HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 115 Residential Properties
SPONSOR(S): Ambler
TIED BILLS: None **IDEN./SIM. BILLS:** SB 398

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Finance & Tax Council			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

This bill makes a number of changes to the regulation of community association managers, condominium associations, homeowners associations, and residential construction, including:

- Requires license revocation of certain community association managers guilty of multiple offenses.
- Limits borrowing by condominium associations.
- Limits condominium association access to units.
- Allows some co-owners of condominium units to serve together on the board.
- Moves new director certification (of reading condominium law and association documents) from before election to after, lowers the requirement, and provides for alternate education.
- Requires the board to hear and notice an amendment to condominium bylaws at two meetings.
- Expands authority of a condominium association to enter into bulk contracts for the benefit of members.
- Allows condominium association to collect regular assessments from a tenant of a delinquent member.
- Limits emergency powers of condominium associations.
- Allows condominium association to suspend use rights and voting rights of a delinquent unit owner.
- Expands state regulatory jurisdiction over condominium associations.
- Requires the Condominium Ombudsman to prepare an educational booklet.
- Creates incentives and liability protection for bulk buyers of distressed condominium associations.
- Requires additional disclosure to members of a homeowners' association if the association budget does not budget for deferred expenditures.
- Provides that a fine greater than $1,000 by a homeowners' association against a parcel owner may become a lien on the property.
- Revises the procedure and requirements for board meetings and elections.
- Requires that an elected director of a condominium association or a homeowners' association must certify in writing within 30 days of being elected that he or she has read the governing documents of the association.
- Provides for additional disclosure to prospective purchasers.
- Repeals current law providing for pre-suit mediation for disputes between a homeowners' association and a parcel owner before the dispute may be filed in court; repeals the requirement that the Department of Business and Professional Regulation arbitrate homeowners' association recall election disputes; and provides for pre-suit mediation or pre-suit arbitration for disputes between homeowners' associations and a parcel owner or owners and parcel owners within the same homeowners' association before a complaint may be filed in court.

This bill appears to have a negative recurring fiscal impact on state government affecting the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund, commencing in FY 2010-2011, of approximately $350,000 annually. This bill does not appear to have a fiscal impact on local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominium associations are governed internally by an association whose members are the owners of units within the association. Many, but not all, residential communities (that are not a condominium or cooperative) are similarly governed by a homeowners association made up of parcel owners. Collectively, these types of associations are referred to as community associations, and the separate statutes governing each type of association are similar in many ways. Condominium associations pay $4 per unit per year to the Florida Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares and Mobile Homes for state regulation of such associations. There is no state agency regulating homeowners associations and they pay no regulatory fee.

A Community Association Manager is a person licensed by the Department of Business and Professional Regulation, Division of Professions, to manage community associations. Any person managing an association of 10 or more units for pay must be licensed.

This bill amends various laws relating to community associations and Community Association Managers as follows:

Effect of Bill

Regulation of Community Association Managers

One ground for discipline of a Community Association manager under current law requires the Department of Professional Regulation to prove that a Community Association Manager has committed "gross misconduct or gross negligence." This bill amends s. 468.436(2)(b)5., F.S., to remove the term "gross" from this standard, thus providing a lower standard of proof for discipline of a Community Association Manager.

Current law gives the Department of Business and Professional Regulation discretion on the appropriate discipline of a Community Association Manager. This bill removes some of that discretion by creating s. 468.436(6), F.S., to provide that, upon the fifth finding of guilt, or the third finding of guilt of the same offense, the license of a Community Association Manager must be revoked.

Borrowing by a Condominium Association

A condominium association, like any other entity, has the authority to borrow money to accomplish the purposes of the entity. Current law does not specifically limit borrowing by a condominium association, other than through the general fiduciary duty that the directors owe to the association. Unless the governing documents require otherwise, the board of administration may enter into a loan without a vote of the membership. This bill amends s 718.111(3), F.S., to provide that borrowing money is a form of a special assessment. Before entering into a loan or line of credit, the board of administration must either give notice to the members of specific use of the funds or must obtain prior approval of two-thirds of the membership.

