The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL:	CS/SB 880
INTRODUCER:	Regulated Industries Committee and Senator Fasano
SUBJECT:	Community Associations
DATE:	April 2, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Rhea	RI	**Fav/CS**
2.			BI	
3.			CA	
4.			JU	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill revises laws related to community associations, including condominium, homeowners', and cooperative associations. Regarding condominium associations, the bill:

- Requires intent to cause harm to the association or one or more of its members in order for a person to knowingly or intentionally fail to create or maintain accounting records required to be maintained by ch. 718, F.S.
- Provides that the association is not responsible for the use or misuse of the information provided pursuant to the compliance requirements of ch. 718, F.S.
- Expands the forms of information in the association's records that are not accessible to unit owners to include disciplinary, health, insurance, personnel records of the association's employees, and passwords;
- Revises the requirements related to financial reporting by the association;
- Provides that the association is not required to take action on items that are placed on a board meeting agenda by petition of the unit owners;
- Revises requirements related to the election of board members, the terms of board offices; vacancies on the board, and the qualifications of board members;

- Includes communication services, information services, and Internet services within the scope of the types of bulk contracts that the board may enter into and the cost for which are considered common expenses.

The bill permits condominium, cooperative, and homeowners' associations to demand payment of any future regular assessments from the tenant of a unit or parcel owner. The tenant must make continual regular assessment payments to the association until released of this requirement by the association. The tenant is only liable for increases in the regular assessment if the tenant is given a notice of the increase before the rent is due. The tenant may credit his or her payment to the unit owner by the amount of the assessment payment. The association may evict the tenant under the procedures in ch. 83, F.S., as if the association were the landlord.

Regarding homeowners' associations, the bill provides that flagpoles that homeowners are entitled to erect are subject to all building codes, zoning setbacks, and other applicable government regulations.

The bill permits homeowners' associations to acquire leaseholds, memberships, or other possessory interests in a lands or facilities, such as country clubs, golf courses, marinas, and other recreational facilities. The recreational facility does not have to be on land contiguous to the association property.

The bill repeals the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height

The bill provides an effective date of October 1, 2009.

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.115, 718.303, 719.108, 720.304, 720.305, 720.3085, 720.31, 721.05, and 553.509.

II. Present Situation:

Condominiums

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely 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."[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration is like a constitution in that it:

> [S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[3]

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grand View at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it generally may be amended as to any matter by a vote of two-thirds of the units.[5] Condominiums are administered by a board of directors referred to as a board of administration.[6]

Condominiums are regulated by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of the Department of Business and Professional Regulation (department), in accordance with ch. 718, F.S.

Condominium Assessments

Section 718.103(1), F.S., defines an "assessment" as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner." Section 718.103(24), F.S., defines a "special assessment" to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."

Condominium- Official Records

Section 718.111(12), F.S., requires that the official records of a condominium association must be maintained within the state for at least 7 years. The records must be made available to the unit owner within 45 miles of the condominium property or within the county in which the condominium property is located. The records must be made available within 5 working days after a written request is received by the governing board of the association or its designee. The records may be made available by having a copy of the official records of the association available for inspection or copying on the condominium property or association property. Alternatively, the association may offer the option of making the records of the association available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

Section 718.111(12)(a)11, F.S., requires the association to maintain accounting records and separate accounting records for each condominium which the association operates. All accounting records must be maintained for a period of not less than 7 years. This section prohibits any person from knowingly or intentionally defacing or destroying accounting records required to be maintained by ch. 718, F.S. It also prohibits knowingly or intentionally failing to create or maintain accounting records required to be maintained by ch. 718. F.S. Persons who violate this provision are personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.

