

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1223 w/CS Condominium Associations  
**SPONSOR(S):** Robaina, and others  
**TIED BILLS:** none **IDEN./SIM. BILLS:** SB 2498 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	<u>33 Y, 6 N w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>State Administration</u>	<u>6 Y, 0 N w/CS</u>	<u>Bond</u>	<u>Everhart</u>
3) <u>Commerce &amp; Local Affairs Apps. (Sub)</u>	<u>10 Y, 0 N</u>	<u>Rayman</u>	<u>Belcher</u>
4) <u>Appropriations</u>	<u>28 Y, 11 N w/CS</u>	<u>Belcher</u>	<u>Baker</u>
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

During the interim prior to the 2004 Legislative Session, the Speaker appointed the Select Committee on Condominium Association Governance. The charge of the committee was to take public testimony and review current laws regulating the governance of condominium associations to identify any improvements in those laws that might be recommended.

This bill with CS amends condominium law to: restrict the ability of a condominium association to amend its governing documents regarding certain issues, re-create the Office of the Condominium Ombudsman, re-create the Advisory Council on Condominiums, and reinstate the requirement that a condominium unit seller provide a Frequently Asked Questions and Answers form to a prospective purchaser.

The bill with CS preserves the department's authority to pursue certain remedies.

This bill with CS requires six positions and an appropriation of \$379,450 from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund in the Department of Business and Professional Regulation (DBPR).

This bill with CS does not appear to have a fiscal impact on local governments.

The act shall take effect upon becoming law.

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

**STORAGE NAME:** h1223f.ap.doc  
**DATE:** April 26, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 with CS increases government regulation of condominium association affairs, creates the Office of the Condominium Ombudsman, creates a seven member Advisory Council on Condominiums, and increases requirements for sellers of condominiums.

This bill with CS reduces individual freedom to amend condominium documents, and to manage condominium affairs.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

During the interim prior to the 2004 Legislative Session, the Speaker created the Select Committee on Condominium Association Governance. The charge of the committee was to take public testimony and review current laws regulating the governance of condominium associations to identify any improvements in those laws that might be recommended. The select committee was instructed to issue a report prior to the beginning of the 2004 session outlining any recommendations for legislation consistent with the committee’s conclusions. This bill with CS represents some of the recommendations of the select committee.

The declaration of condominium is the legal document, recorded in the public records of the county where a condominium is located, that details the legal rights and legal obligations of condominium unit owners in a condominium associations. It has been referred to as a condominium’s constitution. See *Woodside Village Condominium Association, Inc. v. Jahren*, 806 So.2d 452, 456 (Fla. 2002). The declaration “strictly governs the relationships among the condominium unit owners and the condominium association.” *Id.*

##### **Effect of Bill**

##### Amendments to the Declaration

Section 718.104(5), F.S., provides that a declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units. Section 718.110, F.S., provides broad authority to amend a declaration. In *Woodside*, the Florida Supreme Court held that a declaration of condominium may be amended to impose lease restrictions on condominium units. The court rejected the concept of “vested rights”, which rights are more commonly referred to as “grandfathered rights”. The court ruled that a properly enacted amendment to a declaration of condominium binds all condominium units, including units owned by an owner who purchased a unit prior to the amendment, even if the unit owner objected to the amendment. *Id.*, at 461-62. However, a concurring opinion to the *Woodside* decision urged the legislature to consider including grandfathering rights in Florida law. *Id.*,

at 465 (Quince, concurring).<sup>1</sup> Consistent with the *Woodside* decision, ch. 2002-27, L.O.F., amended s. 718.104(5), F.S., to recognize that an amendment to a declaration of condominium applies to all of the condominium units, including units whose owners did not consent to the amendment.

This bill with CS creates grandfathering rights in new s. 718.110(13), F.S., that are inconsistent with the ruling in *Woodside* and inconsistent with s. 718.104(5), F.S., as changed by ch. 2002-27, L.O.F. The new subsection (13) provides that the ability of a unit owner to rent the condominium unit, to keep a pet, or to utilize a specific parking space is a "right". An amendment to a declaration may not restrict such rights unless the amendment specifically provides that it is taking away such rights. Additionally, an amendment to a declaration that affects such rights must be approved by at least a majority of the voting interests of the association, unless a higher vote is required by the declaration.

#### Re-Creation of Condominium Ombudsman

A prior Condominium Study Commission recommended creation of an Office of the Condominium Ombudsman, which office was created in 1991.<sup>2</sup> The authority for the office was repealed before the office was ever opened.<sup>3</sup>

This bill with CS re-creates the Office of the Condominium Ombudsman. The ombudsman must be an attorney. The ombudsman is appointed by, and serves at the pleasure of, the Governor. The ombudsman may use division records, make recommendations for legislation, act as liaison between parties to a dispute or complaint, recommend initiation of enforcement proceedings, and make recommendations to the division for addressing complaints. The expenses of the ombudsman are paid from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. The office of the ombudsman must be in Leon County.

