

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 319 Residential Properties
SPONSOR(S): Civil Justice Subcommittee; Moraitis, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 3 N, As CS	Cary	Bond
2) Business & Consumer Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

This bill amends laws relating to condominiums, cooperatives, and homeowners' associations, to:

- Allow condominium boards to install code-compliant hurricane doors and other types of code-compliant hurricane protection;
- Allow extra time for the completion of planned additional phases to a condominium;
- Provide for the creation of a condominium within a condominium;
- Extend the time period for classification as a bulk assignee or bulk buyer of condominiums from July 1, 2012 to July 1, 2015;
- Allow the condominium ombudsman and his or her staff to engage in other professions as long as it does not create a conflict with his or her work in that office;
- Conform certain provisions to make the laws of condominiums, cooperatives, and homeowners' associations consistent in certain areas;
- Require a condominium board secretary to maintain directors' educational certificates, and imposes the same requirements on cooperative and homeowners' association secretaries;
- Limit challenges to association member election or recall results to within 60 days after the results are released, and limits recalls when that member is scheduled to come up for election within 60 days of the desired recall;
- Allow a condominium or homeowners association to collect unpaid late fees, interest, costs, and reasonable attorneys fees when collecting unpaid assessments;
- Modify quorum requirements to account for suspended members;
- Provide that the home address of a licensed Community Association Manager is not published except in response to a specific public records request; and
- Remove the requirement that elevators in multi-family structures be retrofitted to meet certain codes by 2015, without changing requirement to bring an elevator up to current code if the elevator is replaced or substantially modified.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominiums - Background

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., "which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.⁴ The declaration generally provides a method for amendment, but if it does not provide such a method, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁵ Condominiums are administered by a board of directors referred to as a "board of administration."⁶

Cooperatives - Background

A "cooperative" is a form of ownership of real property created pursuant to ch. 719, F.S., wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.⁷

Like condominiums, cooperatives are created by cooperative documents and include articles of incorporation of the association, bylaws, the ground lease or any other underlying lease, the document evidencing a unit owner's membership or share in the association, and the document recognizing a unit owner's title or right of possession to his or her unit.⁸

Cooperatives are administered in accordance with the bylaws or other cooperative documents.⁹ Should the bylaws or other cooperative documents not specify the form of administration, the board of administration is composed of three or five members, depending on the size of the cooperative, including a president, a secretary, and a treasurer.¹⁰ Bylaws or other cooperative documents are required to provide rules relating to administration, quorum, board meetings, shareholder meetings, budget procedures, recall of board members, common expenses, amendment of bylaws, transfer fees, annual budget, and arbitration, though the statutes provide rules if the bylaws or other cooperative documents fail to do so.¹¹

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So.2d 494, 496-97 (Fla. 4th DCA 2003).

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S.

⁶ Section 718.103(4), F.S.

⁷ Section 719.103(12), F.S.

⁸ Section 719.103(13), F.S.

⁹ Section 719.106(1), F.S.

¹⁰ Section 719.106(1)(a), F.S.

¹¹ Section 719.106, F.S.

Homeowners' Associations – Background

Florida law gives statutory recognition to corporations that operate residential communities, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.¹²

A "homeowners' association" is defined as a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹³ Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not-for-profit corporations.¹⁴

Homeowners' associations are administered by an elected board of directors.¹⁵ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.¹⁶ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁷

Effect of the Bill - Condominiums

These provisions of the bill apply only to condominium associations:

Windstorm Protection

Condominium boards are currently required to adopt hurricane shutter specifications in accordance with the applicable building code.¹⁸ They are also allowed to approve the installation of hurricane shutters, impact glass, and code-compliant windows.¹⁹ This bill amends ss. 718.113(5) and 718.115(1), F.S., to allow a condominium to install code-compliant doors and other types of code-compliant hurricane protection.

Phases

Condominiums may be developed in phases if the declaration of condominium provides for the phases and describes the anticipated phases in detail.²⁰ The phases must be added within seven years or the right to add additional phases expires.²¹ This bill amends s. 718.403(1), F.S., to provide that the unit owners may extend the 7-year period to allow for an additional three years from the end of the original 7-year period. The vote to extend must occur within the last 3 years of the original 7-year period.

Condominium Within a Condominium

This bill creates s. 718.406, F.S. to allow the development of a condominium within a condominium parcel. The bill provides for creation of a secondary condominium within one or more condominium units pursuant to a secondary condominium declaration. The secondary condominium is governed by both the primary condominium declaration and the secondary condominium declaration. The primary condominium declaration controls the secondary in the event of a conflict.

