

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 294

INTRODUCER: Senator Bracy

SUBJECT: Condominium, Cooperative, and Homeowners' Associations

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Parks</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 294 provides substantively identical financial reporting requirements for condominium, cooperative, and homeowners' associations. Under the bill, associations that fail to provide the unit or parcel owner with a copy of the prior year's financial statement, after receipt of a written request, must provide the division with a copy of the required financial statement for the next 3 consecutive years. The association is also precluded from the option of preparing a less complex financial report during those years.

The bill repeals the provisions of law that require condominium, cooperative, and homeowners' associations having fewer than 50 units or parcels to prepare a report of cash receipts and expenditures. This change will make these smaller associations subject to other provisions of existing law which define the financial reporting requirements of an association based on its annual revenues.

As a result, the bill increases the financial reporting requirements for a small association whose annual revenue exceeds \$150,000. These associations, depending upon their revenues, must prepare a compiled, reviewed, or audited financial statement. However, the bill does not change the financial reporting requirements for smaller associations whose annual revenues do not exceed \$150,000.

The effective date of the bill is July 1, 2017.

II. Present Situation:

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to

associations that are still under developer control.¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.² After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.⁵

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.⁶

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

¹ Sections 718.501(1) and 719.501(1), F.S.

² *Id.*

³ Section 718.501(1), F.S.

⁴ Section 718.501(1), F.S.

⁵ Sections 718.501(1) and 719.501(1), F.S.

⁶ *Id.*

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.⁷

Condominium

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."⁸ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁹ A declaration is similar to 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.¹⁰

A condominium is administered by a board of directors referred to as a "board of administration."¹¹

Cooperative Associations

Section 719.103(12), F.S., defines a "cooperative" to mean:

that form of ownership of real property 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.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.¹²

Homeowners' Associations

Florida laws provide statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹³

⁷ See s. 720.306(9)(c), F.S.

⁸ Section 718.103(11), F.S.

⁹ Section 718.104(2), F.S.

¹⁰ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹¹ Section 718.103(4), F.S.

¹² See ss. 719.106(1)(g) and 719.107, F.S.

¹³ See s. 720.302(1), F.S.

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, and 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.”¹⁴ Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.¹⁵

Homeowners’ associations are administered by a board of directors whose members are elected.¹⁶ 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 recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹⁷ The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.¹⁸

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners’ associations, provide for the governance of these associations. The chapters delineate requirements for notices of meetings,¹⁹ recordkeeping requirements, including which records are accessible to the members of the association,²⁰ and financial reporting.²¹ Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

Official Records

Condominium, cooperative associations, and homeowners’ associations are required to maintain the official records of an association. The provisions regarding access to records are similar for each type of association.

Current law delineates the types of records that the association must maintain and identifies records that are and are not accessible to association members. The associations are required to maintain official records for at least 7 years.²²

The official records of the association must be open to inspection by any association member or the authorized representative of such member at all reasonable times. Members of the association

¹⁴ Section 720.301(9), F.S.

¹⁵ Section 720.302(5), F.S.

¹⁶ See ss. 720.303 and 720.307, F.S.

¹⁷ See ss. 720.301 and 720.303, F.S.

¹⁸ Section 720.303(1), F.S.

¹⁹ See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners’ associations.

²⁰ See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners’ associations.

²¹ See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners’ associations.

²² See s. 718.111(13)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners’ associations.

have the right to inspect the records, and to make copies or obtain copies, at the reasonable expense, if any, of the member.

If the association fails to provide the requested records within 10 working days after receipt of a written request from a member, there is a rebuttable presumption that the association willfully failed to comply with the access to records requirement. A member of the association is entitled to actual damages or minimum damages for the association's willful failure to comply with a records request. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request.

If a condominium or cooperative association fails to permit inspection, the person prevailing in an action to enforce the access to records requirement is entitled to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Current law does not provide a right to attorney fees expressly related to failure to provide requested records, but a member of a homeowners' association, if he or she is the prevailing party in litigation against the association, is entitled to recover reasonable attorney fees and costs, and may also recover additional amounts determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund the expenses of the litigation.

Financial Reporting

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. These provisions for each association type are comparable.

Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to complete, the financial statements. 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, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

Condominium and cooperative associations may not waive the financial reporting requirements for more than 3 consecutive years.²³ A cooperative association may waive financial reporting for the fiscal year by a vote of majority of the voting interests of the association present at a duly called meeting of the association.²⁴ Chapter 718, F.S., does not provide the process for waiving financial reporting requirements in condominium associations.

The type of financial reporting that an association must perform is based on the association's total annual revenue. An association with total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.

²³ Sections 718.111(13) and 718.104(4)(b)4., F.S. Chapter 720, F.S., does not authorize homeowners' associations to waive financial reporting requirements.

²⁴ Section 718.104(4)(b)4., F.S.

- At least \$150,000 but less than \$300,000 must prepare compiled financial statements.²⁵
- At least \$300,000 but less than \$500,000 must prepare reviewed financial statements.²⁶
- \$500,000 or more must prepare audited financial statements.²⁷

An association of fewer than 50 units or parcels, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures. Provisions specify the information that must be disclosed in the report of cash receipts and expenditures. Cooperative and homeowners' associations may provide otherwise in their governing documents.

If approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

III. Effect of Proposed Changes:

Existing sections 718.11(13), 719.104(4), and 720.303(7), F.S., specify the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. The bill provides substantively identical revisions to the financial reporting requirements for each type of association.

Under the bill, associations that fail to provide the unit or parcel owner with a copy of the prior year's financial statement, after receipt of a written request, must provide the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation with a copy of the required financial statement for the next 3 consecutive years. The association is also precluded from the option of preparing less complex financial reports during those years.

The bill repeals s. 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S., the provisions that require condominium, cooperative, and homeowners' associations, respectively, having fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures. Under the bill, an association with fewer than 50 units or

²⁵ A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without the assurance of a Certified Public Accountant (CPA) that the statement conforms with Generally Accepted Accounting Principles (GAAP). Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

²⁶ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

²⁷ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

parcels is required to prepare a compiled, reviewed, or audited financial statement if the association's total annual revenue is more than \$150,000. However, the bill does not increase the financial reporting requirements for a smaller association whose revenues do not exceed \$150,000.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Condominium, cooperative, and homeowners' associations that fail to provide the unit or parcel owner with a copy of the prior year's financial statement may incur additional expenses if prohibited from waiving the reporting requirement for three consecutive years.

The bill may cause a negative impact on condominium, cooperative and homeowners' associations operating fewer than 50 units, if the association is required to hire an accountant to complete a compiled, reviewed, or audited financial statement instead of the report of cash receipts and expenditures required under current law.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 294 amends s. 718.111(13), F.S., to provide that a condominium association that fails to give the unit owner with a copy of the prior year's financial statement, after receipt of a written request, must provide the division with a copy of the required financial statement for the next three consecutive years, and is also prohibited from waiving the reporting requirement during those years.

SB 1682 by Senator Garcia creates s. 718.111(13)(e), F.S., to provide that a condominium unit owner may give notice to the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation that an association has failed to mail or hand deliver to the unit owner a copy of the most recent financial statement after a request. The division must then give the association notice that it must comply with the request. If the association fails to comply with that request within five business days, the association may not waive the financial reporting requirement.

The provision in SB 1682 differs from the provision in this bill. SB 294 does not require the division to give notice to the association that it must comply with the unit owner's request and does not require that the association comply with the request within five days before the association is prohibited from waiving the required financial statement for failing to comply with the request.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 719.104, and 720.303.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.