

CHAMBER ACTION

1 The Judiciary Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to homeowners' associations; amending s.
7 720.303, F.S.; requiring the budget to provide for annual
8 operating expenses; authorizing the budget to include
9 reserve accounts for capital expenditures and deferred
10 maintenance; providing the amount to be reserved;
11 authorizing the association to adjust replacement reserve
12 assessments annually; authorizing the developer to vote to
13 waive the reserves or reduce the funding of reserves for a
14 certain period; revising provisions relating to financial
15 reporting; revising time periods in which the association
16 must complete its reporting; creating s. 720.3035, F.S.;
17 providing for architectural control covenants and parcel
18 owner improvements; authorizing the review and approval of
19 plans and specifications; providing limitations; providing
20 rights and privileges for parcel owners as set forth in
21 the declaration of covenants; amending s. 720.307, F.S.;
22 requiring developers to deliver financial records to the
23 board in any transition of association control to members;

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24 requiring certain information to be included in the
 25 records and for the records to be prepared in a specified
 26 manner; amending s. 720.308, F.S.; providing that a
 27 guarantee of common expenses shall be effective under
 28 certain circumstances; requiring the guarantee to meet
 29 certain requirements; authorizing the guarantee to provide
 30 certain requirements; requiring the stated dollar amount
 31 of the guarantee to be an exact dollar amount for each
 32 parcel identified in the declaration; providing payments
 33 required from the guarantor to be determined in a certain
 34 manner; providing a formula to determine the guarantor's
 35 total financial obligation to the association; providing
 36 that certain expenses incurred in the production of
 37 certain revenues shall not be included in the common
 38 expenses; providing an effective date.

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Subsections (6) and (7) of section 720.303,
 43 Florida Statutes, are amended to read:

44 720.303 Association powers and duties; meetings of board;
 45 official records; budgets; financial reporting; association
 46 funds; recalls.--

47 (6) BUDGETS.--

48 (a) The association shall prepare an annual budget that
 49 sets out the annual operating expenses. The budget must reflect
 50 the estimated revenues and expenses for that year and the
 51 estimated surplus or deficit as of the end of the current year.

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52 | The budget must set out separately all fees or charges paid for
53 | by the association for recreational amenities, whether owned by
54 | the association, the developer, or another person. The
55 | association shall provide each member with a copy of the annual
56 | budget or a written notice that a copy of the budget is
57 | available upon request at no charge to the member. The copy must
58 | be provided to the member within the time limits set forth in
59 | subsection (5).

60 | (b) In addition to annual operating expenses, the budget
61 | may include reserve accounts for capital expenditures and
62 | deferred maintenance for which the association is responsible to
63 | the extent that the governing documents do not limit increases
64 | in assessments, including reserves. If the budget of the
65 | association includes reserve accounts, such reserves shall be
66 | determined, maintained, and waived in the manner provided in
67 | this subsection. Once an association provides for reserve
68 | accounts in the budget, the association shall thereafter
69 | determine, maintain, and waive reserves in compliance with the
70 | provisions of this subsection.

71 | (c) If the budget of the association does not provide for
72 | reserve accounts governed by this subsection and the association
73 | is responsible for the repair and maintenance of capital
74 | improvements that may result in a special assessment if reserves
75 | are not provided, each financial report for the preceding fiscal
76 | year required by subsection (7) shall contain the following
77 | statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
78 | DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
79 | AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.

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80 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
81 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE
82 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
83 INTERESTS OF THE ASSOCIATION.

84 (d) An association shall be deemed to have provided for
85 reserve accounts when reserve accounts have been initially
86 established by the developer or when the membership of the
87 association affirmatively elects to provide for reserves. If
88 reserve accounts are not initially provided for by the
89 developer, the membership of the association may elect to do so
90 upon the affirmative approval of not less than a majority of the
91 total voting interests of the association. Such approval may be
92 attained by vote of the members at a duly called meeting of the
93 membership or upon a written consent executed by not less than a
94 majority of the total voting interests in the community. The
95 approval action of the membership shall state that reserve
96 accounts shall be provided for in the budget and the approval
97 action of the membership shall designate the components for
98 which the reserve accounts are to be established. Upon approval
99 by the membership, the board of directors shall provide for the
100 required reserve accounts for inclusion in the budget in the
101 next fiscal year following the approval and in each year
102 thereafter. Once established as provided in this subsection, the
103 reserve accounts shall be funded or maintained or shall have
104 their funding waived in the manner provided in paragraph (f).

