

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1203 Homeowners' Associations

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Esposito and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 2 N, As CS	Larkin	Anstead
2) Civil Justice Subcommittee	14 Y, 2 N	Mawn	Jones
3) Commerce Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents.

The bill:

- Clarifies that directors and officers are subject to the general standards for directors outlined in the Florida Not For Profit Corporation Act.
- Allows HOA members to make a written request for a detailed accounting of any amounts owed to the HOA, and the HOA must provide such information or else the board forfeits any outstanding fine.
- Requires that an HOA, Architecture Review Committees (ARCs), or other such similar committee allow homeowners to appeal a decision of the HOA, ARC, or committee.
- Prohibits an HOA from levying fines or imposing suspensions if a violation has been timely cured.
- Prohibits certain fines from becoming a lien on a parcel such as: lawn, landscaping, grass maintenance, and traffic violations.
- Prohibits fines from being aggregated to create a lien against a parcel; and only allows a fine or an assessment of less than 1 percent of a parcel's property value at the time the fine was levied to become a lien against the parcel if approved by 75 percent of the total membership of parcel owners;
- Prohibits HOAs from issuing fines:
 - to parcel owners based on traffic infractions that were not committed by the parcel owner,
 - based on leaving garbage receptacles on the street for a certain time period, and
 - based on leaving holiday decorations or lights up under certain circumstances.
- Prohibits an HOA from preventing a homeowner from installing or displaying vegetable gardens and clotheslines in areas not visible from the frontage or adjacent parcels.
- Provides that without the approval of 75% of the voting members at a member meeting, the HOA may not impose:
 - A regular assessment that is more than 10 percent greater than the regular assessment for the HOA's preceding fiscal year unless it can be shown that a higher increase is necessary for property protection and public safety, or
 - Special assessments that in the aggregate exceed 5 percent of the budgeted gross expenses of the HOA for that fiscal year.
- Provides that the lien of the association is subordinate to that of any mortgage that was recorded prior to the filing of a notice of HOA lien, not just a first mortgage as provided in current law.

The bill has no fiscal impact on state or local government. The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, the association is authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹ In Florida, approximately 45 percent of homes are part of an HOA.²

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, 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.³

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located.

After control of the HOA is obtained by members other than the developer, the HOA may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The HOA may defend actions in eminent domain or bring inverse condemnation actions. Any individual member or class of members may bring any action without participation by the HOA, but a member does not have authority to act for the HOA by virtue of being a member.⁴

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.⁵

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.⁶

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.⁷ The articles of incorporation establish the HOA's existence, basic structure, and governance.⁸ The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.⁹

¹ S. 720.301(9), F.S.

² Patrick Regan, "45% of Florida Homes Are Part of an HOA, the Highest Percentage in the Nation." *South Florida Agent Magazine*, Apr. 21, 2023, <https://southfloridaagentmagazine.com/2023/04/20/45-of-florida-homes-are-part-of-an-hoa-the-highest-percentage-in-the-nation/> (last visited Feb. 1, 2024).

³ See generally ch. 720, F.S.

⁴ S. 720.303(1), F.S.

⁵ S. 720.311, F.S.

⁶ S. 720.301(8), F.S.

⁷ Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), <https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/> (last visited Feb. 1, 2024).

⁸ *Id.*

⁹ *Id.*

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.¹⁰ Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.¹¹

Official Records

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:¹²

- A copy of the HOA's governing documents:
 - declaration of covenants and each amendment,
 - bylaws and each amendment,
 - articles of incorporation and each amendment, and
 - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices.
 - The association shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from association records when the member revokes consent to receive notice by electronic transmission.
- All of the HOA's insurance policies, which must be retained for at least 7 years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility.
 - Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
 - Accurate, itemized, and detailed records of all receipts and expenditures.
 - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - All tax returns, financial statements, and financial reports of the HOA.
 - Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary.

¹⁰ S. 720.306(1), F.S.

¹¹ *Id.*

¹² S. 720.303(4), F.S.

- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

The HOA bylaws must require the HOA to post all notices of board meetings in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.¹³

Access to Official Records

The official records must be maintained within the state for at least 7 years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within 10 business days after receipt by the board or its designee of a written request.

