

Bill No. SB 1444

Barcode 084044

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Joyner) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. It is the intent of the Legislature to establish the Home Court Advantage Pilot Program as a pilot program in Hillsborough and Pinellas Counties for a period of 1 year. The purpose of the Home Court Advantage Pilot Program is to establish an inexpensive, expedient, and simplified court procedure as an independent venue in which certain community associations and parcel owners can informally resolve disputes relating to covenants and restrictions without having to resort to potentially time-consuming and expensive court litigation. The Home Court Advantage Pilot Program shall be implemented and administered by the chief judge of the Thirteenth Judicial Circuit in Hillsborough County and the chief judge of the Sixth Judicial Circuit in Pinellas County, subject to the supervision of the Florida

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1 Supreme Court.

2           Section 2. Definitions.--As used in this act, the  
3 term:

4           (1) "Community association" means an association  
5 responsible for the operation of a condominium as defined by  
6 s. 718.103, Florida Statutes; an association responsible for  
7 the operation of a cooperative as defined by s. 719.103,  
8 Florida Statutes; a timeshare condominium or cooperative  
9 association regulated by chapters 718 and 721, Florida  
10 Statutes; and a homeowners' association as defined by s.  
11 720.301, Florida Statutes, except that the term does not  
12 include any such association if a developer elects or appoints  
13 a majority of the members of the board of directors of the  
14 association. A community association within the meaning of  
15 this act includes only those community associations operating  
16 residential communities partially or totally situated in  
17 Pinellas County or in Hillsborough County. An association  
18 operating a commercial community is not subject to this act. A  
19 mixed-use condominium as defined by s. 718.404, Florida  
20 Statutes, is a community association for purposes of this act  
21 to the extent that the dispute involves the association and  
22 the amount of a residential unit.

23           (2) "Parcel owner" means the owner of legal title to a  
24 parcel governed by a community association.

25           (3) "Dispute" means a disagreement between a community  
26 association and a parcel owner concerning the validity or  
27 enforcement of restrictions contained in the documents  
28 governing the community, including any declaration of  
29 restrictions and covenants, declaration of condominium, deed  
30 restrictions, the articles of incorporation, and bylaws of the  
31 community association, or any rules governing the community,

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1 which dispute arises in the Thirteenth or Sixth Judicial  
 2 Circuits. The term also includes the failure of the  
 3 association or parcel owner to comply with the requirements of  
 4 chapter 718, chapter 719, chapter 720, or chapter 721, Florida  
 5 Statutes, as applicable.

6 (4) "Petitioner" means the party filing a petition  
 7 pursuant to this act. Respondent is the party responding to  
 8 the petition.

9 (5) "Developer" means the entity creating the  
 10 community operated by the association or any entity that  
 11 offers residential parcels for sale or lease in the ordinary  
 12 course of its business within that community.

13 Section 3. Rules of procedure; report required.--

14 (1) The chief judges of the Thirteenth and Sixth  
 15 Judicial Circuits may adopt rules and procedures for the  
 16 creation and operation of the Home Court Advantage Pilot  
 17 Program in Hillsborough County and Pinellas County,  
 18 respectively. The chief judges shall adopt simplified rules of  
 19 practice and procedure which include a form petition and form  
 20 answer. The petition must be verified. The rules shall be  
 21 designed to promote the inexpensive and expedient resolution  
 22 of a dispute. The court shall adopt rules allowing qualified  
 23 lay representatives, including community association managers  
 24 licensed under chapter 468, Florida Statutes, to represent a  
 25 party and to file a petition, answer, or other pleadings with  
 26 the court upon proper application. The rules shall be  
 27 liberally construed to facilitate the inexpensive resolution  
 28 of disputes. The parties should be encouraged to engage in  
 29 proceedings under this act without the necessity of legal  
 30 counsel where appropriate.