Access to Condominium Units by the Association

In a condominium, unit owners share a building. Sometimes, in order to maintain that building the association must give access to the interior of units to contractors and workers. Section 718.111(5), F.S., gives an association a right of access to condominium units. This bill amends s. 718.111(5), F.S., to require in non-emergency situations that an association give a unit owner 24 hours notice that the association will be accessing the unit, requires that at least two persons be in attendance during the access, and requires that one of the two be an employee or director of the association. The prior notice of access must give the name of an authorized representative who will be accessing the unit.

Condominium Association Assessment Meeting Notice

The board of administration of a condominium association sets the level of regular assessments necessary for the operation of the association, and may impose special assessments to pay for extraordinary or unexpected expenses. Current law requires that an association publish notice of any meeting of the board, and requires the notice of a meeting to consider assessments to contain the *estimated* amount of the assessment to be considered. This bill amends s. 718.112(2)(c), F.S., to require the meeting notice to contain the *actual cost* of the assessment, not the estimated cost.

Condominium Association Directors

Current law provides that, if no person files to run for a particular seat against an incumbent director, that director is eligible for reappointment without an election. This bill amends s. 718.112(2)(d)1., F.S., to provide that if the total number of candidates for election to the board is equal to or is less than the number of vacancies, the incumbent candidates are reappointed without election.

Current law provides that co-owners of a condominium unit may not serve together on the association board of administration. It is unclear under current law whether co-owners who own two or more units in an association are eligible to serve together on the board of administration. This bill amends s. 718.112(2)(d)1., F.S., to provide that co-owners who own more than one condominium unit in an association are eligible to serve together on the board of administration, and that co-owners may serve on the board together if there is an insufficient number of persons running for the board.

Current law provides that a person who is delinquent in payment of "any fee" is ineligible for election to the board of administration, and a current director who falls more than 90 days delinquent in any fee is removed by action of law from the board. This bill amends ss. 718.112(2)(d)1. and 718.112(2)(n), F.S., to provide that delinquency in payment of any "fee, fine, or special or regular assessment" disqualifies a person from running for the board, and any director or officer with a delinquency of any fee, fine, or special or regular assessment of 90 days or more is removed from the board.

Current law requires a person running for a seat on the board of administration must certify that he or she has read the condominium law and the association's governing documents upon qualifying to run

for the office. A copy of the certification of each candidate must be distributed to unit owners with the notice of the election. This bill amends s. 718.112(2)(d)3., F.S., to remove the certification requirement.

The bill requires newly elected directors, within 90 days of being elected, to certify in writing that they have read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies, or, in lieu thereof, submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate automatically disqualifies a director from serving on the board.

This bill further provides that these requirements for membership on the board of administration do not apply to a timeshare condominium.

Amendment of Condominium Association Bylaws

Just as the declaration of condominium is analogous to a state or federal constitution, the bylaws of an association are analogous to the statutory laws of an association. Current law does not require any particular method for amendment of the bylaws of an association. This bill creates s. 718.112(2)(h)4., F.S. to provide that if the bylaws are amended by the directors, they must be noticed and discussed at two meetings before passage (analogous to two readings before the Legislature).

Communication Services Provided to a Condominium Association

Section 718.115, F.S., defines common expenses, which are the expenses of a condominium association, and authorizes the association to expend funds for such expenses. Paragraph (1)(d) provides that the declaration of condominium may provide for, and charge to the unit owners, the cost of a master television antenna or a bulk contract for cable television service. The cost of a bulk cable contract may be apportioned on a per unit basis rather than according to the usual allocation of common expenses of the association. Bulk contracts must provide an opt-out provision for any unit occupied by a deaf person, blind person, or any person receiving SSI[1] or food stamps.

The bill amends s. 718.115(1)(d), F.S., to expand the scope of authorized bulk contracts. The bill removes references to master antenna television system or duly franchised cable television services with an authorized to enter into bulk contracts for communication services as defined in ch. 202, F.S.,[2] information services, or Internet service.

The bill also provides that only "cable or video service" is subject to the opt-out provisions. Accordingly, to the extent that a communications service, information service or internet services is not a cable or video service, the opt-out provisions will not apply.