An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

If the HOA has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. However, an HOA may impose fees to cover the costs of providing copies of the official records.¹⁴ An association must allow a member or authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.¹⁵

The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this requirement.¹⁶

A member who is denied access to official records is entitled to the actual damages or minimum damages for the HOA's willful failure to comply with this requirement. The minimum damages are to be \$50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.¹⁷

The HOA may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month.¹⁸

The following records are not accessible to members or parcel owners:¹⁹

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.

¹³ S. 720.303(2)(c), F.S.

¹⁴ The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. S. 720.303(5)(c), F.S.

¹⁵ S. 720.303(5), F.S.

¹⁶ S. 720.303(5)(a), F.S.

¹⁷ S. 720.303(5)(b), F.S.

¹⁸ S. 720.303(5)(c), F.S.

¹⁹ S. 720.303(5)(c)1.-9., F.S.

- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.
- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Powers and Duties of Officers and Directors – Current Situation

The officers and directors of an HOA have a fiduciary relationship to the members who are served by the HOA.²⁰ An officer, director, or manager may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the HOA.²¹ If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office. The vacancy must be filled according to law until the end of the director's term of office.

If the HOA enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated HOA, or other entity in which a director is also a director or officer or is financially interested, the board must:²²

- Comply with the requirements for conflicts of interest in a corporation not for profit.²³
- Enter certain disclosure requirements into the written minutes of the meeting.
- Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the HOA is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

²⁰ S. 720.303(1), F.S.

²¹ However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs. S. 720.303(3), F.S.

²² S. 720.3033(2), F.S.

²³ A contract or transaction with a conflict of interest is not voidable if the relationship or interest is disclosed or known to the board; the board authorized, approved, or ratified it by vote or written consent; or the contract or transaction is fair and reasonable at the time it is authorized. Such contract or transaction must be authorized, approved, or ratified by a majority of the directors on the board who have no relationship or interest in such transaction. S. 617.0832, F.S.

Powers and Duties of Officers and Directors – Effect of the Bill

The bill clarifies that the officers and directors of an HOA are subject to the general standards for directors outlined in s. 617.0830, F.S., of the Florida Not for Profit Corporation Act. HOA directors were likely obligated to comply with these standards under current law as long as they were not inconsistent with the provisions of the HOA governing documents, but the bill would expand the standards to HOA officers and require HOA governing provisions to be consistent with these standards. Under the bill, officers and directors would be required to discharge their duties:

- In good faith²⁴;
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- In a manner he or she reasonably believes to be in the best interests of the corporation.

The bill also provides that in discharging his or her duties, officers and directors would be permitted to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- One or more officers or employees of the corporation whom the officer or director reasonably believes to be reliable and competent in the matters presented;
- Legal counsel, public accountants, or other persons as to matters the officer or director reasonably believes are within the persons' professional or expert competence; or
- A committee of the board of directors of which he or she is not a member if the officer or director reasonably believes the committee merits confidence.

The bill also provides that officers and directors are not liable for any action taken as an officer or director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with standards outlined in s. 617.0830, F.S., of the Florida Not for Profit Corporation Act.

Accounting of Balance Due- Current Situation

The HOA's financial and accounting records are considered official records and must be maintained by the HOA as discussed above.²⁵ More specifically, the HOA is required to maintain the current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due. These records are available upon written request for the requester to inspect and copy. Currently, Florida Law does not require an HOA to give a detailed accounting to an individual of any amounts he or she owes to the HOA.

Accounting of Balance Due- Effect of the Bill

The bill provides that a parcel owner or any occupant, licensee, or invitee of the parcel owner may, at any time, make a written request to the board for a detailed accounting of any amounts he or she owes to the HOA and the board shall provide such information within 10 business days after receipt of the written request. After a person makes a written request for a detailed accounting, he or she may not ask for another detailed accounting for 90 calendar days. Failure by the board to timely respond to a written request for a detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested such accounting.

²⁴ S. 617.0830(3), F.S. provides an example of when a director or officer is not acting in good faith. A director or officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by s. 617.0830 (2), F.S. unwarranted.

