

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: SPB 7046

INTRODUCER: For consideration by the Regulated Industries Committee

SUBJECT: Homeowners' Associations

DATE: January 26, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	_____	RI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7046 relates to the governance of homeowners' associations.

Regarding fines assessed in homeowners' associations, the bill:

- Allows association members to make a written request for a detailed accounting of any amounts owed to the association, and provides that, if the association fails to provide the accounting within 15 business days of a written request, any outstanding fines of the person who requested such accounting are waived if the fine is more than 30 days past due and the association did not give prior written notice of the fines.
- Increases the prohibition against fines of less \$1,000 becoming a lien against the parcel to fines of less than \$2,500.
- Requires the association to apply the payment for a fine to the fine amount before satisfying any other amounts due to the association, and provides that attorney fees and costs may not continue to accrue after the fine is paid.
- Prohibits certain fines from becoming a lien on a parcel, such as violations related to lawn, landscaping, grass maintenance, and traffic violations.
- Prohibits homeowners' associations from issuing fines or imposing a suspension based on:
 - Leaving garbage receptacles on the street for a certain time period; and
 - Leaving holiday decorations or lights up under certain circumstances.
- Prohibits homeowners' associations from preventing a homeowner from installing or displaying vegetable gardens and clotheslines in areas not visible from the frontage or adjacent parcels.

The bill prohibits homeowners' associations from retroactively applying a new rule or covenant against a parcel owner, except against a parcel owner who consented to the new covenant or rule and a parcel owner who acquires the title to the parcel after the effective date of the new covenant or rule.

The bill also provides that homeowners' associations may not prohibit a homeowner or their tenant, guest, or invitee from parking:

- A personal vehicle, including a pickup truck, in the property owner's driveway or in common parking lots.
- A work vehicle, which is not a commercial motor vehicle, in the property owner's driveway.
- Their assigned law enforcement vehicle on public roads or rights-of-way within the homeowners' association.

The bill provides the following criminal penalties related to homeowners' associations, including matters related to the official records of the association:

- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept any thing or service of value or kickback;
- First degree misdemeanor for knowingly or intentionally defacing or destroying required accounting records or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;
- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association; and
- Third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

The bill also expands the current criminal prohibitions against fraudulent voting activity to provide that a person who performs any of the following actions commits a misdemeanor of the first degree:

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections;
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections; or
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

The bill provides that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Under the bill, any officer or director charged with a criminal violation under ch. 720, F.S., is deemed removed from office and a vacancy declared. The bill also provides that directors and officers of a homeowners' association are subject to the general standards for directors outlined in the Florida Not For Profit Corporations Act, s. 617.0830, F.S.

The bill takes effect July 1, 2024.

II. Present Situation:

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.¹

A "homeowners' association" is defined as a:²

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.³

Homeowners' associations are administered by a board of directors that is elected by the members of the association.⁴ 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-adopted amendments to these documents.⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁶

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

¹ See s. 720.302(1), F.S.

² Section 720.301(9), F.S.

³ Section 720.302(5), F.S.

⁴ See ss. 720.303 and 720.307, F.S.

⁵ See ss. 720.301 and 720.303, F.S.

⁶ Section 720.303(1), F.S.

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 of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.⁷

The governing documents of a homeowners' association are:⁸

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

Section 720.301(3), F.S., defines a "community" as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

Other Relevant Topics

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Official Records – Homeowners' Associations

Present Situation

Florida law specifies the official records that homeowners' associations must maintain.⁹ Generally, the official records must be maintained in Florida for at least seven years.¹⁰ Certain types of these records must be accessible to the members of an association.¹¹ Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.¹²

⁷ Section 720.306(9)(c), F.S.

⁸ Section 720.301(8), F.S.

⁹ See s. 720.303(5), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

The official records that the association must make available to the members for inspection and copying include, in relevant part, a copy of the:¹³

- Bylaws of the association and of each amendment to the bylaws.
- Articles of incorporation of the association and of each amendment thereto.
- Declaration of covenants and a copy of each amendment thereto.
- Current rules of the homeowners' association.

Effect of Proposed Changes

The bill amends s. 720.303(5), F.S., to provide the following additional criminal prohibitions and penalties for violations related to the official records:

- Second degree misdemeanor¹⁴ for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to the inspection and copying of official records of an association;
- First degree misdemeanor¹⁵ to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members; and
- Third degree felony¹⁶ to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

The bill provides that officers and directors charged with a criminal violation created in the bill are deemed removed from office and a vacancy declared.

Financial Accounting – Homeowners’ Associations

Present Situation

Every homeowners’ association is required to prepare an annual budget that sets out the annual operating expenses. The budget must:¹⁷

- Reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year.
- Set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person.

¹³ Section 720.303(4), F.S.

¹⁴ Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

¹⁵ Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

¹⁶ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

¹⁷ Section 720.303(6)(a), F.S.

The homeowners' association must provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the homeowners' association is responsible.¹⁸ Depending on the association's governing documents, an association's budget may provide for reserve accounts.¹⁹ Upon approval by the membership, the board of directors must include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter.²⁰

The financial and accounting records of a homeowners' association are required official records and must be maintained by the association and made available to its members for inspection and copying.²¹ Additionally, the homeowners' association 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 must also be available upon written request for a member of the association to inspect and copy.

Effect of Proposed Changes

The bill creates s. 720.303(14), F.S., to provide 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 association, and the board must provide such information within 15 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.

Under the bill, the board's failure to respond to a written request for a detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested such accounting which are more than 30 days past due and the association did not give prior written notice of the fines.

Debit Cards – Homeowners' Associations

Present Situation

Section 718.111(15)(a), F.S., prohibits persons from using a debit card issued in the name of, or billed directly to, a condominium association for any expense. Section 718.111(15)(b), F.S., provides that any person using an association debit card for an unlawful expense may be prosecuted for credit card fraud under s. 718.61, F.S.

¹⁸ Section 720.303(6)(b), F.S.

¹⁹ Section 720.303(6)(d), F.S.

²⁰ Section 720.303(6)(c)(1), F.S.

²¹ Section 720.303(4), F.S.

Effect of Proposed Changes

The bill creates s. 720303(13), F.S., to prohibit persons to use a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Under the bill, a person commits theft²² by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association. The bill defines the term “lawful obligation of the association” as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

Under the bill, a person who violates this prohibition is deemed removed from office and a vacancy declared.

Officers and Directors - Fiduciary Duty - Homeowners' Associations

Present Situation

The officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association.²³ Homeowners' associations created under ch. 720, F.S., are corporations governed by and subject to part I of ch. 607, F.S., relating to the Florida Business Corporation Act, if the association was incorporated under that part, or to ch. 617, F.S., relating to corporations not for profit, if the association was incorporated under that chapter.

Section 617.0830, F.S., provides general standards for directors of a non-profit corporation, and also specifies when a director is not personally liable for actions he or she takes or fails to take as a director. A director must discharge his or her duties as a director, including his or her duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.²⁴ A director is not liable for any action taken as a director, or any failure to take any action, if the duties of office are performed in compliance with s. 617.0830, F.S.²⁵

Kickbacks Prohibition

An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association is subject to monetary damages. If the board finds that an

²² Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. *Id.*

²³ Section 720.303(1), F.S.

²⁴ Section 617.0830(1), F.S.

²⁵ Section 617.0830(4), F.S.

officer or director has violated this condition, the board must immediately remove the officer or director from office.²⁶

The vacancy must be filled according to law until the end of the director's term of office.

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.²⁷

Removal from Office for Certain Violations

Section 720.3033(4), F.S., requires a board to immediately remove from office any officer or director who is charged with:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election punishable as a felony crime as provided in s. 831.01, F.S.;²⁸
- Felony theft or embezzlement involving association funds;
- Destruction of or refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.; or
- Obstruction of justice.

A vacancy must be filled as provided by s. 720.306(9), F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.²⁹

If a criminal charge is pending against an officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. An officer or director must be reinstated for the remainder of his or her term of office if the charges are resolved without a finding of guilt.

Effect of Proposed Changes

The bill amends s. 720.303(1), F.S., relating to the powers and duties of homeowners' associations, to provide that the officers and directors of a homeowners' association are subject to s. 617.0830, F.S.

The bill amends s. 720.3033(3), F.S., to provide that an officer, director, or manager of an association who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his

²⁶ Section 720.303(3), F.S.

²⁷ Section 720.3033(3), F.S.

²⁸ Section 831.01, F.S., relates to the crime of forgery. A forgery violation is a felony of the third degree. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

²⁹ Section 720.306(9), F.S., relates to elections and vacancies on a board. It also prohibits convicted felons, including persons who've been convicted in another jurisdiction which would be considered a felony crime in Florida, of serving on a board for at least five years as of the date the person seeks election to the board, unless their civil rights have been restored.

or her immediate family, from any person providing or proposing to provide goods or services to the association commits a third degree felony.³⁰ If the board finds that an officer or director has violated this prohibition, the officer or director is deemed removed from office and a vacancy declared.

The bill also amends s. 720.3033(4), F.S., to require the removal from office and a vacancy declared if an officer or director is charged by information or indictment with any criminal violation under ch. 720, F.S.

Architectural Control – Homeowners’ Associations

Present Situation

If the governing documents allow, a homeowners’ association or its architectural, construction improvement, or other similar committee (committee) may:³¹

- 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 association or its committee 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.³²

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 association or its committee. If the association or its committee 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.³³

A homeowners’ association or committee 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.³⁴

Effect of Proposed Changes

The bill amends s. 720.3035(1), F.S., to prohibit homeowners’ associations and their committees from enforcing or adopting a covenant, rule, or guideline that:

³⁰ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

³¹ Section 720.3035(1), F.S.

³² Section 720.3035(2), F.S.

³³ Section 720.3035(4), F.S.

³⁴ Section 720.3035(5), F.S.

- 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 association or any architectural, construction improvement, or other such similar committee of an association, 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 association or a committee thereof.

Prohibited Clauses in Governing Documents

Present Situation

Under current Florida law, homeowners' associations 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 artificial turf, boats, flags of specified sizes, flag poles, and recreational vehicles.³⁵

Homeowners' association's 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.³⁶
- Any property owner from implementing Florida-friendly landscaping³⁷ on his or her land or create any requirement or limitation in conflict with any provision of part II of ch. 373, F.S., relating to 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 ch. 373, F.S.

Effect of Proposed Changes

The bill amends s. 720.3045, F.S., to expand the list of items that homeowners' associations are prohibited from preventing homeowners 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 also amends s. 720.3075(3), F.S., to provide that the homeowners' association's governing documents cannot prohibit a property owner, a guest, tenant, or invitee from parking his or her:

- Personal vehicle, including a pickup truck in the property owner's driveway or in common parking lots.
- Work vehicle, which is not a commercial motor vehicle,³⁸ in the property owner's driveway.

³⁵ Section 720.3045, F.S.

³⁶ Section 720.3075(3), F.S.

³⁷ See s. 373.185(1)(b), F.S., defining the term "Florida-friendly landscaping."

³⁸ Section 320.01(25), F.S., defines the term "commercial motor vehicle" to mean "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."

In addition, the governing documents may not prohibit 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 homeowners' association.
- 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 license. The homeowners' association 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.
- 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.
- Installing a metal roof, artificial turf, vegetable garden, or clotheslines or other energy-efficient device.

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

Fines

Present Situation

Parcel owners, tenants, and guests must comply with the homeowners' association's declaration, bylaws, and rules. Homeowners' associations may levy fines against or suspend the right of a parcel owner, occupant, or a guest of an owner or occupant, to use the common areas³⁹ or any other association property for failing to comply with any provision in the association's governing documents. A suspension for failing to comply with an association's declaration, bylaws, or rules may not be for an unreasonable amount of time.⁴⁰

Homeowners' associations may levy reasonable fines for violations of the declaration, bylaws, or reasonable rules of the association. 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 association's governing documents authorize such a fine. A fine that is less than \$1,000 may not become a lien on the property.⁴¹

Before a homeowners' association 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 association's official records. A hearing must be provided before a committee of at least three members appointed by the board

³⁹ 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. Section 720.305(2)(a), F.S.

⁴⁰ Section 720.305(2), F.S.

⁴¹ Section 720.305(2), F.S.

who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. 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.

The committee must approve the fine or suspension by majority vote or the proposed fine or suspension may not be imposed.⁴² After the hearing, the committee must provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records, of the committee's findings 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.⁴³

If the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the fine payment is due five 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 also be provided to the person by mail or hand delivery.⁴⁴

If a person is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the homeowners' association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until it is paid in full.⁴⁵

A homeowners' association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association that is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the association.⁴⁶

The notice and hearing requirements for levying fines do not apply to a suspension imposed for delinquent payment.⁴⁷

All suspensions imposed for delinquent payment of any fee, fine, or other monetary obligation due to the homeowners' association must be approved at a properly noticed board meeting. Upon approval, the association 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 association's official records.⁴⁸

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ A suspension may not prohibit an owner or tenant of a parcel from having access to 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. Section 720.305(4), F.S.

⁴⁶ Section 720.305(4), F.S.

⁴⁷ Section 720.305(3), (4), F.S.

⁴⁸ Section 720.305(5), F.S.

Effect of Proposed Changes

The bill amends s. 720.305(2), F.S., to provide that a fine of less than \$2,500 may not become a lien against the parcel.

The bill amends s. 720.305(2)(b), F.S., to require that the 14-day notice of the parcel owner's right to a hearing must be in writing, and requires that the hearing must be held within 30 days after issuance of the notice. The bill allows the committee 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 other electronic means.

The bill amends s. 720.305(2)(d), F.S., to require that the committee's written notice of its findings related to the violation must be provided to the parcel owner, or to any occupant, licensee, or invitee of the parcel owner who is subject to the fine or suspension, within seven days after the hearing. If applicable, the written notice of the committee's findings must provide instructions on how a suspension is to be fulfilled, or the date by which a fine must be paid. The written notice must also state the date the fine is due, which must be at least 30 days after the notice is delivered.

Under the bill, the homeowners' association must apply the payment for a fine to the fine amount before satisfying any other amounts due to the association, and attorney's fees and costs may not continue to accrue after the fine is paid.

The bill creates s. 720.305(7), F.S., to prohibit homeowners' associations filing a lien on the parcel based on fines relating to lawn, landscaping, or grass maintenance. In addition, a fine based on a traffic infraction may not become a lien on the parcel.

The bill creates s. 720.305(8), F.S., to prohibit homeowners' associations from issuing 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 one week after the association provides written notice of the violation to the parcel owner.

Section 720.305(9), F.S., prohibits associations from retroactively applying a new rule or covenant against a parcel owner, except against a parcel owner who consented to the new covenant or rule and a parcel owner who acquires title to the parcel after the effective date of the new covenant or rule.

Fraudulent Voting Activities

Present Situation

Section 720.3065, F.S, provides that each of the following actions relating to homeowners' association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:⁴⁹

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

Effect of Proposed Changes

The bill amends s. 720.3065, F.S, revising the list of actions that may constitute fraudulent voting activity. Under the bill, a person who performs any of the following actions relating to homeowners' association elections commits a misdemeanor of the first degree:⁵⁰

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

These additional criminal prohibitions do not apply to a licensed attorney giving legal advice to a client.

⁴⁹ Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

⁵⁰ *Id.*

Law Enforcement Vehicles

Present Situation

Section 720.318, F.S., prohibits homeowners' associations from preventing a law enforcement officer⁵¹ 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.⁵²

Effect of Proposed Changes

The bill amends s. 720.318, F.S., to provide that homeowners or their tenant, guest, or invitee may park their assigned law enforcement vehicle on public roads or rights-of-way within the homeowners' association.

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:

The governing documents of a homeowners' association are a contract. To the extent this bill affects previously recorded governing documents by prohibiting the enforcement of governing documents, the bill may unconstitutionally impair a contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, "No... law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that "No state shall . . . pass any . . . law impairing the obligation of contracts."

⁵¹ See s. 943.10(1), F.S., defining the term "law enforcement officer."

⁵² Section 720.318, F.S.

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,⁵³ the Florida Supreme Court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether a state law operates as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Was the law enacted to deal with a broad, generalized economic or social problem;
- Does the law operate in an area that was already subject to state regulation at the time the contract was entered into; and
- Is the law's effect on the contractual relationships temporary or is it severe, permanent, immediate, and retroactive.⁵⁴

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 the following sections of the Florida Statutes: 720.303, 720.3033, 720.3035, 720.3045, 720.305, 720.3065, 720.3075, 720.3085, and 720.318.

⁵³ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

⁵⁴ *Id.* at 779.

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.