Condominium Association Assessments; Collection from Tenants

A condominium association is in effect a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Section 718.116, F.S., provides for the assessment and collection of periodic and special assessments to fund the association. A unit owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company (if purchased) insures the buyer should the closing agent not properly see to payment of assessments through closing.

[1] SSI is Supplemental Security Income under Title XVI of the Social Security Act.
[2] Chapter 202, F.S., is the Communications Services Tax Simplification Law.

Foreclosure, an involuntary sale, is different. A unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the condominium unit be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 718.116(1)(b), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 6 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the unit holders through increased regular assessments and may be passed on to the unit owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving condominium associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of condominium units in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to significant financial troubles in condominium associations statewide.[3] Of great frustration to associations is situations where the unit is rented and the unit owner in default keeps the rents while the association is required to allow the tenant to use the common areas.[4]

This bill amends s. 718.116, F.S., to give the association the right to demand that any tenant within a condominium unit that is in foreclosure pay future regular assessments to the association. The tenant may deduct such regular assessments paid to the association from the tenant's rent. The association may evict a tenant that refuses to pay.

Condominium Association Emergency Powers

Section 718.1265, F.S., gives the board of administration of condominium association very broad powers to deal with an emergency. For instance, the board can borrow, move money from reserves, meet without notice, evacuate the building, make emergency repairs, and the like. This bill amends the emergency powers provisions to provide that emergency powers may only be exercised during the term of the stated emergency unless more than 20% of the units are uninhabitable.

Transfer of Condominium Association Control

A condominium association is originally controlled by the developer of the association. Section 718.301, F.S., requires the developer to transfer control to a board elected by the unit owners upon the first happening of any one of seven grounds. Paragraph (1)(f) requires transfer of control if a court has appointed a receiver over the developer and the receivership has not been dismissed within 30 days of appointment. This bill amends s. 718.301(1)(f), F.S., to provide that transfer of control is not required if the receivership court determines that transfer of control would be detrimental to the association or its members.

[3] See, for instance: Iuspa-Abbott, *Condo Meltdown*, Daily Business Review, July 22, 2008; Bayles, *Help for Homeowners Associations*, HeraldTribune.com, October 6, 2008; Andron, *Condo Associations in Eye of Foreclosure Storm*, Miami Herald, April 21, 2008; 2008 *Florida Community Association Mortgage Foreclosure Survey*, April 16, 2008; Geffner, *Condo Foreclosures Hurt Others, Too*, MSNBC.com, August 29, 2008; Moody, *Banks Stick Unpaid Fees to Condos*, Florida Today, October 26, 2008; Owers, *Foreclosures Lead to Budget Problems for Associations*, South Florida Sun-Sentinel, February 24, 2009; *State of Distress: Florida Community Association Mortgage Foreclosures Spawn Crisis Within State's Condo and HOA Population*, February 24, 2008 (survey finding that nearly two-thirds of associations were impacted by foreclosure losses). All articles on file with committee staff.

[4] See s. 718.106(4), F.S.

Suspension of Condominium Use and Voting Rights for Delinquency

Section 718.106, F.S., provides that a condominium unit owner is entitled vote on association matters and may use the common areas of the association. Subsection (4) provides that the right to use the common areas is transferred to the tenant of a condominium unit. Nothing in statute allows the association to suspend voting or use rights when a unit owner is delinquent. Section 718.303, F.S., sets forth the obligations that unit owners and tenants owed to the condominium association.

The bill amends s. 718.303(3), F.S., to provide that, where a condominium unit owner is more than 90 days delinquent in the payment of any regular or special assessment, the condominium association may suspend the right of the unit owner to use the common areas. The suspension will also apply to tenants, occupants, and guests of the unit owner. The suspension may only extend for a reasonable period of time. However, the association may not suspend access to a limited common element dedicated to that one unit,[5] common elements necessary to access the unit, utility services provided to the unit, parking spaces, or elevators.[6]

A condominium association seeking to impose a fine must give the person subject to the fine notice of a hearing and the hearing must be before a committee of unit owners who are not members of the board of administration. This bill amends s. 718.303(3), F.S., to require the same notice and hearing before suspension of use rights; but then creates s. 718.303(4), F.S., to provide that a suspension of use rights for nonpayment of assessments (or the imposition of fine for late payment) requires a hearing before the board of administration before it may be imposed.

