

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 476

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Hooper

SUBJECT: Law Enforcement Vehicles

DATE: January 27, 2020

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<b>Fav/CS</b>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 476 provides that condominium, homeowners', and cooperative associations may not prohibit law enforcement officers who are owners, tenants, guests, or invitees of an owner to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

The bill does not have a fiscal impact on state and local governments.

The bill takes effect upon becoming law.

**II. Present Situation:**

**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 community associations. The chapters delineate requirements for notices of meetings,<sup>1</sup> recordkeeping requirements, including which records are accessible to the members of the association,<sup>2</sup> and

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<sup>1</sup> See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>2</sup> See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

financial reporting.<sup>3</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

### **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.”<sup>4</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>5</sup> A declaration is similar to a constitution in that it:

[S]trictly 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.<sup>6</sup>

A condominium is administered by a board of directors referred to as a “board of administration.”<sup>7</sup>

### **Cooperative Associations**

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

[T]hat 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.<sup>8</sup>

### **Homeowners’ Associations**

Florida law provides statutory recognition to corporations that operate residential communities in Florida as well as 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.<sup>9</sup>

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<sup>3</sup> See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

<sup>4</sup> Section 718.103(11), F.S.

<sup>5</sup> Section 718.104(2), F.S.

<sup>6</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>7</sup> Section 718.103(4), F.S.

<sup>8</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>9</sup> 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.”<sup>10</sup> Unless specifically stated to the contrary in the articles of incorporation, 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.<sup>11</sup>

Homeowners’ associations are administered by a board of directors whose members are elected.<sup>12</sup> 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 a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>13</sup> The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.<sup>14</sup>

### **Restrictive Covenants**

Community associations may enact and enforce covenants as a condition for living in the association. A covenant is an agreement, or contract, which grants a right or imposes a liability. Covenants can range from requiring owners to pay a portion of the common expenses to restrictions on the age of permanent residents.<sup>15</sup>

A restrictive covenant limits the use of community association property. Restrictive covenants imposed by a community association’s declaration are valid unless they are clearly ambiguous, wholly arbitrary, or violate a public policy or a constitutional right. Restrictions imposed by a community association’s board of directors must also be reasonable.<sup>16</sup>

### **Community Association Fines and Suspensions**

Owners, tenants, and guests must comply with a condominium, cooperative, or homeowners’ association’s (community associations) declaration, bylaws, and rules. Condominium, cooperative, and homeowners’ associations may levy fines against or suspend the right of an owner, occupant, or a guest of an owner or occupant, to use the common elements or any other association property for failing to comply with any provision in the association’s governing documents. A suspension for failing to comply with the community association’s declaration, bylaws, or rules may not be for an unreasonable amount of time.<sup>17</sup>

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<sup>10</sup> Section 720.301(9), F.S.

<sup>11</sup> Section 720.302(5), F.S.

<sup>12</sup> See ss. 720.303 and 720.307, F.S.

<sup>13</sup> See ss. 720.301 and 720.303, F.S.

<sup>14</sup> Section 720.303(1), F.S.

<sup>15</sup> Sections 718.104(5), 718.112(3), 719.1035, 719.106(2), 720.301(4), and 720.304(1), F.S.; Peter Dunbar, *The Condominium Concept*, 13-21 (14th ed. 2014-15).

<sup>16</sup> *Beachwood Villas Condominium v. Poor*, 448 So. 2d 1143, 1144 (Fla. 4th DCA 1984); *Hidden Harbour Estates, Inc. v. Basso*, 393 So. 2d 637, 639-40 (Fla. 3rd DCA 1981).

<sup>17</sup> Sections 718.303, 719.303, and 720.305, F.S.

No fine may exceed \$100 per violation although a fine may be levied for each day of a continuing violation provided the fine does not exceed \$1,000. However, a fine levied by a homeowners' association may exceed \$1,000 if the governing documents authorize it. Fines levied by condominium associations and cooperatives may not become a lien on the property. Fines levied by a homeowners' association that do not exceed \$1,000 may not become a lien on the property.<sup>18</sup>

A community association may suspend an owner, tenant, or guest's ability to use the association's common elements or any other association property, if the owner is more than 90 days delinquent in paying a monetary obligation including a fine. The suspension may remain in effect until the fine is paid.<sup>19</sup>

A community association may also suspend an owner's voting rights for any monetary obligation that exceeds \$1,000 and is more than 90 days delinquent.<sup>20</sup>

