

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill makes numerous changes to the regulations applicable to condominium associations.

Safeguard Individual Liberty - The bill prohibits associations from forbidding the attachment of religious items of the front door area of a condominium unit and creates a right of a condominium unit owner or renter to own a companion animal.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Chapter 718, Florida Statutes, the Condominium Act (act) is a comprehensive statute that regulates residential condominium living throughout the state. The act contains myriad regulations dealing with condominium elections, finances, communication with unit owners, repair and maintenance, and meetings of the condominium's governing board which is elected from among the condominium's unit owners. Currently, there are 3 million unit owners spread among 20,000 condominium associations across the state with approximately 70 percent of these associations located in Palm Beach, Broward, Miami-Dade, and Monroe counties.

The Department of Business and Professional Regulation's Florida Division of Land Sales, Condominiums and Mobile Homes (division) is charged with carrying out this regulatory responsibility under the provisions of the act. The division's mission is to provide consumer protection to condominium residents through education, developer disclosure, enforcement, and alternative dispute resolution.

Chapter 720, F.S., generally describes how homeowner associations (HOA's) organize and operate themselves. Although the division provides alternative dispute resolution services for residents of HOA's, no state agency is responsible for regulating HOA's. Chapter 720, F.S., specifically provides that it is the legislature's intent that HOA's not be regulated.

Section 718.50151, F.S., establishes the Condominium Advisory Council and generally authorizes the council to gather public input regarding condominium living and advise the division. Since its inception the council has conducted numerous public meetings and received the testimony of hundreds of condominium unit owners.

Sections 718.5011 and 718.5012, F.S., establish the office of the Condominium Ombudsman who is appointed by the Governor and serves at the pleasure of the Governor. The principle role of the Ombudsman is to act as a neutral liaison between the division and unit owners in resolving condominium unit owner issues and to provide election monitoring services to condominium associations. Under the current law, the Ombudsman does not "enforce" any provisions of the act, but can recommend that the division take enforcement action with respect to condominium problems encountered or reported to the Ombudsman's office.

Effect of Proposed Changes

Creation of condominiums

The bill amends s. 718.104(4)(f), F.S., to provide that, for condominiums created after April 1, 2007, the ownership share of the common elements, and proportion of sharing expenses must be based solely

on the relative size of the unit in relation to the total size of each other unit in the condominium. Under the current law, the proportionate share of condominium ownership must either be equal fractional shares or based on the relative size of the units.

Amendment to declaration

It amends s. 718.110(1), F.S., to require that notice of proposed amendments to the declaration of condominium be provided to unit owners by certified mail.

The condominium association

- Section 718.111(5), F.S., is amended to provide that, except in the case of an emergency, condominium associations must give the unit owner 24 hours advance written notice of intent to access the unit.
- Section 718.111(12)(b), F.S., is amended to require that association records be made available in the county where the condominium property is located for the purpose of allowing records access to unit owners. Social security numbers, driver's license numbers, credit card numbers, and other personal identifying information of unit owners, occupants or tenants would not be available for inspection by unit owners or their appointed representatives.
- Section 718.111(13), F.S., is amended to delete a requirement that a unit owner must make a written request to receive a copy of the financial statement and instead provides that condominium associations must mail or hand-deliver a copy of the financial statements to each unit owner. The financial reporting requirements cannot be waived for more than two consecutive years.
- Section 718.111(15), F.S., is created to provide for reconstruction in the event of a casualty. Where condominium property is damaged the board must obtain reliable and detailed estimates of the cost to repair the damaged property to substantially the same condition existing immediately prior to the casualty and substantially in accordance with the original plans and specifications as soon as possible and not later than 60 days after the casualty. If the damage exceeds 50 percent of the property's value, the condominium may be terminated unless, within 90 days after the casualty, 75 percent of the unit owners agree to reconstruction. The board must engage the services of a registered architect and knowledgeable construction specialists to prepare any necessary plans, receive and approve bids for reconstruction, arrange for disbursement of construction funds, approve the work and all other matters pertaining to the repair and reconstruction.

At any time during reconstruction, or if the insurance proceeds are insufficient to pay the estimated costs, assessments must be made against all unit owners according to their ownership interests set forth in the declaration. Assessments must be made against unit owners for damage to their units according to the cost of reconstruction or repair of their respective units and the assessments must be levied and collected as all other assessments are provided in the Condominium Act. Thus, the cost to repair damage to a unit may be assessed solely against that unit and may be foreclosed as with an assessment foreclosure.