The bill also creates s. 718.303(5), F.S., to provide that a condominium association may suspend the voting rights of a unit owner who is 90 or more days delinquent in any monies owed to the association.

Regulation of Condominium Associations by DBPR

Section 718.501, F.S., provides the regulatory framework by which the Department of Business and Professional Regulation (DBPR) regulates condominium associations. After turnover of association control from the developer to unit owners, DBPR only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records. This bill amends s. 718.501(1), F.S. to the jurisdiction of DBPR after turnover to add failure to maintain the common elements.

Section 718.501(1)(d), F.S., lists the remedies and penalties available to DBPR after a finding that an association or an individual has violated an applicable provision of the condominium law. This bill adds additional remedies to:

- Provide that, where DBPR finds that an officer or director of an association has intentionally falsified association documents with the intent to conceal material facts, the division must prohibit the officer or director from acting as an officer or director of any condominium, cooperative or homeowners association.

- Provide that, where DBPR finds that any person has derived an improper personal benefit from a condominium association, DBPR must order the person to pay restitution to the association and reimburse DBPR for the cost of investigation and prosecution.

[5] For instance, a balcony is typically categorized as a limited common element dedicated to the exclusive possession of one unit.

[6] Some of the common areas that could be placed off-limits to a delinquent unit owner, and the guests and tenants of that unit owner, would include swimming pools, spas, gyms, workout rooms, tennis courts, golf courses, meeting rooms, and the like.

Florida Condominium Handbook

This bill requires the Condominium Ombudsman to publish a Florida Condominium Handbook.

Distressed Condominiums

This bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." In essence, the statute creates two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. There are advantages that may accrue with the status as successor developer, including acquisition of certain developer-retained rights under the condominium documents and the ability to control the condominium association by electing or designating a majority of the directors of the condominium association board of directors. On the other hand, there are certain disadvantages, including potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.[7]

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. The findings include a finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including the foreclosing mortgagee.[8] The bill provides a statement of legislative intent that it is public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

Definitions

The bill amends the definition of "developer" s. 718.103(16), F.S., to exclude a bulk assignee or a bulk buyer. The bill creates s. 718.703, F.S., to define "bulk assignee" as a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or all of the rights of the developer under specified recorded documents. It also defines "bulk buyer" as a person who acquires more than seven condominium parcels but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

Changing the definition of "developer" to exclude bulk buyers and bulk assignees will have the effect of limiting the jurisdiction of DBPR over such persons under s. 718.501, F.S. Under s. 718.501(1), F.S., DBPR has full jurisdiction over an association controlled by a developer to enforce any provision of the condominium laws, but has only limited jurisdiction over an association not controlled by a developer.

Assignment and Assumption of Developer Rights

Creates s. 718.704, F.S., relating to the assignment and assumption of developer rights. In general, a bulk assignee assumes all liabilities of the developer. However, a bulk assignee is not liable for:

[7] Schwartz, *The Successor Developer Conundrum in Distressed Condominium Projects*, The Florida Bar Journal, Vol. 83, No. 7, July/August 2009.

[8] For instance, in one case the construction lender foreclosed after the original developer defaulted on a loan. The lender took title to condominium project, completed construction, and, while holding itself out as developer and owner of project, advertised and sold units to purchasers. The court found that the lender became the developer of the project and therefore liable for performance of express representations made to buyers, for patent construction defects in entire condominium project, and for breach of any applicable warranties due to defects in portions of project completed by lender. *Chotka v. Fidelco Growth Investors*, 383 So.2d 1169 (Fla. 2nd DCA 1980).

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee.

- Funding converter reserves for a unit not acquired by the bulk assignee.

- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser.

- Including in the cumulative audit required at turnover for an audit of income and expenses during the period prior to assignment.

- Any actions taken by the board prior to the time at which the bulk assignee appoints a majority of the board.

- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider.[9]

Development rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee.

