

**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 Regulated Industries

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BILL: SB 902

INTRODUCER: Senator Rodrigues

SUBJECT: Public Pool Regulations

DATE: March 29, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			CA	
3.			RC	

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**I. Summary:**

SB 902 exempts from supervision by the Department of Health (DOH) swimming pools serving condominium, cooperative, and homeowners' associations that have 32 or fewer parcels and are not being operated as public lodging establishments. Under the bill, such pools would not be required to obtain a permit from the DOH and would not be inspected.

The bill takes effect July 1, 2021.

**II. Present Situation:**

**Condominium Associations**

A condominium is a "form of ownership of real property created under ch. 718, F.S."<sup>1</sup> Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.<sup>2</sup> For unit owners, membership in the association is an unalienable right and a required condition of unit ownership.<sup>3</sup> A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.<sup>4</sup>

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.<sup>5</sup> Although unit owners are considered shareholders of this

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> See s. 718.103, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 718.104(2), F.S.

<sup>5</sup> Section 718.303(3), F.S.

corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a “board of administration.”<sup>6</sup> The board of administrators is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements, which are owned in undivided shares by the unit owners.<sup>7</sup> In litigation, an association's board of directors is in charge of directing attorney actions.<sup>8</sup>

### **Cooperative Associations**

A cooperative differs from a condominium in that cooperative units are not individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely because of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.<sup>9</sup> 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>10</sup>

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.

### **Homeowners' Associations in Mobile Home Parks**

Chapter 723, F.S., relates to mobile home park lot tenancies. In these communities, the homeowner does not own the real estate upon which the mobile home is located; the homeowner leases the mobile home lot from the mobile home park owner. Homeowners in these communities may form a homeowners' association.<sup>11</sup>

The mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or

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<sup>6</sup> Section 718.103(4), F.S.

<sup>7</sup> Section 718.103(2), F.S.

<sup>8</sup> Section 718.103(30), F.S.

<sup>9</sup> See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019).

<sup>10</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>11</sup> See ss. 723.075 through 723.0791, F.S.

increases of either, to the mobile home owner if such costs are not otherwise collected in the lot rental amount and passing on the costs was disclosed prior to tenancy.<sup>12</sup>

### **Swimming Pools Serving Community Associations**

The DOH is responsible for the oversight and regulation of water quality and safety of certain 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 the DOH must be obtained. If the DOH determines that the public swimming pool is, or may reasonably be expected to, operate in compliance with state laws and rules, the 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.<sup>13</sup>

Pools serving condominiums or cooperatives with no more than 32 units and which are not operated as public lodging establishments are exempt from the DOH's requirements for public pools.<sup>14</sup> Pools serving homeowners' associations are not exempt from supervision by the DOH.

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

The bill amends s. 514.0115(2)(a), F.S., to exempt from supervision by the DOH swimming pools serving condominium, cooperative, and homeowners' associations that have 32 or fewer parcels and are not being operated as public lodging establishments. Under the bill, such pools would not be required to obtain a permit from the DOH and would not be inspected.

The bill takes effect July 1, 2021.

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

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

None.

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

None.

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

None.

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

None.

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<sup>12</sup> Section 723.031(5)(c), F.S.

<sup>13</sup> Section 514.031(1), F.S.

<sup>14</sup> Section 514.0115(2), F.S.

E. Other Constitutional Issues:

None.

**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 substantially amends section 514.0115 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.)

None.

B. Amendments:

None.