105 (e) The amount to be reserved in any account established
106 shall be computed by means of a formula that is based upon
107 estimated remaining useful life and estimated replacement cost

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108 or deferred maintenance expense of each reserve item. The
109 association may adjust replacement reserve assessments annually
110 to take into account any changes in estimates of cost or useful
111 life of a reserve item.

112 (f) Once a reserve account or reserve accounts are
113 established, the membership of the association upon a majority
114 vote at a meeting at which a quorum is present may provide for
115 no reserves or less reserves than required by this section. If a
116 meeting of the unit owners has been called to determine whether
117 to waive or reduce the funding of reserves and no such result is
118 achieved or a quorum is not attained, the reserves as included
119 in the budget shall go into effect. After the turnover, the
120 developer may vote its voting interest to waive or reduce the
121 funding of reserves. Any vote taken pursuant to this subsection
122 to waive or reduce reserves shall be applicable only to one
123 budget year.

124 (g) Funding formulas for reserves authorized by this
125 section shall be based on either a separate analysis of each of
126 the required assets or a pooled analysis of two or more of the
127 required assets.

128 1. If the association maintains separate reserve accounts
129 for each of the required assets, the amount of the contribution
130 to each reserve account shall be the sum of the following two
131 calculations:

132 a. The total amount necessary, if any, to bring a negative
133 component balance to zero; and

134 b. The total estimated deferred maintenance expense or
135 estimated replacement cost of the reserve component less the

136 estimated balance of the reserve component as of the beginning
137 of the period for which the budget will be in effect. The
138 remainder, if greater than zero, shall be divided by the
139 estimated remaining useful life of the component. The formula
140 may be adjusted each year for changes in estimates and deferred
141 maintenance performed during the year and may include factors
142 such as inflation and earnings on invested funds.

143 2. If the association maintains a pooled account of two or
144 more of the required reserve assets, the amount of the
145 contribution to the pooled reserve account as disclosed on the
146 proposed budget shall not be less than that required to ensure
147 that the balance on hand at the beginning of the period for
148 which the budget will go into effect plus the projected annual
149 cash inflows over the remaining estimated useful life of all of
150 the assets that make up the reserve pool are equal to or greater
151 than the projected annual cash outflows over the remaining
152 estimated useful lives of all of the assets that make up the
153 reserve pool, based on the current reserve analysis. The
154 projected annual cash inflows may include estimated earnings
155 from investment of principal. The reserve funding formula shall
156 not include any type of balloon payments.

157 (h) Reserve funds and any interest accruing thereon shall
158 remain in the reserve account or accounts and shall be used only
159 for authorized reserve expenditures unless their use for other
160 purposes is approved in advance by a majority vote at a meeting
161 at which a quorum is present. Prior to turnover of control of an
162 association by a developer to parcel owners, the developer-
163 controlled association shall not vote to use reserves for

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164 purposes other than that for which they were intended without
165 the approval of a majority of all nondeveloper voting interests
166 voting in person or by limited proxy at a duly called meeting of
167 the association.

168 (7) FINANCIAL REPORTING.--Within 90 days after the end of
169 the fiscal year, or annually on the date provided in the bylaws,
170 the association shall prepare and complete, or contract for the
171 preparation and completion of, a ~~an annual~~ financial report for
172 the preceding fiscal year. Within 21 ~~60~~ days after the final
173 financial report is completed by the association or received
174 from the third party, but not later than 120 days after the end
175 of the fiscal year or other date as provided in the bylaws,
176 ~~close of the fiscal year.~~ the association shall, within the time
177 limits set forth in subsection (5), provide each member with a
178 copy of the annual financial report or a written notice that a
179 copy of the financial report is available upon request at no
180 charge to the member. Financial reports shall be prepared as
181 follows:

182 (a) An association that meets the criteria of this
183 paragraph shall prepare or cause to be prepared a complete set
184 of financial statements in accordance with generally accepted
185 accounting principles as adopted by the Board of Accountancy.
186 The financial statements shall be based upon the association's
187 total annual revenues, as follows:

188 1. An association with total annual revenues of \$100,000
189 or more, but less than \$200,000, shall prepare compiled
190 financial statements.

