

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 623 Community Associations

SPONSOR(S): Civil Justice Subcommittee, Business & Professions Subcommittee, Shoaf

TIED BILLS: **IDEN./SIM. BILLS:** SB 1154

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|----------|--|
| 1) Business & Professions Subcommittee | 13 Y, 0 N, As CS | Brackett | Anstead |
| 2) Civil Justice Subcommittee | 14 Y, 0 N, As CS | Mawn | Luczynski |
| 3) Commerce Committee | | | |

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation, broadly regulates condominium and cooperative associations and has limited regulatory authority over homeowner's associations (HOA).

CS/CS/HB 623:

- Exempts a pool within an HOA with 32 parcels or less from public pool regulation.
- Requires associations to maintain bids for work or materials for one year, instead of seven.
- Requires an HOA to maintain ballots and all records relating to elections in the HOA's official records.
- Prohibits associations from requiring owners to state a reason for requesting to inspect official records.
- Provides that a condominium association required to make association documents available on a website may instead make them available on a mobile application.
- Allows an HOA to give notice of a meeting on a website.
- Provides that condominium board term limits do not apply retroactively to service prior to 2018.
- Prohibits condominium owners' insurance policies from providing rights of subrogation against the association under certain circumstances.
- Allows condominiums to charge a buyer or renter the actual cost of a background check.
- Provides that certain notice requirements apply to all unit owner meetings, not just the annual meetings.
- Amends the due date for paying a fine levied by an association.
- Provides that an interest in a cooperative unit is an interest in real property, not in personal property.
- Deletes the provision prohibiting a condominium association from contracting with a company in which a board member has a financial interest.
- Allows the office of the Condominium Ombudsman to be located outside of Leon County.
- Permits a unit owner in a condominium to install, at the owner's expense, a natural gas fuel station within the boundaries of the owner's limited common element or exclusive parking area.
- Allows mediation of specified condominium disputes in lieu of non-binding arbitration, except for election and recall disputes, which must be arbitrated or litigated in court.
- Restates that any provision in a community association's declaration, bylaws, or rules that violates any right under the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution is unenforceable, and no action is required by an association to remove or amend such provisions.
- Provides that a community association may record a notice in the county in which it is located indicating that it does not intend to enforce any regulation in its declaration, bylaws, or rules that infringes upon the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution.

The bill is not expected to have a fiscal impact on local government. The bill may have a fiscal impact on state government. See Fiscal Comments.

The bill provides an effective date of July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0623d.CJS

DATE: 1/24/2020

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

Condominiums

A condominium is a form of real property ownership created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for common elements operation and maintenance. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The board enacts bylaws which govern the association administration.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to residents owning shares in the cooperative association.³ The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is a residential property owners association in which voting membership is made up of parcel owners, 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.⁴ Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes, but no state agency has direct HOA oversight.

¹ S. 718.103(11), F.S.

² S. 718.104(2), F.S.

³ S. 719.103(2)(26), F.S.

⁴ S. 720.301(9), F.S.

Cooperatives as Personal and Real Property Interest

Current Situation

The real property of a cooperative association is owned by a corporation, not the individual unit owners. A person who purchases a cooperative unit does not receive title to the unit or any portion of the cooperative's real property. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association. An interest in a corporation or cooperative is represented by the ownership of stock in the corporation.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.⁵ Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁶

Real property is anything that is permanent, fixed, and immovable, such as land or a building. At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.⁷

In Florida, a cooperative is treated as real property for some homestead purposes. Even though the legal definition of homestead follows the common law and requires an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a cooperative unit.⁸ Florida's homestead laws govern the cooperative for purposes of exemption from forced sale by creditors⁹ and for purposes of the ad valorem taxation exemption. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent, meaning the transfer or conveyance of property by will or inheritance.¹⁰

In contrast, the Condominium Act specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property. There is no corresponding statute in the Cooperative Act,¹¹ and Florida courts have recognized that there is some confusion as to whether a cooperative ownership interest is an interest in real property or personal property.¹²

Effect of the Bill

The bill provides that an interest in a cooperative unit is an interest in real property for all purposes including devise and descent. This puts an interest in a cooperative unit on the same footing as an interest in a condominium unit.

⁵ *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996).

⁶ Am. Jur. 2d Property § 18.

⁷ *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); See generally The Florida Bar, *Practice Under Florida Probate Code* Chapter 19 (9th ed. 2017).

⁸ Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").

⁹ Ss. 222.01 and 222.05, F.S.

