

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 2284

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Bennett

SUBJECT: Homeowners' Associations

DATE: March 31, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bascom	Kiger	EP	Fav/CS
2.			CA	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) makes the following changes to the original bill:

- Retains the provision that expressly allows any individual to place a “for sale” sign on their property provided it does not interfere with common areas or easements.
- Provisions related to the inspection of certain water control structures and the reversion of title to the state for abandoned structures have been removed

New provisions include the following:

- Prohibiting local governments from preventing security systems and associated facilities to be constructed by community development districts.
- A requirement that applicants demonstrate financial responsibility for construction and operation of stormwater management systems.

- Authority for a water management district or the Department of Environmental Protection (DEP) to file a lien against any landowners responsible for operation and maintenance of stormwater management systems.
- The creation of noncriminal penalties that may be levied against homeowner association board members for their violation of laws related to meetings, records, reports or accounting of funds.
- Requirements that developers ensure that stormwater management systems meet state operational requirements prior to relinquishing control to a homeowners association.
- Exempting security systems or facilities constructed pursuant to the CS from existing statutory provisions governing the obstruction of highways.

This CS amends sections 190.012, 373.413, 373.436, 720.303, 720.304, 720.307, and 861.01, Florida Statutes.

II. Present Situation:

Section 190.012, F.S., governs special powers that may be granted for public improvements and the construction and maintenance of certain facilities undertaken by a community redevelopment districts. One specific subsection permits these districts to undertake certain activities once consented to by local governments. Included in these are: parks and recreational facilities; fire prevention and control; schools; security; mosquito control; and waste collection and disposal.

Part IV of Chapter 373, F.S., creates within the Department of Environmental Protection (DEP) a Environmental Resource Permit program (ERP) which regulates activities involving the alteration of surface water flows. This includes new activities in uplands that generate stormwater runoff from upland construction, as well as dredging and filling in wetlands and other surface waters. ERP applications are processed by either the department or one of the state's water management districts, in accordance with the division of responsibilities specified in operating agreements between the Department and the water management districts.

The ERP program is in effect throughout the State, except for the Florida panhandle within the limits of the Northwest Florida Water Management District. In the 2006 legislative session, amendments were made to s. 373.4145, F.S., authorizing the department to promulgate rulemaking addressing stormwater quality and quantity, and rules for the Northwest ERP stormwater program went into effect October 1, 2007. The remaining components of the comprehensive ERP program, including isolated wetlands, are currently being written and are scheduled for completion in 2008.

The ERP program is designed to prevent stormwater pollution to lakes and streams by protecting wetlands. First required in 1995, ERP permits combine the former wetland dredge and fill permit issued by the department and the management and storage of surface waters permit issued by the water management districts. An ERP is needed to regulate activities such as dredging and filling in wetlands, construction of drainage facilities, stormwater containment and treatment, construction of dams or reservoirs, and other activities affecting state waters. Anyone proposing construction of new facilities, including governmental agencies, developers building new residential or commercial areas, and anyone who wants to fill in wetlands must have an ERP.

Each district has an operating agreement with the department about which agency will process ERPs for particular projects, based on the type of land use. For example, the districts process residential and commercial developments, while the department processes power plants, wastewater treatment plants and single-family home projects.

Section 720.303, F.S., details the powers and duties granted to homeowners associations. Provisions in this section provide guidelines for the exercise of certain duties and powers by these associations including minimum reporting and fiduciary requirements. Activities governed within this section include: board meetings; official record keeping; budgets; financial reporting; and handling of association funds.

Section 720.304, F.S., governs the rights of homeowners to assemble and to display certain signs. In addition, this section also protects certain actions or activities from SLAPP suits¹. One specific provision related to displays protects homeowners from lawsuits concerning the display of the American Flag.

Section 861.01, F.S., specifically prohibits the obstruction of public roads by fencing across such roads or by willfully causing any other obstructions.

III. Effect of Proposed Changes:

Section 1: Amends s. 190.012, F.S., to provide that no local government pursuant to powers granted to community development districts may prohibit the construction or use of security systems and facilities which enclose or restrict access to roads.

Section 2: Amends s. 373.413, F.S., to condition the issuance of any ERP permits for the construction of certain stormwater systems on a demonstration by the applicant that sufficient financial responsibility is in place to ensure the proper operation of such a system for 5 years. The DEP is granted specific rule making authority to define the form and content of such financial assurance. The DEP is required to modify the financial assurance requirements as the system demonstrates its ability to operate and be properly maintained. The DEP and the water management districts existing authority to require financial responsibility for other types of stormwater systems is not modified by this provision.

Section 3: Amends s. 373.436, F.S., to allow the DEP or the water management district to have a lien against each landowner whom is responsible for the permitted stormwater system.

Section 4: Amends s. 720.303, F.S., to allow board members of a homeowners association to be charged with noncriminal infractions for violations related to meetings of the board, official records, budgets, financial reporting, and association funds. Board members may be charged

¹ SLAPP suits are Strategic Lawsuits Against Public Participation, in which a corporation or developer sues an organization in an attempt to scare it into dropping protests against a corporate initiative. SLAPP suits typically involve the environment, for example, local residents who are petitioning to change zoning laws to prevent a real estate development might be sued in a SLAPP suit for interference with the developer's business interests. Many states, including Florida have "anti-SLAPP suit" statutes that protect citizens' rights to free speech and to petition the government.

\$500 for a first offense, \$1,000 for second or subsequent offenses, and a misdemeanor for knowingly violating these provisions a third or subsequent time.

Section 5: Amends s. 720.304, F.S., to provide that the placement of a reasonably sized “For Sale” sign shall not be grounds for the filing of a lawsuit under current law governing the rights of homeowners.

Section 6: Amends s. 720.037, F.S., to require that developers, prior to transferring control or ownership for any stormwater system, shall ensure that such system meets all state requirements.

Section 7: Amends s. 861.01, F.S., to exempt security systems or related facilities built pursuant to a community development districts authority provided for in Section 1 of this CS.

Section 8: Provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require cities and counties to expend funds or limit their authority to raise revenues or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Members of the board of a homeowners association may now be subject to certain noncriminal infractions should they violate provisions related to the conduct of their meetings or the keeping of records.

Landowners whom are responsible for the operation and maintenance of stormwater systems will now have potential financial exposure if such systems are abandoned or not properly operated.

C. **Government Sector Impact:**

The DEP and the water management districts do not anticipate any direct fiscal impact from the provisions of the CS. They do anticipate some minimal costs associated with additional rule making concerning the development of financial responsibility criteria.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation Committee on April 4, 2008:

The CS makes the following changes to the original bill:

- Retains the provision that expressly allows any individual to place a “for sale” sign on their property provided it does not interfere with common areas or easements.
- Provisions related to the inspection of certain water control structures and the reversion of title to the state for abandoned structures have been removed

New provisions include the following:

- Prohibiting local governments from preventing security systems and associated facilities to be constructed by community development districts.
- A requirement that applicants demonstrate financial responsibility for construction and operation of stormwater management systems.
- Authority for a water management district or the DEP to file a lien against any landowners responsible for operation and maintenance of stormwater management systems.
- The creation of noncriminal penalties that may be levied against homeowner association board members for their violation of laws related to meetings, records, reports or accounting of funds.
- Requirements that developers ensure that stormwater management systems meet state operational requirements prior to relinquishing control to a homeowners association.
- Exempting security systems or facilities constructed pursuant to the CS from existing statutory provisions governing concerning the obstruction of highways.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