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191 2. An association with total annual revenues of at least
192 \$200,000, but less than \$400,000, shall prepare reviewed
193 financial statements.

194 3. An association with total annual revenues of \$400,000
195 or more shall prepare audited financial statements.

196 (b)1. An association with total annual revenues of less
197 than \$100,000 shall prepare a report of cash receipts and
198 expenditures.

199 2. An association in a community of fewer than 50 parcels,
200 regardless of the association's annual revenues, may prepare a
201 report of cash receipts and expenditures in lieu of financial
202 statements required by paragraph (a) unless the governing
203 documents provide otherwise.

204 3. A report of cash receipts and disbursement must
205 disclose the amount of receipts by accounts and receipt
206 classifications and the amount of expenses by accounts and
207 expense classifications, including, but not limited to, the
208 following, as applicable: costs for security, professional, and
209 management fees and expenses; taxes; costs for recreation
210 facilities; expenses for refuse collection and utility services;
211 expenses for lawn care; costs for building maintenance and
212 repair; insurance costs; administration and salary expenses; and
213 reserves if maintained by the association.

214 (c) If 20 percent of the parcel owners petition the board
215 for a level of financial reporting higher than that required by
216 this section, the association shall duly notice and hold a
217 meeting of members within 30 days of receipt of the petition for
218 the purpose of voting on raising the level of reporting for that

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219 | fiscal year. Upon approval of a majority of the total voting
 220 | interests of the parcel owners, the association shall prepare or
 221 | cause to be prepared, shall amend the budget or adopt a special
 222 | assessment to pay for the financial report regardless of any
 223 | provision to the contrary in the governing documents, and shall
 224 | provide within 90 days of the meeting or the end of the fiscal
 225 | year, whichever occurs later:

226 | 1. Compiled, reviewed, or audited financial statements, if
 227 | the association is otherwise required to prepare a report of
 228 | cash receipts and expenditures;

229 | 2. Reviewed or audited financial statements, if the
 230 | association is otherwise required to prepare compiled financial
 231 | statements; or

232 | 3. Audited financial statements if the association is
 233 | otherwise required to prepare reviewed financial statements.

234 | (d) If approved by a majority of the voting interests
 235 | present at a properly called meeting of the association, an
 236 | association may prepare or cause to be prepared:

237 | 1. A report of cash receipts and expenditures in lieu of a
 238 | compiled, reviewed, or audited financial statement;

239 | 2. A report of cash receipts and expenditures or a
 240 | compiled financial statement in lieu of a reviewed or audited
 241 | financial statement; or

242 | 3. A report of cash receipts and expenditures, a compiled
 243 | financial statement, or a reviewed financial statement in lieu
 244 | of an audited financial statement.

245 | Section 2. Section 720.3035, Florida Statutes, is created
 246 | to read:

247 720.3035 Architectural control covenants; parcel owner
 248 improvements; rights and privileges.--

249 (1) The authority of an association or any committee of an
 250 association to review and approve plans and specifications for
 251 the location, size, type, or appearance of any structure or
 252 other improvement on a parcel, or to enforce standards for the
 253 external appearance of any structure or improvement located on a
 254 parcel, shall only be authorized and permitted to the extent
 255 that the authority is specifically stated or reasonably inferred
 256 as to such location, size, type, or appearance in the
 257 declaration of covenants.

258 (2) If the declaration of covenants provides options for
 259 the use of material, the size of the structure or improvement,
 260 the design of the structure or improvement, or the location of
 261 the structure or improvement on the parcel, neither the
 262 association nor any committee of the association shall restrict
 263 the right of a parcel owner to select from the options provided
 264 in the declaration of covenants.