### **Commercial Vehicles**

A common restrictive covenant in community associations is restricting or prohibiting the parking of certain vehicles such as commercial vehicles. However, the community association's governing documents often do not define the term "commercial vehicle," which can lead to confusion about what constitutes a commercial vehicle.<sup>21</sup>

Florida courts have upheld homeowners' association provisions restricting the parking of commercial when the term "commercial vehicle" has not been defined in the governing documents.<sup>22</sup>

In June 2005, the Town of Davie requested an advisory opinion from the Florida Office of the Attorney General on the definition of commercial vehicle. Specifically, the town inquired whether a marked law enforcement vehicle is a commercial vehicle for the purposes of parking on property located in a community association. A homeowners' association within the town prohibited commercial vehicles from parking in the driveways within the association property. The association had informed an owner that a law enforcement vehicle was a commercial vehicle and could not be parked in the driveway.<sup>23</sup>

The Attorney General determined that a law enforcement vehicle is not a commercial vehicle because a commercial vehicle is used by a business for the purpose of economic gain, and law

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Mike Antich, *Discrimination Against Vocational Vehicles*, Automotive Fleet (Dec. 22, 2017) <https://www.automotive-fleet.com/160128/discrimination-against-vocational-vehicles> (last visited Oct. 28, 2019); and Clinton Morrell, *Are law enforcement vehicles subject to Community Association "commercial vehicle" bans?*, The Condo & HOA Law Bulletin (Feb. 8, 2016) <https://thecondoandhoalawbulletin.com/2016/02/08/are-law-enforcement-vehicles-subject-to-community-association-commercial-vehicle-bans/> (last visited Nov. 26, 2019).

<sup>22</sup> *Cottrell v. Miskove*, 605 So. 2d 572, 573 (Fla. 2nd DCA 1992) (The terms "commercial" and "vehicle" are well defined terms and when combined the term is not vague, ambiguous, or unclear.).

<sup>23</sup> Op. Att'y Gen. Fla. 05-36 (2005). A copy is available at: <http://www.myfloridalegal.com/ago.nsf/printview/0D1E173CAF5568FF852570220059A538> (last visited Nov. 26, 2019).

enforcement services are an integral part of government and are not provided for economic gain. The Attorney General also noted that assigning a police vehicle to an officer to drive during off-duty hours to provide a quicker response when called to an emergency is a direct benefit to the public, and the presence of a police vehicle in a neighborhood may serve as a deterrent to crime.<sup>24</sup>

Recently, the media reported that a Clearwater police officer may be subject to hundreds of dollars in fines imposed by the police officer's homeowners' association if the police officer continued to park a marked police cruiser in the driveway instead of the garage.<sup>25</sup> The association's declaration prohibits owners from parking commercial and *government issued* vehicles in driveways.<sup>26</sup> According to the media reports, the association has changed its position and now lets the police officer park a marked cruiser in the driveway. However, media reports indicate that the exception only applies to that specific police officer, and all future owners with government issued vehicles may not park them in the driveways.<sup>27</sup>

### Law Enforcement Officer

Chapter 943, F.S., is the Department of Law Enforcement Act.<sup>28</sup> Section 943.10(1), F.S., defines the term "law enforcement officer" to mean:

[A]ny person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include support personnel employed by the employing agency.<sup>29</sup> The definition does not include part-time or auxiliary law enforcement officers themselves.<sup>30</sup>

<sup>24</sup> *Id.*

<sup>25</sup> Heather Leigh, *HOA tells Clearwater officer to move her police cruiser into her garage or face legal action*, ABC Action News Tampa Bay, (Aug. 27, 2019) <https://www.abcactionnews.com/news/region-pinellas/hoa-tells-clearwater-officer-to-move-her-police-cruiser-into-her-garage-or-face-legal-action> (last visited Nov. 26, 2019); WFTS Staff, *HOA tells Florida officer to move her police cruiser off her driveway or face legal action*, News Channel 5 Nashville, Sep. 1, 2019, <https://www.newschannel5.com/news/national/hoa-tells-florida-officer-to-move-her-police-cruiser-into-off-her-driveway-or-face-legal-action> (last visited Nov. 26, 2019).

<sup>26</sup> Heather Leigh, *State leaders push for change after HOA tells Clearwater officer to move cruiser from driveway*, ABC Action News Tampa Bay, August 29, 2019 <https://www.abcactionnews.com/news/region-pinellas/state-leaders-push-for-change-after-hoa-tells-clearwater-officer-to-move-cruise-from-driveway> (last visited January 1, 2020).

