

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1163 CS Vacation and Timeshare Plans
SPONSOR(S): Mealor
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Blalock	Bond
2) Insurance Committee	17 Y, 0 N	Callaway	Cooper
3) Justice Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law requires sellers of timeshare property located outside the state of Florida to file a public offering statement with the Division of Florida Land Sales, Condominiums, and Mobile Homes within the Department of Business and Professional Regulation for approval before they can provide any potential buyer in the state of Florida with information regarding a timeshare unit.

This bill provides that a timeshare seller in Florida can offer timeshare interests in a timeshare plan located outside of Florida without filing a public offering statement as long as the seller meets certain disclosure criteria.

Timeshares may include condominium units and cooperatives and can be regulated in part by ch. 720, F.S. (Condominiums) and ch. 719, F.S. (Cooperatives). This bill provides that timeshare condominiums and cooperatives are not subject to the provisions pertaining to the transfer of association control condominium and cooperative law, unless there is a majority vote to hold a transfer of control elections. This bill also provides procedures for the transfer of control elections approved by the majority vote.

This bill revises the formula for determining the amount of funding of reserve accounts by the developer.

This bill appears to have a negative recurring fiscal impact on state revenues of approximately \$100,000, and an unknown but likely minimal negative recurring impact on expenditures, both affecting the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill decreases government regulation of timeshare plans located outside the state of Florida.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Vacation Plan and Timesharing Act establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.¹ A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods² or a condominium unit in which timeshare estates have been created.³ A timeshare plan is any arrangement, plan, scheme, or similar device whereby a purchaser gives consideration for ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years. Prior to offering any timeshare plan, a developer must file a registered public offering statement with the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR) for approval.⁴

Requirements When Not Filing a Public Offering Statement

Under current law, a person cannot offer timeshare interests in a real property timeshare plan located outside the state of Florida without filing a public offering statement with the division and getting approval from the division. While a person is staying at a timeshare located inside the state of Florida the developer of the timeshare may want to provide the person with information about another timeshare for sale by that developer, including ones located out of the state.

This bill creates s. 721.03(11), F.S., which provides that a seller can offer timeshare interests in a real property timeshare plan located outside the state of Florida without filing a public offering statement, provided all of the following criteria have been satisfied:

- The Seller must provide a disclosure statement to each prospective purchaser. The disclosure statement must contain information that is substantially equivalent to the disclosures required in timeshare and multi-state timeshare public offering statements. The disclosure statement must also include exhibits of the following documents:
 - Declaration of condominium;
 - Cooperative documents;
 - Declaration of covenants and restrictions;
 - Articles of incorporation creating the owners' association;
 - Bylaws of the owners' association;
 - Management agreement and all maintenance and other contracts regarding the management and operation of the timeshare property which have terms in excess of 1 year;
 - Estimated operating budget for the timeshare plan and the required schedule of purchasers' expenses; and

¹ Sections 721.02(2), (3), F.S.

² Section 721.05(39), F.S.

³ Section 718.103(26), F.S.

⁴ Section 721.07, F.S.

- Any other documents or instruments creating the timeshare plan.
- The seller must deliver the disclosure statement in a way that satisfies the requirements of ch. 721, F.S., regarding a public offering statement.
- The seller must utilize and furnish to each purchaser a fully completed and executed copy of a purchase contract that contains the statement:

"You may cancel this contract without any penalty or obligation within 10 days after the date you sign this contract. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the seller at (address) . Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10-day cancellation period, is prohibited."

The contract must also contain the initial purchase price and any additional charges to which the purchaser could be subject to such as financing and the current year's annual assessment for common expenses.

- All purchase contracts must also contain the following statements in conspicuous type:
 - "This timeshare plan has not been reviewed or approved by the State of Florida"; and
 - "The timeshare interest you are purchasing requires certain procedures to be followed in order for you to use your interest. These procedures may be different from those followed in other timeshare plans. You should read and understand these procedures prior to purchasing".
- The seller can only offer an out-of-state plan on behalf of:
 - The developer of a timeshare plan that has been approved by the division within the last 7 years, or where an amendment by the developer has been approved by the division within the preceding 7 years, which timeshare plan has neither been terminated or withdrawn; or
 - A developer under common ownership or control with a developer described above provided that any common ownership must constitute as least a 50% ownership interest.
- An out-of state timeshare plan can only be offered to a person who already owns a timeshare interest in a timeshare plan filed by a developer that has met the 7-year requirements stated above.
- Any out-of-state timeshare plan must meet all requirements of ch. 720, F.S., except as provided in ss. 721.06⁵, 721.065⁶, 721.07⁷, 721.27⁸, 721.55⁹, and 721.58¹⁰, F.S. The out-of-state timeshare plan must also be eligible for any exemptions provided by ch. 721, F.S.
- Any escrow account required to be established by s. 721.08, F.S., can be maintained in the jurisdiction where the timeshare property is located.
- The seller must be required to provide notice of the out-of-state timeshare plan to the division on a form prescribed by the division, along with payment of a one-time fee not to exceed \$1,000 per filing.