265 (3) For the purpose of establishing setback lines that are
 266 specifically stated in the declaration of covenants, each parcel
 267 shall be deemed to have only one front for purposes of
 268 determining the required front setback even if the parcel is
 269 bounded by a roadway or other easement on more than one side.
 270 When the declaration of covenants does not provide for specific
 271 setback lines, the applicable county or municipal setback lines
 272 shall apply, and neither the association nor any committee of
 273 the association shall enforce or attempt to enforce any setback

274 | line that is inconsistent with the applicable county or
 275 | municipal standard or standards.

276 | (4) Each parcel owner shall be entitled to the rights and
 277 | privileges set forth in the declaration of covenants concerning
 278 | the use of the parcel, and the construction of permitted
 279 | structures and improvements on the parcel and such rights and
 280 | privileges shall not be unreasonably infringed upon or impaired
 281 | by the association or any committee of the association. If the
 282 | association or any committee of the association should infringe
 283 | upon or impair the rights and privileges set forth in the
 284 | declaration of covenants, the adversely affected parcel owner
 285 | shall be entitled to recover damages caused by such infringement
 286 | or impairment, including any costs and reasonable attorney's
 287 | fees incurred in preserving or restoring the rights and
 288 | privileges of the parcel owner set forth in the declaration of
 289 | covenants.

290 | (5) Neither the association nor any committee of the
 291 | association shall enforce any policy or restriction that is
 292 | inconsistent with the rights and privileges of a parcel owner
 293 | set forth in the declaration of covenants, whether uniformly
 294 | applied or not. Neither the association nor any committee of the
 295 | association may rely upon a policy or restriction that is
 296 | inconsistent with the declaration of covenants, whether
 297 | uniformly applied or not, in defense of any action taken in the
 298 | name of or on behalf of the association against a parcel owner.

299 | Section 3. Paragraph (t) is added to subsection (3) of
 300 | section 720.307, Florida Statutes, to read:

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301 720.307 Transition of association control in a
302 community.--With respect to homeowners' associations:

303 (3) At the time the members are entitled to elect at least
304 a majority of the board of directors of the homeowners'
305 association, the developer shall, at the developer's expense,
306 within no more than 90 days deliver the following documents to
307 the board:

308 (t) The financial records, including financial statements
309 of the association, and source documents from the incorporation
310 of the association through the date of turnover. The records
311 shall be audited by an independent certified public accountant
312 for the period from the incorporation of the association or from
313 the period covered by the last audit, if an audit has been
314 performed for each fiscal year since incorporation. All
315 financial statements shall be prepared in accordance with
316 generally accepted accounting principles and shall be audited in
317 accordance with generally accepted auditing standards, as
318 prescribed by the Board of Accountancy, pursuant to chapter 473.
319 The certified public accountant performing the audit shall
320 examine to the extent necessary supporting documents and
321 records, including the cash disbursements and related paid
322 invoices to determine whether expenditures were for association
323 purposes and the billings, cash receipts, and related records of
324 the association to determine whether the developer was charged
325 and paid the proper amounts of assessments. This paragraph
326 applies to associations with a date of incorporation after
327 December 31, 2006.

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328 Section 4. Section 720.308, Florida Statutes, is amended
329 to read:

330 720.308 Assessments and charges.--

331 (1) ASSESSMENTS.--For any community created after October
332 1, 1995, the governing documents must describe the manner in
333 which expenses are shared and specify the member's proportional
334 share thereof. Assessments levied pursuant to the annual budget
335 or special assessment must be in the member's proportional share
336 of expenses as described in the governing document, which share
337 may be different among classes of parcels based upon the state
338 of development thereof, levels of services received by the
339 applicable members, or other relevant factors. While the
340 developer is in control of the homeowners' association, it may
341 be excused from payment of its share of the operating expenses
342 and assessments related to its parcels for any period of time
343 for which the developer has, in the declaration, obligated
344 itself to pay any operating expenses incurred that exceed the
345 assessments receivable from other members and other income of
346 the association. This section does not apply to an association,
347 no matter when created, if the association is created in a
348 community that is included in an effective development-of-
349 regional-impact development order as of the effective date of
350 this act, together with any approved modifications thereto.

