

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 927 Lake County  
**SPONSOR(S):** Local Administration Subcommittee, Sabatini  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration Subcommittee	11 Y, 0 N, As CS	Moehrle	Miller
2) Civil Justice Subcommittee	11 Y, 0 N	Padgett	Luczynski
3) State Affairs Committee	21 Y, 0 N	Moehrle	Williamson

### SUMMARY ANALYSIS

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

A cooperative association may not charge a potential buyer or renter costs or fees in connection with the sale, lease, or sublease, or other transfer of a unit 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.

The bill amends ch. 2003-302, Laws of Fla., to allow mobile home cooperatives in Lake County having more than 1,100 units to assess a transfer fee of \$500 or less to any assignee, transferee, or purchaser of a unit located within the cooperative upon the affirmative vote of the majority of the members of the cooperative association. Upon the affirmative supermajority vote (two-thirds) of the members, the cooperative may assess a fee of greater than \$500 but no more than \$1,000. Of the 12 mobile home cooperatives in Lake County, only one currently meets this criterion, Hawthorne Residents Cooperative Association, Inc.

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

**Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Community Associations

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

- Condominium Associations;
- Cooperative Associations;<sup>1</sup>
- 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).<sup>2</sup>

##### *Cooperatives*

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. In a cooperative, the real property is owned by the corporation or other entity and individual units are leased to residents owning shares in the corporation.<sup>3</sup> A cooperative is created by recording articles of incorporation in the county in which the real property is located.<sup>4</sup> Upon creation of a cooperative,<sup>5</sup> the association must file the recording information with the Division within 30 days.<sup>6</sup> Cooperative members have exclusive possession of their unit and are entitled to use common areas for purposes for which they are intended.<sup>7</sup> Tenants who lease from a unit owner have the same rights.<sup>8</sup> The cooperative association<sup>9</sup> is responsible for the operation of the cooperative and is governed by a board of administration, who are elected by resident shareholders. The board enacts bylaws, which govern the cooperative association. The lease payment amount is the pro-rata share of the cooperative's operational expenses.<sup>10</sup>

##### *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.<sup>11</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>12</sup> A declaration governs the relationships among condominium unit owners and the condominium association. Condominiums operate similarly to cooperatives and the laws regulating condominiums are in many instances nearly identical to those regulating cooperatives.

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<sup>1</sup> Cooperative associations are not political subdivisions of the state. See s. 1.01(8), F.S. The words "public body," "body politic," or "political subdivision" include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

<sup>2</sup> DBPR, *Division of Florida Condominiums, Timeshares & Mobile Homes*, available at [myfloridalicense.com/DBPR/condo-timeshares-mobile-homes/#1510244746362-2dc21ff-1059](http://myfloridalicense.com/DBPR/condo-timeshares-mobile-homes/#1510244746362-2dc21ff-1059) (last visited on Feb. 5, 2020).

<sup>3</sup> S. 719.103(2)(26), F.S.

<sup>4</sup> Ss. 719.1035(1) and 607.0203(1), F.S.

<sup>5</sup> S. 719.1035(2), F.S. Cooperative documents are enforceable equitable servitudes running with the land and are effective until the cooperative is terminated.

<sup>6</sup> S. 719.1035(1), F.S.

<sup>7</sup> S. 719.105(2), F.S. Unit owners may not hinder or encroach upon the rights of other unit owners.

<sup>8</sup> S. 719.105(3), F.S. When a unit is leased, the tenant has all use rights in the association property available for use by the unit owner and the unit owner does not have such rights except as a guest.

<sup>9</sup> S. 719.103(2), F.S.

<sup>10</sup> S. 719.106(1)(g), F.S.

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

<sup>12</sup> S. 718.104(2), F.S.