#### Re-Creation of Advisory Council on Condominiums

A prior Condominium Study Commission recommended creation of an Advisory Council on Condominiums, which was created in 1991.<sup>4</sup> In its 9 year life, the council rarely met, and had continued and constant vacancies. DBPR listed it as one of nine advisory committees or boards to eliminate in the 2000 session.<sup>5</sup> Chapter 2000-302, L.O.F., eliminated the council.

This bill with CS re-creates the Advisory Council on Condominiums.

#### Frequently Asked Questions and Answers Form

Current law requires a developer to provide extensive disclosure regarding a condominium to prospective purchasers,<sup>6</sup> and requires a lesser amount of information to be provided by a person re-

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<sup>1</sup> The concurring opinion reads: I concur in the majority's decision which quashes the decision by the Second District Court of Appeal. I write simply to urge the Legislature to seriously consider placing some restrictions on present and/or future condominium owners' ability to alter the rights of existing condominium owners. At the time the units in question here were purchased, the owners had the right to lease their property with relatively few restrictions. One of the owners purchased his units in 1979 and had enjoyed this leasing right for eighteen years before the Declaration of Condominium was amended. The twelve-month lease which was permitted at the time these unit owners purchased their units is no longer valid. These owners can now only lease their property for nine months in any twelve month period. As the district court pointed out the amendment has deprived these owners of a valuable right that existed at the time of purchase. See *Woodside Village Condominium Assoc., Inc. v. Jahren*, 754 So.2d 831, 833 (Fla. 2d DCA 2000). This valuable right may well have been the determinative factor for their decisions to buy these properties. As the district court suggested, there should at least be some type of "escape" provision for those "unit owners whose substantial property rights are altered by amendments to declarations adopted after they acquire their property." 754 So.2d at 835.

<sup>2</sup> Section 17 of ch. 91-103, L.O.F.

<sup>3</sup> Section 16 of ch 92-49, L.O.F.

<sup>4</sup> Section 17 of ch. 91-103, L.O.F.

<sup>5</sup> From floor debate on HB 1465, April 11, 2000.

<sup>6</sup> See s. 718.503(1), F.S.

selling a condominium unit.<sup>7</sup> In 1992, the condominium law was amended to require current owners reselling their unit to provide a copy of the document known as “Frequently Asked Questions and Answers”, a document initially created by the developer.<sup>8</sup> That requirement was eliminated in 2002<sup>9</sup> because many owners were unable to obtain a copy of the document to provide to a prospective purchaser; and because many sellers were unable to properly understand the management of the association in sufficient detail to accurately update the form.

This bill with CS reinstates the requirement that a person selling a condominium unit must provide the Frequently Asked Questions and Answers document to a prospective purchaser. This bill with CS also amends the content of the document to require disclosure of all potential lawsuits in which the association may be liable for more than \$25,000. The CS preserves the department’s authority to prosecute any existing judicial or administrative legal proceedings that are in existence on the effective date of this act.

C. SECTION DIRECTORY:

Section 1 amends s. 718.110, F.S., relating to grandfathered rights and amendments to a declaration of condominium.

Sections 2, 3, and 4, create ss. 718.5011, 718.5012, and 718.5014, F.S., re-creating the Office of the Condominium Ombudsman.

Section 5 creates s. 718.5015, F.S., re-creating the Advisory Council on Condominiums.

Section 6 amends s. 718.504, F.S., reinstating the requirement that a private seller of a condominium unit must provide a prospective purchaser with the “Frequently Asked Questions and Answers” document.

Section 7 provides that passage of this act will not affect any existing prosecution.

Section 8 provides six full-time equivalent positions and appropriations to implement the provisions of the act.

Section 9 provides an effective date upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill with CS does not provide for increased revenues to the state.

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<sup>7</sup> See s. 718.503(2), F.S.

<sup>8</sup> Section 19 of ch. 91-103, L.O.F.

<sup>9</sup> Section 14 of 2002-27, L.O.F.