351 (2) GUARANTEE OF COMMON EXPENSES.--

352 (a) Establishment of a guarantee.--If a guarantee of the
353 assessments of parcel owners is not included in the purchase
354 contracts or declaration, any agreement establishing a guarantee
355 shall be effective only upon the approval of a majority of the

356 voting interests of the members other than the developer.
357 Approval shall be expressed at a meeting of the members voting
358 in person or by limited proxy or by agreement in writing without
359 a meeting if provided in the bylaws. Such guarantee shall meet
360 the requirements of this section.

361 (b) Guarantee period.--The period of time for the
362 guarantee shall be indicated by a specific beginning and ending
363 date or event.

364 1. The ending date or event shall be the same for all of
365 the members of a homeowners' association, including members in
366 different phases of the development.

367 2. The guarantee may provide for different intervals of
368 time during a guarantee period with different dollar amounts for
369 each such interval.

370 3. The guarantee may provide that after the initial stated
371 period the developer has an option to extend the guarantee for
372 one or more additional stated periods. The extension of a
373 guarantee is limited to extending the ending date or event;
374 therefore, the developer does not have the option of changing
375 the level of assessments guaranteed.

376 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
377 amount of the guarantee shall be an exact dollar amount for each
378 parcel identified in the declaration. Regardless of the stated
379 dollar amount of the guarantee, assessments charged to a member
380 shall not exceed the maximum obligation of the member based on
381 the total amount of the adopted budget and the member's
382 proportionate ownership share of the common elements.

383 (4) CASH FUNDING REQUIREMENTS DURING THE GUARANTEE.--The
384 cash payments required from the guarantor during the guarantee
385 period shall be determined as follows:

386 (a) If at any time during the guarantee period the funds
387 collected from member assessments at the guaranteed level and
388 other revenues collected by the association are not sufficient
389 to provide payment, on a timely basis, of all assessments,
390 including the full funding of the reserves unless properly
391 waived, the guarantor shall advance sufficient cash to the
392 association at the time such payments are due.

393 (b) Expenses incurred in the production of nonassessment
394 revenues, not in excess of the nonassessment revenues, shall not
395 be included in the assessments. If the expenses attributable to
396 nonassessment revenues exceed nonassessment revenues, only the
397 excess expenses must be funded by the guarantor. Interest earned
398 on the investment of association funds may be used to pay the
399 income tax expense incurred as a result of the investment; such
400 expense shall not be charged to the guarantor; and the net
401 investment income shall be retained by the association. Each
402 such nonassessment-revenue-generating activity shall be
403 considered separately. Any portion of the parcel assessment that
404 is budgeted for designated capital contributions of the
405 association shall not be used to pay operating expenses.

406 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
407 guarantor's total financial obligation to the association at the
408 end of the guarantee period shall be determined on the accrual
409 basis using the following formula: the guarantor shall pay any
410 deficits that exceed the guaranteed amount, less the total

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411 regular periodic assessments earned by the association from the
412 members other than the guarantor during the guarantee period,
413 regardless of whether the actual level charged was less than the
414 maximum guaranteed amount.

415 (6) EXPENSES.--Expenses incurred in the production of
416 nonassessment revenues, not in excess of the nonassessment
417 revenues, shall not be included in the operating expenses. If
418 the expenses attributable to nonassessment revenues exceed
419 nonassessment revenues, only the excess expenses must be funded
420 by the guarantor. Interest earned on the investment of
421 association funds may be used to pay the income tax expense
422 incurred as a result of the investment; such expense shall not
423 be charged to the guarantor; and the net investment income shall
424 be retained by the association. Each such nonassessment-revenue-
425 generating activity shall be considered separately. Any portion
426 of the parcel assessment that is budgeted for designated capital
427 contributions of the association shall not be used to pay
428 operating expenses.

429 Section 5. This act shall take effect July 1, 2006.