

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1357 Community Associations

**SPONSOR(S):** Business & Professions Subcommittee; Civil Justice Subcommittee; La Rosa and Cortes, J.

**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 1 N, As CS	Malcolm	Bond
2) Business & Professions Subcommittee	12 Y, 0 N, As CS	Brown-Blake	Anstead
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located under the Department of Business and Professional Regulation (Department), has limited regulatory authority over condominium associations and homeowner's associations (limited only to arbitration of election and recall disputes). A condominium is a form of real property ownership created pursuant to ch. 718, F.S. 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.

The bill amends current law relating to condominiums and homeowners' associations. Specifically, the bill:

- Revises the types of official records an association must retain;
- Requires a condominium or homeowners' association with 7,500 or more units or parcels to provide a website for association members to view certain official records and meeting notices;
- Requires an outgoing or recalled board member to turn over the administrative rights or controls of the association's website to the incoming board;
- Requires the directors and officers of the board of an association to disclose any conflict of interest and establishes procedures for providing notice of a vote on a conflict-of-interest transaction;
- Prohibits a homeowners' association from enforcing traffic laws and criminal laws;
- Creates style and form requirements for amendments to a homeowners' association's governing documents and provides that nonmaterial errors in the amendment process do not invalidate an otherwise properly adopted amendment;
- Provides that an amendment to a declaration or governing document is effective when properly recorded in the same public records where the declaration or governing document is recorded;
- Provides that restrictions in a homeowners' association's rules related to a parcel owner's ability to offer a home for rent only apply to parcel owners who consent to the rule or purchase their home after the rule is enacted;
- Provides notice requirements in order to transfer past due assessments or liens;
- Requires associations offer payment plans to members with past due assessments; and
- Requires association boards to vote prior to filing for foreclosure on a lien.

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

The bill provides an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

The Division provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (limited to arbitration of election and recall disputes).<sup>1</sup>

#### ***Condominiums***

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities.<sup>2</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>3</sup> A declaration is similar to a constitution as it governs the relationship among unit owners and the association. Specifically, 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.<sup>4</sup>

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights.<sup>5</sup> The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."<sup>6</sup> The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.<sup>7</sup>

#### ***Homeowners' Associations***

A homeowners' association is a corporation responsible for the operation of a community subdivision in which the membership is made up of parcel owners, whose membership is a mandatory condition of parcel ownership. A homeowners' association is authorized to impose assessments that, if unpaid, may become a lien on the parcel. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S.<sup>8</sup>

A homeowners' association is administered by an elected board of directors. The powers and duties of a homeowners' association includes 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 those documents.

Chapter 720, F.S., provides procedures and minimum requirements for operating a homeowners' association and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes. The Department does not regulate homeowners' associations or

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<sup>1</sup> *Id.*

<sup>2</sup> s. 718.103(11), F.S.

<sup>3</sup> s. 718.104(2), F.S.

<sup>4</sup> *Id.* at (5).

<sup>5</sup> s. 718.103(2), F.S.

<sup>6</sup> *Id.* at (4).

<sup>7</sup> s. 718.112, F.S.

<sup>8</sup> s. 720.301(9), F.S.

handle other disputes involving homeowners' associations. The Department regulates the community association managers which often manage homeowners' associations.

## **Condominiums and Homeowners' Associations - Official Records**

### Background

Condominium and homeowners' associations are currently required to maintain official records, which include:

- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- accounting records for the association;
- All contracts for work to be performed; and
- All other written records which are related to the operation of the association.<sup>9</sup>

### Effect of the Bill

The bill makes the following changes to the official records that a condominium association is required to maintain:

- The association must retain plans, permits, and warranties related to improvements to the common areas or other property that the association is obligated to maintain, repair, or replace;
- The association must remove from its official records the e-mail address and fax number of a unit owner who revokes his or her consent to receive notice by electronic transmission;
- The association must retain bids for materials, equipment, or services for a period of one year.
- Financial records, tax returns, and any records that identify, measure, record, or communicate financial information must be retained; and
- Physical copies of the association's official records must be open to inspection by a member or his or her authorized representative.