Bylaws

Section 718.112, F.S., is amended by the bill as follows:

- Allows condominium association board members to determine the number of board members if the bylaws are silent, and to require five members to be unit owners;

- Associations would be required to respond to unit owner inquiries using certified mail and may adopt reasonable rules which limit responses to two inquiries of a unit owner in any 30-day period;
- The board must address agenda items proposed by a petition of 20 percent of the unit owners submitted 48 hours in advance of a scheduled meeting, a unit owner's faxed signature would be sufficient for any matter that requires the signature of a unit owner, correspondence from the board to unit owners must be accomplished by the same delivery method, or a more secure method, used by the owner, items could be taken up at a board meeting on an emergency basis without being originally included on the agenda pursuant to a petition of 20 percent of the unit owners;
- If a board meeting is held to consider regular or special assessments, the notice of the meeting must include a description of the nature, cost, and breakdown of any such assessments;
- Deletes provisions authorizing associations to establish alternative election procedures in their bylaws; the only prohibition against eligibility for board membership is conviction of a felony by any court of record in the United States, without the restoration of civil rights;
- The association, or its representative would continue to carry out the duties related to notice of election. All ballot envelopes would have to be secured in a locked or sealed ballot drop box immediately upon receipt and could not be opened in advance of the election meeting;
- Owners would have the right to have items, other than budget items, placed on the agenda of the annual meeting and voted upon if a written request is made by 20 percent or more of all voting interests at least 90 days before the date of the annual meeting;
- The association's annual budget would have to both include estimated revenues and expenses, the budget from the prior year would remain in effect until the association has adopted the new budget for the current year. In addition, the budget would have to include reserves for structural repairs;
- Associations would have to include a disclaimer on all ballots involving waiver or reallocation of reserves stating that waiver or reallocation of existing reserves may result in unanticipated special assessments, reserve waiver votes would have to be taken at the annual meeting. The association, after turnover from the developer's control could use reserves for non-scheduled purposes to mitigate further damage or make the condominium accessible for repairs in the case of a catastrophic event;
- Except in the case of an emergency, unless otherwise specified in the bylaws or with approval by a vote of a majority of unit owners, the board could not obtain a loan or line of credit in an amount that exceeds 10 percent of the association's current year budget. After the declaration of condominium is recorded and until such time as the association has been created, all common expenses shall be paid by the developer. Assessments must be levied based on the adopted budget or authorized special assessment and accelerated assessments are due and payable after a claim of lien has been filed.
- The requirement that the bylaws include a provision for mandatory nonbinding arbitration as provided in s. 718.1255, F.S., is removed from current law.

Maintenance; limitation upon improvement; display of flag; display of religious decorations; hurricane shutters

The bill amends s. 718.113(1), F.S., to provide that maintenance of limited common elements must either be performed by the unit owners entitled to exclusive use of the limited common elements or assessed against those unit owners if the association performs the maintenance.

It requires the board to restate hurricane shutter specifications at each annual meeting, and specifies that the board may, subject to approval of a majority of the voting interest of the condominium, install, maintain, repair, or replace hurricane shutters or other hurricane protection that complies with the applicable building code.

The board would be required to have the condominium buildings inspected every five years by a professional engineer or architect for the purpose of determining whether the building is structurally and electrically safe. Detailed reporting requirements would be required of the engineer or architect and must include information on the immediate and long-term maintenance needs. The report would become an official record of the association and an executive summary of long-term maintenance needs must be distributed to all unit owners.

Section 718.113(7), F.S., is created to prohibit the association from forbidding the attachment of religious items to the front-door area of a condominium unit.

Prohibition against SLAPP suits

Section 718.1224, F.S., is created prohibiting strategic lawsuits against public participation, otherwise known as SLAPP suits, against unit owners. Governmental entities, business organizations, and individuals in Florida would be prohibited from filing or causing to be filed through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to petition for redress of grievances on matters relating to the condominium association. A condominium unit owner sued in violation of this section would have a right to an expeditious resolution. The court may award actual damages and as much as treble damages to a prevailing unit owner as well as attorney's fees and costs. A condominium association cannot expend association funds in prosecuting a SLAPP suit against a unit owner.