Condominium – Elections

Section 718.112(2)(d)3., F.S., requires a person desiring to be a candidate for election to the board of administration of a condominium association to qualify for office at least 40 days before the election. One condition of qualifying is that the candidate must certify that he or she has read

[4] Section 718.104(5), F.S.
[5] Section 718.110(1)(a), F.S.
[6] Section 718.103(4), F.S.

and understands, to the best of his or her ability, the governing documents of the association and the provisions of ch. 718, F.S., and any applicable administrative rules. This signed certification must be included with the ballot.

Condominium – Assessments and Foreclosures

Section 718.103(1), F.S., defines an "assessment" as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner." Section 718.103(24), F.S., defines a "special assessment" to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.[7]

Section 718.116(1)(b), F.S., provides that if a first mortgagee, e.g., the mortgage lending bank, or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the 6 months immediately preceding the acquisition of title or 1 percent of the original mortgage debt, whichever is less. However, this limitation applies only if the first mortgagee is joined by the association as a defendant in the foreclosure action. This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.

The successor or assignee, in respect to the first mortgagee includes only a subsequent holder of the first mortgage.

Homeowners' Associations - Display of Flag

Section 720.304(2)(a), F.S., permits homeowners to display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 41/2 feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. This right exists, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association.

Section 720.304(2)(b), F.S., permits homeowner to also erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. Homeowners may display the same flags that specified under s. 720.304(2)(a), F.S.

[7] Section 718.116(1), F.S.

Alternate Power Generators for Elevators

During the 2006 Regular Session, s. 553.509(2)(a), F.S.,[8] was enacted to require that any person, firm, or corporation that owns, manages, or operates a residential multi-family dwelling, including a condominium, which is at least 75 feet high (high-rise residential buildings) and contains a public elevator, have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator must ensure that residents have building access for an unspecified number of hours each day over a five-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system in the building.

The alternate generated power requirements of s. 553.509(2), F.S., do not apply to high-rise buildings that were in existence on October 1, 1997, or which were either under construction or under contract for construction on October 1, 1997.[9] Newly constructed residential multi-family dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements of s. 553.509(2), F.S., before occupancy.[10]

Section 553.509(2)(b), F.S., provides that, at a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power. The power source must be capable of powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other internal public portions of the building. The dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request. Proof of a current service contract for such equipment and fuel must be posted in the elevator machine room or other place conspicuous to the elevator inspector.

Verification Requirements

Section 553.509(2)(b), F.S., requires that the person, firm, or corporation that owns, manages, or operates a building affected by this requirement must provide to the local building inspection agency verification of engineering plans for alternate generated power capability by December 31, 2006.

The local building inspectors must verify the installation and operational capability of the alternate generated power source and report to the county emergency management director by December 31, 2007.

Posting Requirements

The owner, manager, or operator of the high-rise residential building must keep written records of any contracts for alternative power generation equipment and fuel source.[11] Quarterly

[8] Section 12, ch. 2006-71, L.O.F.
[9] Section 553.507, F.S., exempts such buildings, structures, and facilities from the provisions of ss. 553.501-553.513, F.S., the "Florida Americans with Disabilities Implementation Act."
[10] Section 553.509(2)(c), F.S.
[11] Section 553.509(2)(b), F.S.

inspection records of lifesafety equipment and alternate power generation equipment must also be posted in the elevator machine room or other place conspicuous to the elevator inspector.[12]

Emergency Operations Plan Requirements

Section 553.509(2)(d), F.S., requires that each person, firm, or corporation that is required to maintain an alternate power source must also maintain a written emergency operations plan that details the sequence of operations before, during, and after a natural or manmade disaster or other emergency situation. The plan must include, at a minimum, a lifesafety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents.