¹⁰ *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978); Black's Law Dictionary (11th ed. 2019).

¹¹ S. 718.106(1), F.S.; See generally ch. 719, F.S.

¹² *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008).

Official Records

Current Situation

Condominiums, cooperatives, and HOAs are required to maintain official records for at least seven years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws, and association rules;
- Meeting minutes;
- A roster of all 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;
- The association's accounting records;
- All contracts for work to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the association's operation.¹³

The official records for condominiums and cooperatives, but not HOAs, must also include all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.¹⁴

Owners may request to inspect an association's official records, and the association must make the records available for inspection within ten business days of receiving an inspection request.¹⁵ A condominium and cooperative may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An HOA may also adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but an HOA may not require an owner to state the reason for the inspection.¹⁶

Effect of the Bill

The bill:

- Provides that all written records relating to a condominium association and an HOA are official records;
- Mirrors condominium law to cooperative and HOA law by requiring that condominiums maintain bids for work, materials, and equipment for one year instead of seven years;
- Mirrors condominium and cooperative law to HOA law by prohibiting a condominium or cooperative from requiring a unit owner to state a reason for official records inspection; and
- Mirrors HOA law to condominium and cooperative law by including all ballots, sign-in sheets, voting proxies, and all other papers relating to voting in the HOA's official records.

Condominium Unit Owner Insurance and Subrogation

Current Situation

A condominium association must use its best efforts to maintain insurance for the association, the association property, and the common elements. If a condominium maintains insurance for the association, it must have coverage for the condominium property as originally installed and all alterations or additions made to the condominium property.¹⁷

Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, walls, ceiling coverings, electrical fixtures, appliances, water

¹³ Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 720.303(5), F.S.

¹⁷ S. 718.111, F.S.

heaters, water filters, built-in cabinets and countertops, and window treatments. Insurance coverage for such property is the responsibility of the unit owner.¹⁸

Often, a condominium association's declaration may contain a clause requiring a unit owner's insurance policy to prohibit subrogation against the condominium association.¹⁹ Subrogation is "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor."²⁰ In the condominium setting, subrogation allows a unit owner's insurer to stand in the place of the unit owner whose unit has been damaged by a negligent party. The unit owner's insurer pays the unit owner for the damage and stands in the place of the unit owner to seek relief from the party that caused the damage, which may be the condominium association.

Prior to 2010, Florida law prohibited a condominium unit owner's insurance policy from providing rights of subrogation against the association. That statutory prohibition was repealed in 2010, and subrogation against a condominium association has been permitted since that time.²¹

Effect of the Bill

The bill provides that if a condominium association's insurance policy does not provide rights of subrogation against the unit owners, then a unit owner's insurance policy may not provide rights of subrogation against the association.

Condominium Websites

Current Situation

Condominium associations with 150 or more units that do not manage timeshare units must post certain documents to a website accessible only to unit owners and condominium association employees. The condominium association's website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment to each declaration;
- The recorded condominium association bylaws and each bylaws amendment;
- The condominium association's articles of incorporation, or other documents creating the condominium association, and each amendment thereto, which copy must be a copy of the articles of incorporation filed with the Department of State;
- The condominium association rules;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility;
- Summaries or complete copies of bids for materials, equipment, or services, which must be maintained on the website for one year;
- The annual budget and any proposed budget to be considered at the annual meeting;
- The financial report and any proposed financial report to be considered at a meeting;
- Each director's certification;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association or any other entity in which a condominium association director is also a director or officer and financially interested;
- Any contract or document regarding the conflict of interest or possible conflict of interest of a community association manager or a board member;

¹⁸ *Id.*

¹⁹ Gary L. Wickert & Kelsey Burazin, *Subrogating Condominium Damage*, Claims Journal June 4, 2015, <https://www.claimsjournal.com/news/national/2015/06/04/263728.htm> (last visited Jan. 23, 2020).

²⁰ *Aurora Loan Services LLC v. Senchuk*, 36 So. 3d 716, 717 (Fla. 1st DCA 2010).

²¹ S. 718.111(11), F.S. (2009); See also Senate Analysis of 2010 Senate Bill 1196 & 1222 (April 9, 2010).

- The notice of any unit owner meeting and the meeting's agenda, posted at least 14 days before the meeting in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked on the front page; and
- Any documents to be considered during a meeting or listed on the meeting's agenda, which must be posted at least seven days before the meeting where the document will be considered.²²

Effect of the Bill

The bill allows a condominium association to post the required documents on a mobile application downloadable to a mobile device or to a website.

