

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 902

INTRODUCER: Regulated Industries Committee and Senator Rodrigues

SUBJECT: Community Association Pools

DATE: April 15, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 902 exempts from supervision by the Department of Health (DOH) swimming pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments. Under the bill, swimming pools in such communities are not be required to have a permit issued by the DOH.

The bill authorizes the DOH to supervise such pools when necessary to ensure water quality and for required safety features, such as an anti-entrapment system or device, or systems or devices that protect against evisceration and body-and-limb suction entrapment and systems that cease the operation of the pump when a blockage is detected.

Under the bill, the DOH may impose fines of up to \$500 per violation. The bill also authorizes the county health department or the DOH to bring an action to abate or enjoin the use of an exempted public swimming pool that is a nuisance because it presents a significant risk to public health by failing to meet sanitation and safety standards.

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.”¹ 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.² For unit owners, membership in the association is an unalienable right and a required condition of unit ownership.³ A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.⁴

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.⁵ Although unit owners are considered shareholders of this 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.”⁶ 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.⁷ In litigation, an association's board of directors is in charge of directing attorney actions.⁸

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.⁹ 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.¹⁰

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

¹ Section 718.103(11), F.S.

² *See* s. 718.103, F.S.

³ *Id.*

⁴ Section 718.104(2), F.S.

⁵ Section 718.303(3), F.S.

⁶ Section 718.103(4), F.S.

⁷ Section 718.103(2), F.S.

⁸ Section 718.103(30), F.S.

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

¹⁰ *See* ss. 719.106(1)(g) and 719.107, F.S.

[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.¹¹

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 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.¹²

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 for swimming pools are conducted by the DOH and 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.¹³ 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 an operating permit.¹⁴ 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.¹⁵

The operating permits must be renewed annually and must be posted in a conspicuous place by the owner or operator of the swimming pool.¹⁶ The owner or operator of the public swimming pool must also post in a prominent position the most recent pool inspection report issued by the DOH pertaining to the health and safety conditions of such facility.¹⁷

Public swimming pools and spas must have certain safety features, including an anti-entrapment system or device. Pools or spas built before January 1, 1993 with a main drain must have

¹¹ See ss. 723.075 through 723.0791, F.S.

¹² Section 723.031(5)(c), F.S.

¹³ Section 514.031(1), F.S.

¹⁴ Section 514.031(1)(c), F.S.

¹⁵ Section 514.031(1)(d), F.S.

¹⁶ Section 514.031(4), F.S.

¹⁷ Section 514.031(5), F.S.

systems or devices that protect against evisceration and body-and-limb suction entrapment and systems that cease the operation of the pump when a blockage is detected.¹⁸

The DOH may suspend or revoke a permit for failure to comply with the provisions of ch. 514, F.S., or rules of the DOH. The DOH may also impose fines of up to \$500 per violation.¹⁹

Section 514.06, F.S., provides that any public swimming pool or public bathing place presenting a significant risk to public health by failing to meet sanitation and safety standards established pursuant to ch. 514, F.S., is declared to be a public nuisance, dangerous to health or safety. The county health department or the DOH may bring an action to abate or enjoin as a nuisance a public swimming pool or public bathing place.

Public swimming pools must meet water quality standards.²⁰ Public swimming pools are subject to additional standards, including standards for the manual addition of chemicals, cleanliness standards, a prohibition against food, beverages, glass containers, and animals in the pool, the operation of the pool circulation system, and water level.²¹ A public pool must also keep a daily record of information regarding pool operations using a form required by the DOH.²²

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.²³ Pools serving homeowners' associations are not exempt from supervision by the DOH.

The annual fee for an operating permit is \$250 for swimming pools greater than 25,000 gallons and \$125 for swimming pools of 25,000 gallons or less. The permit fee for a swimming pool in an "exempted" condominium or cooperative with over 32 units is \$50.²⁴

III. Effect of Proposed Changes:

The bill creates s. 514.0115(3), F.S., to exempt from supervision by the DOH swimming pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not being operated as public lodging establishments. Under the bill, swimming pools in such communities are not be required to have a permit issued by the DOH. Under the bill, such pools would not be required to obtain a permit from the DOH and would not be inspected.

The bill authorizes the DOH to supervise homeowners' association and other property association pools when necessary to ensure water quality. Under the bill, the DOH may also supervise such swimming pools under s. 514.0315, F.S., relating to required safety features, s. 514.05, F.S., providing administrative penalties, including fines of up to \$500 per violation, and

¹⁸ See s. 514.0315, F.S.

¹⁹ Section 514.05, F.S.

²⁰ See Fla. Admin. Code R. 64E-9.004.

²¹ *Id.*

²² *Id.*

²³ Section 514.0115(2), F.S.

²⁴ Fla. Admin. Code R. 64E-9.015. It is not clear why the DOH rule refers to pools in condominium or cooperative with over 32 units as exempted.

s. 514.06, F.S., authorizing the county health department or the DOH to bring an action to abate or enjoin a nuisance the use of a public swimming pool or public bathing place that presents a significant risk to public health by failing to meet sanitation and safety standards.

The bill amends s. 553.77(7), F.S., to correct a cross-reference.

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.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, owners and operators of a swimming pool serving a homeowners' association or other property association that has no more than 32 units or parcels would be saved the expense of annual operating permit for the swimming pool. The annual fee for an operating permit is \$250 for swimming pools greater than 25,000 gallons and \$125 for pools of 25,000 gallons or less. The annual permit fee for a swimming pool in an exempted condominium or cooperative with over 32 units is \$50.²⁵

²⁵ *Supra* n. 22.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 514.0115 and 553.77.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Regulated Industries on March 30, 2021:

The committee substitute:

- Changes the title of the bill from an act relating to “public pool regulations” to an act relating to “community association pools.”
- Does not amend s. 514.0115(2)(a), F.S.
- Creates s. 514.0115(3), F.S., to exempt from supervision by the DOH swimming pools serving homeowners’ associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments from permitting and inspection requirements.
- Permits the DOH to supervise pools in such communities when necessary to ensure water quality and under ss. 514.0315, 514.05, and 514.06, F.S.
- Amends s. 553.77(7), F.S., to correct a cross-reference.

B. Amendments:

None.