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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 887
RELATING TO: Mandated Property Reform Task Force
SPONSOR(S): Representative(s) Melvin and others

TIED BILL(S):

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

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
- (2) FISCAL POLICY & RESOURCES
- (3) FISCAL RESPONSIBILITY COUNCIL
- (4)
- (5)

I. SUMMARY:

Current law provides statutory recognition of homeowners' associations and sets forth certain duties and responsibilities for such associations. Current law recognizes that it is not in the best interest of homeowners' associations or association members to create a bureau or other agency of state government to regulate the affairs of homeowners' associations. There are ongoing disputes between property owners and homeowners' associations regarding the enforcement of regulations within communities, and many of these disputes have led to lawsuits.

HB 887 creates the Mandated Property Reform Task Force. The Task Force is charged with reviewing and recommending appropriate changes to the laws of the State of Florida affecting land sales, exemptions, and mandatory homeowners' associations and disclosure laws related to adult and residential subdivisions. The task force must evaluate the changes and additions, if any, to those laws which may be appropriate to protect the interest of consumers and property owners on certain matters.

The task force is comprised of the following 39 members. By February 1, 2003, the task force must submit a preliminary report; and, by February 1, 2004, the task force must submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding any recommended changes and additions to those laws the task force was charged to evaluate.

This bill does not appear to have a fiscal impact on local governments, but it does have a fiscal impact on state government. HB 887 appropriates \$100,000 from the General Revenue Fund to the Office of Legislative Services for the purpose of paying administrative expenses and funding contracts necessary to carry out the provisions of this act.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

This bill creates a new commission.

B. PRESENT SITUATION:

Chapter 720, F.S., pertains to homeowners' associations.¹ The purpose of this chapter is to give statutory recognition to corporations that operate residential communities in the state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without impairing the ability of such associations to perform their functions. This chapter sets forth various requirements for homeowners' associations. The powers and duties of the associations include those set out in Chapter 720, F.S., as well as those set forth in the governing documents² of specific homeowners' associations.

Each member of an association, as well as a member's tenants, guests, and invitees, and each association are governed by both Chapter 720, F.S., and the governing documents of the community and the association. Any action to redress alleged failure or refusal to comply with any of these provisions may be brought by the association or any member of the association against the association itself; a member; any director or officer of an association who willfully and knowingly fails to comply with these provisions; and any tenants, guests, or invitees occupying a parcel³ or using the common areas.⁴ Section 720.311, F.S., specifies that the Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials, and in offering a more efficient, cost-effective option to litigation in disputes regarding homeowners' associations.

¹ Section 720.301(7), F.S.. A "homeowners' association" or "association" is defined as a "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. The term 'homeowners' association' does not include a community development district or other similar special taxing district created pursuant to statute.

² Section 720.301(6), F.S., defines "governing documents" as "(a) [t]he recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplement, and recorded exhibits thereto; and (b) [t]he article of incorporation and bylaws of the homeowners' association, and any duly adopted amendments thereto."

³ Section 720.301(9), F.S., defines "parcel" as "a platted or unplatted lot, tract, unit, or other subdivision of real property within a community, as described in the declaration:

- (a) Which is capable of separate conveyance; and
- (b) Of which the parcel owner, or an association in which the parcel owner must be a member, is obligated:
 - 1. By the governing documents to be a member of an association that serve the community; and
 - 2. To pay to the homeowners' association assessments that, if not paid, may result in a lien."

⁴ Section 720.305, F.S.

Accordingly, at any time after the filing in a court of competent jurisdiction of a complaint relating to a dispute under Chapter 720, F.S., the court may order mediation or arbitration.⁵

Homeowners' associations are not governed by any state agency or bureau, as Chapter 720, F.S., specifically states that the Legislature recognizes that it is not in the best interest of homeowners' associations or association members to create a bureau or other agency of state government to regulate the affairs of homeowners' associations.⁶ In contrast, Chapter 718, F.S., which pertains to condominium associations, provides that the Department of Business and Professional Regulation's Division of Florida Land Sales, Condominiums, and Mobile Homes (the Division) has regulatory power over condominium associations. The Division has the power to enforce and ensure compliance with provisions relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units.⁷

There are ongoing disputes between property owners and homeowners' associations regarding the enforcement of regulations within communities, and many of these disputes have led to lawsuits.⁸

C. EFFECT OF PROPOSED CHANGES:

HB 887 creates the Mandated Property Reform Task Force. The Task Force is charged with reviewing and recommending appropriate changes to the laws of the State of Florida affecting land sales, exemptions, and mandatory homeowners' associations and disclosure laws related to adult and residential subdivisions. The task force must evaluate the changes and additions, if any, to those laws which may be appropriate to protect the interest of consumers and property owners on matters including

- Control of the homeowners' association's operations;
- Management and maintenance;
- Disclosure of financial reports by developers or owners;
- Disclosure of all governing documents governing the real property;
- Penalties for noncompliance;
- Oversight and funding for protection of consumers' and property owners' interests;
- Alternative dispute resolution; and
- Assistance in the formulation of rules to implement enforcement.