31 (2) The chief judges shall direct a report to the

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1 Supreme Court within 60 days following the conclusion of the  
 2 pilot program. This report shall review the operation and  
 3 results of the program. The Chief Justice of the Supreme Court  
 4 shall review the reports and make determinations and  
 5 recommendations to the Legislature by February 1, 2009,  
 6 concerning the feasibility of establishing a statewide program  
 7 and provide copies of the result to the President of the  
 8 Senate, the Speaker of the House of Representatives, and the  
 9 minority leader of each house of the Legislature.

10 Section 4. Jurisdiction.--

11 (1) Subject to subsection (2), a dispute within the  
 12 jurisdiction of the Home Court Advantage Pilot Program  
 13 includes any dispute regarding the enforceability or validity  
 14 of those documents governing the operation of the community  
 15 association, the reasonableness of any action of the board of  
 16 directors of the community association involving the  
 17 documents, any dispute in which an association seeks  
 18 enforcement of its documents, and any dispute alleging the  
 19 failure of a community association or parcel owner to comply  
 20 with the requirements of chapter 718, chapter 719, chapter  
 21 720, or chapter 721, Florida Statutes, whichever is  
 22 applicable, or the documents governing the community.

23 (2) Only disputes between a community association and  
 24 a parcel owner are within the jurisdiction of the program.  
 25 Officers or directors of the community association may not be  
 26 parties in these proceedings. Disputes involving tenants or  
 27 guests of parcel owners are subject to this act if the tenant  
 28 is alleged to have violated the documents governing the  
 29 community, except that eviction proceedings are exempt from  
 30 the jurisdiction of the program. Disagreements relating to the  
 31 imposition, reasonableness, or collection of fines,

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1 assessments, special assessments, or other fees owed by a  
2 parcel owner, lien foreclosure actions, or disagreements  
3 regarding the enforcement of a judgment are not subject to the  
4 pilot program.

5 (3) If a dispute described by this act is also  
6 otherwise subject to the mandatory nonbinding arbitration  
7 programs described by s. 718.1255 or s. 719.1255, Florida  
8 Statutes, applicable to condominiums or cooperatives, or is  
9 otherwise subject to mandatory mediation or mandatory binding  
10 arbitration as provided by s. 720.311, Florida Statutes,  
11 relating to homeowners' associations, the dispute shall be  
12 filed pursuant to this act and is not required or permitted to  
13 be filed pursuant to chapter 718, chapter 719, or chapter 720,  
14 Florida Statutes, as applicable, except that recall and  
15 election disputes shall continue to be subject to s. 718.1255,  
16 s. 719.1255, or s. 720.311, Florida Statutes, as applicable,  
17 and are not within the jurisdiction of this act.

18 (4) Regardless of whether this authority exists in the  
19 documents governing the community association, a parcel owner  
20 may commence a proceeding under this act against another  
21 parcel owner or against the association for any violation of  
22 the documents or controlling statute, and an association may  
23 also commence a proceeding against a parcel owner, or the  
24 owner and his tenant or occupant, for violations of the  
25 documents or statute. If authorized by a power of attorney  
26 executed by an association, a parcel owner may commence an  
27 enforcement proceeding in the name of the association.

28 Section 5. Procedure for mandatory filing; filing  
29 fee.--

30 (1) Before filing a petition with the clerk, the  
31 petitioner shall provide the intended respondent with a

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1 written demand identifying the nature of the dispute,  
 2 demanding the relief sought, stating that, if the relief is  
 3 not provided, the dispute will be filed in the courts, and  
 4 providing the respondent with a reasonable period of time  
 5 within which to provide the relief sought. The failure to  
 6 provide advance written notice shall result in the dismissal  
 7 of the petition.