Formula for Funding Reserve Accounts

Section 721.03(3), F.S., provides that the developer of a timeshare must fund reserve accounts for capital expenditures and deferred maintenance for the roof, plumbing, air-conditioning, and any component of the structure that has a useful life that is less than the useful life of the overall structure.

⁵ Section 721.06, F.S. provides for contracts for the purchase of timeshare interests.

⁶ Section 721.065, F.S. provides for resale purchase agreements of timeshares

⁷ Section 721.07, F.S. provides for timeshare public offering statements

⁸ Section 721.27, F.S. provides for the annual fee for each timeshare unit in plan.

⁹ Section 721.55, F.S. provides for multisite timeshare plan public offering statements for vacation clubs.

¹⁰ Section 721.58, F.S. provides for the filing fee and annual fee for vacation clubs.

These reserve accounts are funded using a formula, which is the product of the estimated current replacement cost of the component as of the date of conversion multiplied by a fraction with the numerator being the remaining life of the component in years and the denominator being the total useful life of the component in years ($a \times b/c = x$)¹¹.

This bill amends s. 721.03(3), F.S. by replacing the numerator of the fraction used in the funding formula for reserve accounts from the "remaining life" of the component in years to the "age" of the component in years. This change in the formula will require more money be put in the reserve accounts if the component is older at the time of conversion, however if the age of the component is low then the amount put in the reserve account will be less. Under the current formula the older the component is at conversion the less that the developer is required to put in the reserve fund, and the lower the age of the component at conversion the greater the amount that has to be put in the reserve account.

One-to-One Purchaser to Accommodation Ratio

Section 721.05(25), F.S., provides that the "one-to-one purchaser to accommodation ratio" is the ratio of the number of purchasers eligible to use the accommodations of a timeshare plan on a given day to the number of accommodations available for use within the plan on that day, such that the total number of purchasers eligible to use the accommodations of the timeshare plan during a given calendar year never exceeds the total number of accommodations available for use in the timeshare plan during that year. For purposes of calculation under this subsection, each purchaser must be counted at least once, and no individual timeshare unit may be counted more than 365 times per calendar year (or more than 366 times per leap year). A purchaser who is delinquent in the payment of timeshare plan assessments will continue to be considered eligible to use the accommodations of the timeshare plan for purposes of this subsection notwithstanding any application of s. 721.13(6)¹².

This bill amends s. 721.05(25), F.S., by replacing all references to "calendar year" or "year" with "12-month period".

Management of Timeshare Plans

Section 721.13, F.S., provides that for each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners' association. Where there is a condominium or cooperative timeshare that requires a mandatory owners' association, the board of administration must be considered the managing entity of the timeshare plan.

This bill amends s. 721.13(1)(b), F.S., to provide that notwithstanding anything to the contrary contained in condominium or cooperative law, timeshare condominium associations and cooperative associations created after July 1, 2006 are not subject to the provisions in ch. 718, F.S. (condominiums) and ch. 719, F.S (cooperatives), unless a majority, present at a duly called meeting of the association, vote to hold a transfer of control election. The majority must constitute at least 15% of the total voting interests other than those owned by the developer. A meeting to decide whether to have a transfer of control election must be conducted, provided that there has been a written request of 15% of the total voting interests other than those owned by the developer. If a transfer of control election is approved, that election must entitle purchasers other than the developer to elect a majority of the members of the board of administration of the association. This bill also provides that the transfer of control election cannot be held prior to the time that transfer of majority control of the members of the

¹¹ a = replacement cost of component, b = remaining life of component, c = total life of component, x = required funding of reserve account.

¹² Section 721.13(6), F.S., provides that "The managing entity of any timeshare plan located in this state may deny the use of the accommodations and facilities of the timeshare plan to any purchaser who is delinquent in the payment of any assessments made by the managing entity against such purchaser for common expenses or for ad valorem real estate taxes".

board of administration would be required by s. 718.301, F.S.¹³ or s. 719.301, F.S.¹⁴ The election must be held 75 days after the approval vote by the majority interest. After purchasers, other than the developer, vote to elect a majority of the members of the board, a developer can exercise the right to vote any developer-owned timeshare interests in the same manner as any purchaser except for the purpose of reacquiring control of the association or selecting a majority of the members of the board of administration.

This bill amends s. 721.13(3)(c), F.S., to provide that when a timeshare plan has a managing entity that is an owners' association, reserves can be waived or reduced by a majority vote of the voting interests that are present, in person or by proxy, at a duly called meeting of the owners' association. If the vote denies reducing or waiving the reserves or no quorum is attained, then the reserves as included in the budget must go into effect.

Insurance for Timeshare Accommodations and Facilities

Section 721.165, F.S., provides that the seller, and thereafter, the managing entity, is responsible for obtaining insurance to protect the accommodations and facilities of the timeshare plan in an amount equal to the replacement cost of such accommodations and facilities.