The bill makes the following changes to the official records that a homeowners' association is required to maintain:

- The association must retain the documents and items provided by the developer when control of the association transfers to members of the association;<sup>10</sup>
- The association must retain a certified copy of its articles of incorporation as well as audits and reviews; and
- Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by members, must be maintained for 1 year after the date of the election, vote, or meeting.

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<sup>9</sup> ss. 718.111(12)(a) and 720.303(4), F.S.

<sup>10</sup> See s. 720.307(4), F.S.

## Condominiums and Homeowners' Associations – Access to Records

### Background

Currently, Florida law does not require a condominium or homeowners' association to maintain a website. Some condominium associations and homeowners' associations have websites for members to access information and documents regarding the association.

The association is required to maintain and provide access to the official records for inspection by any association member or parcel owner or the authorized representative of the member or parcel owner at reasonable times.<sup>11</sup> The right to inspect includes the right to make or obtain copies at the expense of the member.

### Effect of the Bill

The bill requires a condominium association with 500 or more units or a homeowners' association with 7,500 or more parcels to provide certain specified documents on the association's website. The website must be independently owned and operated by the association or operated by a third-party provider with whom the association has the right to operate a web page dedicated to the association's activities, notices and records.

The following documents must be placed on the website:

- Copies of the association's official records;
- The annual budget and financial report, and any proposed budget and financial reports to be considered at the annual meeting;
- Any document created by the association or a board member relating to the recall of a director;
- Documentation reporting the compensation of directors, officers, or members.;
- A list of all contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium or homeowners' association, or other entity in which an association director is also a director or officer is financially interested;
- Any fidelity bond entered into by the association.;
- Any contract or document regarding a conflict of interest or possible conflict of interest;<sup>12</sup> and
- Notice of any board meeting and the agenda for the meeting, placed online no later than 14 days before the meeting posted in plain view on the front page, or on a separate subpage labeled "Notices" which is conspicuously visible and linked from the front page of the association's website. The association must post on the website any documents to be considered during the meeting or listed on the agenda no later than 7 days before the meeting.

A homeowners' association website must also contain:

- A copy of the information submitted to the division to comply with the reporting requirement in s. 720.303(14), F.S.;<sup>13</sup> and
- The certification of each director required by s. 720.3033(1), F.S.<sup>14</sup>

A condominium or homeowners' association must ensure that information and records that members are not permitted to access are not placed on its website. If protected information is included in documents that are required to be placed on the website, the association must redact such information before placing the documents online.

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<sup>11</sup> ss. 718.111(12)(c), and 720.303(5), F.S.

<sup>12</sup> See "Condominiums and Homeowners' Associations – Conflict-of-Interest Transactions" section below.

<sup>13</sup> See "Homeowners' Association - Reporting Requirement" section below.

<sup>14</sup> s. 720.3033(1), F.S., requires each director of a homeowners' association to certify "that he or she has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and 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." In lieu of such written certification, the director may submit a certificate of having satisfactorily completed a certified educational curriculum.

The current roster of all members with their mailing addresses and parcel identifications may not be placed on the website. The website must include the following statement: "A current roster of all members and their mailing addresses and parcel identifications is available at the request of any association member." The notice must include the e-mail address of the person to contact for a copy of the roster.

A homeowners' association with fewer than 7,500 parcels located within the physical boundaries of an affiliated association that has 7,500 or more parcels must provide digital copies of the specified documents on the larger affiliated association's website. A homeowners' association with fewer than 7,500 parcels located within the physical boundaries of an association with 7,500 or more parcels, but that is not affiliated with the larger association, may provide digital copies of certain documents on its website if the association so chooses.

A condominium association with fewer than 500 units or a homeowner's association with fewer than 7,500 parcels may provide the listed documents on a website, but is not required to do so.