Alternative dispute resolution

Section 718.1255(4)(e), F. S., is amended to require the division to promptly refer an arbitration case to mediation, when requested by a party, and removes the ability of the parties in mediation to seek to recover any costs and attorney's fees as part of the costs and attorney's fees that may be recovered by the prevailing party in any subsequent litigation.

Emotional-support animals

The bill creates s. 718.1257, F.S. to provide that unit owners or renters of a condominium have the right to own a companion animal if the animal is deemed helpful to the person's physical or psychological well-being as attested by at least two qualified health care professionals. Any law or rule contrary to this provision shall be deemed unconscionable and of no legal effect. The unit owner is entitled to attorneys fees in any court action that requires the unit owner to enforce this provision.

Agreements entered into by the association

Section 718.302(1), F.S., is amended to include services and products in the list of grants and reservations made by an association prior to turnover that must be fair and reasonable and which may be canceled by unit owners other than the developer.

Agreements for operation, maintenance, or management of condominiums

Section 718.3025(1), F.S., is amended to require that in order for a written contract providing for the operation, maintenance or management of the association or condominium property to be enforceable, it must contain provisions that all obligations be complete within one year and must prohibit automatic renewal of the contract.

Contracts for products and services

Section 718.3026, F.S., is amended to provide that a contract with a service provider shall not be for a term in excess of three years and shall not contain an automatic renewal clause, and a contract for construction or repair of the property that exceeds 10 percent of the total annual budget must occur under the written advisement of an attorney.

Obligations of owners

Section 718.303, F.S., is amended to clarify that the committee presiding over the hearing required before a fine can be imposed on a unit owner must be made up of unit owners who are not members of the board, and provides that anyone subject to an action under this section must be notified of the violation by certified mail, return receipt requested. Except in the case of imminent danger to person or property, the person noticed has 30 days in which to respond in writing. If no response is provided and the violation continues or is repeated, the association may proceed under s. 718.303(1) and (2), F.S., without further notice except as provided in s 718.303(3), F.S.

Mixed-Use Condominiums

Section 718.404(1), F.S., is amended so as to make retroactive the current prohibition against commercial unit owners in a mixed-use condominium having veto authority over amendments to condominium documents.

Section 708.404(2), F.S., is amended so as to make retroactive the requirement that in mixed-use condominiums when the number of residential units meet or exceed 50% of the total units, owners of the residential units are entitled to a majority of seats on the council.

Powers and duties of Division of Florida Land Sales, Condominiums and Mobile Homes

Section 718.501(1)(e), F.S., is amended to make it mandatory that the division prepare and disseminate a prospectus and other information to assist prospective owners and developers of residential condominiums.

Section 718.501(1)(j), F.S., is amended to provide that the division must work in conjunction with the recommendations of the Ombudsman when providing training and education programs for board members and unit owners.

Section 718.501(n), F.S., is amended to require upon a finding by the division that any association has committed a violation within the jurisdiction of the division, the association must mail and post a notice to all owners setting forth the facts and findings and the corrective action required.

Ombudsman; appointment; administration

Section 718.5011, F.S., is amended to provide that the Ombudsman shall exercise policymaking and other functions authorized in the Condominium Act independently of the Department of Business and Professional Regulation and without approval or control of the department. The department must render administrative support to the office in matters pertaining to budget, personnel, office space,

equipment, and supplies. All revenues collected for the office by the department shall be deposited in a separate fund or account from which the department may not use or divert the revenues.

Ombudsman; powers and duties

Section 718.5012, F. S., is amended to remove the requirement that the Ombudsman develop policies and procedures. The Ombudsman would have authority to order meetings between unit owners, boards, board members, community association managers and other affected parties. Section 718.5012(3), F.S. is created to provide that any unit owner or association acting in good faith on the advice of the Ombudsman would be immune from any penalties or actions.

Prospectus or offering circular

Section 718.504(21), F.S., is amended to require the condominium budget, include estimated revenues, and to delete the provision of the law that allows the budget to be stated in terms of more than one annual period, or distinguish between the periods prior to and after turnover of developer control.