Condominium Term Limits

Current Situation

Condominium association board members serve one-year terms, but a board member may serve a two-year term if allowed by association's bylaws or articles of incorporation.²³

In 2017, the Legislature passed a law prohibiting a condominium association board member from serving more than four consecutive two-year terms unless two-thirds of the total voting interests approve his or her continued service or there are not enough eligible candidates to fill board vacancies.²⁴

In 2018, the Legislature amended the term limit provision for condominium board members to clarify that a board member could not serve more than eight consecutive years instead of four consecutive two-year terms.²⁵ Questions from the public remain about whether time served on a board prior to the enactment of the term limit provision counts toward the eight-year maximum.²⁶

Effect of the Bill

The bill provides that only board service occurring after July 1, 2018, counts towards a board member's eight-year maximum.

Condominium Transfer Costs

Current Situation

A condominium association may not charge a potential buyer or renter costs or fees in connection with the sale, lease, sublease, or other unit transfer type unless:

- The fee is limited to \$100 or less;
- The fee is provided for in the association's governing documents; and
- The association approves the sale, lease, sublease, or transfer.²⁷

A condominium association may require a potential renter to provide the association a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.²⁸

Effect of the Bill

²² S. 718.111(12)(g), F.S.

²³ S. 718.112(2)(d), F.S.

²⁴ See House Analysis of 2017 House Bill 1237 (July 5, 2017).

²⁵ See House Analysis of 2018 House Bill 841 (Mar. 27, 2018).

²⁶ David G. Muller, *Is new term limit restriction retroactive*, Naples Daily News (Sept. 15, 2018)

<https://www.naplesnews.com/story/money/real-estate/2018/09/15/new-term-limit-restriction-retroactive/1259991002/> (last visited Jan. 23, 2020).

²⁷ S. 718.112(2)(i), F.S.

²⁸ *Id.*

The bill provides that, in addition to a \$100 administrative fee, a condominium association may charge a potential buyer or renter the actual cost to perform any background check or screening required in connection with the sale, mortgage, lease, sublease, or other unit transfer type.

Condominium Service Providers Conflicts of Interest

Current Situation

Prior to 2017, a condominium association could sign a contract for maintenance or management services with an entity in which a member of the association's board of directors had a financial interest. The contract had to disclose the board member's financial interest, and a discussion of the financial interest had to be in the minutes of the meeting at which the vote to authorize the contract was held. Any contract that failed to disclose such interest was unenforceable.²⁹ The contract also had to be affirmed by a two-thirds vote of the members of the board of directors present. The board member with a financial interest in the entity could not participate in the vote.³⁰

In 2017, the Legislature passed a law prohibiting a condominium association from employing or contracting with any service provider in which a board member, or a relative of a board member within the third degree of consanguinity by blood or marriage, has a financial interest. This restriction does not apply if the board member or relative owns less than one percent of the equity shares of the service provider or to timeshare condominiums.³¹

Effect of the Bill

The bill repeals the provision prohibiting a condominium association from employing or contracting with any service provider in which a board member or a relative of a board member has a financial relationship. However, the bill maintains the provision requiring a board member's financial interest be disclosed in the contract with the association and in the minutes of the meeting at which the board votes on the contract. Any contract that fails to disclose such interest is unenforceable. The contract also requires an affirmative vote of two-thirds of the board of directors present and prohibits a board member with a financial interest from participating in the vote. This restores the law applicable to board member conflicts of interest to its pre-2017 state.

Condominium Electric Vehicle Charging and Natural Gas Fuel Stations

Condominium Electric Vehicle Charging Stations – Current Situation

In 2018, the Legislature passed a law prohibiting a condominium association from preventing a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered by the unit owner.³²

29 S. 718.3026(3), F.S.

30 *Id.*

31 See House Analysis, *supra* note 24.

32 See House Analysis, *supra* note 25.

The installation may not cause irreparable damage to the condominium property, and the association may require the unit owner to:³³

- Comply with bona fide safety requirements, consistent with applicable building code or recognized safety standards;
- Comply with reasonable architectural standards adopted by the association so long as such standards do not prohibit the installation of such station or substantially increase the cost;
- Engage the services of a duly licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station;
- Provide a certificate of insurance naming the association as an additional insured on the policy; and
- Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station.