²⁵ S. 720.303(4), F.S.

HOA Architectural and Construction Improvement Covenants and Rules - Current Situation

If the governing documents allow it, an HOA or its architectural review (ARC), construction improvement, or other similar committee may:²⁶

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

The HOA or ARC may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.²⁷

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the HOA or ARC. If the an HOA or ARC unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.²⁸

An HOA or ARC may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.²⁹

HOA Architectural and Construction Improvement Covenants and Rules – Effect of the Bill

The bill **prohibits** an HOA, ARC, or other such similar committee from enforcing or adopting a covenant, rule, or guideline that:

- Limits or places requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel.
- Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the HOA or any architectural, construction improvement, or other such similar committee of an HOA, if such system is not visible from the parcel's frontage and is substantially similar to a system that is approved or recommended by the HOA or a committee thereof.

The bill provides that if a parcel owner's rights and privileges have been unreasonably infringed upon or impaired by a decision concerning the architectural use of his or her parcel or the construction of permitted structures and improvements on such parcel by the HOA, ARC, or other such similar committee, the HOA must provide the parcel owner with the ability to appeal such decision to an appeals committee that consists of at least three members appointed by the board. The members of the appeals committee cannot be:

- An officer,
- Director, or
- An employee of the HOA, or
- Members of the ARC.

Furthermore, the bill provides that the appeals committee has the right to reverse, modify, or affirm the decision being appealed. A parcel owner may appeal a decision of the HOA, ARC, or other such similar committee within 90 days after the owner receives written notification of the initial decision. The bill requires that the appeals committee must decide on the issue under appeal within 60 days after receiving a parcel owner's request for appeal.

²⁶ S. 720.3035(1), F.S.

²⁷ S. 720.3035(2), F.S.

²⁸ S. 720.3035(4), F.S.

²⁹ S. 720.3035(5), F.S.

Prohibited Clauses in Governing Documents- Current Situation

Under current Florida law, HOAs may not restrict the installation, display and storage of any items on a parcel that are not visible from the parcel's frontage or an adjacent parcel, unless the item is prohibited by general law or local ordinance. Such items include, but are not limited to:³⁰

- Artificial turf;
- Boats;
- Flags; and
- Recreational vehicles.

HOA governing documents may not prohibit:

- A homeowner from displaying up to two portable, removable flags in a respectful manner. However, all flags must be displayed in a respectful manner consistent with the requirements for the United States flag.³¹
- Any property owner from implementing Florida-friendly landscaping³² on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S., regarding the permitting of consumptive uses of water or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373, F.S.

Furthermore, HOAs are prohibited from preventing a law enforcement officer³³ who is a parcel owner, or who is a tenant, guest, or invitee of a parcel owner, from parking his or her assigned law enforcement vehicle where the parcel owner, or the tenant, guest, or invitee of the parcel owner, has a right to park.

Prohibited Clauses in Governing Documents - Effect of the Bill

The bill expands the list of items that an HOA is prohibited from preventing a homeowner from installing, displaying, or storing on their property to include vegetable gardens and clotheslines in areas not visible from the frontage or adjacent parcels.

The bill provides that HOA governing documents cannot prohibit:

- a property owner, or a guest, tenant, or invitee, from parking his or her personal vehicle, including a pickup truck:
 - in the property owner's driveway,
 - in common parking lots,
 - on public roads and rights-of-way, or
 - in any other area at which the property owner or the property owner's tenant, guest, or invitee has a right to park.
- a property owner, or a guest, tenant, or invitee, from parking his or her work vehicle, which is not a commercial motor vehicle³⁴, in the property owner's driveway.
- a property owner from inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor list of the HOA.
- operating a vehicle that is not a commercial motor vehicle in conformance with state traffic laws on public roads or rights-of-way or the property owner's parcel.
- a property owner from inviting, hiring, or allowing entry to a contractor or worker on his or her parcel solely because the contractor or worker does not have a professional or an occupational

³⁰ S. 720.3045, F.S.

³¹ S. 720.3075(3), F.S.