## **Condominiums and Homeowners' Associations – Turn Over of Association Records**

### Background

Current law requires an outgoing board member of a condominium association to turn over all official records and property of the association in his or her possession or control to the incoming board within five days after the election.<sup>15</sup> While there is no similar requirement in current law for a homeowners' association board member who has lost his or her seat due to an election, current law does provide that when a director of the homeowners' association's board of directors has been recalled and is in possession of records and property of the association, he or she must turn over such records to the board within five business days.<sup>16</sup>

### Effect of the Bill

The bill requires an outgoing board member of a condominium association, including a member who has been recalled, to turn over the administrative rights or controls of an association's website or other digital or electronic asset to the incoming board.

Additionally, the bill requires a board member of a homeowners' association who lost his or her seat due to an election or a recall to turn over all official records and property of the association, including administrative rights or controls of an association's website or other digital or electronic asset, to the incoming board within five days after the election or the effective date of the recall. The bill also requires a developer to turn over to the association any administrative rights or controls of the association's website or other digital or electronic asset when the board of directors of a homeowners' association can be elected by the members of the association.

## **Condominiums and Homeowners' Associations – Conflict-of-Interest Transactions**

### Background

If a condominium or homeowners' association enters into a contract or transaction with a director or any business in which one of the association's directors is also a director, officer, or is financially interested, current law requires that the board disclose the financial interest or that the contract or transaction be fair or reasonable. Additionally, the board must:

- Enter a disclosure of the financial interest in the minutes of the meeting in which the contract or transaction was approved;
- Approve the contract or transaction by two-thirds of the directors present at the meeting; and

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<sup>15</sup> s. 718.111(12)(f), F.S.

<sup>16</sup> s. 720.303(10), F.S.

- Disclose the contract or transaction at the meeting of the members. At the meeting, the contract may be canceled by a majority vote of the members present.<sup>17</sup>

The board of directors may appoint a board of administration consisting of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The board of administration's role is limited to determining whether to confirm or reject a fine or suspension levied by the board. The person sought to be fined or suspended by the association has the opportunity for a hearing in front of the board of administration before the imposition of a fine or suspension. The board of administration may not impose a fine or suspension without at least 14 day's notice prior to the opportunity for the hearing. Additionally, if the board of administration imposes a fine or suspension, the association must provide written notice of the fine or suspension by mail or hand delivery to the parcel owner and any tenant, licensee, or invitee of the parcel where applicable.<sup>18</sup>

### Effect of the Bill

The bill requires the directors and officers of a board of a condominium or homeowners' association to disclose any activity that may reasonably be construed as a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice or board approval taken at a member meeting:

- The director, officer, or a relative of a director or officer enters into a contract for goods or services with the association;
- The director, officer, or a relative of a director or officer holds an interest in any corporation or other business entity that conducts, or proposes to conduct, business with the association; or
- A corporation or other business entity that, directly or indirectly, owns or controls the director or officer, or otherwise influences any decisions made by the director or officer, intends to conduct business with the association.

If a director, officer, or a relative of a director or officer proposes to engage in an activity is a conflict of interest, the proposed activity must be placed on a meeting agenda and submitted to the board for a vote. If the board votes against the proposed activity, the director, officer, or a relative of a director or officer must notify the board of his or her intention not to pursue the action or withdraw from the position as director or officer. If the board finds that an officer or director has violated the conflicts-of-interest provisions, the board must immediately remove the officer or director from office.

The board must provide notice of any possible conflict of interest and any related proposed contracts or documents related to the conflict at least 7 days before the meeting at which the possible conflict of interest will be considered or voted upon by the board. A director, officer, or a relative of a director or officer that has an interest in the transaction involving the possible conflict of interest may attend the meeting at which the transaction is considered by the board and must be allowed to make a presentation regarding the transaction. After the presentation, the director, officer, or a relative of a director or officer must leave the meeting during the discussion and the director or officer must recuse him or herself from the vote.

A condominium association with 500 or more units or homeowners' association with 7,500 or more parcels must place the required pre-meeting notice of a possible conflict of interest on the front page of its website at least 7 days before the meeting. Any related proposed contracts or documents must be attached to the agenda provided on the website.

The bill also provides that for a homeowners' association with 7,500 or more parcels, any committee to hear appeals must consist of at least five members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee of the association.

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<sup>17</sup> ss. 718.3026(3); 720.3033(2), F.S.

<sup>18</sup> s. 720.305(2)(b), F.S.

## Homeowners' Association - Reporting Requirement

### Background

Under current law, by November 22, 2013, a community association manager or management firm, or the association when there is no community association manager or management firm, must have reported to the Division the association's legal name, federal employer identification number, mailing and physical addresses, total number of parcels, and total amount of revenues and expenses from the association's annual budget. This reporting requirement is set to expire on July 1, 2016.<sup>19</sup>

### Effect of the Bill

The bill deletes the July 1, 2016, expiration date of the reporting requirement and requires a community association manager or management firm to provide required information to the Department without a set date and to update the Department when any of the reported information changes. An association that does not use a community association manager or management firm is exempt from the reporting requirement. The bill also requires the report to identify the community association manager or management firm.

## Homeowners' Association - Fines and Suspensions

### Background

Currently, Florida law authorizes a homeowners' association to levy fines and suspend the rights of a member to use certain common areas and facilities if a member fails to comply with the association's rules and governing documents.<sup>20</sup> The association must provide the member with a notice and a hearing.<sup>21</sup> Fines may exceed \$100 per violation, may be levied for each day of a continuing violation, and may accrue over time.<sup>22</sup> However, the fines levied may not exceed \$1,000 in the aggregate unless otherwise provided for in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel.<sup>23</sup> If a fine or suspension is imposed, the homeowners' association must provide written notice of the fine or suspension by mail or hand delivery to the parcel owner and any tenant, licensee, or invitee of the parcel owner.<sup>24</sup>

Current law does not limit what type of conduct or actions that a homeowners' association may include in its governing documents that would make a member liable for a fine or suspension of use rights.

### Effect of the Bill

The bill prohibits a homeowners' association from enforcing traffic laws and state and federal criminal laws or from levying fines or suspending a member's right to use common areas and facilities for violations of such laws. Additionally, the bill prohibits an association from placing any requirements in its governing documents regarding compliance with traffic laws or state and federal criminal laws.

## Homeowners' Associations - Amendments to Governing Documents

### Background

Current law provides that a homeowners' association may amend its governing documents. The process for amendment and the vote required are generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. Generally, a homeowners' association must furnish each member with a copy of an amendment within

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<sup>19</sup> s. 720.303(14), F.S.

<sup>20</sup> s. 720.305(1), (2), F.S.

<sup>21</sup> *Id.* at (3).

<sup>22</sup> s. 720.305(2), F.S.

<sup>23</sup> *Id.* at (1).

<sup>24</sup> *Id.* at (3).

30 days of recording; however, in certain circumstances, in lieu of providing a copy of the recorded amendment, the association may provide notice to members that the amendment was adopted and identify the book and page number or instrument number of the recorded amendment.<sup>25</sup>

### Effect of the Bill

The bill requires that a proposal to amend an existing provision of a homeowners' association declaration must contain the full text of the provision to be amended and may not be revised or amended by reference only to the declaration title or number. Words to be added must be inserted in the text and underlined, and words to be deleted must be stricken with hyphens. However, if the proposed change is so extensive that this procedure would hinder the understanding of the proposed amendment, it is not necessary to use underlined and stricken text. Instead, a notation must be inserted before the proposed amendment stating: "Substantial rewording of declaration. See provision for present text."

The bill provides that any nonmaterial errors or omissions in the amendment process do not invalidate an otherwise properly adopted amendment. Additionally, an amendment to a declaration or any recorded governing document is effective when properly recorded in the same public records where the declaration or governing document is recorded.

The bill also provides that any amendment to a homeowners' association's governing documents that prohibits a parcel owner from renting his or her home, altering the duration of the rental term, or specifying or limiting the number of times a parcel owner is entitled to rent his or her home only applies to parcel owners who consent to the amendment and parcel owners who acquire title to their homes after the effective date of the amendment.