8       (2) Before filing a dispute with the court, a dispute  
 9 within the jurisdiction of the pilot program must be filed  
 10 with the clerk of court in the county in which the community  
 11 governed by the community association is located. At the same  
 12 time the petition is filed, the petitioner shall provide a  
 13 copy of the petition and attachments to the respondent by  
 14 United States certified mail. The petition must be on a form  
 15 adopted by the court, or must be substantially similar to the  
 16 form, and must include a copy of the demand letter required by  
 17 subsection (1). The petition must include portions of the  
 18 governing documents relied upon in the petition.

19       (3) The clerk of the court in which the petition is  
 20 filed shall direct an order to the respondent by certified  
 21 mail which shall provide the respondent 14 days in which to  
 22 file an answer to the petition. The answer must include any  
 23 defenses that the respondent has to the petition. If the  
 24 respondent files a motion to dismiss the petition, it must be  
 25 accompanied by an answer and defenses in order to promote the  
 26 timely resolution of the dispute. The answer may not include  
 27 any claim that the respondent may have against the petitioner,  
 28 but may address only the dispute stated in the petition.

29       (4) Any petition filed must include the circuit court  
 30 filing fee set forth in s. 28.241, Florida Statutes, currently  
 31 set in the amount of \$255, payable to the clerk of the court

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1 in which the dispute is to be filed. This fee is  
2 nonrefundable. The filing fees shall be used by the court to  
3 defray the costs of administering the program.

4 (5) Where a party filing a petition demonstrates to  
5 the magistrate at the time of the filing of the petition or  
6 thereafter that the party is in need of and entitled to  
7 immediate emergency injunctive relief, the magistrate may  
8 abate the proceeding and allow the party to file for a  
9 temporary injunction in court.

10 Section 6. Magistrates.--

11 (1) The court shall maintain a list of qualified  
12 magistrates to hear the disputes described by this act. In  
13 order to be qualified, the person seeking to act as a  
14 magistrate must be a member in good standing with The Florida  
15 Bar and must have practiced law in the area of community  
16 association disputes for at least 5 years, or must be a member  
17 in good standing of The Florida Bar and licensed as a  
18 community association manager pursuant to part VIII of chapter  
19 468, Florida Statutes. The courts may, by rule, adopt  
20 additional requirements for qualification.

21 (2) A magistrate shall serve without compensation, but  
22 is entitled to immunity as provided by s. 44.107, Florida  
23 Statutes. A magistrate serves at the pleasure of the chief  
24 judge of the circuit court.

25 Section 7. Conduct of proceedings; appeals.--

26 (1) A magistrate may hear and decide the disputes  
27 filed pursuant to this act, but she or he may not hold a  
28 person in contempt. A magistrate may enter all orders  
29 necessary or helpful in the conduct of the proceedings,  
30 including the imposition of sanctions and fines, against a  
31 party that refuses to comply with a lawful nonfinal order of

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1 the magistrate. A magistrate may issue subpoenas to compel the  
2 attendance and production of persons and documents. The  
3 magistrate shall, unless waived by both parties to the  
4 dispute, conduct a final hearing, if one is required, within  
5 60 days after the filing of the petition, and shall, within 14  
6 days after the final hearing, issue a final order. The final  
7 order is binding on the parties, except that if an appeal by  
8 trial de novo is not filed in the circuit court within 30 days  
9 after rendition of the final order, the final order is binding  
10 on the parties and may be enforced in the courts of this state  
11 as provided in subsection (2). The final order of the  
12 magistrate is admissible in any appeal of the final order.

13 (2) A final order of the magistrate which has not been  
14 timely appealed may be enforced by filing a petition for  
15 enforcement in circuit court. The prevailing party in an  
16 enforcement action is entitled to reasonable costs and  
17 attorney's fees.