¹² See s. 720.302(1), F.S.

¹³ Section 720.301(9), F.S.

¹⁴ Section 720.302(5), F.S.

¹⁵ See ss. 720.303 and 720.307, F.S.

¹⁶ See ss. 720.301 and 720.303, F.S.

¹⁷ Section 720.303(1), F.S.

¹⁸ Section 718.113(5), F.S.

¹⁹ Section 718.113(5)(a), F.S.

²⁰ Section 718.403(1), F.S.

²¹ *Id.*

The secondary condominium association acts on behalf of the unit owners in the primary condominium association and the president of the secondary condominium association or designee casts the vote of the secondary condominium in the primary condominium association. The primary condominium association may provide insurance required by s. 718.111(11), F.S. for common elements and other improvements within the secondary condominium if the primary condominium declaration allows it. Common expenses due the primary condominium association with respect to a subdivided unit are common expense of the secondary condominium association and are collected by the secondary condominium association from its members to be paid to the primary condominium association. Owners or first mortgage holders of a secondary condominium unit may register an interest in the property with the primary condominium association.

Bulk Assignee or Bulk Buyer

In 2010, the Legislature passed the Distressed Condominium Relief Act²² in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act.²³ Specifically, the Distressed Condominium Relief Act created categories of "bulk buyers" and "bulk assignees."²⁴ A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents.²⁵ A bulk buyer is a person who acquires more than seven condominium parcels but who does not receive an assignment of developer rights other than the right to:

- Conduct sales, leasing, and marketing activities within the condominium;
- Be exempt from payment of working capital contributions; and
- Be exempt from rights of first refusal.²⁶

In general, a bulk assignee, but not a bulk buyer, assumes all liabilities of the developer. However, a bulk assignee is not liable for:

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee;
- Funding converter reserves for a unit not acquired by the bulk assignee;
- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser;
- Including in the cumulative audit required at turnover an audit of income and expenses during the period prior to assignment;
- Any actions taken by the board prior to the time at which the bulk assignee appoints a majority of the board; or
- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

The Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state"²⁷ and was not intended to be open-ended, and was therefore enacted for "only a specific and defined period."²⁸ Currently, the time limitation for classification as a bulk assignee or bulk buyer is until July 1, 2012.²⁹ This bill amends s. 718.707, F.S., to extend the date to July 1, 2015.

²² Chapter 2010-174, L.O.F.

²³ Section 718.702(3), F.S.

²⁴ Section 718.703(1) & (2), F.S.

²⁵ Section 718.703(1), F.S.

²⁶ Section 718.703(2), F.S.

²⁷ Section 718.102(1), F.S.

²⁸ Section 718.102(3), F.S.

²⁹ Section 718.707, F.S.

Ombudsman

In 2004, the Legislature created the Office of the Condominium Ombudsman.³⁰ The Ombudsman is an attorney appointed by the Governor and is, along with office staff, restricted from certain acts, such as actively engaging in any other business or profession, serving as the representative of any political party, executive committee, or other governing body of a political party, serving as an executive, officer, or employee of a political party, receiving remuneration for activities on behalf of any candidate for public office, or campaigning for a candidate for political office.³¹ The Ombudsman's duties include, but are not limited to:

- Preparing and issuing reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division;
- Acting as a liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties;
- Monitoring and reviewing procedures and disputes concerning condominium elections or meetings, including enforcement when the ombudsman believes election misconduct has occurred;
- Making recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers;
- Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with the statutes, division rules, and the condominium documents governing the association;
- Encouraging and facilitating voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy; and
- Assisting with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the division to resolve.³²

This bill amends s. 718.5011, F.S., to provide that an officer or full-time employee of the ombudsman's office may engage in another business or profession as long as it does not directly or indirectly relate to or conflict with his or her work in the Ombudsman's office.

Conforming Laws related to Condominiums, Cooperatives and Homeowners' Associations

The bill conforms certain aspects of the Condominium Act, the Cooperative Act and the statute governing Homeowners' Associations.

Board Meetings for the Purpose of Discussing Personnel Matter

Generally, association meetings are open to unit owners.³³ A condominium board may currently close meetings when the board meets with the association's attorney to seek legal advice or when the board meeting is held for the purpose of discussing personnel matters.³⁴ However, cooperatives are only able to close meetings with the board's attorney.³⁵ This bill amends s. 719.106(1)(c), F.S. to make cooperatives consistent with condominiums with respect to this issue.