The costs of installation, operation, maintenance, repair, and removal are the responsibility of the unit owner or the owner's successor and the association may use their assessment powers to enforce the payment of such costs.³⁴

The association must grant an implied easement across the common elements to the unit owner for the installation of the electric vehicle charging station and any necessary equipment for the furnishing of electrical power to the electric vehicle charging station.³⁵

Natural Gas Fuel – Current Situation

Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle.³⁶ The term includes all forms of fuel commonly or commercial known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.³⁷ However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.³⁸

Condominium Electric Vehicle Charging and Natural Gas Fuel Stations – Effect of the Bill

The bill provides that a condominium is prohibited from preventing a unit owner from installing a natural gas fuel or electric vehicle charging station within the boundaries of the unit owner's limited common element or exclusively designated parking area.

The bill gives "natural gas fuel" the same meaning as s. 206.9951, F.S., and defines natural gas fuel vehicle to mean a motor vehicle powered by natural gas fuel.

A unit owner installing a natural gas fuel station is subject to the same requirements as an owner installing an electric vehicle charging station. The unit owner is also responsible for the supply and storage of the natural gas fuel.

The bill allows a unit owner to use an embedded meter to meter the electricity used by an electric vehicle charging or natural gas fuel station or to have the station separately metered.

The bill also provides that the unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of electric vehicle charging or natural gas fuel stations.

³³ S. 718.113(8), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ S. 206.9951(2), F.S.

³⁷ *Id.*

³⁸ *Id.*

Alternative Dispute Resolution

Current Situation

Prior to initiating litigation of a condominium dispute³⁹ in court, a party to the dispute must petition the Division for mandatory non-binding arbitration of the dispute.⁴⁰ HOAs must also petition the Division for arbitration of all HOA election and recall disputes.⁴¹ A party to arbitration may petition for mediation of the dispute incident to arbitration, and the Division's arbitrator may refer a case to mediation incident to arbitration in his or her discretion.⁴²

Effect of the Bill

The bill authorizes a party to a condominium dispute to petition for mediation with the Division in lieu of arbitration prior to initiating litigation of the dispute in court. However, the bill provides that election and recall disputes are not eligible for mediation in lieu of arbitration. Instead, election and recall disputes must be arbitrated by the Division or filed directly with a court of competent jurisdiction.

Condominium and HOA Fines and Suspensions

Current Situation

Condominium associations and HOAs may levy fines against or suspend the right of an owner, occupant, or an owner or occupant's guest, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.⁴³

A board may not impose a fine or suspension without giving at least 14 days' written notice of the fine or suspension and the opportunity for a hearing. The hearing must be held before a committee of unit or parcel owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.⁴⁴

A fine approved by the committee must be paid to the association five days after the committee meeting. The condominium or HOA must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.⁴⁵

Effect of the Bill

The bill provides that if a fine is approved by the committee, it must be paid to the association five days after notice of the approved fine is sent to the unit or parcel owner and, if applicable, to any tenant, licensee, or invitee of the owner, instead of five days after the meeting approving the fine.

Notice of Elections for Condominium Associations

Current Situation

Condominium Associations must mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before the election. Condominium associations must also mail, deliver, or electronically transmit a second notice of election to the unit owners along with a ballot listing all the candidates. However, no exact time is currently specified for the provision of the second notice.⁴⁶

³⁹ "Dispute" is defined in s. 718.1255(1), F.S.

⁴⁰ S. 718.1255(4)(a)-(d) and (i)-(m), F.S.

⁴¹ Ss. 720.303(10)(d) and (g) and 720.306(9)(c), F.S.

⁴² S. 718.1255(4)(e)-(h), F.S.

⁴³ Ss. 718.303(3) and 720.305(2)(a), F.S.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ S. 718.112(2)(d), F.S.

Effect of the Bill

The bill provides that the second election notice must be mailed, delivered, or electronically transmitted to unit owners not less than 14 days or more than 34 days prior to the election.

Notice of Meetings for Condominium Associations

Current Situation

A condominium association must provide written notice of the association's annual meeting. The notice must include an agenda, and must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on condominium property for at least 14 continuous days before the annual meeting or repeatedly broadcast with the agenda on a closed-circuit cable television system serving the association.⁴⁷

Effect of the Bill

The bill applies the requirements to provide written notice to each owner and conspicuously post such notice to all unit owner meetings, not just the annual meeting.

The bill also provides that except for the annual meeting, the time-period that a condominium association must serve notice of meetings to the owners and conspicuously post such notice is determined by the association's bylaws. If the bylaws are silent, the notice must be sent to the unit owners and conspicuously posted at least 14 days before the meeting.

