

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 14, 1998 Revised: _____

Subject: Homeowners' Associations

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 2068 makes the following revisions to the provisions of the Florida Statutes relating to mandatory homeowners' associations: requires that board meetings be held in the county in which the association is located; addresses commingling of funds; provides a list of documents which must be delivered by the developer to the association upon transition of control; prohibits certain clauses in the associations' governing documents; requires specified disclosures to prospective purchasers; provides for reserve and operating accounts; and provides for alternative dispute resolution.

This bill substantially amends the following sections of the Florida Statutes: 617.303, 617.307, 617.311 and 689.26. The bill creates the following sections of the Florida Statutes: 617.3075 and 617.3077.

II. Present Situation:

Chapter 94-350, Laws of Florida, required the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (the division) to conduct a study concerning "laws governing mandatory associations and residential subdivisions" and to report to the Legislature. While the division was directed to evaluate any changes which would be "appropriate to protect the interests of consumers," the Legislature was specifically interested in the issues of control of an association's operations; agreements for recreational amenities, management, and maintenance; and disclosure of covenants concerning real property.

In December 1994, the division produced its Report on Mandatory Homeowners' Associations that became the basis for substantive legislation during the 1995 session. Chapter 95-274, Laws of Florida, substantially amended ch. 617, F.S. Sections 617.302 - 617.312, F.S., were enacted to

govern disclosures to prospective purchasers, association powers and duties, obligations and remedies of members, voting and election procedures, transaction of association control, and association contracts. The purposes of these sections are to give statutory recognition to corporations that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions. These statutes do not apply to associations subject to chs. 718, 719, 721, or 723, F.S.

Subsection 617.301(7), F.S., defines a "homeowners' association" as a Florida corporation responsible for the operation of a community in which the voting membership is made up of parcel owners or their agents, or a combination thereof, 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. The term does not include a community development district or other similar special taxing district created pursuant to statute.

Section 617.303, F.S., governs an association's powers and duties, including its budget and financial reporting obligations; however, this section does not specifically address the issue of commingling of the associations' funds.

Section 617.307, F.S., provides for the transition of control from the developer to the homeowners' association. The statute authorizes members other than the developer to elect the majority of the board of directors of the association when the earlier of two events occurs:

- (1) Three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members;
or
- (2) Such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.

Section 689.26, F.S., requires that a prospective purchaser of property in a mandatory homeowners' association be presented a disclosure summary prior to executing a contract for sale. The statute specifies the form and contents of the disclosure summary, and provides that the disclosure be supplied by the developer, or by the parcel owner if the sale is by an owner other than the developer.

III. Effect of Proposed Changes:

Section 1 amends s. 617.303(2), F.S., to require that homeowners' association board meetings be held at a location within the county in which the association is located.

Section 617.303(8), F.S., is created to prohibit commingling of an association's funds. Paragraph (a) requires that all funds must be maintained separately in the association's name. The

association's reserve and operating funds may not be commingled, except that an association may jointly invest reserve funds in mutual bond funds rated BBB or higher. This paragraph further provides that any jointly invested funds must be accounted for separately. Paragraph (b) prohibits a developer in control of an association from commingling association funds with his or her own funds or those of any other homeowners' association.

Section 2 amends s. 617.307, F.S., relating to the transition of association control from the developer to the homeowners. Subsection (2) is created to require that the developer, at his or her own expense, deliver to the association, after transition of control, the following association documents: all deeds to common property; the original of the association's articles of incorporation; a copy of the bylaws; the minute books, including all minutes; the books and records of the association; all adopted policies, rules and regulations; resignations of the directors who are required to resign for transition; the financial records of the association from the date of incorporation through the date of turnover; all association funds and control thereof; all tangible property of the association; a copy of all contracts in force with the association; a list of names, addresses and telephone numbers of all contractors, subcontractors or others employed by the association; all insurance policies in effect; any permits issued to the association by governmental entities; all warranties in effect; and a roster of current homeowners and their addresses, telephone numbers, and section and lot numbers. Subsection (3) is created to require that, within 12 months after transition, the developer give to the board of directors financial statements for the last five years. The financial statements must be compiled if the annual budget is under \$400,000, or reviewed if the annual budget is \$400,000 or more.

Section 3 creates s. 617.3075, F.S., to prohibit the inclusion or enforcement of the following types of clauses within an association's governing documents:

- ▶ Authorizing the developer to unilaterally make changes to the homeowners' association documents after the transition of control from the developer to the homeowners;
- ▶ Prohibiting the homeowners' association from suing the developer; and
- ▶ Authorizing the developer to cast votes in excess of one per lot after the transition of control of the association from developer to homeowners;

Subsection (2) is created to clarify that the prohibition on including these clauses applies prospectively to clauses created on or after the effective date of this act.

Section 4 creates s. 617.3077, F.S., to provide for reserve and operating accounts of a homeowners' association. This section requires that reserve accounts for all expenditures of deferred maintenance, repairs, or replacement of common property be established at the time the association is created.

Section 5 amends s. 617.311, F.S., to provide for alternative dispute resolution, voluntary mediation, voluntary binding arbitration, and legislative findings.

Subsection (1) provides legislative findings that support alternative dispute resolution and recognize that parcel owners are frequently at a disadvantage when litigating against an association. This section provides that alternative dispute resolution should not be used to encourage the filing of frivolous lawsuits. Further, this section establishes that a need exists for flexible means of alternative dispute resolution and that voluntary binding arbitration may relieve some of the delay parcel owners have experienced with circuit court litigation.

Subsection (2) provides definitions of arbitration and dispute.

Subsection (3) encourages voluntary mediation through Citizen Dispute Settlement Centers as provided in s. 44.201, F.S. According to the Office of the State Courts Administrator, there are 15 such centers across the state.

Subsection (4) provides that voluntary binding arbitration may be requested pursuant to s. 44.104, F.S.

Section 6 amends s. 689.26, F.S., which provides a disclosure summary form for prospective purchasers of association controlled property. The bill creates a new provision stating that the documents are matters of public record and can be obtained from the record office in the county where the property is located. Further, the bill adds a requirement that any contract or agreement for sale must refer to and incorporate the disclosure summary and must include a statement that the potential buyer should not execute the contract or agreement until he or she has received and read the disclosure summary.

Section 12 provides an effective date of October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 544, which has passed out of the Senate Community Affairs and Judiciary Committees, contains many of the same or similar provisions as this bill. Some provisions of SB 544 conflict with the provisions of this bill.

VIII. Amendments:

None.