³² Defined in s. 373.185, F.S.

³³ A law enforcement officer is defined in s. 943.10(1), F.S.

³⁴ "Commercial motor vehicle" means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight. S. 320.0, F.S.

license. The HOA may not require a contractor or worker to present or prove possession of a professional or an occupational license to be allowed entry onto a property owner's parcel.

- a property owner from installing code-compliant hurricane protection or home hardening, such as hurricane shutters, impact glass, code-compliant windows or doors, or other similar protection that complies with or exceeds the applicable building code.
- a property owner from installing a metal roof, artificial turf, vegetable garden, or clotheslines or other energy-efficient device.³⁵

The bill provides that HOA documents may not limit landscaping to grass-only or grass-majority lawns, or issue a mandatory watering schedule to property owners. However, the HOA's documents may generally require that a property owner keep any lawn, landscaping, and grass on the property owner's parcel well-maintained.

The bill clarifies that a law enforcement officer that is a homeowner, or the tenant, guest, or invitee thereof, may park his or her assigned law enforcement vehicle on public roads or rights-of-way within the HOA if this is an area where the homeowner, or the tenant, guest, or invitee thereof, otherwise has a right to park.

The bill also states that an HOA is prohibited from enforcing a new rule or covenant against a parcel owner for an action that took place before the new rule or covenant was enacted.

Fines and Suspension- Current Situation

Owners, tenants, and guests must comply with an HOA's declaration, bylaws, and rules. HOAs may levy fines against or suspend the right of a parcel owner, or an occupant or guest of an owner or occupant, to use the common areas³⁶ or any other association property for failing to comply with any provision in the HOA's governing documents. A suspension for failing to comply with an HOA's declaration, bylaws, or rules may not be for an unreasonable amount of time.³⁷

An HOA may levy reasonable fines for violations of the declaration, bylaws, or reasonable rules of the HOA. No fine may exceed \$100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed \$1,000 in the aggregate. However, a fine may exceed \$1,000 if the HOA's governing documents authorize it. Fines may not become a lien on the property unless the fines exceed \$1,000.³⁸

Before an HOA levies a fine or a suspension, it must give the person receiving the fine or suspension at least 14 days' notice of an opportunity for a hearing. Notice must be provided at the designated mailing or e-mail address in the HOA's official records. A hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee, must be provided. The notice must include a description of the alleged violation, the specific action required to cure such violation, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.

A fine and suspension committee of at least three members selected by the board must hold a hearing to reject or approve the fine or suspension. Board directors, officers, and employees of the HOA and family of such people may not serve on the committee. The committee must approve the fine or suspension by majority vote; otherwise, the proposed fine or suspension may not be imposed.³⁹ After the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the HOA's official records of the parcel owner, of the committee's findings

³⁵ Similar to s. 163.04(2), F.S regarding local governments.

³⁶ This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.

³⁷ S. 720.305(2), F.S.

³⁸ S. 720.305(2), F.S.

³⁹ *Id.*

related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable.⁴⁰

If the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. Written notice of the fine or suspension must be provided to the person by mail or hand delivery.⁴¹

If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the HOA, the HOA may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities⁴² until it is paid in full.

An HOA may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the HOA that is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the HOA.⁴³

The notice and hearing requirements for levying fines do not apply to a suspension imposed for delinquent payment.⁴⁴

All suspensions imposed for delinquent payment of any fee, fine, or other monetary obligation due to the HOA must be approved at a properly noticed board meeting. Upon approval, the HOA must send written notice to the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel owner's designated mailing or e-mail address in the HOA's official records.⁴⁵

Fines and Suspension- Effect of the Bill

Levying Fines

The bill requires that a fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' **written notice of the parcel owner's right to a hearing**. Furthermore, the bill requires that the hearing must be held within 30 days after issuance of the notice. The bill provides that the committee is authorized to hold the hearing by telephone or other electronic means. If the hearing is held by telephone or other electronic means, the notice must include the access information required to attend the telephonic conference or appear through the electronic medium.

The bill provides that the committee must provide a written notice of the committee's findings related to the violation to the applicable person described in the statute within **7 days** after the hearing. If applicable, the written notice of the committee's findings is required to provide instructions on how the parcel owner or any occupant, licensee, or invitee of the parcel owner needs to **fulfill a suspension, or the date by which a fine must be paid**.

The bill provides new procedures for imposing a fine:

- If a violation is found by the committee, but has been cured before the hearing or as specified in the applicable written notice, a fine or suspension may not be imposed.
- The HOA must indicate on the notice of fine the date it is due, which date must be at least 30 days after the notice is delivered.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² A suspension may not prohibit an owner or tenant of a parcel from having access a portion of common areas used to provide access or utility services to the parcel, or from having vehicular and pedestrian ingress to and egress from the parcel. S. 720.305(4), F.S.

⁴³ S. 720.305(4), F.S.

⁴⁴ S. 720.305(3), (4), F.S.

⁴⁵ S. 720.305(5), F.S.

- If a violation is found by the committee, and the proposed fine or suspension levied by the board is approved by the committee and the violation is not cured or the fine is not paid, reasonable attorney fees and costs may be awarded to the HOA. However, attorney fees and costs may not begin to accrue until after the due date for the fine and time for an appeal has expired.
- Upon receipt of a payment for any outstanding fines, the HOA must apply the payment first to the fine before satisfying any other amounts due to the HOA. Attorney fees and costs may not continue to accrue after the fine is paid.
- A parcel owner or any occupant, licensee, or invitee may request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the HOA.

Limitations on Fines

The bill limits when an HOA may impose a fine or suspension. The bill provides that:

- A fine may not be imposed against a parcel owner for a speeding violation committed by his or her occupant, licensee, guest, or invitee.
- If an HOA allows a fine to be levied or a suspension to be imposed against a parcel owner or an occupant, licensee, guest, or invitee for a traffic infraction⁴⁶, such infraction must be determined and issued by a board-approved nonaffiliated third party specializing in traffic infractions.
- HOAs may not issue a fine or suspension for:
 - Leaving garbage receptacles at the curb or end of the driveway less than 24 hours before or after the designated garbage collection day or time.
 - Leaving holiday decorations or lights up longer than indicated in the governing documents, unless such decorations or lights are left up for longer than 1 week after the association provides written notice of the violation to the parcel owner.

The bill restricts when an HOA fine can become a lien:

- A fine that amounts to less than 1 percent of the parcel's property value at the time the fine was levied may only become a lien against the parcel with the approval by 75 percent of the total membership of parcel owners, and fines may not be aggregated to create a lien against a parcel.
- If an HOA allows a fine to be levied for an infraction relating to lawn, landscaping, or grass maintenance, such fine may not become a lien on a parcel.

Assessments and Charges- Current Situation

Overview

Current law gives HOAs the ability to levy and collect assessments⁴⁷ from unit or parcel owners. This allows the HOA to carry out its responsibility for the HOA's management, operation, and maintenance.⁴⁸ In addition to levying assessments, HOAs also have the power to establish the time when each assessment is due, including when an assessment becomes delinquent.⁴⁹

The most common assessments are those required to fund an HOA's common expenses identified in an HOA's annual budget. The amount to fund the common expenses and the assessments required to meet that amount are determined when an HOA's budget is adopted.⁵⁰ In contrast, a special assessment is an assessment levied against unit or parcel owners for unexpected expenses that are over and above those anticipated by the annual budget.⁵¹

⁴⁶ The term "traffic infraction" means a noncriminal violation of parking and traffic rules adopted by the state, county, municipality, or association.

⁴⁷ S. 720.301(1), F.S. provides that an "assessment" or "amenity fee" means a sum or sums of money payable to the association, to the developer or other owner of common areas, or to recreational facilities and other properties serving the parcels by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.

⁴⁸ S. 720.301(1), and 720.308(1), F.S.

⁴⁹ See generally, ch. 720, F.S.

⁵⁰ S. 720.303(6)(a), F.S.

⁵¹ S. 720.303(6), F.S.