## **Homeowners' Associations - Election of Directors**

### Background

Current law provides that the procedure for electing directors of a homeowners' association board must be in accordance with those provided in the governing documents.<sup>26</sup> Currently, there are no requirements as to manner or location in which an election must take place.

### Effect of the Bill

The bill requires a homeowners' association with 7,500 parcels or more to allow association members to vote in the election of directors at a designated location from 7 a.m. to 7 p.m. on the day of the election.

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<sup>25</sup> s. 720.306(1), F.S.

<sup>26</sup> s. 720.306(9), F.S.

## Homeowners' Associations - Past Due Assessments and Liens

### Background

Current law provides that the governing documents for any homeowners' association created after October 1, 1995, must describe the manner in which expenses are shared and must specify each member's proportional share of the expenses, more generally referred to as "assessments."<sup>27</sup> An unpaid assessment may result in a lien against the parcel.<sup>28</sup> An association lienor may pursue foreclosure, or transfer the lien or the right to collect past due assessments to a third party.

### Effect of the Bill

The bill provides that associations are not permitted to use a third party to collect or otherwise take legal action to collect unpaid assessments unless the association has adopted and follows a written collection policy governing the collection of unpaid assessments, which must include:

- The date on which assessments must be paid and when an assessment is considered past due;
- Late fees and interest the association is entitled to impose;
- Returned check charges the association is entitled to impose;
- When a unit owner or member is entitled to enter into a payment plan, and the payment plan's minimum terms;
- The method by which payments may be applied on the delinquent account; and
- Legal remedies available to the association for failure to pay past due assessments.

The bill requires the association to send the unit owner or member a notice of delinquency no less than 30 days before the association intends to transfer the right to collect past due assessments or a lien to a third party or refers it to an attorney for legal action. The notice must include:

- The total amount due, with an accounting of how the total was determined;
- Whether the member or unit owner may enter into a payment plan, and instructions for contacting the association to enter the payment plan;
- The name and contact information to request a copy of the documents to verify the amount of the debt; and
- That action is required to cure the delinquency and that failure to do so within 30 days of the notice may result in the past due assessments being transferred to a third party for collection, a lawsuit being filed against the member, the filing and foreclosure of a lien against the unit owner's or member's property, or other remedies available under Florida law.

The bill provides that an association or third party authorized to collect on past due assessments must make a documented good faith effort to set up a payment plan that provides a period of at least six months to pay off the past due assessments in equal installments.

The association and the third party holder of the right to collect on past due assessments are not prohibited from pursuing legal action against a unit owner or member if the unit owner fails to comply with the terms of a payment plan. A unit owner's or members' failure to remit payment or to remain current with regular assessments as they come due during the time period provided for in the payment plan, constitutes a failure to comply with the terms of his or her payment plan. If a unit owner or member fails to comply with the payment plan, he or she shall be required to immediately pay the remainder of all past due assessments owed to the association or third party holder.

Associations and third parties authorized to collect past due assessments are not required to offer a payment plan if:

- The unit owner does not occupy the parcel and has acquired the property as a result of:
  - Default of a security interest encumbering the parcel; and
  - Foreclosure of the association's lien; and

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<sup>27</sup> s. 720.308(1), F.S.

<sup>28</sup> s. 720.301(1), F.S.

- The unit owner or member has previously had a payment plan with the association or third party holder of the past due assessment.

The association may only foreclose on the lien if:

- The balance of the assessments and charges secured by the lien is equal to or greater than six months of common expense assessments; and
- The association's board has voted in a recorded vote, to authorize the filing of foreclosure against the specific unit or parcel.

The board may not delegate the requirement to vote prior to filing for foreclosure to any attorney, insurer, manager, or third party. Any legal action filed without evidence of the required recorded vote authorizing the action shall be dismissed by the court. No attorneys' fees, court costs, or other charges incurred by the association, holder of the lien, or third party in connection with an action that is dismissed for this reason may be assessed against the unit owner or member.