The written emergency operations plan and inspection records must be open for periodic inspection by local and state government agencies.[13] The owner or operator must keep a generator key in a lockbox posted at or near any installed generator unit.[14]

Residential Dwellings for Persons Age 62 and Older

Section 553.509(2)(e), F.S., requires that multi-story affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development must make every effort to obtain grant funding from the Federal Government or the Florida Housing Finance Corporation to comply with the requirements of s. 553.509(2), F.S. It provides that, if an owner of such a residential dwelling cannot comply with the requirements of this subsection, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a natural or manmade disaster or other emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

Inspections

Section 553.509(2)(f), F.S., requires that certified elevator inspectors confirm that all installed generators are in working order, the elevators have current inspection records posted, and a generator key located near the generator. If there is no installed generator, the inspector is required to confirm that the appropriate pre-wiring and switching capabilities are present and that the guaranteed contingent service contract is posted.

Interim Report-Alternate Power Generators for Elevators

The October 2008 interim report by the Regulated Industries Committee also studied the extent of compliance with s. 553.509(2), F.S., reviewed the problems that citizens and governmental agencies have had in implementing these requirements. Senate professional staff recommended

[12] Section 553.509(2)(d), F.S.
[13] *Id.*
[14] *Id.*

that the Legislature consider the repeal of s. 553.509(2), F.S. The repeal recommendation was based upon the following findings and conclusions:

- The requirement may pose a threat to public safety, i.e., the availability of emergency power for elevators during the five days after a declared state of emergency may encourage persons to stay in high-rise buildings and areas that are not safe and do not have the necessary infrastructure for safe habitation;
- The requirement does not have a clearly defined state or local agency that is responsible for its on-going enforcement;
- Enforcement of the requirement by a state agency would carry a fiscal burden without a clearly defined benefit that may out-weigh the public safety concerns;
- The requirement does not appear to have any clearly defined impact on elevator safety;
- It is not clear what penalty, if any, should be imposed on building owners who cannot comply with the requirement because they cannot afford the expense; and
- To the extent that an alternate emergency power for elevators provides a public benefit, the Florida Building Code currently requires emergency power for elevators in new high-rise residential construction.

Alternatively, the professional staff recommended that the Legislature could continue to require emergency generated power pursuant to s. 553.509(2), F.S., but, to ensure uniform compliance, provide funding for the Bureau of Elevator Safety within the Division of Hotels and Restaurants, Department of Business and Professional Regulation, for the enforcement of this provision.

III. Effect of Proposed Changes:

Official Records

The bill amends s. 718.111(12)(a)11. and (c), F.S., to clarify that accounting records that cannot be defaced or destroyed include accounting records required to be created by ch. 718, F.S., during the period for which such records are required to be maintained. The bill also requires that there must be the intent to cause harm to the association or one or more of its members in order to knowingly or intentionally fail to create or maintain accounting records required to be maintained by ch. 718, F.S.

The bill provides that the association is not responsible for the use or misuse of the information provided pursuant to the compliance requirements of ch. 718, F.S. However, the bill also provides that the association may be responsible if it has an affirmative duty not to disclose such information pursuant to ch. 718, F.S.

The bill also amends s. 718.111(12)(c), F.S., to provide that the following forms of information in the association's records are not accessible to unit owners:

- Disciplinary, health, insurance, and personnel records of the association's employees;
- Email addresses;
- Electronic security measures used to safeguard data, including passwords; and
- Data generated by software used by the association which allows manipulation of data.

The bill permits access to the following personal identifying information: the person's name, lot or unit designation, mailing address, property address, and other contact information.

Financial Reporting

The bill amends s. 718.111(13), F.S., to revise the requirements related to financial reporting by the association. The bill requires the division to adopt rules that include standards for presenting a summary of association reserves. The bill clarifies that this disclosure does not apply to reserves funded via the pooling method.

The bill deletes the provisions that the person preparing the financial reports is entitled to rely on an inspection report prepared for or by the association to meet the fiscal and fiduciary standards of ch. 718, F.S.

Bylaws

The bill amends s. 718.112(2)(c), F.S., to provide that the association is not required to take action on items that are placed on a board meeting agenda by petition of the unit owners.

