

STORAGE NAME: h1817.sgc.doc
DATE: April 17, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL ON SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1817
RELATING TO: Condominiums & Cooperatives
SPONSOR(S): Fiscal Responsibility Council and Representative Cantens
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) FISCAL RESPONSIBILITY COUNCIL YEAS 21 NAYS 1
 - (2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (3) COUNCIL ON SMARTER GOVERNMENT YEAS 12 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

Certain disputes involving condominium and cooperative associations are required to be referred to non-binding arbitration before the parties may file a court action. The arbitration program is operated by the Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes.

This bill repeals the requirement that the Department of Business and Professional Regulation employ full-time arbitrators to operate the condominium and cooperative association dispute program.

This bill further provides that only election and recall matters are subject to arbitration by the division. Other condominium and cooperative disputes will be referred to local arbitration and mediation programs where available, and the division will provide arbitration where a local program is not available.

The changes reflect budget reductions contained within the House Appropriations bill. Eight full time equivalent (FTE) positions are eliminated and spending authority of \$18,000 is reduced in the Land Sales, Condominium and Mobile Homes Trust Fund in DBPR. This bill does not appear to have a fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Arbitration of certain disputes involving condominium or cooperative associations and unit owners is required before an action in court may be pursued. In 1991, the Florida Legislature implemented a recommendation of the 1991 Condominium Study Commission and adopted a law requiring mandatory non-binding arbitration to help alleviate crowded court dockets and in recognition that many unit owners are unable to afford the high cost of litigation. Shortly thereafter the Arbitration Section was created within the Department. Now a part of the Bureau of Condominiums, Florida Division of Florida Land Sales, Condominiums and Mobile Homes, the section is staffed by five full-time attorney arbitrators, one certified mediator, and support staff. The Arbitration Section also handles recall arbitrations.¹

The condominium arbitration program is provided for by s. 718.1255, F.S.; and is adopted for cooperative associations by s. 719.1255, F.S. Section 718.1255(4), F.S., requires that the program be operated.

Section 718.1255(4)(a), F.S., requires that, prior to the institution of court litigation, a party to a "dispute" must petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of \$50. The term "dispute" means any disagreement between two or more parties that involves:

- The authority of the board of directors, under this chapter or association document to require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto; or alter or add to a common area or element.
- The failure of a governing body, when required by this chapter or an association document, to properly conduct elections; give adequate notice of meetings or other actions; properly conduct meetings; or allow inspection of books and records.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit

¹ http://www.state.fl.us/dbpr/lsc/arb_index.shtml

based upon the alleged failure of the association to maintain the common elements or condominium property.

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation is required to employ full-time attorneys to act as arbitrators to conduct the arbitration hearings. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. The department must promulgate rules of procedure to govern such arbitration hearings including mediation incident thereto. Those rules are found at Chapter 61B-45 of the Florida Administrative Code, entitled "Mandatory Non-Binding Arbitration Rules Of Procedure".

A petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents advance written notice of the specific nature of the dispute; a demand for relief, and a reasonable opportunity to comply or to provide the relief; and notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute. Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

Upon receipt by the division, the petition is promptly reviewed to determine the existence of a dispute and compliance with the requirements of ss. 718.1255(4)(a) and (b), F.S. If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of ss. 718.1255(4)(a) and (b), F.S., and any other applicable rules, a copy of the petition must be served by the division upon all respondents.

Either before or after the filing of the respondent's answer to the petition, any party may request that the arbitrator refer the case to mediation. Upon receipt of a request for mediation, the division must promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

The arbitration decision must be presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding is awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator.

The party who files a complaint for a trial de novo must be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo must be awarded reasonable court costs and attorney's fees.

Historically, the arbitration program has had approximately 500 cases filed annually.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 718.1255, F. S. to substantially change the condominium and cooperative arbitration program.