Notice of Meetings for HOAs

Current Situation

HOAs must notice all board meetings by posting notice in a conspicuous place on the HOA's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding parcel use is considered.⁴⁸

HOAs are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice before the meeting and posting the notice in a conspicuous place before the meeting. If an HOA opts to broadcast notice in lieu of posting notice, it must do so at least four times during every broadcast hour of each day.⁴⁹ Additionally, when notice of an HOA meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the owner's parcel is located.⁵⁰

In 2018, the Legislature passed a law allowing condominium and cooperatives to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must require the association to send an electronic notice providing a hyperlink to the website where the notice is posted to all unit owners whose email addresses are part of the official records in the same manner as notice for a member meeting. Notice by website does not remove the requirement to comply with the other notice requirements.⁵¹

Effect of the Bill

The bill amends HOA law to mirror condominium and cooperative law by allowing HOAs to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting

⁴⁷ S. 718.112(d), F.S.

⁴⁸ Ss. 718.112(2), 719.106(1), & 720.303(2)(c), F.S.

⁴⁹ *Id.*

⁵⁰ S. 720.306(1)(g), F.S.

⁵¹ See House Analysis, *supra* note 25.

the notices are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice providing a hyperlink to the website where the notice is posted to all parcel owners whose email addresses are part of the official records in the same manner as notice for a member meeting. Notice by website must be in addition to the other notice requirements.

The bill also provides that when notice of a meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address in the HOA's official records, instead of the address identified as the parcel's owner's mailing address on the property appraiser's website.

Cooperative Associations Video Conferencing

Current Situation

Cooperative association board members and committee members may attend meetings by telephone. If a board or committee member attends a meeting by telephone, a speaker must be used so the member may be heard by the rest of the board or committee and by any unit owners in attendance.⁵²

Effect of the Bill

The bill provides that cooperative association board members and committee members may attend meetings by telephone, real time video conferencing, or by using a similar real-time electronic or video communication. If a board or committee member attends a meeting by telephone, video, or electronic or video communication, a speaker must be used so the member may be heard by the rest of the board or committee and by any unit owners in attendance.

HOA Swimming Pools

Current Situation

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied.⁵³

Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishments are exempt from DOH's public pools requirements.⁵⁴ HOA pools are not exempt from DOH regulation even where the HOA has 32 homes or less.

⁵² S. 719.106(1)(b), F.S.

⁵³ S. 514.031(1), F.S.

⁵⁴ S. 514.0115(2), F.S.

Effect of the Bill

The bill provides that pools for HOAs and other property associations with 32 parcels or less and not operating as public lodging establishments are also exempt from DOH's public pools requirements.

Condominium Ombudsman

Current Situation

Within the Division is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor to serve as a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the Division, and the Legislature on any matter or subject within the jurisdiction of the Division. In addition, the Ombudsman may make recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁵⁵

The Ombudsman also acts as a liaison between the Division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.⁵⁶

The Ombudsman is required to keep his or her principal office in Leon County, Florida, on Division premises or, if suitable space cannot be provided on such premises, in a place convenient to the Division. However, the Ombudsman may establish branch offices elsewhere in the state with the Governor's approval.

Effect of the Bill

The bill deletes the requirement that the Ombudsman keep his or her principal office in Leon County, Florida, but maintains the requirement that the Ombudsman's office be in a place convenient to the Division.

The Fourteenth Amendment of the U.S. Constitution and Article II of the Florida Constitution

Current Situation

Section 1 of the Fourteenth Amendment of the U.S. Constitution provides that:⁵⁷

- Every person born or naturalized in the U.S. is a citizen of the U.S. and the state where they live;
- Every person has equal protection of the laws;
- No state may curtail the privileges or immunities of citizens; and
- No state may deprive any person of life, liberty, or property without due process.

The Fourteenth Amendment only applies to the states, not private parties. However, the United States Supreme Court ruled that a racially restrictive private covenant in a land deed violates the Fourteenth Amendment. The Supreme Court determined that even though a restrictive covenant is between private parties, because a state court was the entity that had to enforce the covenant, the covenant violated the Fourteenth Amendment.⁵⁸

According to news articles, residents in Florida and across the country have discovered old restrictions and covenants in deeds and community association governing documents prohibiting minorities from owning or renting property in the neighborhood. These restrictions cannot be enforced because they violate the Fourteenth Amendment as well as the Federal Fair Housing Act and the Florida Fair

⁵⁵ Ss. 718.5011 & 718.5012, F.S.