The bill amends s. 718.112(2)(d), F.S., to exempt timeshare condominiums from the requirement that the terms of all members of the board expire at the annual meeting. The bill deletes the requirement of approval of a majority of the total voting interests for amending the bylaws to provide for staggered terms.

The bill also amends s. 718.112(2)(d), F.S., to:

- Provide that associations that do not include timeshare units may not permit co-occupants and co-owners of a unit to serve together on the board unless one of them owns more than one unit; and
- Provide that a person who is more than 90 days delinquent of any fee, fine, or assessment is ineligible for board membership.

The CS amends s. 718.112(2)(d)3., F.S., to require a post-election certification by each newly elected or appointed director. The written certification must be submitted to the secretary of the association within 90 days after being elected or appointed to the board. The new board member must certify that he or she has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and rules and regulations; that he or she will work to uphold such documents and policies to the best of his or her ability, and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. This course must have been completed within 1 year before the 90-day deadline.

A board member is automatically disqualified if he or she fails to timely file the written certification or educational certificate. The secretary of the association must keep the written certification or educational certificate for inspection by the members for 5 years after a director's election or appointment. The bill also provides that the validity of any appropriate action is not affected by the association's failure to have certification on file.

Director or Officer Delinquencies and Offenses

The bill amends s. 718.112(2)(n), F.S., to clarify that a director or officer who is more than 90 days delinquent in the payment of any fee, fine, regular assessment, or special assessments is deemed to have abandoned the office. Current law only references regular assessments.

The bill amends s. 718.112(2)(o), F.S., which provides that a director or officer who is charged with a felony theft or embezzlement offense involving the association's funds or property must be removed from office. The bill clarifies that the charge of a felony is by information or indictment.

Common Expenses

The bill amends s. 718.115(1)(d), F.S., to provide that communication services as defined in ch. 202, F.S., information services, or Internet service are included in the scope of the types of bulk contracts that the board may enter into and the cost for which are considered common expenses.

The bill also amends s. 718.115(1)(d), F.S., to clarify that cable or video service are the types of common expense services that may be discontinued by a hearing impaired or legally blind person, or by a person receiving supplemental security income or food stamps. It also includes video services in place of the current term "television" in regards to the type of expense, including cable, that must be shared equally by all participating unit owners if fewer than all unit owners share the expense. The bill also permits the association to make an assessment for video cable services. The current authority for the assessment references term "television," which the bill deletes.

Condominium – Assessments and Foreclosures

The bill amends s. 718.116(5)(b), F.S., relating to the association's claim of lien, to provide that the unit owner's cost may not exceed $75 for collection letters or any other collection efforts by management companies or licensed managers related to the claim of lien. However, reasonable fees may be charged for preparation by the management company of any letter or certificate required by ch. 718, F.S.

Condominiums – Assessment Payments by Tenants

The bill creates s. 718.116(11), F.S., to authorize the associate to demand payment of any future regular assessments from the tenant of the unit owner. These provisions are identical to the provisions in ss. 719.108(10) and 720.3085(8), FS, for tenants in cooperative associations and homeowners' associations, respectively.

The bill does not require that the tenant pay any unpaid past assessments. The bill would require the tenant to make continual regular assessment payments to the association until released of this requirement by the association. The tenant is only liable for increases in the regular assessment if the tenant is given a notice of the increase before the rent is due. The tenant may credit his or her payment to the unit owner by the amount of the assessment payment. The bill would permit the association to evict the tenant under the procedures in ch. 83, F.S., as if the association were the landlord. The tenant's payment of regular assessments does not give the tenant the right voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 718.116(11), F.S., may be superseded.

Condominium – Sanctioning Units Owners

The bill amends s. 718.303(3), F.S., to authorize condominium associations to suspend, for a reasonable period of time, the right of a unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The declaration of condominium or the bylaws of the association must authorize the suspension. As with fines, notice and a hearing must be provided.