As to disputes regarding the failure of a governing body, when required by ch. 718, F.S. (condominiums), or ch. 719, F.S. (cooperatives), to properly conduct elections or to recall a board member, the existing arbitration procedure applies. The division is no longer required to employ full-time arbitrators, however, and thus if the division elects it may privatize the service.

This bill further provides that certain disagreements formerly resolved through the arbitration program are to be referred to a local resolution program prior to filing suit. These provisions apply to any disagreement between two or more parties that involves:

- The authority of the board of directors, under ch. 718, F.S., or ch. 719, F.S., or an association document, to require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto; or alter or add to a common area or element; or
- The failure of a governing body, when required by this chapter or an association document, to give adequate notice of meetings or other actions; properly conduct meetings; or allow inspection of books and records.

Disputes referred to local resolution must be resolved in the county in which the dispute has occurred. The dispute will be referred to a local government alternative dispute resolution, mediation, or arbitration program. Such cases are to be handled by these programs without the necessity of the case being filed in the court system. In the resolution of these cases on the local level, past precedent of prior division arbitration decisions must be considered and followed where appropriate.

Local government alternative dispute resolution, mediation, or arbitration programs may charge fees for handling these cases. The division must handle any of these cases arising in counties which do not have local government alternative dispute resolution, mediation, or arbitration programs. The division must provide a list of these programs to anyone requesting this information and must act as a clearinghouse for disputes, directing affected parties to the appropriate local alternative dispute resolution, mediation, or arbitration program within the county in which the dispute has occurred.

A dispute is not subject to resolution by the local government alternative dispute resolution, mediation, or arbitration program if it includes any disagreement that primarily involves:

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

This bill provides for an effective date of July 1, 2001. As a transition rule, the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation is required to continue the arbitration of any cases which qualified for arbitration on the date the case was filed with the division and which were filed with the division prior to July 1, 2001.

This bill further appropriates 1 FTE and \$440,626 from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to the Department of Business and Professional Regulation for the purpose of investigating and resolving disputes and dealing with compliance issues relating to condominiums and cooperatives. This appropriation will not take effect if a similar amount of funding is included in the various appropriations for compliance and enforcement in the Florida Land Sales, Condominiums, and Mobile Homes program in the fiscal year 2001-2002 General Appropriations Act.

D. SECTION-BY-SECTION ANALYSIS:

See the Effect of Proposed Changes section of the analysis.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

	<u>FTE</u>	<u>FY 01-02</u>
Salaries	(8)	(426,292)
Expenses		(32,334)
Subtotal		(458,626)
Transfer		440,626
Total Land Sales, Condo Mobile Homes Trust Fund		(18,000)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who would formerly pay \$50 for non-binding arbitration of their condominium or cooperative dispute will be required by this bill to utilize local dispute resolution programs instead,

and to pay the prevailing fee for such program. It is unknown whether those programs will charge more or less than \$50 per case.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

This bill implements a recommendation of the Governor regarding elimination of the condominium arbitration program. The rationale is explained as follows:

Currently, condominium owners pay \$4 each year to the state to fund regulation of condominiums by the Department of Business and Professional Regulation. Included in this regulation is a program to conduct mandatory, non-binding arbitration hearings to attempt to resolve condominium disputes before they end up in court. However, since the original condominium arbitration program was established, local government resources available for dispute resolution, such as civil mediation programs, have significantly improved. Governor Bush is proposing to eliminate the duplicative efforts by the state. Furthermore, mediating issues about things such as people's pets, parking, or what an owner can or cannot do in their own condo is not a primary function of state government and does not serve an appropriate regulatory role in protecting the health, safety, and welfare of the citizens of Florida.²

² <http://www.ebudget.state.fl.us/priorities/condominiumfeereduction.asp>

STORAGE NAME: h1817.sgc.doc

DATE: April 17, 2001

PAGE: 7

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Juliette Noble

Staff Director:

David K. Coburn

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Lynne Overton, J.D.

AS FURTHER REVISED BY THE COUNCIL ON SMARTER GOVERNMENT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Don Rubottom