⁵⁶ *Id.*

⁵⁷ U.S. Const. amend. XIV, §1.

⁵⁸ *Shelley v. Kramer*, 68 S.Ct. 836 (U.S. 1948).

Housing Act, which applies if the property is in Florida.⁵⁹ However, these restrictions and covenants can be difficult to remove.⁶⁰

Article I, section 2, of the Florida Constitution is similar to the Fourteenth Amendment in the U.S. Constitution, establishing the basic rights of all natural persons in Florida and providing that all such persons:⁶¹

- Are equal before the law;
- Have inalienable rights, including the right to:
 - Enjoy and defend life and liberty;
 - Pursue happiness;
 - Be rewarded for industry; and
 - To acquire, possess, and protect property; and
- May not be deprived of any right because of race, religion, national origin, or physical disability.

Effect of the Bill

The bill restates that any provision in a community association's declaration, bylaws, or rules that violates any right under the Fourteenth Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution is void and unenforceable, and no action is required by an association to remove or amend such provisions because they cannot be enforced.

The bill also provides that a community association may record a notice in the county in which it is located indicating that it does not intend to enforce any regulation in its declaration, bylaws, or rules that violates the Fourteenth Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution. However, the bill specifies that an association's failure to record such notice may not be the basis for liability or evidence of discrimination or an intent to discriminate.

B. SECTION DIRECTORY:

Section 1: Amends s. 514.0015, F.S., relating to exemptions from supervision or regulation; variances.

Section 2: Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.

Section 3: Amends s. 718.111, F.S., relating to the association.

Section 4: Amends s. 718.112, F.S., relating to bylaws.

Section 5: Amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.

Section 6: Amends s. 718.1255, F.S., relating to alternative dispute resolution; voluntary mediation, mandatory nonbinding arbitration; legislative findings.

Section 7: Amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 8: Amends s. 718.5014, F.S., relating to ombudsman location.

Section 9: Amends s. 719.103, F.S., relating to definitions.

Section 10: Amends s. 719.104, F.S., cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 11: Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

⁵⁹ The Federal Fair Housing Act and the Florida Fair Housing Act prohibit discrimination in home sales, financing, and rentals based on race, color, sex, pregnancy, disability, nationality, religion, and familial status. See 42 U.S.C. § 3601-189; See Ch. 760, part II, F.S.

⁶⁰ TaMaryn Waters, *Attorney Wants outdated, racist covenant language in Betton Hills stripped*, Tallahassee Democrat (July 1, 2019), <https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/> (last visited Jan. 23, 2020); Judy L. Thomas, *'Curse of covenant' persists — restrictive rules, while unenforceable, have lingering legacy*, The Kansas City Star (July 27, 2016), <https://www.kansascity.com/news/local/article92156112.html> (last visited Jan. 23, 2020); Rachel Spacek, *'No persons other than persons of the White race': Racist language remains in older Idaho homes' documents*, Idaho Press (Nov. 5, 2019), https://www.idahopress.com/news/local/no-persons-other-than-persons-of-the-white-race-racist/article_167d13e1-59ce-5f03-b1e1-771709da5e4b.html (last visited Jan. 23, 2020).

⁶¹ Art. I, s. 2, Fla. Const.

Section 12: Amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 13: 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 14: Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 15: Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.

Section 16: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unknown if prohibiting condominium owners' insurance policies from providing rights of subrogation against the association will increase or decrease the cost of condominium unit owners' insurance policies.

D. FISCAL COMMENTS:

It is unknown whether the change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent will have an impact on state revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 11, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Corrects a scrivener's error by correcting a reference to the Florida Constitution, from article II, to article I, section 2.
- Permits a unit owner in a condominium association to install an alternative fuel station for an alternative fuel motor vehicle within the boundaries of the owner's limited common element or exclusively designated parking area.

On January 22, 2020, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that the records a condominium association must maintain are written records related to the association's obligation.
- Required condominium association bylaws to provide for mandatory alternative dispute resolution, not just mandatory non-binding arbitration.
- Changes references from "alternative fuel station" to "natural gas fuel station," providing that a condominium association may not prevent a unit owner from installing a natural gas fuel station within his or her exclusively-designated or limited common element parking space.
- Required either mandatory non-binding arbitration or presuit mediation of condominium disputes prior to initiating litigation of the dispute in court, with the exception of election and recall disputes, which must be arbitrated by the Division or filed with a court of competent jurisdiction.

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