18 (3) If no timely appeal has been filed in a case in  
19 which a party who was ordered by final order of the magistrate  
20 to take some action or to refrain from taking some action does  
21 not comply with the final order of the magistrate within 30  
22 days after rendition of the final order, the magistrate  
23 retains jurisdiction upon the petition or request of a party  
24 to impose a fine against the offending party for noncompliance  
25 with the final order. A fine may not exceed \$100 per  
26 violation. However, a fine may be levied on the basis of each  
27 day of a continuing violation which may not, in the aggregate,  
28 exceed \$1,000 per violation. A fine shall be imposed only upon  
29 notice and upon the conduct of a proceeding conducted by the  
30 magistrate during which the parties have an opportunity to  
31 appear and be heard on the issue of the intended fine. Any



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1 order imposing a fine may be appealed to the circuit court  
 2 within 30 days after rendition of the order. If a fine is  
 3 imposed against a parcel owner for noncompliance with the  
 4 final order of the magistrate, the association is entitled to  
 5 one-half of the amount of the fine imposed, and the  
 6 association may use its lien authority to collect its half of  
 7 the unpaid fine. The other half of the fine shall be paid to  
 8 the clerk of the circuit court and used to defray the costs of  
 9 administering the pilot program.

10       (4) The magistrate shall conduct these proceedings,  
 11 including the final hearing, in accordance with simplified  
 12 rules of procedure adopted by the chief judge of the court in  
 13 which the petition is filed. Discovery rights shall be  
 14 restricted to cases in which manifest prejudice to a party is  
 15 shown to result from a denial of discovery. The magistrate is  
 16 not bound by formal rules of evidence and evidence of a kind  
 17 normally relied upon by persons in the conduct of their  
 18 affairs is admissible and shall be considered by the  
 19 magistrate. Evidence that is cumulative shall be excluded from  
 20 consideration.

21       (5) A magistrate may grant all relief necessary for  
 22 the disposition of the dispute including, but not limited to,  
 23 making a finding that a provision contained in the documents  
 24 is invalid and unenforceable; an order enforcing the  
 25 provisions of the documents and statute; an order requiring an  
 26 association or parcel owner, tenant, or guest to comply with  
 27 the documents or statute; or and an order finding that the  
 28 association has selectively enforced its documents. However, a  
 29 magistrate may not reform the documents governing the  
 30 community.

31       (6) In deciding a dispute, a magistrate shall follow

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1 and apply the applicable statute as well as controlling case  
2 law, including case law holding that in a community  
3 association a declaration may be unreasonable yet be  
4 nonetheless enforceable.

5       (7) A magistrate is subject to the standards of  
6 professional conduct contained in the Florida Rules for  
7 Court-Appointed Arbitrators. A magistrate may not preside over  
8 a dispute involving a party currently represented by the  
9 magistrate, but may preside over a dispute involving a former  
10 client where both parties, upon disclosure of the prior  
11 representation, consent in writing.

12       (8) A magistrate may, in the exercise of his or her  
13 discretion, award reasonable prevailing party costs and  
14 attorney's fees.

15           Section 8. This act shall take effect July 1, 2007.

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18 ===== T I T L E   A M E N D M E N T =====

19 And the title is amended as follows:

20           Delete everything before the enacting clause

21  
22 and insert:

23                           A bill to be entitled

24           An act relating to covenants and deed  
25           restrictions; providing legislative intent;  
26           providing definitions; requiring the chief  
27           judges in the Thirteen and Sixth Judicial  
28           Circuits to adopt certain rules and procedures  
29           for the establishment of a pilot arbitration  
30           program in Hillsborough County and Pinellas  
31           County, respectively; requiring the chief

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1 judges to submit a report to the Florida  
2 Supreme Court regarding the program; providing  
3 for jurisdiction; authorizing the filing of a  
4 dispute; authorizing a parcel owner or  
5 community association to commence a proceeding;  
6 providing complaint procedures; requiring a  
7 filing fee; providing qualifications for  
8 magistrates; providing duties and  
9 responsibilities of magistrates during  
10 arbitration proceedings; providing proceedings  
11 for appeal; providing a code of ethics for  
12 magistrates; providing an effective date.

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