## *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 the HOA is authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>13</sup> Only HOAs for which the recorded covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an elected board of directors administers an HOA. The powers and duties of an HOA include those created by statute<sup>14</sup> and those provided in the association's governing documents, including the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. The statutes establish procedures and minimum requirements for HOA operation and create a mandatory binding arbitration program, administered by the Division for certain election and recall disputes, but no state agency has direct HOA oversight.<sup>15</sup>

## *Mobile Home Parks*

A mobile home is a transportable structure built on an integral chassis and designed for use as a dwelling.<sup>16</sup> The Florida Mobile Home Act (Act)<sup>17</sup> provides for the regulation by the Division of mobile tenancies in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease. The Act was created to address the unique relationship between a mobile home owner and a mobile home park owner.<sup>18</sup> Unlike a cooperative, in a mobile home park subject to the Act, a resident owns the mobile home but rents or leases the lot from a mobile home park.<sup>19</sup>

## Cooperatives as Personal and Real Property Interest

A corporation, not the individual residents, owns the real property of a cooperative association. 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 ownership interest in a cooperative is an interest in personal property, not real property.<sup>20</sup>

In contrast, the Condominium Act specifically provides that a condominium parcel is a separate parcel of real property.<sup>21</sup> There is no corresponding statute in the Cooperative Act,<sup>22</sup> and Florida courts recognize there is some confusion as to whether a cooperative ownership interest is an interest in real property or personal property.<sup>23</sup>

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<sup>13</sup> S. 720.301(9), F.S.

<sup>14</sup> See ch. 720, F.S.

<sup>15</sup> Ss. 720.306(9)(c) and 720.311(1), F.S.

<sup>16</sup> S. 723.003(8), F.S., defines a mobile home as "a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein."

<sup>17</sup> Ch. 723, F.S.

<sup>18</sup> S. 723.004(1), F.S. The legislative findings state, in part, "once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship that distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights, which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected."

<sup>19</sup> S. 723.002, F.S.

<sup>20</sup> *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996).

<sup>21</sup> S. 718.106(1), F.S.

<sup>22</sup> S. 718.106(1), F.S.; See generally ch. 719, F.S.

<sup>23</sup> *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So. 2d 1053 (Fla. 2008).

## Cooperative Transfer Costs

A cooperative association may not charge a potential buyer or renter costs or fees in connection with the sale, lease, or sublease, or other transfer of a unit 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.<sup>24</sup>

A cooperative association may require a potential tenant to provide the association a security deposit equivalent to one month of rent. Within 15 days after a tenant vacates the premises, the association must refund the full security deposit or give written notice to the tenant of any claim made against the security deposit.<sup>25</sup>

## Lake County Mobile Home Cooperative Associations

According to DBPR, there are 12 active mobile home cooperatives in Lake County.<sup>26</sup> These cooperatives range in size from 19 to 1,144 residential units.<sup>27</sup> Under a local law, mobile home cooperatives in Lake County with more than 1,100 units may alter, convert, lease, or modify the common areas of the cooperative by majority vote of the total voting interests in the cooperative.<sup>28</sup> Currently, one mobile home cooperative meets this criteria, Hawthorne Residents Cooperative Association, Inc. (Hawthorne at Leesburg), which has 1,195 units (1,114 of which are residential units).<sup>29</sup>

Colonial Penn Insurance Company built Hawthorne at Leesburg in 1972. In 1982, residents bought the 300-acre community from Colonial Penn for \$9.3 million and established the mobile home cooperative in 1983.<sup>30</sup> Hawthorne at Leesburg currently is valued at approximately \$22 million, reports no debt, and reports "a substantial cash surplus."<sup>31</sup> Membership in the cooperative is limited to purchasers of membership certificates. Transferees of a membership certificate automatically become members of the corporation if all requirements for membership have been met.<sup>32</sup> Currently, the corporation allows the directors to impose a fee in connection with the approval of the assignment or sublease of units that may not exceed \$50.00.<sup>33</sup>

## **Effect of Proposed Changes**

The bill allows mobile home cooperatives in Lake County having more than 1,100 units to assess a transfer fee of no greater than \$500 to any assignee, transferee, or purchaser of a cooperative unit located within the mobile home cooperative upon the affirmative vote of the majority of the members of the cooperative association. Upon the affirmative supermajority (two-thirds) vote of the members, the cooperative association may assess a transfer fee of greater than \$500 but no more than \$1,000.