Association powers and duties

Several amendments to s. 720.303, F.S., are provided as follows:

- The association may establish and fund reserve accounts for capital expenditures and items of deferred maintenance, and provide for calculating reserves, maintaining reserves, and waiving reserves if the association determines that reserves will be included in the budget;
- Specified disclosures must be included in the annual financial report should the association decide not to include reserves in the budget when such expenditures are applicable; and
- Extends the deadline for homeowners' associations completing their annual financial reports, to 90 days from the end of the reporting period. The reports must be provided to the homeowners within 21 days after completion of the statements, but not less than 120 days from the end of the reporting period and shall be prepared in accordance with generally accepted accounting principles as adopted by the Board of Accountancy.

Transition of association

Section 720.307, F.S., relating to turnover from developer control to the homeowners' association is amended to clarify its application only to mandatory homeowners' associations. The bill lowers the percentage of sell-out of parcels that triggers turnover of developer control from 90 percent to 75 percent. The developer is required to convey title to common areas to the association immediately after its incorporation and any additional common areas acquired by the developer must be conveyed immediately to the association.

For associations incorporated after December 31, 2007, the developer is required to turnover to the board the financial records and source documents from the incorporation through the date of turnover to the board.

Prohibited clauses in association documents

Section 720.3075, F.S., is amended to prohibit associations from restricting homeowners from installing hurricane shutters or other hurricane protection, or from mounting temporary or permanent shutters or other hurricane protection during any time that a hurricane warning has been declared, evacuation ordered, or for seven days after the conclusion of the watch or evacuation, or for 14 days in the case of a category 4 storm or greater.

If a local government restricts homeowners' employing temporary or permanent shutters the local government may also authorize associations to adopt and enforce equal or lesser restrictions. The association may adopt restrictions governing the color or form of shutters or other permanent exterior window coverings. Associations may not restrict the time or duration for shutters or other hurricane protection to be open or closed during any period.

It provides an effective date of July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Amending s. 718.104(4) relating to creation of condominiums and contents of declaration.

Section 2: Amending s. 718.110(1) relating to amendment of declaration and correction of error or omission in declaration by circuit court.

Section 3: Amending s. 718.111(5), (7), (12), (13), (15) relating to the association as pertaining to condominiums.

Section 4: Amending s. 718.112(2) relating to bylaws of the association.

Section 5: Amending s. 718.113 relating to maintenance, limitation upon improvement, display of flag, and hurricane shutters.

Section 6: Creating s. 718.1224 relating to prohibition against SLAPP suits.

Section 7: Amending s. 718.1255(4) relating to alternative dispute resolution, voluntary mediation, mandatory nonbinding arbitration, and legislative findings.

Section 8: Amending s. 718.1257 relating to companion animals.

Section 9: Creates an unnumbered section requiring condominium developers to pay monthly maintenance fees on unsold units.

Section 10: Amending s. 718.302(1) relating to agreements entered into by the association.

Section 11: Amending s. 718.3025(1) relating to agreements for operation, maintenance, or management of condominiums and specific requirements.

Section 12: Amending s. 718.3026(2) relating to contracts for products and services, in writing, bids, and exceptions.

Section 13: Amending s. 718.303(3) and (4) relating to obligations of owners, waiver, and levy of fine against unit by association.

Section 14: Amending s. 718.404(1) and (2) relating to mixed-use condominiums.

Section 15: Amending s. 718.501 relating to powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes.

Section 16: Amending s. 718.5011(1) relating to the ombudsman, appointment, and administration.

Section 17: Amending s. 718.5012 relating to the ombudsman, powers, and duties.

Section 18: Amending s. 718.504(21) relating to the prospectus or offering circular.

Section 19: Amending s. 720.303(6) and (7) relating to association powers and duties, meetings of board, official records, budgets, financial reporting, association funds, and recalls.

Section 20: Amending s. 720.307 relating to transition of homeowners' association control in a community.

Section 21: Amending s. 720.3075(5) relating to prohibited clauses in association documents.