³⁰ Chapter 2004-385, L.O.F.

³¹ Section 718.5011(2), F.S.

³² Section 718.5012, F.S.

³³ See ss. 718.112(2)(c), 719.106(1)(c), and 720.306(6), F.S.

³⁴ Section 718.112(1)(c)3., F.S.

³⁵ Section 719.106(1)(c), F.S.

Amending Condominium, Cooperative, and Homeowners' Association Documents

Current law allows condominiums, cooperatives, and homeowners' associations, through the declaration of condominium, cooperative documents, and bylaws, respectively, to establish procedures for amending said documents.³⁶ However, current law also provides default procedures, should the documents not establish such procedures.³⁷ The Condominium Act contains a provision with a legislative finding that the procurement of mortgagee consent to amendments that do not affect the rights or interest of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of a condominium association to approve amendments to the condominium documents through legal means.³⁸ The Condominium Act renders unenforceable provisions in the declaration, articles of incorporation, or bylaws that require mortgagee consent in matters that do not affect the rights or interests of the mortgagee. The Act only applies to mortgages entered into after October 1, 2007.³⁹

Where consent is required, current law allows a condominium association to:

- Rely upon public records to identify the holders of outstanding mortgages;
- Use the address provided in the original recorded mortgage document unless there is a different address in a recorded assignment or modification of the mortgage;
- Request the name and address of the person to whom mortgage payments are currently being made; and
- Provide notice to each address found using such methods, along with all other available addresses provided to the association, using a method that establishes proof of delivery.⁴⁰

For amendments that require mortgagee consent, consent may be evidenced by properly recorded joinder. For individuals or entities that do not respond to such notice, consent is evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded.⁴¹

This bill adds subsection (7) to s. 719.1055, F.S. and adds paragraph (d) to s. 720.306(1), F.S. to provide substantially the same procedures for both cooperatives and homeowners' associations.

Board Member Education Requirement

Current law requires newly appointed or elected members of a condominium board of directors to certify in writing within 90 days that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Alternatively, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies, and the board may temporarily fill the vacancy during the suspension. The secretary is required to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election.⁴² These educational requirements do not apply to cooperative or homeowners' associations.

This bill amends ss. 719.106(1)(d)1., F.S., and 720.306(9)(a), F.S., to impose the same education and certification requirements on board members of a cooperative association and a homeowners' association. The bill also amends s. 718.112(2)(d)4.b., F.S. to require the secretary to retain the

³⁶ See ss. 718.110, 719.1055, and 720.306, F.S.

³⁷ *Id.*

³⁸ Section 718.110(11), F.S.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Section 718.110(11)(e), F.S.

⁴² Section 718.112(2)(d)4.b., F.S.

director's written certification or educational certificate for the duration of the director's uninterrupted tenure, if the director serves longer than 5 years.

Changes to Election and Recall

Current law requires that condominium, cooperative, and homeowners' association board members, directors, and/or elected officers are elected⁴³ by written ballot or voting machine in the case of condominiums⁴⁴ and cooperatives⁴⁵, and as provided in accordance with the procedures set forth in the governing documents in the case of homeowners' associations.⁴⁶ There is currently no limitations period to initiate a challenge to the election process. Furthermore, board members may be recalled with or without cause by the vote or agreement in writing by a majority of all the voting interests by vote or petition.⁴⁷

This bill adds s. 718.112(2)(d)4.c., F.S., and amends ss. 719.106(1)(d)1., F.S., and 720.306(9)(a), F.S., to require that all challenges to condominium, cooperative or homeowners' association member elections must be commenced within 60 days after the election results are announced.⁴⁸ This bill amends ss. 718.112(2)(j), 719.106(1)(f), and 720.303(10), F.S., to require that challenges to a recall election must be filed within 60 days after the recall is deemed certified and to limit challenges when there are 60 or fewer days until the scheduled election of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled. The bill also gives unit owners the right to challenge the board for failure to act on the recall vote or petition pursuant to s. 718.1255, F.S.,⁴⁹ limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed. The bill also amends s. 718.112(2)(d)4., F.S., to provide an exemption allowing proxy voting for members of a timeshare condominium board.

Assessments

Owners of units in condominiums, cooperatives, and homeowners' associations are required to pay periodic assessments to fund the operations of the association.⁵⁰ Owners and occupants maintain obligations to the associations.⁵¹ The purchaser of a unit is jointly and severally liable with the previous owner for all assessments that were due at the time of the purchase, regardless of the method of purchase.⁵² The person acquiring title is responsible to pay the amount owed to the association within 30 days after the transfer of title.