The bill prohibits the transfer fee from being used for operational expenses. Any closing financial document related to the sale of a cooperative unit must include, as a line item, the transfer fee chargeable to the purchaser of the cooperative unit. The bill provides that the transfer fee is not applicable to current members of a mobile home cooperative who transfer their existing cooperative

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<sup>24</sup> S. 719.106(1)(i), F.S. The cooperative transfer statute is similar to that for condominium associations. See s. 718.112(2)(i), F.S.

<sup>25</sup> S. 719.106(1)(i), F.S.

<sup>26</sup> Florida Department of Business & Professional Regulation, *Search for a License*, [myfloridalicense.com/wl11.asp?mode=3&search=City&SID=&brd=&typ=](http://myfloridalicense.com/wl11.asp?mode=3&search=City&SID=&brd=&typ=) (last visited Feb. 5, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> Ch. 2003-302, Laws of Fla.

<sup>29</sup> *Search for a License, supra.*

<sup>30</sup> Hawthorne at Leesburg, *History*, <http://www.hawthorneatleesburg.com/history/> (last visited Feb. 5, 2020).

<sup>31</sup> *Id.*

<sup>32</sup> Bylaws of Hawthorne Residents Cooperative Association, Inc., *Article II. Membership and Voting Rights*, [hawthorneatleesburg.com/wp-content/uploads/2018/06/HRCA-By-Laws-revised-5-9-18.pdf](http://hawthorneatleesburg.com/wp-content/uploads/2018/06/HRCA-By-Laws-revised-5-9-18.pdf) (last visited Feb. 5, 2020).

<sup>33</sup> Bylaws of Hawthorne Residents Cooperative Association, Inc., *Article VIII. Corporate Funds- 8.13 Transfer and Fees*, [hawthorneatleesburg.com/wp-content/uploads/2018/06/HRCA-By-Laws-revised-5-9-18.pdf](http://hawthorneatleesburg.com/wp-content/uploads/2018/06/HRCA-By-Laws-revised-5-9-18.pdf) (last visited Feb. 5, 2020). The bylaws state that no charge may be made in connection with an extension or renewal of a sublease.

unit into a revocable living trust for their direct and personal benefit. The transfer fee is applicable to all other trust or estate planning beneficiaries.

B. SECTION DIRECTORY:

**Section 1:** Amends ch. 2003-302, Laws of Fla., to allow a mobile home cooperative to assess a transfer fee of specified amounts under certain circumstances.

**Section 2:** Provides the act is effective upon becoming a law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? October 17, 2019.

WHERE? The Daily Commercial, a daily newspaper of general circulation published in Lake County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes  No

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

The Florida Constitution prohibits special laws granting a privilege to a private corporation.<sup>34</sup> The Florida Supreme Court held that the term “privilege” as used in the context of this constitutional prohibition encompasses more than a financial benefit and includes a right, benefit, or advantage granted to a private corporation.<sup>35</sup> The Court has held that the “grant of privilege to a private corporation” reasonably means providing a benefit to a private corporation that others do not receive.<sup>36</sup> A special law conforms to the Constitution if it does not provide a specific benefit or advantage to a private corporation that is not available to other citizens. Because other mobile home cooperatives within Lake County may grow in size and exceed the 1,100 unit threshold, the bill does not appear to conflict with the constitutional prohibition.

B. RULE-MAKING AUTHORITY:

The bill does not authorize nor require agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exception to General Law

The bill creates an exception to s. 719.106(1)(i), F.S., by authorizing a transfer fee of greater than \$100. Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

<sup>34</sup> Art. III, S. 11(a)(12), Fla. Const.

<sup>35</sup> *Lawnwood Medical Center v. Seeger*, 990 So. 2d 503 (Fla. 2008).

<sup>36</sup> *Venice HMA LLC v. Sarasota County*, 228 So. 3d 76 (Fla. 2017).

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 29, 2020, the Local Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute revises the transfer fee amount the cooperative association may charge in the bill from \$1,000 to:

- Upon the affirmative majority vote of members, a transfer fee no greater than \$500; and
- Upon the affirmative supermajority vote of members, a transfer fee of greater than \$500 but no more than \$1,000.

This analysis is drafted to the committee substitute as approved by the Local Administration Subcommittee.