The bill provides that the fines and suspensions authorized by s. 718.303(3), F.S., do not apply to failure by the unit owner to pay any amount due to the association. The bill also authorizes associations to provide in their bylaws or declaration of condominium that a unit owner's voting rights may be suspended due to nonpayment of assessments, fines, or other charges payable to the association which are delinquent in excess of 90 days.

Cooperatives – Assessments and Foreclosures

The bill amends s. 719.108, FS, relating to a cooperative association's claim of lien, to provide that the unit owner's cost may not exceed $75 for collection letters or any other collection efforts by management companies or licensed managers related to the claim of lien. However, reasonable fees may be charged for preparation by the management company of any letter or certificate required by ch. 718, F.S.

The bill also requires that any payment received by the cooperative association must be applied to the costs for collection services for which the association has contracted before the payment is applied to the delinquent assessment. It also provides a lien by the association for authorized administrative late fees and reasonable collection costs for which the association has contracted.

The bill creates s. 719.108(10), F.S., to provide for the payment of unpaid regular assessments by the tenant of a unit owner in a cooperative association. These provisions are identical to the provisions in ss. 718.116(11) and 720.3085, F.S., for tenants in condominium associations and homeowners' associations, respectively.

Section 719.108(10), F.S., authorizes the cooperative association to demand payment of any future regular assessments from the tenant of the unit owner. The bill does not require that the tenant pay any unpaid past assessments. The bill would require the tenant to make continual

regular assessment payments to the association until released of this requirement by the association. The tenant is only liable for increases in the regular assessment if the tenant is given a notice of the increase before the rent is due. The tenant may credit his or her payment to the unit owner by the amount of the assessment payment. The bill would permit the association to evict the tenant under the procedures in ch. 83, F.S., as if the association were the landlord. The tenant's payment of regular assessments does not give the tenant the right voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 719.108(10), F.S., may be superseded.

Homeowners' Associations - Display of Flag

The bill amends s. 720.304(2)(b), F.S., regarding flagpoles in homeowners' associations, to provide that flagpoles are subject to all building codes, zoning setbacks, and other applicable government regulations. The other applicable government regulation include, but are not limited to, noise and lighting ordinances.

Homeowners' Associations – Sanctioning Parcel Owners

The bill amends s. 720.305(2), F.S., to provide that the provisions that authorize associations to suspend the parcel owner's right to use association property do not apply to common areas that provide access to the parcel or utility services for the parcel. Any fine or suspension must be imposed at a properly noticed board meeting. The owner, and, if applicable, the owners occupant, licensee, or invitee must be notified of the fine or suspension by mail or hand delivery.

Homeowners' Associations – Assessments and Foreclosures

The bill creates s. 720.3085(8), FS, to provide for the payment of unpaid regular assessments by the tenant of a unit owner in a cooperative association. These provisions are identical to the provisions in ss. 718.116(11) and 719.108(10), F.S., for tenants in condominium associations and cooperative associations, respectively.

Section 720.3085(8), F.S., authorizes the homeowners' association to demand payment of any future regular assessments from the tenant of the unit owner. The bill does not require that the tenant pay any unpaid past assessments. The bill would require the tenant to make continual regular assessment payments to the association until released of this requirement by the association. The tenant is only liable for increases in the regular assessment if the tenant is given a notice of the increase before the rent is due. The tenant may credit his or her payment to the unit owner by the amount of the assessment payment. The bill would permit the association to evict the tenant under the procedures in ch. 83, F.S., as if the association were the landlord. The tenant's payment of regular assessments does not give the tenant the right voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 720.3085(8), F.S., may be superseded.

Homeowners' Associations – Recreational Leaseholds

The bill creates s. 720.31(6), F.S., to permit homeowners' associations to acquire leaseholds, memberships, or other possessory interest in a lands or facilities, such as country clubs, golf

courses, marinas, and other recreational facilities. The recreational facility does not have to be on land contiguous to the association property.