This bill amends ss. 718.116(1)(a), 719.108(1), and 720.3085(2)(b), F.S. to provide that a purchaser is jointly and severally liable with the previous owner for late fees, interest, costs, and reasonable attorney fees incurred by the association in an attempt to collect, in addition to the unpaid assessments.

The bill also amends ss. 718.116(1)(c), and 720.3085(2)(d), F.S., to limit the liability of the person acquiring title to the amount specifically provided for in the statute. The bill does not affect cooperatives concerning this issue.

⁴³ Under certain circumstances, board members may be appointed rather than elected. *See, e.g.*, ss. 718.112(2)(d)9., 719.106(d)6., and 720.303(10)(e), F.S.

⁴⁴ Section 718.112(2)(d)4, F.S.

⁴⁵ Section 719.106(1)(d)1, F.S.

⁴⁶ Section 720.306(9)(a), F.S.

⁴⁷ *See* ss. 718.112(2)(j), 719.106(1)(f), and 720.303(10), F.S.

⁴⁸ By contrast, results of state elections must be contested within 10 days after the last board officially certifies the results of the election. *See* s. 102.168(2), F.S.

⁴⁹ Section 718.1255, F.S., requires alternative dispute resolution, such as voluntary mediation or mandatory nonbinding arbitration prior to filing suit in trial court.

⁵⁰ *See, e.g.*, ss. 718.116, 719.104(5), and 720.308, F.S.

⁵¹ *See, e.g.*, ss. 718.303, 719.303, and 720.305, F.S.

⁵² Sections 718.116(1)(a), 719.108(1), and 720.3085(2)(b), F.S.

Common Elements

Condominiums, cooperatives, and homeowners' associations own common elements and facilities. Condominiums, cooperatives, and homeowners' associations are currently allowed to take action against owners and/or residents that do not comply with the provisions of the declaration bylaws, or reasonable rules.⁵³ Sanctions may include suspending, for a reasonable time, the right of a unit owner or tenant or guest to use the common elements, common facilities, or any other association property.⁵⁴

This bill limits which common elements the association may restrict the unit owner, tenant, or guest from using. Specifically, the bill amends ss. 718.303(3)(a), 719.303(3)(a), and 720.305(2)(a), F.S., to prohibit an association from restricting the use of:

- Limited common elements intended to be used only by that unit;
- Common elements needed to access the unit;
- Utility services provided to the unit;
- Parking spaces; and
- Elevators.⁵⁵

Quorum

Condominiums, cooperatives, and homeowners' associations may suspend voting rights of a unit or member due to nonpayment of any monetary obligation due the association which is more than 90 days delinquent.⁵⁶ Suspended voting interests may not be counted towards the total number of voting interests necessary to constitute a quorum.⁵⁷

This bill amends ss. 718.303(5), 719.303(5), and 720.305(4), F.S., to specifically reduce the number of voting interests required to establish a quorum by the number of suspended voting interests, notwithstanding the association's governing documents or bylaws.

Public Records

The Department of Business and Professional Regulation is responsible for certifying applicants to be licensed community association⁵⁸ managers.⁵⁹ This bill creates s. 468.433(5), F.S., to prohibit the department from publishing a licensee's personal home address unless it is for the purpose of satisfying a public records request.

Elevator Safety

In 2010, the Legislature amended s. 399.02, F.S. to exempt elevators in condominiums, cooperatives and other multi-family residential buildings that were issued certificates of occupancy as of July 1, 2008, from retroactive application of future updates to the Elevator Safety Code (ASME A17.1 and A17.3) until July 1, 2015 or until the elevator is replaced or requires major modification, whichever occurs first.⁶⁰

⁵³ See ss. 718.303(3), 719.303(3), and 720.305(2), F.S.

⁵⁴ See ss. 718.303(3)(a), 719.303(3)(a), and 720.305(2)(a), F.S.

⁵⁵ The bill does not include the 'elevators' provision in amending s. 720.305(2)(a), F.S., but does include a provision prohibiting the homeowners' association from impairing the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including the right to park.

⁵⁶ See ss. 718.303(5), 719.303(5), and 720.305(4), F.S.

⁵⁷ *Id.*

⁵⁸ By definition in s. 468.431(1), F.S., "community association" includes condominiums, cooperatives, and a "residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel."