### **Other Effects of the Bill**

The bill provides that "community association management services" has the same definition as "community association management" in ch. 468, F.S., which regulates community association managers.

The bill amends the term "committee" to mean "a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board or to take action on behalf of the board."

The bill makes technical, drafting, and conforming changes to chs. 718 and 720, F.S.

The bill provides an effective date of July 1, 2016.

### **B. SECTION DIRECTORY:**

**Section 1** amends s. 468.431, F.S., relating to a definition.

**Section 2** amends s. 718.103, F.S., relating to a definition.

**Section 3** amends s. 718.111, F.S., relating to maintaining condominium association records.

**Section 4** creates s. 718.115, F.S., relating to providing access to condominium association records.

**Section 5** creates s. 718.115, F.S., correcting a reference.

**Section 6** amends s. 718.116, F.S., providing assessments and filing for foreclosure.

**Section 7** creates s. 718.3027, F.S., relating to conflict of interest for directors and officers.

**Section 8** amends s. 720.303, F.S., relating to maintaining homeowners' association records and reporting requirements.

**Section 9** creates s. 720.3031, F.S., relating to providing access to homeowners' association records.

**Section 10** amends s. 720.3033, F.S., relating to officers and directors.

**Section 11** amends s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

**Section 12** amends s. 720.306, F.S., relating to meetings of members; voting and election procedures.

**Section 13** amends s. 720.307, F.S., relating to the transition of association control in a community.

**Section 14** amends s. 720.308, F.S., relating to assessments and charges.

**Section 15** amends s. 720.3085, F.S., relating to payment for filing for foreclosure.

**Section 16** amends s. 720.311, F.S., related to dispute resolution.

**Section 17** provides an effective date of July 1, 2016.

## **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:**

The bill requires a condominium association with 500 or more units or a homeowners' association with 7,500 or more parcels to provide a website so that association members can view certain official records and notices of the association. Some associations may incur indeterminate costs in creating, operating, and maintaining the website.

### **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:

None.

**B. RULE-MAKING AUTHORITY:**

The extension in the bill of the reporting requirement in s. 720.303(14), F.S., for homeowners' association community managers and management firms may create a need for rulemaking by the division.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 26, 2016, the Civil Justice Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Retains the exemption in current law that provides that certain service contracts are not subject to the contract regulations for condominium associations;
- Provides that certain amendments to a homeowners' association's governing documents related to a parcels owner's ability to offer a home for rent only apply to certain parcel owners;
- Requires a recalled board member of a condominium or homeowners' association to turn over the administrative rights or controls of the association's website to the board;
- Provides that the 24-month limit for a homeowners' association to collect on past due assessments is extended for the period of time the association is subject to a bankruptcy stay;
- Removes the electronic notice provisions related to a homeowners' association's transfer of a lien or past due assessments to a third party; and
- Makes technical and grammatical corrections.

On February 2, 2016, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revises definitions provided under the Condominium Law regarding committees.
- Clarifies terminology;
- Removes the requirement that community association websites be only accessible to members of the association and employees;
- Clarifies conflict of interest language pertaining to directors, officers, and relatives of directors and officers of an association;
- Provides that a meeting of a committee that does not take final action on behalf of an association's board or make recommendations regarding the budget to the board are subject to s. 720.303, F.S., and related association requirements unless expressly exempted;
- Removes the requirement for homeowners' associations to provide information to the Department, but requires the associations to update the Department if the information changes;
- Clarifies that a committee which hears appeals must consist of at least five members appointed by the board if the homeowners' association consists of 7,500 or more parcels;
- Removes lien and payment plan requirements for homeowner's associations and replaces it with language requiring condominium and homeowners associations to offer payment plans with conditions to members who owe past due assessments;
- Prohibits the filing for foreclosure without prior board approval and a documented vote;
- Requires the board of condominium and homeowners' associations to provide notice to a member prior to selling a past due assessment or lien to a third party; and
- Provides that the requirement to create and provide documents on a website does not apply to condominium associations that manage timeshares.

This staff analysis is drafted to reflect the committee substitute.