When the amount of an assessment has been determined, the HOA must establish a payment schedule for the owners in accordance with the HOA's bylaws. The payments must be sufficient to provide the funds necessary to pay all the anticipated operating expenses and all unpaid expenses previously incurred.⁵²

A parcel owner may not avoid paying assessments by waiving the use of common elements or services in the HOA. No parcel owner may be relieved from liability for all or part of an assessment.⁵³ Boards must keep account of the assessments levied against every parcel owner and the assessments paid by every owner. These records are part of the HOA's official records.⁵⁴

Claim of Lien

An HOA may claim a lien for all unpaid assessments, but not for all unpaid fines.⁵⁵ An HOA may file a claim of lien for a delinquent assessment with the Clerk of Court in the county where the HOA is located. The claim of lien must state the legal description of the parcel, the owner of the parcel, the HOA's name and address, and the assessment amount owed and the due date. An officer or agent of the HOA must sign the claim of lien.⁵⁶ A filed claim of lien is valid for one year.⁵⁷

Prior to filing a claim of lien, an HOA must give a parcel owner the opportunity to pay a delinquent assessment. At least 45 days before filing a claim of lien, an HOA must provide written notice of the HOA's intent to file a lien to the unit owner. The notice of intent to record a claim of lien must include the following information:⁵⁸

- The amount owed on the owner's account;
- The interest rate for the amounts owed;
- A statement that the owner has 45 days after receipt of this notice to pay the amount owed or the HOA will file a claim of lien against the unit or parcel; and
- A breakdown of the amount owed including:
 - Maintenance costs due;
 - Late fee, if applicable;
 - Interest;
 - Certified mail charges;
 - Other costs; and
 - Total amount owed.

The notice must be sent by certified or registered mail, return receipt requested, and by first-class mail to the owner's address listed in the official records.⁵⁹ If the address is different than the parcel address, the notice must also be sent to the parcel. If the address is different than the parcel address and the address is outside the United States, the HOA may send the notice by first class mail, instead of first class and certified/registered mail.

A parcel owner may challenge a claim of lien by filing a notice of contest of lien with the Clerk of Court. After a parcel owner files a notice of contest, an HOA has 90 days to commence enforcement of the lien.⁶⁰

An HOA may bring an action to foreclose on a parcel for unpaid assessments in circuit court in the same way that a mortgage on real estate is foreclosed. The homestead protections provided by Florida's Constitution do not prevent the foreclosure and sale of a parcel.⁶¹ In addition to an action of

⁵² S.720.30851(1), F.S.

⁵³ S. 720.3085(2)(a), F.S.

⁵⁴ S. 720.303(4)-(5), F.S.

⁵⁵ An HOA has a lien on a parcel for a fine that is \$1,000 or more. S. 720.305(2), F.S.

⁵⁶ Ss. 720.301(1), and (11), 720.305(2), and 720.3085(1), F.S.

⁵⁷ S. 713.22(1), F.S.

⁵⁸ S. 720.3085(4), F.S.

⁵⁹ S. 720.3085(4)(b), F.S.

⁶⁰ S. 720.3085(1), F.S.

⁶¹ *Bessemer v. Gersten*, 381 So. 2d 1344, 1347 (Fla. 1980).

foreclosure, an HOA may also bring a civil action to recover a money judgment for the unpaid assessments without waiving any claim of lien.⁶²

Prior to foreclosing on a lien, an HOA must provide written notice to the owner of its intent to foreclose on the lien. An HOA must give a parcel owner the written notice at least **45 days** before foreclosing on the lien. The notice must include the following information:⁶³

- A claim of lien has been filed against the owner's property for failing to pay an assessment(s);
- The HOA intends to foreclose on the lien in 45 days;
- The total amount owed;
- The interest rate and the interest owed; and
- The contact information for the HOA's attorney or representative.

Maximum Level of Assessments

Assessments charged to a member must not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member's proportionate share of the expenses as described in the governing documents.⁶⁴ Currently in Florida, there is not a cap on how much an HOA can raise assessments. However, the HOA's governing documents may have specific provisions about raising regular assessments or imposing special assessments.⁶⁵ California has placed a cap on how much an HOA can increase assessments.⁶⁶

Assessments and Charges- Effect of Bill

The bill **prohibits** the board from imposing a regular assessment that is 10 percent greater than the regular assessment of the HOA's previous fiscal year or imposing special assessments that as a whole are valued more than 5 percent of the current fiscal year's gross expense budget without the approval of 75 percent of voting members at a member meeting.