Section 22: Providing an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The department estimates the following expenditures:

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Effects	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Expenses – State Standard	3,426	0	0
Operating Capital Outlay – State Standard	1,300	0	0
Subtotal	4,726	None	None

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Salaries/Benefits – 1 FTE	48,217	48,217	48,217
Expenses – State Standard	6,489	6,489	6,489
Expenses – Travel	1,000	1,000	1,000
Other: DMS/HR Services	401	401	401
Subtotal	56,107	56,107	56,107

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

According to the department, the proposed legislation will not generate any revenues and will require the addition 1 full-time equivalent (FTE) position. The department estimates initial expenditures of \$60,833 in Fiscal Year 2007-08 and annual expenditures of \$56,107 in future years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

The Department of Business and Professional Regulation in its analysis of the bill has raised the following legal issues:

The amendment to s. 718.104(4), Florida Statutes, has an effective date of April 2007, which is prior to the effective date of the bill. If it is intended to retroactively apply to condominiums created between April 1, 2007, and the effective date, it may be challenged under article 1 section 10 of the Florida Constitution, as changing the ownership rights created and held in fee simple title by unit owners. The amendment requires all condominiums to create ownership interests based on the

relative size of the unit to the total size of all units, while this may be desirable in condominiums where there are units of different sizes, it is less complicated to base assessments on an equal fractional basis when all units are configured the same, even if the exact size of the units may differ. For example, a developer may create a condominium in which all of the units are two bedrooms, but they are not exactly the same size.

New subsection 718.111(15), Florida Statutes, if applied retroactively, may impair contract rights already established in many declarations of condominium. If the intent is to apply this provision retroactively, the intent should be expressed. Further clarification as to a shortfall of proceeds would be helpful where the shortfall is caused by a high deductible. Further clarification of unit damages in light of those portions a unit covered by the association's insurance policy under s. 718.111(11) and those portions insured by the unit owner would harmonize these two provisions.

Section 718.113(1), Florida Statutes, changing the association's authority to assess the repair costs of a limited common element it is required to maintain, if applied retroactively, would raise a constitutional impairment of contract issue and leave the association with an obligation to repair but no funds with which to do so.

Section 720.307(5), Florida Statutes, applying developer transfer of association control to all "existing" associations and repealing the grandfathering provision raises a question of retroactive application and impairment of contract rights under article I, section 10, of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its analysis of the bill, the Department of Business and Professional Regulation noted the following issues:

The amendment to section 718.110(1), Florida Statutes, requires associations to provide a notice of proposed amendments to the declaration of condominium to unit owners by certified mail, and the amendment to section 718.112(2)(a)2., Florida Statutes, requiring responses to unit owner inquiries by certified mail, will be an additional expense to associations, and certified mail may not be available for unit owners who reside outside of the United States. The amendment to section 718.111(13), Florida Statutes, prohibiting the waiver of financial reporting requirements is worded in a way that implies the vote may be taken by the board, which conflicts with other language in the same section of the law.

Section 5 of the bill also creates section 718.111(15)(a) – (d), Florida Statutes, addressing reconstruction after casualty, allowing termination where the damage to the property exceeds 50% of its worth. The bill does not indicate how the association should determine the "worth" of the condominium. Termination under these circumstances is discretionary (the bill says "may be terminated"), but the bill does not explain how procedurally this exercise of discretion is to occur, except to say that the condominium may be terminated "unless 75% of the owners agree to reconstruction and repair." Therefore, a number of questions are raised. Can the board itself decide to terminate, or not to repair, when the 50% damage threshold is achieved, subject to any vote of 75% of the owners to rebuild? Is the 75% vote a minimum threshold? Is a vote of the owners required to terminate once 50% is achieved; what vote is required? The intended operation of this new section is obscure and uncertain. The bill further does not explain if the new procedures apply to pre-existing condominiums. If so, it may have a retroactive effect of changing existing declaration provisions governing reconstruction and repair and be challenged under article 1, section 10 of the Florida Constitution. The association will be required to make assessments against unit owners for the damage to their units, and may use the association's lien authority to enforce collection. Damage to the unit that is covered by the association's insurance policy, but not paid due to the deductible, should be assessed as a common expense, and damage to the unit that is covered by the unit owner's policy should be the responsibility

of the unit owner. This amendment also requires the board to gather estimates and effect repairs within 60 days after the casualty

The amendment to section 718.112(2)(d), Florida Statutes, repealing the election procedures opt out will impose greater costs on those associations that have opted out of the procedure, which will result in an increase in assessments¹. Smaller associations are more likely to opt out of the election procedures provided in the Act, and establish a simpler method in their bylaws. Under the current law a majority of the voting interests must approve the alternative election procedures.