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- If more than one acquirer receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

Transfer to Unit Owner-Controlled Board

The bill creates s. 718.705, F.S., relating to the transfer of control of the condominium board of administration. The bill provides that transfer of condominium units to a bulk assignee is not a transfer that would require turnover. However, units transferred from the bulk assignee count for purposes of determining when turnover is required.

In an ordinary turnover, the developer is required to deliver certain items and documents to the new board of administration that is controlled by unit owners. A bulk assignee is only required, however, to turnover items and documents that the bulk assignee actually has. A bulk assignee has the duty to attempt to obtain turnover materials from the original developer, and must list materials that the bulk assignee was unable to obtain.

Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer

Under current law, a successor developer may be liable for filing anew all of the condominium documents for regulatory review. The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer: Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation:

- Updated prospectus of offering circular, or a supplement, which must include the form of contract for purchase and sale;
- Updated Frequently Asked Questions and Answers sheet;

[9] The bill references the definition of "insider" at s. 726.102(7), F.S. Chapter 726, F.S., prohibits fraudulent transfers.

- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the previous fiscal year prior to acquisition by bulk assignee or accounting records cannot be obtained in good faith, in which case notice requirements must be met.

In addition, a bulk assignee (but not a bulk buyer) must file with the division and provide each purchaser with a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is a conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Both bulk assignees and bulk buyers must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

Similar to the restrictions on developers while they are in control of the association, a bulk assignee may not waive reserves, reduce reserves, or use a reserve for a purpose other than set aside for, unless such waiver, reduction or use is approved by a majority of the voting interests not under the control of the developer, bulk assignee, or a bulk buyer.

While in control of the association, a bulk assignee or a bulk buyer must comply with the requirements of s. 718.302, F.S., which section regulates contracts entered into by the association.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

Limitations

The bill creates s. 718.707, F.S., to provide a time limitation for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2012.

Liabilities of Developers and Others

The bill creates s. 718.708, F.S., to provide that an assignment of developer rights does not release the developer from any liabilities under the condominium declaration or ch. 718, F.S. The section further provides that nothing in the act waives, releases, compromises, or limits the liability of contractors, subcontractors, materialmen, manufacturers, architects, engineers, or any participant in the design or construction of a condominium for any claim brought by the association, unit owners, bulk assignees, or bulk buyers relating to the design, construction defects, misrepresentations, or violations of ch. 718, F.S., except as provided in the act.

Homeowners' Associations -- Board and Committee Meetings

Current law at s. 720.303(2), F.S., provides procedures for all homeowners' association board meetings and some committee meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. In general, board and committee meetings are open to all members. Paragraph (2)(a) provides that a meeting of the board of directors or a committee to discuss pending or proposed litigation where the contents of the meeting would otherwise be covered by the attorney-client privilege may be closed to the members. Paragraph (2)(b) provides that, notwithstanding any other law, meetings between the board or a committee and an attorney to discuss

personnel matters may be closed to members. It is possible that these two paragraphs are in conflict because of the term "nowithstanding."

This bill amends s. 720.303(2)(b), F.S., to provide that all board or committee meetings to discuss "proposed or pending litigation" may be closed to the members, and all board or committee meetings regarding personnel matters may be closed to the members regardless of whether the association attorney is present at such meeting.

Homeowners' Associations -- Member Access to Records

Current law requires a homeowners' association to provide members of the association access to the records of the association within 10 business days of a written request for inspection or copying of the records. A member may sue the association for failure to timely provide the required access. This bill amends s. 720.303(5)(a), F.S., to require that a member request for access to records must be sent by certified mail, return receipt requested, if the member wishes to sue for failure to provide the required access.

Current law allows an association to charge a member for copies of records of the association. The association may charge up to 50 cents a page or, if the copies are made by an outside vendor, the association may charge the actual cost charged by the vendor. This bill amends s. 720.303(5)(c), F.S., to provide that an association copying more than 25 pages may charge a member the actual cost of copying, including reasonable costs for employees.

Homeowners' Associations -- Reserve Accounts

Current law allows, but does not require, a homeowners association to provide for reserve accounts.[10] A reserve account is in effect a savings account whereby an association collects periodic advance payments to cover future anticipated capital expenditures and deferred maintenance items. Monies in a reserve account may only be spent for maintenance, repair and replacement of the reserve item. A reserve account, once established, must remain in existence.