⁵⁹ Section 468.433(1), F.S.

⁶⁰ Chapter 2010-176, L.O.F.

The bill amends s. 399.02(9), F.S. to eliminate the July 1, 2015 deadline and thereby provide that existing elevators need not comply with current codes until the elevator is replaced or requires major modification.

This bill also contains numerous technical and clarifying changes throughout.

B. SECTION DIRECTORY:

Section 1 amends s. 399.02, F.S., regarding the Elevator Safety Code.

Section 2 amends s. 468.433, F.S., prohibiting the publication of a licensee's home address except to satisfy a public record request.

Section 3 amends s. 718.112, F.S., regarding condominium bylaws.

Section 4 amends s. 718.113, F.S., regarding hurricane shutters and protection in condominiums.

Section 5 amends s. 718.115, F.S., regarding common expenses in condominiums.

Section 6 amends s. 718.116, F.S., regarding condominium assessments.

Section 7 amends s. 718.303, F.S., regarding obligations of condominium owners and occupants.

Section 8 amends s. 718.403, F.S., regarding phase condominiums.

Section 9 creates s. 718.406, F.S., regarding condominiums created within condominium parcels.

Section 10 amends s. 718.5011, F.S., regarding condominium ombudsman.

Section 11 amends s. 718.707, F.S., regarding time limitation for classification as bulk assignee or bulk buyer.

Section 12 amends s. 719.104, F.S., regarding cooperative official records.

Section 13 amends s. 719.1055, F.S., regarding amendment of cooperative documents.

Section 14 amends s. 719.106, F.S., regarding cooperative bylaws.

Section 15 amends s. 719.108, F.S., regarding liability for rents and assessments.

Section 16 amends s. 719.303, F.S., regarding obligations of cooperative owners.

Section 17 amends s. 720.303, F.S., regarding homeowners' association powers and duties.

Section 18 amends s. 720.305, F.S., regarding obligations of members of homeowners' associations.

Section 19 amends s. 720.306, F.S., regarding homeowners' association elections.

Section 20 amends s. 720.3085, F.S., regarding homeowners' association assessments.

Section 21 amends s. 721.16, F.S., regarding liens for overdue assessments.

Section 22 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of this bill, regarding elevator codes, will have a positive fiscal impact on associations and the owners of multi-family structures, and a corresponding negative fiscal impact on companies that provide such services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, Section 10 of the Florida provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."⁶¹ A statute contravenes the state constitution's prohibition against impairment of contracts when it has the effect of changing the substantive rights of the parties to existing contracts.⁶²

Laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens. Florida has a "well-accepted principle . . . that virtually no degree of contract impairment is tolerable in this state." When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy."⁶³

⁶¹ Article 1, Sec. 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts"

⁶² 10A Fla. Jur. s. 411, Constitutional Law.

⁶³ *Pomponio v. Claridge of Popmano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).

This year, the Supreme Court held that a provision in the Condominium Act that retroactively changed the composition of the voting interests in a condominium board was an unconstitutional impairment of the obligation of contracts.⁶⁴ This bill amends s. 718.303, F.S., to reduce the number of votes to obtain a quorum in accordance with the number of suspended voting interests or consent rights "notwithstanding an association's declaration, articles of incorporation, or bylaws."

B. RULE-MAKING AUTHORITY:

The 2010 law on elevators required the Department of Business and Professional Regulation to adopt rules to administer the exemption. The department is still in the rulemaking process, which will have to be started again if this bill is passed into law.⁶⁵

Otherwise, the bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill limits the liability for unpaid assessments of the person acquiring title to a condominium or home falling under a homeowners' association, but the amended language does not provide the same limitation of liability for units of a cooperative.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 7, 2011, the Civil Justice Subcommittee adopted five amendments. The amendments:

- Provide an exemption allowing proxy voting for timeshare condominium board members;
- Limit the liability for unpaid assessments of the person acquiring title to a condominium parcel to the amount specifically provided for in the statute;
- Limit the liability for unpaid assessments of the person acquiring title to a parcel within a homeowners' association to the amount specifically provided for in the statute;
- Provide additional requirements for the creation of a condominium within a condominium;
- Conform portions of cooperative law to be similar to condominium law; and
- Make numerous grammatical and stylistic changes to the bill.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

⁶⁴ *Cohn v. Grand Condominium Assoc.*, 62 So.3d 1120 (Fla. 2011).

⁶⁵ Conversation with DBPR staff on November 21, 2011.