The amendment to section 718.112(2)(f)2., Florida Statutes, requires associations to include a reserve for structural repairs in the budget. It is unclear what should be included in this category, which appears to require a reserve for the entire structure. This section of the bill also creates section 718.112(2)(f)7. Florida Statutes, providing that except in the case of an emergency, or otherwise provide for in the bylaws, or approved by the unit owners, the board can not take out a loan or a line of credit that exceeds 10 percent of the current budget. This may impair the ability of the board to carry out its duty to repair and maintain the common elements.

The amendment to section 718.113(1), Florida Statutes, providing that the cost of maintenance of limited common elements must be shared by those entitled to use the limited common elements creates a situation in which an association may assess the common expenses based on the size of the unit (required by amendment to section 718.104(4)(f), Florida Statutes) and assess the limited common element maintenance costs equally between all of the units. For example, the documents could be drafted to make the building a limited common element in order to assess the cost of building maintenance equally.

The amendment creating section 718.113(6), Florida Statutes, requires associations to engage an architect or engineer every five years for the purpose of determining if the building is structurally and electrically safe. It is unclear if the benefit of this requirement outweighs the cost involved.

The amendment to section 718.501(1)(e), Florida Statutes, conflicts with section 718.504, Florida Statutes, which provides that the developer of "more than 20 residential units, shall prepare a prospectus." The change requires the division to prepare the prospectus, and includes all condominiums whether 2-unit or 200-unit. It also require the division to disseminate the prospectus, but to whom and how is not discussed. It is unclear if the division's current information brochures Unit Owner Rights and Responsibilities and Guide to Purchasing a Condominium are sufficient to comply with this requirement. Under the current law, a developer of more that 7 condominium units is required to file with the division. A prospectus is required if there are more than 20 residential units, or there is property served in common by more than 20 residential units. Presumably, a separate prospectus would not be needed in these cases. There would be a workload increase if a prospectus would need to be developed for those filings with between 8 and 20 units, but it is not possible to project that number of filings or the associated workload.

The amendment to section 720.307(4), Florida Statutes, requiring the preparation of a turnover audit within 30 days following the turnover election is unrealistic, and will result in violations the cause of which may be beyond the control of the developer.

Section 23 of the bill requiring condominium developers to pay assessments on unsold units that are rented, notwithstanding anything to the contrary in the documents, conflicts with section 718.116(9), Florida Statutes, which provides that the developer, may be excused from assessments unless there is a guarantee in place. The guarantee agreement may be found in the declaration, prospectus or contracts. If the intent is to eliminate the developer guarantee, it would be less confusing to amend section 718.116(9), Florida Statutes.

¹ In contrast to this comment, another opinion would maintain that these costs are confined to copying costs, and would better be described as minimal or insignificant; consequently, an additional assessment would not result.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the Committee on Business Regulation adopted a strike-all amendment, as amended, and reported the bill favorably. The amendment made the following changes to the bill:

- Removed all changes proposed by the bill to Chapter 719 relating to Cooperatives.
- Removed all proposed changes to Chapter 720 relating to Homeowners' Associations, except some of those changes contained in Section 53. of the bill (now Section 19. in the amendment) relating to Homeowner Association budgets and financial reporting. Also, remaining in the amendment are the changes to s. 720.307 F.S., contained in Section 58. of the bill (now Section 20. in the amendment) relating to turnover from developer control to a Homeowner Association.
- Removed all changes proposed related to conforming provisions of the statutes to the renaming of the Division of Land Sales, Condominiums, and Mobile Homes in DBPR and deleted provisions creating the new Division of Mandated Properties and the Advisory Council on Mandated Properties.
- Removed changes proposed by the bill to Chapter 190 relating to Community Development Districts except those contained in Sections 4. and 5. of the bill (now Sections 1. and 2. in the amendment) which amend ss. 190.048 and 190.0485 F.S. to create detailed disclosure requirements in a contract for the sale of real property or a residential unit located in a district and also to conform the real property recording requirements to the disclosure changes.
- Reduced the negative fiscal impact to the Department of Business and Professional Regulation from an estimated \$11 million annually to approximately \$56,000 annually.
- The amendment modifies the changes made to Chapter 718 relating to Condominiums as follows:
 - Regarding access to a unit, removes language requiring that one of the two people accessing the unit must be a board member;
 - Limits the waiver of certain financial reporting to two consecutive years rather than a total of two years;
 - Removes a change which would have prohibited board action on a resolution without an open meeting;
 - Changes the new provision requiring that the board must address agenda items proposed by a petition of 20 percent of the unit owners to require the petition be submitted 48 hours in advance of the meeting to enable posting of the updated agenda.
 - Reinstates the current law allowing associations to adopt reasonable rules concerning the frequency and manner of responding to unit owner inquiries but specifies that a response to two inquiries within a 30-day period rather than one inquiry is a minimum for a reasonable rule;
 - Changes the new requirement that the board respond to unit owner correspondence by the same delivery method used by the owner to the same method or more secure method.
 - Removes a requirement proposed in the bill that unless bylaws provide otherwise, parliamentary procedures must be used by the board of administration when conducting association meetings;
 - Removes a change in the bill that would have prevented associations from using both sides of the paper when printing candidate information sheets;
 - Changes the new provision requiring the board of administration to vote on items placed on the agenda by 20 percent of the unit owners' voting interests to the placement on the agenda of items other than budget items;
 - Removes the requirement that the division develop a ballot form for the new requirement that a vote for no financial reserves or a percentage of reserves be taken at the annual meeting;
 - Removes from the bill changes that would have taken effect January 1, 2008 replacing the arbitration program for recall disputes currently operated by the division with a program operated by the Ombudsman;

