

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 649 Petition for Objection to Assessment

SPONSOR(S): Civil Justice & Property Rights Subcommittee, Fernandez-Barquin

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	18 Y, 0 N, As CS	Mawn	Jones
2) Ways & Means Committee	17 Y, 0 N	Curry	Aldridge
3) Judiciary Committee	19 Y, 0 N	Mawn	Kramer

SUMMARY ANALYSIS

A condominium is a form of ownership of real property created under ch. 718, F.S., also referred to as the Condominium Act. A condominium is composed of units which may be owned by one or more persons along with an undivided right of access to common elements. All unit owners are members of the condominium association, which is the entity responsible for the operation and maintenance of the common elements owned by the unit owners.

A cooperative is a form of property ownership created under ch. 719, F.S. The real property in the cooperative is owned by the cooperative association, while 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 generally operate similarly to condominiums.

A mobile home park is a use of land created under ch. 723, F.S., in which lots or spaces are offered for rent or lease for the placement of mobile homes in which the park's primary use is residential. A mobile home subdivision is a use of land also created under ch. 723, F.S., in which individual lots are owned by mobile home owners and where a portion of the subdivision or amenities exclusively serving the subdivision are retained by the subdivision developer. Mobile home owners living in a mobile home park may form a homeowners' association if at least two-thirds of all the owners consent in writing to become association members. Mobile home owners living in a mobile home subdivision may form a homeowners' association under ch. 720, F.S., in which association membership is a mandatory condition of lot ownership, or in the same manner as a mobile home park homeowner's association under ch. 723, F.S.

A condominium, cooperative, or mobile home homeowners' association may challenge an ad valorem tax assessment on behalf of all of its members by filing a single joint petition with the Value Adjustment Board ("VAB"). However, the Third District Court of Appeal in *Central Carillon Beach Condo. Ass'n Inc. v. Garcia* recently determined that an association could not defend its members in a VAB decision appeal filed by the property appraiser, as current law requires the individual taxpayers to be named as defendants.

CS/HB 649:

- Authorizes a condominium or cooperative association to defend its members that are unit or parcel owners in ad valorem tax suits brought by a property appraiser after a VAB decision and to appeal such decisions on the owners' behalf.
- Requires an association to notify, in a specified manner, its members of its intention to petition the VAB and that, by not opting out of the petition, the owner agrees that the association may represent him or her in any subsequent proceedings.

On March 12, 2021, the Revenue Estimating Conference estimated that the bill would have a zero or negative indeterminate impact on local government revenue.

The bill provides an effective date of July 1, 2021.

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

STORAGE NAME: h0649e.JDC

DATE: 3/29/2021

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominiums

A condominium is a form of ownership of real property created under ch. 718, F.S., also referred to as the Condominium Act¹ composed of units which may be owned by one or more persons along with an undivided right of access to common elements.² A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.³ A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, which is the entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors called a “board of administration.” The board enacts bylaws governing the association’s administration.

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, the statute converts an ownership interest in a condominium to an interest in real property.

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S. The real property is owned by the cooperative association, while individual units are leased to the residents who own shares in the cooperative association.⁴ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums, and the laws regulating cooperatives are often nearly identical to those regulating condominiums.

An ownership interest in a 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 an automobile, 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

Mobile Home Parks and Subdivisions

A mobile home park is a use of land created under ch. 723, F.S., in which lots or spaces are offered for rent or lease for the placement of mobile homes⁸ in which the park’s primary use is residential.⁹ A mobile home subdivision is also a use of land created under ch. 723, F.S., in which individual lots are owned by mobile home owners and where a portion of the subdivision or amenities exclusively serving

¹ S. 718.101, F.S.

² “Common elements” means the portions of the condominium property not included in the units. S. 718.103(11), F.S.

³ S. 718.104(2), F.S.

⁴ S. 719.103(2) and (26), F.S.

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

⁶ Am. Jur. 2d Property s. 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 A mobile home is 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 plumbing, heating, air-conditioning, and electrical systems contained therein. S. 723.003(8), F.S.