This bill amends s. 720.303(6), F.S., to allow the members of an association to terminate a reserve account. This bill also allows an association to create funding accounts that are not formal reserve accounts, and creates a disclosure that informs members that such funding accounts are not protected from being used by the association for expenditures that are unrelated to the reserve item.

Homeowners' Associations - Compensation of Directors

There is no prohibition in current law on compensation of the directors, officers, or committee members of a homeowners' association. This bill creates s. 720.303(12), F.S., to provide that a director, officer or committee member may not receive any salary or compensation from the association for the performance of his or her duties and may not benefit in any other way financially from service to the association. This bill also creates exceptions to this limitation, which exceptions provide that this limitation does not prohibit:

- Participation in a financial benefit accruing to all or a significant number of members as a result of lawful actions taken by the board including in part maintenance or repair of community assets;
- Reimbursement for out-of-pocket expenses subject to approve in accordance with procedures established by the governing documents;
- Recovery of insurance proceeds which are derived from a policy of insurance maintained by the association for the benefit of its members;

[10] Probably the most common reserve account applicable to a homeowners association is for repaving of private roads.

- Any fee or compensation authorized in the governing documents; or
- Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by a proxy at the meeting of the members.

Borrowing by a Homeowners Association

A homeowners association, like any other entity, has the authority to borrow money to accomplish the purposes of the entity. Current law does not specifically limit borrowing by a homeowners association, other than through the general fiduciary duty that the directors owe to the association. Unless the governing documents require otherwise, the board of directors may enter into a loan without a vote of the membership. This bill amends s 720.303, F.S., to provide that borrowing money by a homeowners association is a form of a special assessment. Before entering into a loan or line of credit, the board of directors must either give notice to the members of specific use of the funds or must obtain prior approval of two-thirds of the membership.

Homeowners Association Transfer Fees

The covenants of a homeowners association may contain a requirement that the parties to any transfer of a parcel within the association must pay a fee to the association for such transfer. Current law generally prohibits transfer fee covenants, although transfer fees payable to a homeowners association are an exception to the prohibition. See s. 689.28(2)(c)7., F.S.

This bill adds s. 720.303(14), F.S., to prohibit a homeowners association from charging or collecting a transfer fee. However, an association may collect a security deposit from a tenant provided that the deposit does not exceed one month's rent. The security deposit may only secure the association against damage by the tenant to the common areas or association property. The association must give a tenant notice of a claim against the deposit within 15 days of the tenant vacating the property.

Homeowners' Associations – Display of Flag

Section 720.304(2)(a), F.S., allows a homeowner in a homeowners association 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 4½ 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. This bill amends the provisions on flags other than the United States flag to provide that those provisions only apply on Armed forces Day, Memorial Day, Flag Day, Independence Day, and Veteran's Day.

The changes made to paragraph (2)(a) do not affect the right of a homeowner under s. 720.304(2)(b), F.S., 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. A homeowner with a freestanding flagpole may display the same additional flags on any day.

Homeowners' Association -- Fines as a Lien

Current law requires members and their tenants, guests and invitees to comply with association governing documents. Among other remedies available to associations for a violation of the governing documents, an association may levy a reasonable fine of up to $100 per violation. A fine for a continuing violation may not exceed $1,000 unless the governing documents specifically allow a larger fine. A fine may not become a lien against a parcel.

This bill amends s. 720.305(2), F.S., to provide that a fine in excess of $1,000 may become a lien against a parcel.

Homeowners' Association -- Proxy Voting

Current law generally allows proxy voting in elections where the parcel owners may vote. A proxy is a written authorization allowing one person to cast another's vote. Current law does not allow nor does it prohibit an association from utilizing absentee balloting.

This bill amends s. 720.306(8), F.S. to create a format for absentee balloting. The bill provides that if the governing documents allow a parcel owner who is not in attendance at a meeting to cast a secret ballot, the ballot must be placed in an inner envelope with no identifying markings and delivered to the association in an outer envelope with the required information. The outer envelope must include the name of the owner, the lot or parcel for which the vote is being cast, and the signature of the parcel owner casting the ballot. Once the eligibility to vote is verified and it is confirmed that there are no other ballots submitted for that lot or parcel, the inner envelope must be removed and added to the ballots of members who voted personally and must be opened when the ballots are counted. If there is more than one ballot submitted for a lot or parcel, the ballots for that lot or parcel are disqualified. No ballot received after the close of balloting by a vote of the membership will be considered.

