.

B. EFFECT OF PROPOSED CHANGES:

This bill makes the following changes to existing law governing the affairs of condominiums, cooperatives, and homeowners’ associations:

- 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. The associations are not liable for the inadvertent disclosure of their members’ email addresses and facsimile numbers.
- Condominium unit owners and cooperative shareholders may vote by limited proxy to waive financial reporting requirements of a condominium or cooperative association.

Additionally, 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.

Current Situation

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.”¹ 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.²

¹ Section 617.01401(8), F.S.

² Section 617.0141(3), F.S.

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.³ A condominium association may be a corporation for profit or a corporation not for profit.⁴ Among the records that a condominium association must maintain are the mailing addresses of its unit owners.⁵ 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.⁶ Notices of board meetings must be conspicuously posted on the condominium property at least 48 hours before the meeting.⁷ 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 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.⁸ At condominium unit owner 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, and to approve the transfer of a condominium unit and other decisions.⁹ Notice of condominium unit owner meeting must be provided to a unit owner by mail or hand-delivery at least 14 days prior to the meeting.¹⁰ 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.¹¹ 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.¹² 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.¹³ 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.¹⁴ 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

³ Section 718.103(11), F.S.

⁴ Sections 718.104(4)(i) and 718.111(1)(a), F.S.

⁵ Section 718.111(12)(a)7., F.S.

⁶ Section 718.103(4), F.S.

⁷ Section 718.112(2)(c), F.S.

⁸ Section 718.112(2)(d)1., F.S.

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

¹⁰ Section 718.112(2)(d)2., F.S.

¹¹ Section 718.112(2)(d)3., F.S.

¹² *Supra* note 10.

¹³ Section 718.111(13), F.S.

¹⁴ Section 718.111(13)(a) and (b), F.S.

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.¹⁵

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.¹⁶ A limited proxy form records how an owner has decided to vote on an issue and does not authorize a proxy holder to decide how the owner's vote will be cast.¹⁷

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.¹⁸ 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).¹⁹ 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.²⁰

A condominium has the authority to make and collect assessments from unit owners to maintain, lease, or repair association property.²¹ 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.²² 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.²³

A condominium association has a lien on each condominium parcel to secure the payment of assessments.²⁴ 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.²⁵ 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.²⁶ 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

¹⁵ Section 718.111(13)(d), F.S.

¹⁶ Sections 718.112(2)(b)2. and 718.111(13)(d), F.S.

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

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

¹⁹ 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.

²⁰ Section 21, ch. 2001-64, L.O.F.

²¹ Sections 718.103(1) and 718.111(4), F.S.

²² Section 718.112(2)(g), F.S.

²³ Section 718.116(1)(a), F.S.

²⁴ Section 718.116(5)(a), F.S.

²⁵ Section 718.116(6)(a), F.S.

²⁶ Section 718.116(8), F.S.

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.”²⁷ A cooperative may be a corporation for profit or a corporation not for profit.²⁸ Among the records that cooperatives must maintain are the mailing addresses of its unit owners.²⁹ 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.³⁰ Notices of board meetings must be posted conspicuously on the cooperative property at least 48 hours before the meeting.³¹ 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.³² 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.³³ 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.³⁴ Notice of shareholder meetings must also be posted conspicuously on condominium 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.³⁵ 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.³⁶ A unit owner is jointly and severally liable with a

²⁷ Section 719.103(12), F.S.

²⁸ Section 719.103(2), F.S.

²⁹ Section 719.104(2)(a)5., F.S.

³⁰ Section 719.103(3), F.S.

³¹ Section 719.106(1)(c), F.S.

³² Section 719.106(1)(d), F.S.

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

³⁴ Section 719.106(1)(d), F.S.

³⁵ Sections 719.103(1) and 719.104(5), F.S.

³⁶ Section 719.106(1)(g), F.S.

previous cooperative unit owner for all unpaid assessments that came due before the purchase of the cooperative unit.³⁷

A cooperative association has a lien on each cooperative parcel to secure the payment of assessments.³⁸ To collect on a lien, a cooperative association may foreclose on the lien and may also bring an action against a unit owner to recover a money judgment.³⁹ 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.⁴⁰

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."⁴¹ Among the records that homeowners' associations are required to maintain are member addresses and parcel identifications.⁴² 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.⁴³ 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.⁴⁴

The board of directors of a homeowners' association manages the affairs of the association.⁴⁵ 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.⁴⁶ 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.

C. SECTION DIRECTORY:

Section 1 amends, s. 617.01401, F.S., to define "electronic transmission" for use in ch. 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

³⁷ Section 719.108(1), F.S.

³⁸ Section 719.108(4), F.S.

³⁹ Section 719.108(5), F.S.

⁴⁰ Section 719.108(6), F.S.

⁴¹ Section 720.301(7), F.S.

⁴² Section 720.303(4)(g), F.S.

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

⁴⁴ See ss. 44-51, ch. 2000-258, L.O.F.

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

⁴⁶ Section 720.303(2), F.S.

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 electronic by electronic transmission to members of corporations not for profit. (See section 2 of the bill.)

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 amends paragraph (a) of 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.

Section 4 amends subsections (2) and (3) of 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.

Section 5 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 6 amends paragraph (a) of subsection (2) of 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.

Section 7 subsections (1) and (2) of 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 8 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 9 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 10 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.

Section 11 provides that the bill takes 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.

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 and homeowners' associations to deliver meeting notices by electronic transmission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES