

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1223 Condominium Associations
SPONSOR(S): Representative Robaina
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	_____	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>State Administration</u>	_____	_____	_____
3) <u>Appropriations</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

A condominium is "that form of ownership of real property which is created pursuant to the provisions of this chapter [ch.718, F.S.], which is comprised of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."

During the interim prior to the 2004 legislative session, the Speaker of the Florida House of Representatives 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. 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.

The select committee issued its report on January 21, 2004. The chairman of the select committee, Representative Robaina, states in the report that "after listening to all public testimony throughout the State of Florida, I submit to you a number of concerns proposed by the residents of this state and a number of my suggestions along with those referred to me by my committee members...."

HB 1223 has been proposed to implement the work of the select committee and amends various provisions in chapter 718, F.S., the "Condominium Act." The bill expands several provisions to address the relationship between condominium unit owners and condominium associations. The bill creates the Office of the Condominium Ombudsman to be located in the Division of Land Sales, Condominiums, and Mobile Homes for administrative purposes. The ombudsman is to be appointed by the Joint Legislative Auditing Committee. The bill creates a seven member Advisory Council on Condominiums to assist in making recommendations for improving the relationship between unit owners and their association.

The fiscal impact of the bill has not been finalized at this time. However, the select committee notes: monies allocated to the trust fund that are generated by condo unit owners must be left to serve only the condo association's needs and not diverted from the account to help fund other initiatives of the state. The trust fund is currently funded by a \$4 unit fee paid by 1.1 million unit owners in the state of Florida. These funds are essential in bringing forth the much needed changes and also to further the education of home owners and board members.

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

STORAGE NAME: h1223.br.doc
DATE: March 7, 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 type="checkbox"/> | N/A <input checked="" 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:

1. Reduce government - The bill expands several provisions to address the relationship between condominium unit owners and condominium associations. The bill creates the Office of the Condominium Ombudsman and provides for duties and staffing. The bill creates a seven member Advisory Council on Condominiums.

B. EFFECT OF PROPOSED CHANGES:

During the interim prior to the 2004 legislative session, the Speaker of the Florida House of Representatives 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.

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HB 1223 has been crafted to implement the work of the select committee and amends various provisions in chapter 718, F.S., the “Condominium Act,” governing condominium associations. A condominium is “that form of ownership of real property which is created pursuant to the provisions of this chapter, which is comprised of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”

Issues identified by the Select Committee on Condominium Governance and implementing provisions of HB 1223 are addressed below.

Section 1. The bill amends s. 718.103, F.S., relating to definitions.

Identified issue: Multiple family members or relatives were serving on the same board creating a conflict of interest.

Board members or family of board members are employed by management companies of many associations.

Recommendation: The bill creates a definition of “immediate family member” for purposes of clear application of several provisions of the bill relating to potential conflict of interest.

Section 2. The bill amends s. 718.104, F.S., relating to condominium declarations.

Identified issue: The number of votes given to the owners of multiple units gave them too much power and control.

Recommendation: The bill specifies that a declaration or bylaw which allows a multiple unit owner in the same condominium to exercise multiple votes shall be void.

Section 3. The bill amends s. 718.110, F.S., relating to amendments to the condominium declaration.

Identified issue: Owners are being impacted fiscally and through hardships by board member decisions.

Recommendation: The bill provides that amendments to the association declaration that restrict specified rights of the unit owners shall only apply to owners who purchase their unit after the effective date of that amendment. It also requires a vote of three-fourths vote for approval.

Section 4. The bill amends s. 718.112, F.S., relating to bylaws.

Identified issue: Reserves not being maintained at any specific percentage rate.

Recommendation: The bill requires a two-thirds vote, rather than a simple majority vote, to provide no reserves or less reserves than are calculated by formula under this subsection.

Section 5. The bill creates s. 718.1125, F.S., relating to board eligibility restrictions.

Identified issue: Multiple family members or relatives were serving on the same board creating a conflict of interest.

Board members did not live in the community and/or country due to the fact that they are investment properties and not their primary residence.

Lack of quality control of potential board members to verify that the association is adhering to current laws that prohibit convicted felons from serving on a board.

Board members are serving for extended periods of time not allowing others to serve on the board.

Recommendation: The bill requires that board members must live in the condominium for at least three months prior to sitting on the board. The bill requires a criminal background check to be conducted by the FDLE and authorizes the records to be made available to unit owners. Rule authority is also specified for the FDLE to establish the process for the background checks.

The bill creates a two year term limit for board members unless there are no other candidates for election. In which case, the board members' term may be extended with a majority vote of the unit owners.

Section 6. The bill amends s. 718.116, F.S., relating to assessments, liability, and liens.

Identified issue: Liens being placed on unit owners and home owners without notice.

Unit owners are not given sufficient time to respond or correct violations and are being cited with fines immediately.

Board members willfully and knowingly expediting the lien and foreclosure process in order to buy the properties themselves at a foreclosure price.

Owners are being impacted fiscally and through hardships by board member decisions.

Recommendation: The bill specifies that liens may not be recorded without giving notice of the claim of lien. It also requires a disclosure statement that reads: UNDER FLORIDA LAW, YOUR CONDOMINIUM UNIT, EVEN IF NOT YOUR HOMESTEAD RESIDENCE, IS SUBJECT TO FORECLOSURE FOR FAILING TO MAKE MAINTENANCE ASSESSMENT PAYMENTS.

The bill requires the association to deliver a notice of intent to record a claim to the unit owner and provide a 45 day time period for the owner to respond. The bill creates a penalty of a misdemeanor of the first degree for those persons who willfully and maliciously place liens in an attempt to foreclose on other unit owners' properties.

The bill requires that issues voted on by board members that create a fiscal impact or hardship for the unit owner, must be approved by a vote of the majority of the unit owners.

Section 7. The bill amends s. 718.3025, F.S., relating to operation and management.

Identified issue: Board members, community association managers (CAMs), and/or property management companies are giving friends or family or companies that they are affiliated with contracts for work in the condominium.

Multiple family members or relatives were serving on the same board creating a conflict of interest.

Board members do not file any type of financial disclosures.

Board members or family of board members are employed by the management company of many associations.

Recommendation: The bill requires disclosure of financial and ownership conflicts of interest by board members, CAMs, and property management companies with contractors doing maintenance or management business with that condominium. If the conflicting contractor is selected by the board, the conflict must be disclosed and approved by a majority vote of the unit owners.

Section 8. The bill amends s. 718.3026, F.S., relating to contracts for products and services.

Identified issue: Board members, community association managers (CAMs), and/or property management companies are giving friends or family or companies that they are affiliated with contracts for work in the community.

Contracts were given out without a competitive bidding process.

Recommendation: The bill requires that the association obtain no fewer than three competitive bids for materials, equipment, or services if the aggregate cost exceeds two and one half percent, rather than five percent, of the association annual budget.

Section 9. The bill creates s. 718.305, F.S., relating to criminal background checks.

Identified issue: No disclosure of former criminals moving into the condominium.

Recommendation: The bill requires mandatory criminal background checks by the board for all new potential unit owners and tenants. The cost is to be paid by the new resident.

Section 10. The bill amends s. 718.103, F.S., relating to duties of the division.

Identified issue: Owners are being impacted fiscally and through hardships by board members decisions.

Residents do not know how the state addresses their rights and concerns.

Recommendation: Currently, the division has the authority to provide training for board members and unit owners. The bill requires mandatory training for newly elected board members and current board members who have not previously voluntarily attended training.

Section 11. The bill creates s. 718.5011, F.S., relating to the Office of the Ombudsman.

Identified issue: Currently, there is no department that has the power to settle disputes between condominium owners and their respective associations, that can help monitor elections and meetings, that can fine members, etc.

Recommendation: The bill creates the Office of the Condominium Ombudsman to be located in the division for administrative purposes. The ombudsman is to be appointed by the Joint Legislative Auditing Committee by a majority vote of the committee members.

Section 12. The bill creates s. 718.5012, F.S., relating to duties of the ombudsman.

Identified issue: Currently, there is no department that has the power to settle disputes between condominium owners and their respective associations, that can help monitor elections and meetings, that can fine members, etc.

Recommendation: The bill specifies the powers and duties of the ombudsman, including the use of division records, making of recommendations for legislation, authority to act as liaison between parties to a dispute or complaint, recommending the initiation of enforcement proceedings, and making recommendations to the division for addressing complaints.

Section 13. The bill creates s. 718.5013, F.S., relating to ombudsman expenditures.

Identified issue: Currently, there is no department that has the power to settle disputes between condominium owners and their respective associations, that can help monitor elections and meetings, that can fine members, etc.

Recommendation: The bill authorizes that costs and expenditures of the ombudsman office be paid out of the division operational trust fund. It authorizes the Joint Legislative Auditing Committee to approve staffing for the office.

Section 14. The bill creates s. 718.5014, F.S., relating to the location of the ombudsman office.

Identified issue: Currently, there is no department that has the power to settle disputes between condominium owners and their respective associations, that can help monitor elections and meetings, that can fine members, etc.

Recommendation: The bill specifies the ombudsman office be located in Leon county.

Section 15. The bill creates s. 718.5015, F.S., relating to the creation of the Advisory Council on Condominiums.

Identified issue: Currently, there is no department that has the power to settle disputes between condominium owners and their respective associations, that can help monitor elections and meetings, that can fine members, etc.

Recommendation: The bill creates a seven member Advisory Council on Condominiums. The council has the responsibilities to receive and process input from the general public relating to changes in the law and division rules, as well as, the education programs of the division.

Section 16. The bill amends s. 718.503, F.S., relating to litigation notification.

Identified issue: Lack of awareness by potential buyers, such as, being notified whether or not the association is or was in litigation or has incurred or will be incurring liabilities.

Recommendation: The bill expands the current "Frequently Asked Questions and Answers" sheet to include additional information. The bill requires the prospectus or offering circular to contain information relating to litigation or potential litigation which may expose the association to liability.

Section 17. The bill transfers the licensure program for community association managers to the division by a type two transfer.

Section 18. The bill authorizes the continuation of active administrative cases under the DBPR against CAMs.

Section 19. The bill creates s. 718.510, F.S., relating to the creation of a condominium owner bill of rights brochure.

Identified issue: Residents do not know how the state addresses their rights and concerns.

Recommendation: The bill requires the division to adopt rules to provide for a brochure entitled, "Condominium Owners' Bill of Rights."

Section 20. Effective date - upon becoming a law.

C. SECTION DIRECTORY:

See B. above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See D. fiscal comments, below.

2. Expenditures:

See D. fiscal comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

NA

2. Expenditures:

NA

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See D. fiscal comments, below.

D. FISCAL COMMENTS:

The report of the select committee comments that:

Monies allocated to the trust fund that are generated by condo unit owners must be left to serve only the condo association's needs and not diverted from the account to help fund other initiatives of the state. The trust fund is currently funded by a \$4 unit fee paid by 1.1 million unit owners in the state of Florida. These funds are essential in bringing forth the much needed changes and also to further the education of home owners and board members.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

NA

2. Other:

NA

B. RULE-MAKING AUTHORITY:

Section 5 of the bill authorized the FDLE, in consultation with the DBPR, to adopt rules for processing criminal background checks of board members.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES