

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.)

BILL: CS/SB 814

SPONSOR: Regulated Industries Committee & Senator Saunders

SUBJECT: Homeowner's Assoc. & Cooperatives

DATE: March 11, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill:

- Allows a grantor or a beneficiary of an inter vivos trust to serve on the board of directors of a for-profit condominium association, cooperative association, homeowners' association, or mobile homeowners' association;
- Inserts the same provisions in the not-for-profit statutes;
- Includes mobile home subdivisions in the definition of "homeowners' association";
- Amends sections in the cooperative statutes to better conform them to corresponding sections in the condominium statutes;
- Allows the conducting of penny-ante games and bingo games by cooperative associations and homeowners' associations;
- Provides that where corporate membership is limited to certain property owners and the corporation has been formed for the benefit of those property owners, no such property owner can be excluded from corporate membership; and,
- Provides that a mobile home subdivision may create a homeowners' association pursuant to the homeowners' association pursuant to the mobile home park homeowners' association statutes, under certain circumstances.

The bill substantially amends the following sections of the Florida Statutes: 849.085, 849.0931, 719.103, 719.1035, 719.104, 719.1055, 719.106, 607.0802, 617.0802, and 617.301. The bill creates sections 719.115 and 719.116 of the Florida Statutes.

II. Present Situation:

Cooperative ownership and condominium ownership are both means of owning an interest in and occupying a multiple-occupant structure. With cooperative ownership, legal title of the building and common areas is vested in a corporation or other entity and the occupants' beneficial use of the dwelling unit and common areas is evidenced by an ownership interest in the association and a

lease interest in the property. s. 719.103(12), F.S. With condominium ownership, each unit, together with an undivided share in common elements, is owned by one or more persons. s. 718.103(11), F.S. The statutes controlling these two forms of ownership are generally very similar.

Section 849.085, F.S., provides that it is not a crime for a person to participate in penny-ante games if specified restrictions are met, including playing the games in a “dwelling.” “Dwelling” is currently defined to include the common elements or recreational areas of a condominium or mobile home park. Additionally, the conduct of any penny-ante game within the common elements or recreation area of a condominium or mobile home park does not create any civil liability for damages arising from the penny-ante game on the part of a condominium association, mobile home owner's association, dwelling owner, or municipality or county or on the part of a unit owner who was not a participant in the game. (“Penny-ante game” means a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value.)

Section 849.0931(5), F.S., provides that a condominium association, a mobile home owners' association, a group of residents of a mobile home park, or a group of residents of a recreational vehicle park may conduct bingo games, subject to certain requirements.

III. Effect of Proposed Changes:

Sections 1 and 2 amend sections 849.085 and 849.0931, F.S., to allow cooperative associations and homeowners' associations to conduct penny-ante and bingo games, subject to the same restrictions as condominium associations and the other dwellings currently authorized. The bill also exempts cooperative associations and homeowners' associations from civil liability for conducting penny-ante games as is currently done with the other entities.

Section 3 amends s. 719.103, F.S., to define the terms “special assessment,” “voting certificate,” and “voting interests.” The condominium statutes define these terms at subsections 718.103(21), (26), and (27).

Section 4 amends s. 719.1035, F.S., to provide that the provisions of the cooperative documents are enforceable equitable servitudes, that they run with the land, and that they are effective until the cooperative is terminated. The condominium statutes contain this provision at s. 718.104(7), F.S.

Section 5 amends s. 719.104, F.S., to allow commingling of reserve and operating funds for investment purposes and to require that if funds are commingled, they must be accounted for separately and the account balance may not be less than the amount identified as reserve funds in the combined account. This provision was added to the condominium statutes last session at s. 718.111(15), F.S. (1998 Supp.).

This section also allows a cooperative board of administration to take specified actions related to easements. This authority is contained in the condominium statutes at s. 718.111(10), F.S.

Section 6 amends s. 719.1055, F.S. Subsection (1) of this statute currently provides that, unless otherwise provided in the original cooperative documents, no amendment to those documents may materially alter or modify the appurtenances of a unit unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units approve the amendment. Subsection (2) currently provides that it does not constitute a material alteration of the appurtenances to a unit for a cooperative association to acquire real property or make a material alteration or substantial addition to real property if the action is approved by 75 percent of the total voting interests of the cooperative. The bill decreases the required margin of approval from 75 percent of the total voting interests of the cooperative to two-thirds of those voting interests.

This is a *different* percentage than in the condominium statutes, which still use 75 percent of the total voting interests. Section 718.110(4), F.S., provides that these actions are not material alterations of appurtenances if done in accordance with s. 718.111(7), F.S., which provides that property is to be acquired as provided in the declaration or, if the declaration does not provide for such acquisitions, with approval of 75 percent of the total voting interests.

Paragraph (3)(a) currently provides that an association may materially alter, convert, lease, or modify the common areas of a mobile home cooperative if the action is approved by 75 percent of the total voting interests of the cooperative. The bill decreases the required margin of approval from 75 percent to two-thirds of the total voting interests.

This is the *same* percentage as in the condominium statutes. In these statutes, s. 718.110(6), F.S., provides that common elements may be enlarged by an amendment to the declaration. Section 718.110(1)(a), F.S., provides that, with two exceptions, the declaration may be amended if approved by not less than two-thirds of the unit owners.

Paragraph (3)(b) currently provides that a cooperative association may change the configuration or size of a unit only if the action is approved by the affected unit owners and 75 percent of the total voting interests of the cooperative. The bill decreases the required margin of approval from 75 percent to two-thirds of the total voting interests.

This is *different* from the condominium statutes. Section 718.110(4), F.S., provides that the declaration cannot be amended to change the configuration or size of a unit in any material fashion unless the record owner of the unit and *all* record owners of all other units approve the amendment.

The bill also creates a subsection (4) to provide procedures for amending cooperative documents, including requiring approval by the owners of not less than two-thirds of the units to make an amendment. These procedures are the same as is provided in the condominium statutes at s. 718.110(1), F.S.

Section 7 amends s. 719.106, F.S. This statute currently requires associations to obtain and maintain adequate fidelity bonding for all persons who control or disburse association funds. The bill allows associations to obtain an insurance policy instead of a bond. This provision was adopted in the condominium statutes last session, s. 718.111(11)(d), F.S. (1998 Supp.).

Section 8 creates s. 719.115, F.S., to limit the liability of a unit owner. A unit owner is only liable for that percentage of common expenses which is assessed against him or her. An owner is liable for acts or omissions of the association in relation to use of the common areas but the owner's liability is limited to the same percentage of such liability as the percentage of the common expenses which the owner is to pay. If the association is involved in any legal action in which it may be exposed to liability in excess of insurance coverage, it must notify the unit owners of the exposure within a reasonable time to allow them to intervene and defend. This is the same provision as is found in the condominium statutes at s. 718.119, F.S.

Section 9 creates s. 719.116, F.S., to provide that for the purposes of property and casualty insurance risk classification, cooperatives are to be classified as residential property. This is the same provision as is found in the condominium statutes at s. 718.1256, F.S.

Section 10 amends s. 607.0802, F.S. This statute requires that directors of for-profit corporations be natural persons. The bill creates an exception to this requirement for boards of directors of condominium associations, cooperative associations, homeowners' associations, and mobile homeowners' associations that require a director to be a property owner member of the association. The bill provides that the grantor or a beneficiary of an inter vivos trust that owns a condominium or cooperative unit, a parcel in a homeowners' association, or a mobile home in a mobile homeowners' association is to be deemed to be a property owner and a member of the association and allows the grantor or beneficiary to serve as a director.

Section 11 amends s. 617.0802, F.S. This statute requires that directors of not-for-profit corporations be natural persons. The bill creates for not-for-profit corporations the same exception provided in section 10 of the bill for for-profit corporations.

Section 12 amends s. 617.301(7), F.S., to include mobile home subdivisions in the definition of "homeowners' association," thereby including such subdivisions in the homeowners' association statutes.

Section 13 amends s. 617.0601, F.S. This section currently provides for rights of corporate members, including classes of members, members' voting rights, and termination of membership. The bill adds a new subsection to provide that where corporate membership is limited to certain property owners and the corporation has been formed for the benefit of those property owners, no such property owner can be excluded from corporate membership. Once admitted, members must comply with all terms and conditions. Any bylaws, rules, or other regulations which would exclude a property owner from membership are declared void.

Section 14 creates a new section 723.0751, F.S. This new section provides that, if a mobile home subdivision has not created a homeowners' association pursuant to the homeowners' association statutes, 617.301-617.312, it may do so pursuant to the mobile home park homeowners' association statutes in chapter 723, F.S. The bill also provides that if the lot owners in the mobile home subdivision share common areas with owners of mobile homes in a park, and those mobile home owners have formed an association pursuant to chapter 723, this association may represent the lot owners under specific circumstances.

Section 15 provides that the bill takes effect July 1, 1999.

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:

The Department of Insurance states that the creation of s. 719.116, F.S., providing that “for purposes of property and casualty insurance risk classification, cooperatives shall be classified as residential property,” may increase the insurance rates on cooperatives operating as office buildings.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.