- Changes the new requirement that condominium buildings be inspected by a professional engineer or architect every 5 years for structural and electrical safety to also include a determination of the short term and long term maintenance needed and requires that long term maintenance be presented as a reserve plan containing an executive summary that must be distributed to all unit owners;
- Removes language in the bill broadly prohibiting the adoption of rules by the board that impair certain rights guaranteed by specified provisions of the state and federal constitutions and instead specifically prohibits the association from forbidding the attachment of religious items at the door or at the entrance of a unit. However, the board may adopt reasonable size restrictions for such items.
- Removes from the bill a change that would have limited associations to contracting only for basic cable TV service when such service is to be charged as a common expense;
- Removes all new provisions related to the protection of unit owners from abuse defined as actions likely to deny a protection afforded under state or federal law, administrative rules, or governing documents;
- Changes the new language requiring that a contract for construction or repair of the property in excess of 10 percent of the annual budget should have the written *approval* of an attorney to “should occur under the written *advisement* of an attorney;”
- Removes new provisions requiring the division to mandate the participation of an association in educational training related to the particular violation and the civil penalties for failing to comply with conditions of noticing unit owners of violations or to complete training;
- Removes a new provision requiring the allocation and transfer of one-fifth of all fees deposited into the division’s trust fund to the Ombudsman;
- Reinstates the existing law that was deleted by the bill prohibiting an officer or employee of the Ombudsman’s office from other professional or business activities or certain political activities;
- Removes language from the bill requiring the division to defer to the findings of the Ombudsman and for the Ombudsman to administer oaths and subpoena witnesses etc.
- Removes new language authorizing the Ombudsman upon petition to order extensive election monitoring;
- Removes new language authorizing the Ombudsman to issue cease and desist orders to developers, associations, or officers or members of the board of administration;
- Removes new “prepared in good faith” language added to the existing law requiring a prospectus to contain an estimated operating budget for the condominium and association;
- Changes the language relating to the rights of homeowners and renters to have companion animals to limit its application to condominium unit owners and renters of condominium units.

On April 20, 2007, the Jobs & Entrepreneurship Council voted favorably on a council substitute that incorporated all of the changes adopted by the Business Regulation Committee described above with the following modifications:

- Amended section 718.404, F.S., relating to mixed-use condominiums to apply the following provisions retroactively:
 - The current prohibition against commercial unit owners in a mixed-use condominium having veto authority over amendments to condominium documents; and
 - The requirement that in mixed-use condominiums when the number of residential units meet or exceed 50% of the total units, owners of the residential units are entitled to a majority of seats on the council;
- Added a provision to section 720.3075, F.S., prohibiting homeowners’ associations from restricting homeowners’ mounting or employing shutters or other hurricane protection on any portion of their home;
- Removed chapter 190 changes from the bill that related to new disclosure requirements applicable to the sale of property in a community development district;
- Removed from the bill a requirement that entry into a condominium unit must be made by two persons;
- Made the requirement mandatory that a contract for repair or construction of property that exceeds 10% of the total annual budget should occur under the written advisement of an attorney; and

- Requires condominium records to be maintained at a location within the county where the condominium is located rather than within 30 miles of the condominium.