This bill amends s. 721.165, F.S., to provide that any insurance may include reasonable deductibles as determined initially by the seller and thereafter by the managing entity. According to DBPR, this tracks language in the Condominium Act regarding insurance (s. 718.111(11)(a), F.S.) and recognizes the difficulty of placing insurance for full value.

Any insurance policy obtained by the seller or managing entity will have been reviewed and approved by the Office of Insurance Regulation pursuant to s. 627.410, F.S. This provides consumer protection against unreasonable insurance deductibles.

C. SECTION DIRECTORY:

Section 1 amends s. 721.03, F.S., to revise the funding formula for reserve accounts, and to provide criteria that must be met before a seller can offer a timeshare interest in a timeshare plan located outside the state of Florida without filing a public offering statement.

Section 2 amends s. 721.05, F.S., to replace all references to "calendar year" or "year" with "12-month period".

Section 3 amends s. 721.13, F.S., to provide that timeshare condominiums and cooperatives created after July 1, 2006 are not subject to the condominium or cooperative provisions pertaining to the transition of association control under certain circumstances, and to provide procedures for transfer of control elections. This section also provides for waving or reducing reserves where a timeshare plan has a managing entity that is an owners' association.

Section 4 amends s. 721.165, F.S. to provide that any insurance may include reasonable deductibles as determined initially by the seller and thereafter by the managing entity.

Section 5 provides an effective date of July 1, 2006.

¹³ Section 718.301, F.S. provides for the transfer of condominium association control.

¹⁴ Section 719.301, F.S. provides for the transfer of cooperative association control.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT ¹⁵

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill will have a negative fiscal impact on state government revenues. Amending s. 721.03, F.S., will exempt developers from registering certain out of state timeshare plans. The change to section 721.03, F.S., will remove the language directing the department from collecting the registration fees (\$2/timeshare week) for those exempted timeshare plans. This will be partially offset by the one-time fee of \$1,000 payable to the division for the developer exercising this exemption from filing. There are currently 78 out of state timeshare projects (comprising 161,888 timeshare weeks) filed with the division. During FY 2004/05, 11 projects (comprising 51,056 timeshare weeks) were filed. The division is unable to determine the number of projects that would be entitled to this exemption; however, based upon FY 2004/05 filings and if all 11 projects were to have been entitled to this exemption, the division would receive \$11,000 in exemption fees instead of \$102,112 in filing fees and \$102,112 in annual fees.

2. Expenditures:

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	FY 2006-07	FY 2007-08	FY 2008-09
Salaries/Benefits # of FTE's	0	0	0
Expenses	0	0	0
Other (identify)	0	0	0
Subtotal	0	0	0
Non-Operating Expenditures	FY 2006-07	FY 2007-08	FY 2008-09
Service Charges (to General Revenue)	(6,651)	(6,651)	(6,651)
Other Indirect Costs	0	0	0
Subtotal	(6,651)	(6,651)	(6,651)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁵ Fiscal impact provided by DBPR on March 13, 2006

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require sellers of out-of-state timeshare plans to file notice of their plan to the Division of Florida Land Sales, Condominiums, and Mobile Homes along with payment of a \$1,000 filing fee.

DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR	
Direct Private Sector Costs	Each seller who is entitled to the exemption and elects not to file a public offering statement with the department would pay a \$1,000 exemption fee.
Direct Private Sector Benefits	Each seller who is entitled to the exemption and elects not to file a public offering statement with the department would not have to pay the \$2/timeshare week fee.
Effects on Competition, Private Enterprise & Employment Markets	Unknown

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, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 721 03(11)(g), F.S., requires a form to be prescribed by the division. This bill authorizes the Division of Florida Land Sales, Condominiums, and Mobile Homes to prescribe by rule the prominent location where the statement, regarding the canceling of the contract, must be located on any compact disc or other alternative media jacket, sleeve, or other container.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice Committee adopted one amendment to this bill. The amendment made the following changes to the bill:

- Revises the formula for determining the amount that a reserve account must be funded, by providing that the numerator of the fraction used in the formula is the "age" of the component in years instead of the "remaining life".
- Specifies that the ability of a seller to offer timeshare interests in a timeshare plan located outside the state of Florida without filing a public offering statement only pertains to "real property" timeshare plans.
- Removes section 3 of the bill pertaining to public offering statements and providing for the use of alternative media as a means of which a purchaser could receive documents pursuant to ch. 721, F.S. from the developer, and removed all other references thereto.

- Provides that timeshare condominium associations and timeshare cooperative associations created after July 1, 2006, are not subject to the provisions pertaining to transfer of association control provided in ch. 718, F.S. (condominiums) and ch. 719, F.S. (cooperatives), unless a majority present at a duly called meeting of the association vote to hold a transfer of control election.
- Provides certain requirements for holding transfer of control elections once a majority vote to hold such elections has occurred.
- Provides that a timeshare plan that has an owners' association may waive or reduce reserves by a majority vote of the voting interests that are present, in person or by proxy, at a duly called meeting of the owners' association.

The bill was then reported favorably with a committee substitute.