

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 Regulated Industries

BILL: SB 426

INTRODUCER: Senators Garcia and Jones

SUBJECT: Community Associations

DATE: January 2 , 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 426 establishes a Condominium Fraud Investigation Pilot Program (pilot program) within the Department of Legal Affairs, Office of the Attorney General, for the purpose of investigating condominium-related fraud and corruption in Florida.

The bill authorizes the Department of Legal Affairs to contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud or, alternatively, to hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program.

The bill provides that a person may submit a complaint to the Office of the Condominium Ombudsman within the Department of Business and Professional Regulation, who must review all submitted complaints and determine which complaints to forward to the Department of Legal Affairs, which may issue subpoenas and conduct audits for investigations, and may administer oaths, subpoena witnesses, and compel the production of books, papers, or other records relevant to such investigations. If the Department of Legal Affairs finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate state attorney for prosecution.

The bill provides that the Department of Legal Affairs must fund the pilot program from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as specifically appropriated annually in the General Appropriations Act. The authority for the pilot program is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also:

- Exempts the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, from the eight percent service charge required by s. 215.20(1), F.S.

- Requires the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) to monitor associations' compliance with the requirement in this paragraph that associations must maintain insurance or fidelity bonding of all persons who control or disburse funds of the association, and to issue fines and establish penalties for failure to maintain the required insurance policy or fidelity bond.
- Requires the division to establish, by July 1, 2026, a searchable cloud-based database that contains specified information and documentation regarding each condominium association operating within Florida, which must allow a user to search the name by which a condominium property is identified to find the association that governs such property.
- Requires the division to forward complaints that allege fraud or corruption to the Office of the Condominium Ombudsman (condominium ombudsman) for review pursuant to pilot program requirements in the bill.
- Expands the duties and powers of the condominium ombudsman by authorizing the condominium ombudsman to void an election if he or she determines violations have occurred, to appoint petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners, and to issue subpoenas and conduct audits for investigations for the purposes of the pilot program.

The bill also establishes the Office of the Homeowners' Association Ombudsman (HOA ombudsman) within the Department of Business and Professional Regulation. The office of the HOA ombudsman must be funded by the General Appropriations Act. The HOA ombudsman must be appointed by the Governor, be an attorney admitted to practice before the Florida Supreme Court, and serve at the pleasure of the Governor.

The bill sets forth the powers of the HOA ombudsman, including acting as a liaison between the DBPR, parcel owners, boards of directors, board members, community association managers, and other affected parties, making recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by parcel owners, associations, or managers, and appointing an election monitor under certain conditions.

The bill takes effect July 1, 2024.

II. Present Situation:

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718, F.S., for condominium associations.

Section 718.501, F.S., provides the investigative and enforcement authority of the division. The division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899, F.S. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control, including investigating complaints against developers involving improper turnover or failure to transfer control to the

association.¹ After control of the condominium is transferred from the developer to the unit owners, the division only has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.²

Fees and Trust Fund

The Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund (trust fund) is used for administration and operation of ch. 718, F.S., relating to condominium associations, ch. 719, F.S., relating to cooperative associations, s. 721, F.S., relating to vacation and timeshare plans, and ch. 723, F.S., relating to mobile homes, by the division. All moneys collected by the division from fees, fines, penalties, or from costs awarded to the division by a court or administrative final order must be deposited in the trust fund.³

The operation of the trust fund is subject to s. 215.20, F.S., which provides an eight percent service charge from all income of a revenue nature deposited in all trust funds except those which are exempted in s. 215.22, F.S.

Each condominium association which operates more than two units is required to pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association is assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid. These fees must be deposited in the trust fund.

Condominiums

A condominium is a “form of ownership of real property created under ch. 718, F.S.”⁴ the “Condominium Act.” 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.⁵ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁶ Condominiums are created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed.⁷

The term “condominium” is defined in the Condominium Act to mean:⁸

...that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more

¹ *Id.*

² Section 718.501(1), F.S.

³ Section 718.509, F.S.

⁴ Section 718.103(11), F.S.

⁵ *See* s. 718.103, F.S., for the terms used in the Condominium Act.

⁶ *Id.*

⁷ Section 718.104(2), F.S.

⁸ Section 718.103(12), F.S.

persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

Condominium Ombudsman

The Office of the Ombudsman (condominium ombudsman) within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the condominium ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁹

The condominium ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.¹⁰

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹¹

A "homeowners' association" is defined as a:¹²

Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.¹³

Homeowners' associations are administered by a board of directors that is elected by the members of the association.¹⁴ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-

⁹ Sections 718.5011 and 718.5012, F.S.

¹⁰ *Id.*

¹¹ *See* s. 720.302(1), F.S.

¹² Section 720.301(9), F.S.

¹³ Section 720.302(5), F.S.

¹⁴ *See* ss. 720.303 and 720.307, F.S.

adopted amendments to these documents.¹⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁶

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.], the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The division has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.¹⁷

Department of Legal Affairs

The Department of Legal Affairs (DLA) within the Office of the Attorney General provides a wide variety of legal services. The DLA defends the state in civil litigation cases, represents the people of Florida in criminal appeals in state and federal courts, operates consumer protection programs and victim service programs, prosecutes some criminal offenses, and investigates Medicaid fraud.¹⁸

III. Effect of Proposed Changes:

Condominium Fraud Investigation Pilot Program

Section 1 of the bill creates s. 16.0151, F.S., to establish the Condominium Fraud Investigation Pilot Program (pilot program) within the DLA.

¹⁵ See ss. 720.301 and 720.303, F.S.

¹⁶ Section 720.303(1), F.S.

¹⁷ Section 720.306(9)(c), F.S.

¹⁸ Office of Program Policy Analysis and Government Accountability, *Office of the Attorney General (Department of Legal Affairs)*, at: <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026> (last visited January 31, 2024).

Section 16.0151(2), F.S., provides that the purpose of the pilot program is to investigate condominium-related fraud and corruption in Florida.

The bill authorizes the DLA to contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud. If the DLA does not contract with a private entity, the DLA must hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program.

Section 16.0151(2), F.S., provides that a person may submit a complaint to the condominium ombudsman, who must review all submitted complaints and determine which complaints to forward to the DLA for additional analysis and investigation under the pilot program. If a complaint submitted to the condominium ombudsman does not contain allegations of fraud or corruption, the condominium ombudsman must forward the complaint to the division, which must investigate claims made pursuant to its duties and powers set forth in s. 718.501, F.S.

Section 16.0151(3), F.S., provides that the DLA has the power to issue subpoenas and conduct audits for investigations, and may administer oaths, subpoena witnesses, and compel the production of books, papers, or other records relevant to such investigations. If, after reviewing a complaint filed under the pilot program, the DLA finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate state attorney for prosecution.

Section 16.0151(4), F.S., provides the DLA shall fund the pilot program from the trust fund as specifically appropriated annually in the General Appropriations Act.

Section 16.0151(5), F.S., provides that this section is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Trust Funds

Section 2 of the bill revises s. 215.22, F.S., to exempt the trust fund, from the appropriation required by s. 215.20(1), F.S., which provides an eight percent service charge from all income of a revenue nature deposited in all trust funds except those which are exempted in s. 215.22, F.S.

Insurance of Fidelity Bonds

Section 3 of the bill revises s. 718.111(11)(h), F.S., to require the division to monitor associations' compliance with the requirement in this paragraph that associations must maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The bill authorizes the division to issue fines and establish penalties for failure to maintain the required insurance policy or fidelity bond.

Database for Condominium Association Information

Section 4 of the bill creates s. 718.13, F.S., to require the division to establish, by July 1, 2026, a searchable cloud-based database that contains information regarding each condominium

association operating within Florida. The database must allow a user to search the name by which a condominium property is identified to find the association that governs such property.

Section 718.13(1), F.S., requires that the database include all of the following information for each association:

- The names, e-mail addresses, and other contact information of officers and directors of the association.
- An indication that the association is self-managed, or, if not self-managed, the contact information for any person licensed under part VIII of ch. 468, F.S., relating to the regulation of community association managers and management firms, and responsible for management of the association.
- A copy of the association's governing documents, including, but not limited to, declarations, bylaws, and rules and any amendments thereto.
- A copy of the association's adopted annual budget, in a file format that is compatible with the database, which includes the amount and purpose of any monthly assessments and current or pending special assessments levied by the association.
- A copy of any studies regarding funds in reserve accounts held by the association or any reports regarding the physical inspection of properties maintained by the association, including any structural integrity reserve studies conducted under s. 718.112(2)(g), F.S., of such properties.

Section 718.13(2), F.S., requires associations to notify the division of any changes to the information related to the association which is included in the database within 30 days after such changes occur.

Section 718.13(3), F.S., provides that the expenses associated with the creation and administration of the database must be funded in part by proceeds from the annual fee paid by associations pursuant to s. 718.501(2)(a), F.S.

The bill does not require condominium associations to submit or report any of the listed information to the division.

Condominium Ombudsman – Powers and Duties

Section 5 of the bill revises s. 718.501, F.S., to require the division to forward complaints that allege fraud or corruption to the condominium ombudsman pursuant to s. 16.0151, F.S.

Section 6 of the bill revises s. 718.5012, F.S., to expand the duties and powers of the condominium ombudsman by authorizing the condominium ombudsman to:

- Void an election if the condominium ombudsman determines that a violation of this chapter has occurred relating to condominium elections.
- Petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners.
- Issue subpoenas and conduct audits for investigations for the purposes of the Condominium Fraud Investigation Pilot Program established under s. 16.0151, F.S.

Trust Fund

Section 7 of the bill revises s. 718.509, F.S., relating to the trust fund to delete the provision that subjects the operation of the trust fund to the eight percent service charge in s. 215.20, F.S.

Homeowners' Association Condominium

Section 8 of the bill creates s. 720.319, F.S., to establish the Office of the Homeowners' Association Ombudsman (HOA ombudsman) within the DBPR.

Section 720.319(1), F.S., provides that:

- The functions of the office of the HOA ombudsman shall be funded by the General Appropriations Act.
- The HOA ombudsman must be appointed by the Governor, be an attorney admitted to practice before the Florida Supreme Court, and serve at the pleasure of the Governor.
- The HOA ombudsman and an officer, or a full-time employee of the HOA ombudsman's office, are prohibited from activities or any other business or profession that directly or indirectly relates to or conflicts with his or her work in the HOA ombudsman's office.
- The HOA ombudsman must maintain his or her principal office at a location convenient to the DBPR, which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office, including branch offices upon the concurrence of the Governor.

Section 720.319(2), F.S., sets forth the powers and duties of the HOA ombudsman, to include, but not be limited to:

- Having access to and use of all files and records of the division.
- Employing professional and clerical staff as necessary for the efficient operation of the office.
- Preparing and issuing reports and recommendations to the Governor, the DBPR, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of ch. 720, F.S.
- Acting as a liaison between the DBPR, parcel owners, boards of directors, board members, community association managers, and other affected parties.
- Developing policies and procedures to assist parcel owners, boards of directors, board members, community association managers, and other affected parties in understanding their rights and responsibilities as set forth in this chapter and in the governing documents of their respective associations.
- Coordinating and assisting in the preparation and adoption of educational and reference materials and shall endeavor to coordinate with private or volunteer providers of such services so that the availability of such resources is made known to the largest possible audience.
- Monitoring and reviewing procedures and disputes concerning association elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner if there is reasonable cause to believe that election misconduct has occurred, as well as reviewing secret ballots cast at a vote of the association.
- Making recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by parcel owners, associations, or managers.

- Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter and the governing documents of their respective associations.
- Encouraging and facilitating voluntary meetings between parcel owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a homeowners' association before a person submits a dispute for a formal or administrative remedy.
- Acting as a neutral resource for the rights and responsibilities of parcel owners, associations, and board members.
- Assisting with the resolution of disputes between parcel owners and the association, or between parcel owners, if applicable.
- Appointing an election monitor.

Section 720.319(3), F.S., authorizes and provides conditions for the HOA ombudsman to monitor elections in homeowners' associations. Under the bill, 15 percent of the total voting interests in a homeowners' association, or six parcel owners, whichever is greater, of a homeowners' association may petition the HOA ombudsman to appoint an election monitor to attend the annual meeting of the parcel owners and conduct the election of directors.

The HOA ombudsman must appoint a division employee, a person who specializes in homeowners' association election monitoring, or a Florida-licensed attorney as the election monitor. Under the bill, the association must pay all costs associated with the election monitoring process.

The bill authorizes the division to adopt rules establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

Effective Date

The bill takes effect July 1, 2024.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill revises s. 718.501(1), F.S., but does not include paragraphs (a) through (s) of that subsection. Section 6, Article III of the State Constitution requires laws to be revised or amended by setting out in full the revised or amended act, section, subsection or paragraph of a subsection.

VII. Related Issues:

The bill creates s. 718.13, F.S., to require the division to establish a cloud-based, searchable database that contains specified information and documentation. However, it is not clear how the division is to acquire the information and documentation because the bill does not require condominium associations to submit or report any of the listed information or documentation to the division.

The bill creates s. 16.0151, F.S., to provide for the investigation by the condominium ombudsman of complaints alleging fraud or corruption. The bill also revises s. 718.501, F.S., to require the division to forward complaints that allege fraud or corruption to the condominium ombudsman pursuant to s. 16.0151, F.S. The term “corruption” is not defined in the bill or the Florida Statutes. It is not clear, under the bill, if the types of “corruption” that trigger a referral to the condominium ombudsman and an investigation, are limited to violations that are criminal in nature or if the term “corruption” also encompasses non-criminal violations under ch. 718, F.S., and violations that are contractual in nature, such as violations of the association’s governing documents. The bill introducer may wish to consider amending the bill to clarify the types of conduct that may constitute “corruption.”

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.22, 718.111, 718.501, 718.5012, and 718.509.

This bill creates the following sections of the Florida Statutes: 6.0151, 718.13, and 720.319.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