The bill also provides an exception to the cap on regular assessments described above. The exception states that the board has the right to increase regular assessments by more than the caps if the board can prove that such increase is necessary for the immediate physical protection of property or public safety. This may include an emergency that creates a threat to the health or safety of the members or of the HOA.

The bill prohibits assessments below 1 percent of the property value at the time of the assessment from becoming a lien on a property without the approval of 75 percent of voting members at a member meeting.

Priority of Association Lien- Current Situation

The priority of the lien of an HOA is contingent upon the language of the covenants that create the assessment obligation and the right to lien. Where the covenants are silent as to the priority, then the HOA's lien will be effective for the purposes of determining priority as of the date of the filing of a claim of lien. Only where the HOA documents specifically provide that a claim of lien shall be considered a lien effective as of the date of the recorded declaration will a claim of lien take priority over mortgages and other liens filed.⁶⁷ **However, the lien of the HOA is subordinate to that of a first mortgage that was recorded prior to the filing of a notice of lien.**

Priority of Association Lien- Effect of Bill

⁶² S. 720.3085(1) F.S.

⁶³ Ss. 718.116(6)(a) and 720.3085(5), F.S.

⁶⁴ S. 720.308(3).

⁶⁵ Dania S. Fernandez, "How Much Can an HOA Raise Dues Each Year in Florida?", Dania Fernandez and Associates, P.A., Feb. 26, 2021, www.daniafernandez.com/2021/03/30/how-much-can-an-hoa-raise-dues-each-year-in-florida/ (last visited Feb. 1, 2024).

⁶⁶ California Civil Code § 5605.

⁶⁷ *Holly Lake Association v. Federal National Mortgage Association*, 660 So. 2d 266 (Fla. 1995) (finding no relation back); *Association of Poinciana Villages v. Avatar Properties, Inc.*, 724 So. 2d 585 (Fla. 5th DCA 1998) (finding relation back).

The bill provides that the lien of the association is subordinate to that of any mortgage, rather than only a first mortgage, that was recorded prior to the filing of a notice of association lien. Thus, when there is a mortgage of record, whichever lien was recorded first in the land records has a higher priority than later recorded liens.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.303, F.S., relating to requirements for HOA officers and directors and to provide an accounting.

Section 2: Amends s. 720.3035, F.S., relating to architectural control covenants.

Section 3: Amends s. 720.3045, F.S., relating to installation, display, and storage of items.

Section 4: Amends s. 720.305, F.S., relating to HOA fines and appeals.

Section 5: Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.

Section 6: Amends s. 720.308, F.S., relating to assessments and charges.

Section 7: Amends s. 720.3085, F.S., relating to lien claims.

Section 8: Amends s. 720.318, F.S., relating to law enforcement vehicles.

Section 9: Provides an effective date.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce fines and assessments paid by members to the HOA.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Impairment of Contracts and Due Process

Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.⁶⁸ However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.⁶⁹ In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.⁷⁰ A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.⁷¹ However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.⁷² Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so “would attach new legal consequences to events completed before its enactment.”⁷³

Both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.⁷⁴ The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.⁷⁵

Whether some of bill’s language is procedural, remedial, or substantive, and whether such modification implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 17, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that the board must respond to a written request for a detailed accounting within 10 business days.
- Provides that after a person makes a written request for a detailed accounting, the person may not ask for another detailed accounting for 90 calendar days.
- Provides that the lien of the association is subordinate to that of a mortgage, rather than only a first mortgage, that was recorded prior to the filing of a notice of association lien.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

⁶⁸ U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.

⁶⁹ U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.

⁷⁰ A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John’s Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).

⁷¹ *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

⁷² *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

⁷³ *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

⁷⁴ U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.

⁷⁵ *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); see, e.g., *Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction’s expiration date both impaired contracts and constituted a taking of private property without due process).