

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4021 Financial Reporting

SPONSOR(S): Steube

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 796

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|----------|--|
| 1) Business & Professions Subcommittee | 11 Y, 0 N | Whittier | Luczynski |
| 2) Civil Justice Subcommittee | | | |
| 3) Regulatory Affairs Committee | | | |

SUMMARY ANALYSIS

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons, but have an undivided share of access to common facilities, and are governed by an association. A cooperative is a form of real property ownership created pursuant to ch. 719, F.S., whereby the real property is owned by the cooperative association, and individual units are leased to the residents, who own shares in the cooperative association. A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S.

State law requires that condominium associations, cooperative associations, and homeowners' associations prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. The financial statements must be based upon the following provisions:

- An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.
- An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.
- An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.
- An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.
- An association that operates fewer than 50 units, regardless of the association's annual revenues, shall ["may" for homeowners' associations] prepare a report of cash receipts and expenditures in lieu of financial statements.

The bill removes the provision, from all three chapters of law, that an association operating fewer than 50 units, regardless of the association's annual revenues, shall ["may" for homeowners' associations] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby the year-end financial reports would be based solely on the level of annual revenues. This change should help ensure transparency and reduce the risk of fraud.

There appears to be no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominium Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which maybe owned by one or more persons, but have an undivided share of access to common facilities.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 governs the relationships among condominium unit owners and the condominium association.

In accordance with s. 718.111(13), F.S., within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association is required to prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association must mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

Specifically, financial reporting by condominium associations must adhere to the following provisions enumerated in s. 718.111, F.S.:

(13)(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.
2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.
3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

- (b) 1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.³
2. An association that operates fewer than 50 units, regardless of the association's annual revenues, **shall** prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

Cooperative Associations

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association,⁴ and individual units are leased to the residents, who own

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

⁴ Section 719.103(2), F.S.

shares in the cooperative association.⁵ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

In accordance with s. 719.104(4)(a), F.S., within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the bylaws of the association, the board of administration shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.⁶

Specifically, financial reporting by cooperative associations must adhere to the following provisions enumerated in s. 719.104, F.S.:

(4)(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement.
2. An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement.
3. An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

- (c) 1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.⁷
2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, **shall** prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.

Homeowners' Associations

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.⁸ There is no state agency that directly regulates homeowners' associations.

In accordance with s. 720.303(7), F.S., within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a third party

⁵ Section 719.103(26), F.S.

⁶ According to s. 719.104(4)(b)4., F.S.,

The requirement to have the financial statement compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

⁷ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

⁸ Section 720.301(9), F.S.

for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

Specifically, financial reporting by homeowners' associations must adhere to the following provisions enumerated in s. 720.303, F.S.:

- (7)(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:
1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.
 2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.
 3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.
- (b) 1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.⁹
2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, **may** prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.

Effect of Proposed Changes

Under the financial reporting requirements for condominiums associations, cooperative associations, and homeowners' associations, the bill removes the provisions that an association operating fewer than 50 units ["parcels" for homeowners' associations], regardless of the association's annual revenues, shall ["may" for homeowners' associations] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby the year-end financial reports would be based solely on the level of annual revenues. This change should help ensure transparency and reduce the risk of fraud.

B. SECTION DIRECTORY:

Section 1. Amends s. 718.111, F.S., relating to financial reporting by condominium associations.

Section 2. Amends s. 719.104, F.S., relating to financial reporting by cooperative associations.

Section 3. Amends s. 720.303, F.S., relating to financial reporting by homeowners' associations.

Section 4. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁹ A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.