2. Expenditures:

	<u>FY 2004-2005</u>	<u>FY 2005-2006</u>	<u>FY 2006-2007</u>
Department of Business and Professional Regulation			
Division of Land Sales, Condominiums, and Mobile Homes Trust Fund			
Non-recurring			
Expenses	\$ 17,450		
Operating Capital Outlay	<u>10,000</u>		
Total Non-recurring – Trust Fund	\$ 27,450		
Recurring			
FTE: 6			
Salaries & Benefits	\$290,532	\$297,785	\$305,240
Expenses – Travel	23,220	23,220	23,220
Expenses – Other	<u>38,248</u>	<u>38,248</u>	<u>38,248</u>
Total Recurring – Trust Fund	\$352,000	\$359,263	\$366,708
Total – Trust Fund	<u>\$379,450</u>	<u>\$359,263</u>	<u>\$366,708</u>

Recurring costs by issue:

Office of the Ombudsman			
Total recurring costs:	\$258,295	\$245,247	\$250,617
Positions (FTE):			
Lead Senior Attorney			
Staff Attorney (2)			
Administrative Assistant II			
Advisory Council on Condominiums			
Total recurring costs:	\$ 68,109	\$ 64,490	\$ 65,499
Position (FTE):			
Administrative Assistant II			
Customer Call Center			
Total recurring costs:	\$ 53,046	\$ 49,526	\$ 50,592
Position (FTE):			
Regulatory Consultant			

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill with CS does not affect local governments.

2. Expenditures:

None. This bill with CS does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In 1991, the act that first created an ombudsman and an advisory council also increased the annual condominium fee from \$1 per unit per year to \$4 per unit per year. The increase was to, in part, fund the ombudsman and the advisory council. That \$4 fee remains today. The current program fees and the cash balance in the trust fund will sustain the increased program costs for several years; however, a fee increase is anticipated as the cash balance erodes.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill with CS does not affect local governments.

##### **2. Other:**

Article I, s. 10, Fla.Const., prohibits the legislature from enacting any law impairing the obligation of contracts. This bill with CS may impair the current contractual rights of condominium unit owners to amend their covenants.

#### **B. RULE-MAKING AUTHORITY:**

The ombudsman is given limited rulemaking authority regarding procedures to remove a condominium association director or officer accused of election fraud.

Section 7 of the strike all amendment provides the department may continue to prosecute any existing judicial or administrative legal proceedings that are in existence on the effective date of this act.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

This bill with CS amends ch. 718, F.S., related to condominiums. Chapter 719, F.S., relating to cooperatives, is very similar to ch. 718, F.S., and many provisions regarding governance of a cooperative are identical to the provisions regarding condominiums. This bill with CS does not make corresponding changes to ch. 719, F.S.

The concept of grandfathered rights may create significant practical enforcement difficulties for condominium associations. Many timeshare properties are also governed by condominium law. The concept of grandfathered rights in a timeshare could be very difficult in application (for instance, a weekly timeshare property with 200 physical units has 10,000 owners).

The bill requires authority for six positions and an appropriation of \$379,450 from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund in the Department of Business and Professional Regulation.

Section 8. of the CS needs an amendment to provide an effective date for appropriation July 1, 2004.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Information supplied by the Committee on Business Regulation: The CS differs from the original bill as follows:

- Removes the provision specifying that a declaration or bylaw allowing a multiple unit owner in the same condominium to exercise multiple votes shall be void.
- Removes language in the bill that creates a two year term limit for board members.
- Removes language in the bill relating to mandatory criminal background checks by the board for all new potential unit owners and tenants.

- Prohibits an attorney from charging in excess of \$75 per letter for correspondence, collection efforts, litigation, or other business arising under this chapter.

On March 29, 2004, the Committee on State Administration adopted one amendment to the bill. The amendment removed the provisions that increased the vote necessary to waive minimum reserves, restricted who may be elected to a condominium board, increased lender responsibility for past due condominium assessments, restricted collection of assessment liens, changed how payments on past due assessments are applied, created a misdemeanor for board members who vote to foreclose a lien, altered how excess special assessments are treated, limited attorney's fees related to condominium matters, required additional disclosures regarding association contracts, required three bids for nearly all condominium association contracts, required all condominium board members to attend training, transferred regulation of Community Association Managers within DBPR, and required DBPR to create a Condominium Owner's Bill of Rights brochure. The amendment also changed the effective date to July 1, 2004. The bill was then reported favorably with a committee substitute.

On April 16, 2004, the Subcommittee on Commerce and Local Affairs Appropriations adopted two amendments to the Committee Substitute from the Committee on State Administration. The strike-all amendment removed proposed language related to compensation and expenses for the Ombudsman Office, and exchanged appointment of the Ombudsman appointment from the Joint Legislative Auditing Committee to the Governor, as proposed. These changes address constitutional issues in the Committee Substitute. The strike-all removes powers of the ombudsman to conduct onsite inspections of condominiums, including surprise inspections. The strike-all preserves the department's authority to prosecute any existing judicial or administrative legal proceedings that are in existence on the effective date of this act. The amendment to the strike-all amendment provides six full-time equivalent positions and funding from the Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to implement the provisions of the act. The committee substitute with amendments was reported favorably.

On April 20, 2004, the Committee on Appropriations adopted two amendments recommended by the subcommittee. The strike-all amendment removed the constitutional issues relating to separation of powers and spending authority. The amendment to the strike-all provided funding to implement the provisions of this act. The bill as amended was reported favorably.