⁵ Section 720.311, F.S.

⁶ Section 720.302, F.S.

⁷ Section 718.501, F.S.

⁸ For example, in Palm Harbor, Florida, a resident was sued by the Palm Harbor Somerset Village Association for having a Dodge Ram Pickup outside his townhouse. The resident allegedly needs the larger vehicle due to mild paralysis resulting from a car accident. The Palm Harbor Somerset Village Association recommended, prior to filing the lawsuit, that the resident purchase a vehicle that is permissible under the association's rules, yet he recently purchased the pickup and allegedly cannot afford another car. In response to the lawsuit, the resident filed a charge of discrimination in housing on the basis of handicap against the association with the county's Office of Human Rights. In mid-December, the Pinellas County Commission authorized the county attorney's office to initiate litigation against the association on the resident's behalf. Information found at <http://www.ccfj.net/hoapickup.htm>, which provided a copy of an article which appeared in the St. Petersburg Times on January 4, 2002. Another example is an issue that is taking place in Jupiter, Florida. A former marine was sued by his homeowners' association, the Indian Creek Homeowners Association Phase 3B Inc., in May 2001 for flying his flag on a 12-foot flag pole against association by-laws. The resident has countersued the association. He claims it has violated his rights as a homeowner, citing a clause in the very same by-laws that forbids "public embarrassment." Information found at <http://www.ccfj.net/flyoldglory.htm#Home>, which provided a copy of an article entitled "Veterans rally in support of man's battle to fly flag," by Sanjay Bhatt, November 12, 2001.

The task force will consist of the following members:

- Eleven members appointed by the Governor;
- Five members appointed by the President of the Senate;
- Five members appointed by the Speaker of the House of Representatives;
- A representative from the Attorney General's office;
- Twelve members representing homeowners' rights and consumer interests selected from a pool of candidates solicited for appointment by the Governor, the President of the Senate, and the Speaker of the House of Representatives. Six of these members are chosen by the Governor, three are chosen by the President of the Senate, and three are chosen by the Speaker of the House of Representatives; and
- Five members of the Legislature to serve as ex officio, nonvoting members, including three senators and two representatives. The senators, appointed by the President of the Senate, must include a member of the Senate Agriculture and Consumer Services Committee, a member of the Senate Judiciary Committee, and a member of the Senate Regulated Industries Committee. The representatives, appointed by the Speaker of the House, must include a member of the House Committee on Business Regulation and a member of the House Committee on Judicial Oversight.

These 39 members must be appointed by July 1, 2002. The selection of the task force must be made in a manner which insures a fair and balanced representation between the industry sector and consumer advocates who have a substantial public record of endeavors on behalf of homeowners' rights and consumer interests. The task force is responsible for electing a chair from among its members. Members serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

The task force must hold its initial organizational meeting by August 1, 2002, and every subsequent meeting will occur at the time and place designated by the chair. A majority of the members constitutes a quorum, and a quorum is necessary for the purpose of conducting official business. The task force must use accepted rules of procedure to conduct its meetings and must keep a complete record of each meeting.

By February 1, 2003, the task force must submit a preliminary report; and, by February 1, 2004 the task force must submit a final report to the Governor, the Speaker of the House of Representatives, and the President of the Senate regarding any recommended changes and additions to those laws which may be appropriate to protect the interests of consumers and property owners on the particular matters the task force was charged to evaluate. The task force is terminated on June 30, 2004.

HB 887 appropriates \$100,000 from the General Revenue Fund to the Office of Legislative Services for the purpose of paying administrative expenses and funding contracts necessary to carry out the provisions of this act.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

HB 887 appropriates \$100,000 from the General Revenue Fund to the Office of Legislative Services for the purpose of paying administrative expenses and funding contracts necessary to carry out the provisions of this act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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:

Cyber Citizens for Justice, Inc. (CCFJ), is a grassroots organization which was "founded to unite Floridians in their quest to improve the daily lives of citizens in our State."⁹ Members of the CCFJ are responsible for creating the language of HB 887 and bringing attention to the idea of a property task force. The President of the CCFJ believes that a property task force would address many issues that currently exist between members of homeowners' associations and the directors of the associations. The president believes these issues are leading to numerous lawsuits throughout the state, and a solution to this problem would "very easily save millions of tax dollars in the future and would help many citizens living in homeowners' associations."¹⁰

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Lauren Cyran, M.S.

J. Marleen Ahearn, Ph.D., J.D.

⁹ <http://www.ccfj.net>

¹⁰ Pursuant to an email received from the President of the Cyber Citizens for Justice, Inc., on January 31, 2002.