

By the Committee on Environmental Preservation and Conservation;
and Senator Bennett

592-06637A-08

20082284c1

1 A bill to be entitled

2 An act relating to homeowners' associations; amending s.
3 190.012, F.S.; authorizing the use of certain security
4 systems by community development districts; prohibiting a
5 local general-purpose government from prohibiting or
6 revoking the exercise of the powers of a community
7 development district after the local general-purpose
8 government has consented to the exercise of such powers by
9 the community development district; amending s. 373.413,
10 F.S.; requiring applicants for permits to construct
11 stormwater management systems to demonstrate financial
12 responsibility for the construction and operation of the
13 systems; amending s. 373.436, F.S.; providing that a lien
14 is created against all property served by certain
15 stormwater management systems if certain costs incurred by
16 a water management district or the Department of
17 Environmental Protection are not reimbursed by such
18 landowners; amending s. 720.303, F.S.; providing penalties
19 for homeowners' association board members who violate
20 certain provisions relating to the conduct of board
21 meetings; amending s. 720.304, F.S.; allowing property
22 owners who are members of a homeowners' association to
23 display a "for sale" sign on their property; amending s.
24 720.307, F.S.; requiring developers to comply with certain
25 permitting requirements relating to financial
26 responsibility for the construction or alteration on
27 stormwater management systems before relinquishing control
28 of homeowners' associations; amending s. 861.01, F.S.;
29 exempting certain fencing systems from a prohibition

592-06637A-08

20082284c1

30 against obstructing public roads and highways; providing
31 an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Subsection (2) of section 190.012, Florida
36 Statutes, is amended to read:

37 190.012 Special powers; public improvements and community
38 facilities.--The district shall have, and the board may exercise,
39 subject to the regulatory jurisdiction and permitting authority
40 of all applicable governmental bodies, agencies, and special
41 districts having authority with respect to any area included
42 therein, any or all of the following special powers relating to
43 public improvements and community facilities authorized by this
44 act:

45 (2) After the local general-purpose government within the
46 jurisdiction of which a power specified in this subsection is to
47 be exercised consents to the exercise of such power by the
48 district, the district shall have the power to plan, establish,
49 acquire, construct or reconstruct, enlarge or extend, equip,
50 operate, and maintain additional systems and facilities for:

51 (a) Parks and facilities for indoor and outdoor
52 recreational, cultural, and educational uses.

53 (b) Fire prevention and control, including fire stations,
54 water mains and plugs, fire trucks, and other vehicles and
55 equipment.

56 (c) School buildings and related structures and site
57 improvements, which may be leased, sold, or donated to the school
58 district, for use in the educational system when authorized by

592-06637A-08

20082284c1

59 | the district school board.

60 | (d) Security, including, but not limited to, guardhouses,
61 | fences and gates, electronic intrusion-detection systems, and
62 | patrol cars, when authorized by proper governmental agencies;
63 | except that the district may not exercise any police power, but
64 | may contract with the appropriate local general-purpose
65 | government agencies for an increased level of such services
66 | within the district boundaries. Security systems and facilities
67 | constructed pursuant to this section are authorized, including
68 | guardhouses, fences, and gates, which enclose or restrict access
69 | to roads. A local general-purpose government may not prohibit or
70 | revoke the exercise of the community development district's
71 | powers under this subsection after it has consented to the
72 | exercise of such powers by the community development district.

73 | (e) Control and elimination of mosquitoes and other
74 | arthropods of public health importance.

75 | (f) Waste collection and disposal.

76 | Section 2. Subsection (6) is added to section 373.413,
77 | Florida Statutes, to read:

78 | 373.413 Permits for construction or alteration.--

79 | (6) (a) As a condition of any permit issued under this part
80 | for a stormwater management system, the applicant shall
81 | demonstrate financial responsibility for the construction of the
82 | system, or independent phase thereof, and for operation and
83 | maintenance of the system for 5 years after the system is
84 | certified by an appropriate professional in this state and the
85 | department or water management district determines that the
86 | construction or alteration has been completed and substantially
87 | conforms to the approved plans and specifications in the permit.