<sup>27</sup> Heather Leigh, *HOA now allowing Clearwater police officer to park cruiser in driveway*, ABC Action News Tampa Bay, Sep. 11, 2019, <https://www.abcactionnews.com/news/region-pinellas/hoa-now-allowing-clearwater-police-officer-to-park-cruiser-in-driveway> (last visited Nov. 26, 2019).

<sup>28</sup> Section 943.01, F.S.

<sup>29</sup> Section 943.10(1), F.S.

<sup>30</sup> *Id.*

## Division of Florida Condominiums, Timeshares, and Mobile Homes

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.<sup>31</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.<sup>32</sup> 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.<sup>33</sup> For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.<sup>34</sup>

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.<sup>35</sup>

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a 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.<sup>36</sup>

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, [F.S.], 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

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<sup>31</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 718.501(1), F.S.

<sup>34</sup> Section 719.501(1), F.S.

<sup>35</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>36</sup> *Id.*

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[, F.S.,] 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.

For homeowners' associations, the division's authority is limited to arbitration of recall election disputes.<sup>37</sup>

### **III. Effect of Proposed Changes:**

The bill provides that homeowners', condominium, and cooperative associations may not prohibit full-time law enforcement officers, as defined in s. 943.10(1), F.S., who are owners, tenants, guests, or invitees of an owner, to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

The bill takes effect upon becoming law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties or municipalities to take 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.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

CS/SB 476 may create a conflict with the governing documents of homeowners', condominium, and cooperative associations to the extent the documents prohibit law enforcement officers, as defined in s. 943.10(1), F.S., who are owners, tenants, guests, or invitees of an owner, to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

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<sup>37</sup> See s. 720.306(9)(c), F.S.

The governing documents of these associations are generally considered contracts.<sup>38</sup> To the extent that the provisions of this bill may be applied retroactively, provisions of the bill may prompt concerns regarding the unconstitutional impairment of contract.

Some contracts forego the impairment of contract analysis by incorporating the relevant governing statute for that particular type of association, including future changes. In the context of condominiums, for example, the contract may include what is referred to as the “Kaufman language,” which states that the contract or association “shall be governed by the Condominium Act, as amended from time-to-time.”<sup>39</sup> Without the Kaufman language, newly enacted statutes may only affect new association documents (or amendments to existing documents) or prior association documents in a limited manner.

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.<sup>40</sup> The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.<sup>41</sup> In *Exxon Corp. v Eagerton*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

Article I, section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.<sup>42</sup> This exception extends to laws that are reasonable and necessary to serve an important public purpose,<sup>43</sup> to include protecting the public’s health, safety or welfare.<sup>44</sup> For a statute to offend the constitutional prohibition against impairment of contract, the statute must have the effect of changing substantive rights of the parties to an existing contract. Any retroactive application of a statute affecting substantive contractual rights would be constitutionally suspect.<sup>45</sup>

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.<sup>46</sup> The balancing process focuses on whether “the nature and extent of the impairment is constitutionally tolerable in light of the

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<sup>38</sup> See *Venetian Isles Homeowners’ Assoc., Inc., v. Albrecht*, 823 So.2d 813 (Fla. 2<sup>nd</sup> D.C.A. 2002) and *Cudjoe Gardens Property Owners Assoc., Inc. v. Patne*, 779 So.2d 598 (Fla. 3<sup>rd</sup> D.C.A. 2001).

<sup>39</sup> See *Kaufman v. Shere*, 347 So.2d 627 (Fla. 3 DCA 1977).

<sup>40</sup> *Stone v. Mississippi*, 101 U.S. 814 (1880).

<sup>41</sup> *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>42</sup> *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980).

<sup>43</sup> *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982), petition den. 424 So.2d 764 (Fla. 1982).

<sup>44</sup> *Khoury v Carvel Homes South, Inc.*, 403 So.2d 1043 (Fla. 1st DCA 1981), petition den. 412 So.2d 467 (Fla. 1981).

<sup>45</sup> *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965 (Fla. 1<sup>st</sup> DCA 1984).

<sup>46</sup> *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).



importance of the state’s objective, or whether it unreasonably intrudes into the parties’ bargain to a degree greater than is necessary to achieve that objective.”<sup>47</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates sections 718.129, 719.131, and 720.318 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Innovation, Industry, and Technology on December 9, 2019:**

The committee substitute cross-references the definition of the term “law enforcement officer” in s. 943.10(1), F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>47</sup> *Id.* at 780.