

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 861 Homeowners Associations
SPONSOR(S): Bilirakis
TIED BILLS: none **IDEN./SIM. BILLS:** SB 1410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Jaroslav	Havlicak
2) Business Regulation			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill makes several changes to ch. 720, F.S., the law governing homeowners' associations. These include:

- providing a non-exclusive list of "matters of common interest" to members of a homeowners' associations, upon which the association may "institute, maintain, settle, or appeal actions or hearing in its name on behalf of all members";
- specifically authorizing homeowners' associations to defend eminent domain and inverse condemnation actions;
- specifically authorizing homeowners' associations to be named as representatives of a class in class action litigation; and
- narrowing the category of rights of a member of a homeowners' association that are protected from later amendments to the association's governing documents, or from changes in the law.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0861.ju.doc
DATE: March 17, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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 may allow for members of homeowners’ associations having their proportionate voting interests reduced, or their share of the association’s common expenses increased, by some future changes in general law, whether intentionally or incidentally.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A homeowners’ association is “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.”¹ A community is defined as all real property that is or will be subject to a recorded declaration of covenants;² a declaration of covenants is, in turn, a “written instrument ... which subjects the land comprising the community to the jurisdiction and control of an association ... in which the owners of the parcels, or their association representatives, must be members.”³ Corporations, whether for profit or not for profit, generally have authority to hold property and to sue and be sued in their own name, as well as other powers.⁴ However, Florida law does not specifically state whether homeowners’ associations, or corporations in general, may be representatives of a class in a class action suit.

Section 720.301(6), F.S., defines the “[g]overning documents” of a community subject to a homeowners’ association as:

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

Section 720.306, F.S., governs meetings of the members of a homeowners association. In general, s. 720.306(1)(b), F.S., provides that governing documents of a homeowners’ association may be amended by a vote of two-thirds of the total voting interests in the association, unless otherwise forbidden by law or by the governing documents themselves. However, s. 720.306(1)(c), F.S., also specifies that:

Unless otherwise provided in the governing documents as originally recorded, an amendment may not affect vested rights unless the record owner of the affected parcel and all record owners of liens on the affected parcels join in the execution of the amendment.

¹ Section 720.301(7), F.S.

² See s. 720.301(3), F.S.

³ Section 720.301(4), F.S.

⁴ See ss. 607.0302 (for-profit corporations) and 617.0302 (non-profit corporations), F.S.

A “vested right” is either an immediate right of present enjoyment or a present, fixed, future right of enjoyment.⁵ It is a property interest that may not be taken without due process of law.⁶ To be considered “vested,” a right must have become a title, either legal or equitable, to the present or future enforcement of a demand.⁷

Proposed Changes

This bill amends s. 720.303, F.S., to do the following:

- provide a non-exclusive list of “matters of common interest” to members of a homeowners’ associations, upon which the association may “institute, maintain, settle, or appeal actions or hearing in its name on behalf of all members”;
- specifically authorize homeowners’ associations to defend eminent domain and inverse condemnation actions;
- specifically authorize homeowners’ associations to be named as representatives of a class in class action litigation; and
- make clear that these provisions do not limit the preexisting rights of individual members of a homeowners’ association.

This bill also amends s. 720.306(1)(c), F.S., to considerably narrow the scope of rights of a member of a homeowners’ association that that subsection protects from later amendments to the association’s governing documents. This bill does this by: 1) changing the language of the subsection’s protection from all “vested rights” to cover only the proportionate voting interests or share of common expenses appertaining to a parcel, and 2) allowing such amendments not only if provided for in the governing documents themselves, but also if permitted by chs. 617 or 720, F.S. (the non-profit corporation and homeowners’ association chapters, respectively).

C. SECTION DIRECTORY:

Section 1. Amends s. 720.303, F.S., to clarify the powers of homeowners’ associations.

Section 2. Amends s. 720.306(1)(c), F.S., to narrow the categories of rights of a member of a homeowners’ association that are protected from amendment of the associations’ governing documents.

Section 3. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

⁵ See *Sanford v. McClelland*, 163 So. 513 (Fla. 1935); *Division of Workers’ Compensation v. Brevda*, 420 So.2d 887 (Fla. 1st DCA 1982). See generally 10 FLA. JUR. 2D CONSTITUTIONAL LAW §§ 331-338.

⁶ See *Mahood v. Bessemer Properties, Inc.*, 18 So.2d 775 (Fla. 1944).

⁷ See *In re Will of Martell*, 457 So.2d 1064 (Fla. 2d DCA 1984).

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Impairment of Contracts

Both article I., s. 10 of the United States Constitution and article I, s. 10 of the Florida Constitution forbid state impairment “of the obligation of contracts.”⁸ Florida courts have generally treated the requirements of the state and federal Contract Clauses as identical, although they have suggested that the provision in the state constitution is probably stronger.⁹

Documents creating some private legal entities have been treated as contracts under the Contracts Clause since at least 1819. That year, in *Trustees of Dartmouth College v. Woodward*,¹⁰ the Supreme Court of the United States ruled that, by attempting to transform Dartmouth College into a public university, New Hampshire had unconstitutionally impaired the obligations of contract—obligations the state had inherited as successor-in-interest to the British Crown, which granted Dartmouth’s corporate charter in 1769.

Under longstanding case law in this state, a corporate charter or articles of incorporation becomes a contract between the shareholders of the corporation and the state upon being granted—a contract governed by the law in force at the time it was made.¹¹ However, courts have also ruled that the Legislature’s express reservation, in s. 607.0102, F.S., of its power to amend or repeal the Florida

⁸ See generally 16 AM. JUR. 2D CONSTITUTIONAL LAW §§ 708-744; 10 FLA. JUR. 2D CONSTITUTIONAL LAW §§ 348-373.

⁹ See, e.g., *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980) (accepting as persuasive an interpretation of the federal Contract Clause by the Supreme Court of the United States in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978)).

¹⁰ 17 U.S. (4 Wheat.) 518 (1819).

¹¹ See *Marion Mortgage Co. v. State ex rel. Davis*, 145 So. 222 (Fla. 1932); *Ex parte Amos*, 114 So. 760 (Fla. 1927); *Columbia County Comm’rs v. King*, 13 Fla. 451 (1869).

Business Corporations Act, prevents a corporation from asserting unalterable contractual rights in its charter or articles of incorporation.¹² Because ch. 720, F.S., does not contain such a reservation, it is possible that amending this chapter with respect to vested rights may only be prospective in nature, i.e., such amendments might only apply against homeowners' associations or their members that acquired such rights after the amendments became effective.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of this bill, amending s. 720.303(1), F.S., makes several different substantive changes. For the sake of clarity, it might make sense to break the entire subsection (both new and old language) into paragraphs.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

¹² See *Aztec Motel, Inc. v. State*, 251 So.2d 849 (Fla. 1971); *Hopkins v. The Vizcayans*, 582 So.2d 689 (Fla. 3d DCA 1991).