⁹ S. 723.003(12), F.S.

the subdivision are retained by the subdivision developer.¹⁰ A prospectus and lot rental agreement govern the legal rights of mobile home owners living in a mobile home park, and such owners may form a homeowners' association if at least two-thirds of the owners in the park consent in writing to become association members.¹¹ Mobile home owners living in a mobile home subdivision may form a homeowners' association under ch. 720, F.S., in which association membership is a mandatory condition of lot ownership, or in the same manner as a mobile home park homeowner's association under ch. 723, F.S.¹²

A mobile home is taxed as real property if the mobile home owner also owns the land on which the mobile home is permanently affixed and maintains a current real property decal issued by the Department of Highway Safety and Motor Vehicles ("DHSMV").¹³ A mobile home not permanently affixed to land owned by the mobile home owner is subject to an annual license tax and must have a mobile home decal issued by the DHSMV.¹⁴ A mobile home which meets the criteria for a real property or mobile home decal but does not have a current decal is taxed as personal property.¹⁵

Community Association Ad Valorem Tax Assessments

Condominium and cooperative association unit owners, mobile home park owners, and mobile home owners are assessed yearly ad valorem¹⁶ taxes by the property appraiser for the county in which the condominium, cooperative, or mobile home park or subdivision is located.¹⁷ For condominium unit owners, ad valorem taxes for common elements are divided and levied proportionally among individual unit owners.¹⁸

Each taxpayer whose property is subject to real or tangible personal ad valorem taxes must be notified of the assessment of each taxable item of property.¹⁹ A taxpayer who objects to a tax assessment may file a petition with the value adjustment board ("VAB")²⁰ of the county in which his or her taxable property is located.²¹ Current law also allows condominium, cooperative, and mobile home homeowners' associations to file a single joint petition to the VAB contesting the tax assessment of any association members who own property which the property appraiser determines are substantially similar.²² Before filing a joint petition, the association must notify each property owner of its intent to petition the VAB and of the owner's right to opt out of the petition.²³ However, current law does not specify a mechanism for such notice.²⁴

A VAB's decision on such petition may be appealed to the circuit court.²⁵ While current law is clear that an association is authorized to act on behalf of all unit owners when filing a petition to the VAB and when initiating an appeal of the VAB's decision, the law is unclear as to whether the association may defend, on behalf of property owners, a property appraiser's appeal of the VAB's decision.²⁶

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¹⁰ S. 723.003(14), F.S.

¹¹ A "member" is a mobile home owner who consents to be bound by the incorporated association's articles of incorporation, bylaws, and policies. Ss. 723.012, 723.031, and 723.075, F.S.

¹² S. 723.0751, F.S.

¹³ A mobile home is considered permanently affixed if it is tied down and connected to the normal and usual utilities. S. 193.075(1), F.S.; Florida Department of Revenue ("DOR"), *Taxation of Mobile Homes in Florida*, https://floridarevenue.com/Forms_library/current/gt800047.pdf (last visited Mar. 22, 2021).

¹⁴ See DOR, *supra* note 13.

¹⁵ *Id.*

¹⁶ "Ad valorem tax" means a tax based upon the assessed value of property. S. 192.001(1), F.S.

¹⁷ S. 194.011, F.S.

¹⁸ S. 718.120(1), F.S.; Office of the Attorney General, Advisory Legal Opinion – AGO 99-12, Mar. 8, 1999.

¹⁹ S. 194.011, F.S.

²⁰ Section 194.015, F.S., creates a value adjustment board for each county consisting of two members of the county's governing body, one member of the school board, and two citizen members.

²¹ S. 194.011(2), F.S.

²² S. 194.011(3)(e), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

The Third District Court of Appeal in *Central Carillon Beach Condo. Ass'n Inc. v. Garcia* took up this issue in a case of first impression.²⁷ Petitioners were two condominium associations (“Associations”) that had represented their unit owners in a tax assessment challenge before a VAB. Respondent was the property appraiser for Miami-Dade County (“Appraiser”).²⁸ When the Associations initially challenged their tax assessment, the VAB lowered their assessed property values.²⁹ In turn, the Appraiser appealed the VAB decision to the circuit court, naming as defendants the individual unit owners instead of the Associations.³⁰ In response, the Associations moved to dismiss the appeal and for certification of the unit owners as a defense class. The circuit court denied both motions, and the Associations appealed the denial to the Third District Court of Appeal.³¹

On appeal, the Appraiser argued that defense class certification should be denied and that each unit owner should be named as a separate defendant because statutes governing tax assessment challenge procedures require that individual taxpayers be named on appeal.³² Specifically, Florida law states that in any case brought by the:

- Taxpayer or association contesting the assessment of any property, the county property appraiser is party defendant.
- Property appraiser alleging specific legal violations in the VAB’s decision or claiming a certain monetary variance between the assessed value of the property by the property appraiser and the VAB,³³ the taxpayer is party defendant.³⁴

The Associations argued that the condominium law, on the other hand, allows condominium associations to represent unit owners through their rights of collective representation.³⁵ The court rejected the Associations’ argument, holding that the relevant condominium law only addresses ad valorem taxes in one phrase, i.e., “protesting ad valorem taxes on commonly used facilities and on units.” The Associations protested the ad valorem taxes on behalf of all units, but the Court reasoned that lawsuits brought by the Appraiser against the unit owners were not “protests.” Rather, they were judicial review proceedings in which the unit owners were defendants. The Court reasoned that an association may only defend an action on behalf of all unit owners in “actions in eminent domain.”³⁶

The Associations also argued that because they could bring a class action if they were appealing a VAB decision, they should also be allowed to “be joined in an action as a representative of that class with reference to litigation....” However, the Court held that s. 718.111(3), F.S., was not as precisely applied to the Appraiser’s lawsuits against the unit owners as the ad valorem litigation provision, s. 194.181(2), F.S., which states that when an appraiser is the plaintiff seeking circuit court review of the VAB decision, “the taxpayer shall be the party defendant....”³⁷ Based on this statutory interpretation, the Court held that current law does not allow a condominium, cooperative, or mobile home homeowners’ association to act on behalf of property owners where the property appraiser appeals a VAB decision.³⁸

Effect of the Bill

CS/HB 649 amends current law to specify the methods by which a condominium, cooperative, or mobile home park homeowners’ association must provide the unit or parcel owners notice of its intent to challenge a tax assessment by petitioning the VAB, and gives the owners a right to opt out of inclusion in the petition. Such notice must inform the unit or parcel owner that by not opting out of the

²⁷ *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d 869 (Fla. 3d DCA 2018).

²⁸ *Id.* at 869.

²⁹ *Id.* at 870.

³⁰ *Id.* at 871.

³¹ *Id.* at 869.

³² *Id.* at 871.

³³ In cases where the property appraiser claims a systematic violation of legal requirements, the VAB is the defendant. S. 194.036(1)(a), (b), F.S.

³⁴ S. 191.181(2), F.S.

³⁵ *Central Carillon*, 245 So. 3d at 871, 872.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

petition, he or she agrees that the association will represent him or her in any subsequent related proceedings, without owner being named or joined as parties. The notice must be hand-delivered or sent by certified mail to each unit or parcel owner, and, if the association is a condominium or cooperative association, posted on association property in the same manner as notice of board meetings. However, the notice may be electronically transmitted to any unit or parcel owner who expressly consented in writing to receiving notices electronically.

The bill also:

- Authorizes a condominium or cooperative association that filed a single joint petition to challenge a tax assessment to continue to represent, prosecute, and defend the unit owners through any related subsequent proceeding.
- Provides that in a property appraiser's appeal of a VAB decision on a single joint petition filed by a condominium or cooperative association, the association is the proper party defendant and the property appraiser need not name the individual unit owners as defendants.
- Expressly incorporates the power to defend unit owners in actions pertaining to VAB decisions in a condominium association's enumerated powers and duties.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 194.011, F.S., relating to assessment notice; objections to assessments.

Section 2: Amends s. 194.181, F.S., relating to parties to a tax suit.

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

Section 4: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On March, 12, 2021, the Revenue Estimating Conference estimated that the bill would have a zero or negative indeterminate impact on local government revenue.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may save condominium, cooperative, and mobile home homeowners' association members that are unit or parcel owners from having to personally pay to defend themselves in an appeal of a VAB's decision brought by a property appraiser, leaving the cost to be borne by the association.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2021, the Civil Justice and Property Rights Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that, in any property appraiser appeal of a VAB decision on a single joint petition filed by a condominium or cooperative association, the association is the only required defendant and the property appraiser does not need to name the individual unit owners as parties.
- Specifically added to the list of a condominium association's powers and duties the power to defend a property appraiser's appeal of a VAB decision on a single joint petition filed by the association.

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