The bill requires that the leaseholds, memberships, or other possessory interest must be stated and fully described in the declaration of the association if created or existing at the time the declaration is recorded. If the interest is created after the recording of the declaration, the interest must provide for material alterations of the declaration or substantial additions to the common areas or association. If the declaration does not provide for such material alterations or additions, then the approval of 75 percent of the total voting interests is required.

The association may join with other associations that are part of the same development or master association in the acquisition of the interest.

Timeshares – Facilities

The bill amends s. 721.05(17), F.S., to clarify the term "facility" means any permanent amenity.

Alternate Power Generators for Elevators

The bill repeals the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height in s. 553.509(2), F.S.

Effective Date

The bill provides an effective date of October 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill creates ss. 718.116(11), 718.116(11) and 720.3085(8), F.S., to authorize condominium associations, cooperative associations, and homeowners' associations, respectively, to demand payment of any unpaid regular assessments from tenants of the unit or parcel owner. The bill authorizes these associations to evict the tenant for non-payment of the assessment and provides a credit to the tenant lease payments for any

assessment payments the tenant makes to the association. These provisions implicate constitutional concerns relating to the impairment of contract.

The retroactive application of these provisions may violate the Contract Clause,[15] the prohibition against ex post facto laws,[16] and the Due Process clauses[17] of the U.S. Constitution. The common law also provides that the government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[18]

The Contract Clause prohibits states from passing laws which impair contract rights. It only prevents substantial impairments of contracts.[19] The courts use a balancing test to determine whether a particular regulation violates the contract clause. The courts measure the severity of contractual impairment against the importance of the interest advanced by the regulation. Also, courts look at whether the regulation is a reasonable and narrowly tailored means of promoting the state's interest.[20] Generally, courts accord considerable deference to legislative determinations relating to the need for laws which impair private obligations.[21] However, courts scrutinize the impairment of public contracts in a stricter fashion. They exhibit less deference to findings of the Legislature, because the Legislature may stand to gain from the outcome.[22]

Although the retroactive application of laws to preexisting lease agreements between condominium associations and third parties may be constitutionally applied,[23] it is not clear whether laws may be retroactively applied to pre-existing lease agreements between a unit owner and the tenant.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires that each unit owner's personal liability insurance policy must provide limits of no less than $300,000 per occurrence. This requirement may increase insurance costs for unit owners who do not currently carry liability coverage of at least that amount.

The bill repeals the alternate emergency generated power requirement for elevator in high-rise residential dwelling in s. 553.509, F.S, The repeal of this provision may save of

[15] Article I, s. 10, U.S. Constitution.
[16] Article I, s. 9, U.S. Constitution.
[17] Fifth and Fourteenth Amendments, U.S. Constitution.
[18] *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998).
[19] *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1923).
[20] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).
[21] *East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945).
[22] *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). *See generally*, Leo Clark, *The Contract Clause: A Basis for Limited Judicial Review of State Economic Regulation*, 39 U. MIAMI L. REV. 183 (1985).
[23] *Century Village, Inc. v. Wellington*, 361 So.2d 128 (Fla. 1978).

the owners of such building the costs of compliance with the requirement. It is estimated by industry representatives that to engineer and install the appropriate generator wiring, coupling, and transfer switch would cost approximately $4,000 to $6,000 per location.

Options to power an elevator by portable generator include purchase and guaranteed services contracts in which a second party provides the generator, maintenance, and servicing for a fee. Costs for purchasing a generator are dependent on each individual application. As an approximate general rule, standby generators cost $300 to $500 per kilo-watt. Thus, a 20 KW standby generator would cost between $6,000 and $10,000. A 100 KW generator would cost between $30,000 and $50,000.

The cost of a guaranteed services contract would be subject to many variables and is unknown. However, it is likely to be considerably less than the cost of a purchased generator.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill amends the condominium official records provision in s. 718.111(12)(b), F.S., the elections provisions in s. 718.112(2)(d), F.S., and the lien and foreclosure provisions in s. 718.116, F.S. These provisions are also amended by SB 998 by Senator Ring. However, as amended by the two bills, the provisions do not conform.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on April 1, 2009:
The committee substitute (CS) does not create s. 627.714, F.S., relating to loss assessment insurance coverage for condominium units. The CS also does not amend s. 718.111(11), F.S., to revise the requirements related to condominium insurance.

The CS amends s. 718.111(12)(b), F.S. to clarify that the association may be responsible for the use or misuse of the information if it has an affirmative duty not to disclose such information pursuant to ch. 718, F.S.

The CS amends s. 718.111(12)(c), F.S., to provide that the email addresses of any person in the association's records are not accessible to unit owners.

The CS amends CS s. 718.111(12)(c)7., F.S., to provide that members do not have a right to access data generated by software used by the association which allows manipulation of data. It deletes the current language that prohibits access to the functionality of software used by the association which allows manipulation of data.

The CS does not amend s. 718.112(2)(d), F.S., to provide for the expiration board member terms. The CS amends s. 718.112(2)(d), F.S., to provide that associations that do not include timeshare units may not permit co-occupants and co-owners of a unit to serve together on the board unless one of them owns more than one unit. It also provides that a person who is more than 90 days delinquent of any fee, fine, or assessment is ineligible for board membership.

The CS does not delete the pre-election certification requirement in s. 718.112(2)(d)3., F.S., and does not require a written pre-election notice of intent to be a candidate that includes the attestation of knowledge required under current law. The CS also amends s. 718.112(2)(d)3., F.S., to require newly elected board members to submit a post-election written certification or educational certificate.

The CS amends s. 718.112(2)(n), F.S., to include any fee or fine among the types of payments that, if delinquent more than 90 days, would deem an officer or director to have abandoned the office.

The CS amends s. 718.115(1)(d), F.S., to reference communication services as defined in ch. 202, F.S., information services, and Internet service within the scope of the types of bulk contracts that the board may enter into and the cost for which are considered common expenses.. It does not reference broadband services. The CS also amends s. 718.115(1)(d)2., F.S., to replace the term "television" with the term "video cable services."

The CS does not amend s. 718.116(1)(b), FS, to revise the limitation for first mortgagee's liability for unpaid assessments upon acquisition of title. The CS does not provide that a lien may not be filed by the association against a unit until 30 days after the date a notice of intent to file a lien is delivered to the owner.

The CS does not create s. 718.116(6), F.S., to specify the methods for proper service of the condominium association's notice of lien. The CS also does not repeal s. 718.121(4), F.S., which provides the current methods for proper service of the condominium association's notice of lien.

The CS amends s. 718.116(5)(b), FS, to limit to $75 the unit owners cost for collection letters and other collection efforts by the management company.

The CS creates s. 718.116(11), F.S., to provide for the payment of unpaid regular assessments by the tenant of a unit owner in a condominium.

The CS amends s. 718.303(3), F.S., to provide for the suspension of the right to use common elements, common facilities, or any other association property.

The CS does not repeal s. 718.121(4), F.S.

The CS amends s. 719.108, FS, relating to a cooperative association's claim of lien, and the payment of unpaid regular assessments by the tenant of a unit owner in a cooperative association.

The CS amends s. 720.305(2), F.S., relating to the imposition of fines and suspension-of-use rights in homeowners' associations.

The CS creates s. 720.3085(8), F.S., to provide for the payment of unpaid regular assessments by the tenant of a unit owner in a condominium.

The CS creates s. 720.31(6), F.S., relating to recreational leaseholds.

The CS amends s. 721.05(17), F.S., to clarify the term "facility."

The CS extends the effective date from July 1, 2009 to October 1, 2009.

B. Amendments:

None.