592-06637A-08

20082284c1

88 (b) The form and content of the financial responsibility
89 mechanism shall be approved by the department or the water
90 management district as part of permit application review. The
91 department or water management district shall release the
92 construction portion of the financial responsibility mechanism
93 after the system has been certified and the department or water
94 management district has determined that the system has been
95 constructed in substantial compliance with the terms and
96 conditions of the permit. The department or water management
97 district shall release the operation and maintenance portion of
98 the financial responsibility within 1 month after approving the
99 transfer of the permit to the operating entity specified in the
100 permit.

101 (c) This subsection does not limit the existing authority
102 of the department or governing board to otherwise require a
103 demonstration of financial responsibility for construction,
104 alteration, or operation and maintenance of a stormwater
105 management system.

106 Section 3. Section 373.436, Florida Statutes, is amended to
107 read:

108 373.436 Remedial measures.--

109 (1) Upon completion of any inspection provided for by s.
110 373.423(3), the executive director or the department shall
111 determine what alterations or repairs are necessary and order
112 that such alterations and repairs shall be made within a time
113 certain, which shall be a reasonable time. The owner of such
114 stormwater management system, dam, impoundment, reservoir,
115 appurtenant work, or works may file a written petition for
116 hearing before the governing board or the department no later

592-06637A-08

20082284c1

117 | than 14 days after such order is served. If, after such order
118 | becomes final, the owner shall fail to make the specified
119 | alterations or repairs, the governing board or the department
120 | may, in its discretion, cause such alterations or repairs to be
121 | made.

122 | (2) Any cost to the district or the department of
123 | alterations or repairs made by it under the provisions of
124 | subsection (1) shall be a lien against the property of the
125 | landowner on whose lands the alterations or repairs are made
126 | until the governing board or department is reimbursed, with
127 | reasonable interest and attorney's fees, for its costs. If the
128 | permitted stormwater management system, dam, impoundment,
129 | reservoir, appurtenant, or work was designed to serve the
130 | property of multiple landowners, the district or department shall
131 | have a lien against each of those landowners in a proportional
132 | amount to reimburse the permitting agency for its costs.

133 | Section 4. Subsection (2) of section 720.303, Florida
134 | Statutes, is amended to read:

135 | 720.303 Association powers and duties; meetings of board;
136 | official records; budgets; financial reporting; association
137 | funds; recalls.--

138 | (2) BOARD MEETINGS.--

139 | (a) A meeting of the board of directors of an association
140 | occurs whenever a quorum of the board gathers to conduct
141 | association business. All meetings of the board must be open to
142 | all members except for meetings between the board and its
143 | attorney with respect to proposed or pending litigation where the
144 | contents of the discussion would otherwise be governed by the
145 | attorney-client privilege. The provisions of this subsection

592-06637A-08

20082284c1

146 shall also apply to the meetings of any committee or other
147 similar body when a final decision will be made regarding the
148 expenditure of association funds and to meetings of any body
149 vested with the power to approve or disapprove architectural
150 decisions with respect to a specific parcel of residential
151 property owned by a member of the community.

152 (b) Members have the right to attend all meetings of the
153 board and to speak on any matter placed on the agenda by petition
154 of the voting interests for at least 3 minutes. The association
155 may adopt written reasonable rules expanding the right of members
156 to speak and governing the frequency, duration, and other manner
157 of member statements, which rules must be consistent with this
158 paragraph and may include a sign-up sheet for members wishing to
159 speak. Notwithstanding any other law, the requirement that board
160 meetings and committee meetings be open to the members is
161 inapplicable to meetings between the board or a committee and the
162 association's attorney, with respect to meetings of the board
163 held for the purpose of discussing personnel matters.

164 (c) The bylaws shall provide for giving notice to parcel
165 owners and members of all board meetings and, if they do not do
166 so, shall be deemed to provide the following:

167 1. Notices of all board meetings must be posted in a
168 conspicuous place in the community at least 48 hours in advance
169 of a meeting, except in an emergency. In the alternative, if
170 notice is not posted in a conspicuous place in the community,
171 notice of each board meeting must be mailed or delivered to each
172 member at least 7 days before the meeting, except in an
173 emergency. Notwithstanding this general notice requirement, for
174 communities with more than 100 members, the bylaws may provide

592-06637A-08

20082284c1

175 | for a reasonable alternative to posting or mailing of notice for
176 | each board meeting, including publication of notice, provision of
177 | a schedule of board meetings, or the conspicuous posting and
178 | repeated broadcasting of the notice on a closed-circuit cable
179 | television system serving the homeowners' association. However,
180 | if broadcast notice is used in lieu of a notice posted physically
181 | in the community, the notice must be broadcast at least four
182 | times every broadcast hour of each day that a posted notice is
183 | otherwise required. When broadcast notice is provided, the notice
184 | and agenda must be broadcast in a manner and for a sufficient
185 | continuous length of time so as to allow an average reader to
186 | observe the notice and read and comprehend the entire content of
187 | the notice and the agenda. The bylaws or amended bylaws may
188 | provide for giving notice by electronic transmission in a manner
189 | authorized by law for meetings of the board of directors,
190 | committee meetings requiring notice under this section, and
191 | annual and special meetings of the members; however, a member
192 | must consent in writing to receiving notice by electronic
193 | transmission.

194 | 2. An assessment may not be levied at a board meeting
195 | unless the notice of the meeting includes a statement that
196 | assessments will be considered and the nature of the assessments.
197 | Written notice of any meeting at which special assessments will
198 | be considered or at which amendments to rules regarding parcel
199 | use will be considered must be mailed, delivered, or
200 | electronically transmitted to the members and parcel owners and
201 | posted conspicuously on the property or broadcast on closed-
202 | circuit cable television not less than 14 days before the
203 | meeting.

592-06637A-08

20082284c1

204 3. Directors may not vote by proxy or by secret ballot at
205 board meetings, except that secret ballots may be used in the
206 election of officers. This subsection also applies to the
207 meetings of any committee or other similar body, when a final
208 decision will be made regarding the expenditure of association
209 funds, and to any body vested with the power to approve or
210 disapprove architectural decisions with respect to a specific
211 parcel of residential property owned by a member of the
212 community.

213 (d) If 20 percent of the total voting interests petition
214 the board to address an item of business, the board shall at its
215 next regular board meeting or at a special meeting of the board,
216 but not later than 60 days after the receipt of the petition,
217 take the petitioned item up on an agenda. The board shall give
218 all members notice of the meeting at which the petitioned item
219 shall be addressed in accordance with the 14-day notice
220 requirement pursuant to subparagraph (c)2. Each member shall have
221 the right to speak for at least 3 minutes on each matter placed
222 on the agenda by petition, provided that the member signs the
223 sign-up sheet, if one is provided, or submits a written request
224 to speak prior to the meeting. Other than addressing the
225 petitioned item at the meeting, the board is not obligated to
226 take any other action requested by the petition.

227 (e) A board member who violates the provisions of this
228 subsection commits a noncriminal infraction punishable by a fine
229 not exceeding \$500. A board member who violates the provisions of
230 this subsection a second or subsequent time commits a noncriminal
231 infraction punishable by a fine not to exceed \$1,000. A board
232 member who knowingly violates the provisions of this subsection a

592-06637A-08

20082284c1

233 third or subsequent time commits a misdemeanor of the first
234 degree, punishable as provided in s. 775.082 or s. 775.083.

235 Section 5. Subsection (7) is added to section 720.304,
236 Florida Statutes, to read:

237 720.304 Right of owners to peaceably assemble; display of
238 flag; SLAPP suits prohibited.--

239 (7) Any parcel owner may display a sign of reasonable size
240 advertising the sale of the parcel within the boundaries of the
241 parcel.

242 Section 6. Subsection (4) of section 720.307, Florida
243 Statutes, is renumbered as subsection (5), and a new subsection
244 (4) is added to that section, to read:

245 720.307 Transition of association control in a
246 community.--With respect to homeowners' associations:

247 (4) Prior to relinquishing control of the homeowners'
248 association, the developer shall ensure that any stormwater
249 management system, dam, impoundment, reservoir, appurtenant, or
250 works meets the requirements of s. 373.413(6).

251 Section 7. Section 861.01, Florida Statutes, is amended to
252 read:

253 861.01 Obstructing highway.--Whoever obstructs any public
254 road or established highway by fencing across or into the same or
255 by willfully causing any other obstruction in or to such road or
256 highway, or any part thereof, shall be guilty of a misdemeanor of
257 the first degree, punishable as provided in s. 775.082 or s.
258 775.083, and the judgment of the court shall also be that the
259 obstruction be removed. This section does not apply to a security
260 system or facility constructed pursuant to s. 190.012.

261 Section 8. This act shall take effect July 1, 2008.