Homeowners' Association -- Director Certification

Current law provides criteria for persons seeking to be elected to the board of directors to a homeowners association. This bill amends homeowner association election law at s. 720.306(9), F.S., to add a requirement that a newly elected director must certify that he or she has read and will uphold the governing documents of the association and that the director will faithfully discharge the director's fiduciary obligations to the association. A director that fails to file the certification with secretary of the association within 30 days after election is disqualified from service on the board of directors. The secretary of the association must maintain the certification for 5 years from election. The failure of the association to have a certification on file does not affect the validity of any action of the association.

One possible interpretation is that the failure to timely file the certification after an election may forever disqualify a person from service on the board of directors. The requirement does not appear to apply to persons appointed to the board to fill a vacancy.

Homeowners Association Assessments; Collection from Tenants

A homeowners association is in effect a partnership between parcel owners with a common interest in a neighborhood and common neighborhood improvements. To operate, an association must collect regular assessments from the parcel owners in order to pay for management, maintenance, insurance, and perhaps reserves for anticipated future major expenses. Sections 720.308 and 720.3085, F.S., provide for the assessment and collection of periodic and special assessments to fund the association. A parcel owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company (if purchased) insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. A unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the home be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 720.3085(2)(c), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being

responsible to the association for the lesser of 12 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the parcel holders through increased regular assessments and may be passed on to the parcel owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving homeowners associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of homes in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to financial troubles in some homeowners associations. Of great frustration to associations is situations where the home is rented and the homeowner in default keeps the rents while the association is required to allow the tenant to use the common areas.[11]

This bill amends s. 720.3085, F.S., to give the association the right to demand that any tenant within a home that is in foreclosure pay future regular assessments to the association. The tenant may deduct such regular assessments paid to the association from the tenant's rent. The association may evict a tenant that refuses to pay.

Homeowners Association Agreements

A condominium association is restricted when entering into management, maintenance and operational agreements by s. 718.3025, F.S. This bill creates s. 720.3095, F.S., to impose the same restrictions on agreements with homeowners associations. Such agreements must be in writing and be specific as to the terms. The agreement must disclose any financial or ownership relationship that the contractor has the developer or with any board member. This section does not apply to contracts for the convenience of the members and that the association does not pay for.

This bill also creates s. 720.3096, F.S., to further limit certain agreements by homeonwners associations. A homeowners association is a non-profit entity governed by ch. 617, F.S., which chapter governs all non-profit corporations. Section 617.0832, F.S., governs director conflicts of interest. The section authorizes insider contracts[12] if any director voting for the insider contract discloses the director's interest in the contractor. The bill requires that an insider contract entered into by a homeowner association must not only comply with s. 617.0832, F.S., but in addition must be approved by a two-thirds vote of the directors. Also, at the next regular or special meeting of the members, the members must be notified of the insider contract and must be given an opportunity to, by a majority vote, cancel the contract. If cancelled, the association will not be not be liable for cancellation fees or penalties and will only be liable for the value of services provided up to the date of cancellation.

Homeowners' Association -- Prospective Purchaser Disclosure

Under current law, a prospective purchaser of a home in a homeowners association must be given a disclosure summary before the contract for sale is executed. The form of the disclosure is set forth in s. 720.401, F.S. Statements on the form must declare in part that:

- A purchaser will be required to be a member of the homeowners' association;
- There are restrictive covenants;
- The purchaser will have to pay assessments;
- The purchaser may have to pay special assessments;
- Failure to pay assessments could result in a lien; and
- The developer may have the right to amend restrictive covenants without association approval.

[11] See s. 720.304(1), F.S.

[12] An insider contract is a contract between a corporation and another entity that one or more directors have an interest in. For instance, in a homeowners association an insider contract might be where John Smith is a director of a homeowners association that hires John Smith Landscaping Company, owned by that director, to mow the common areas.

This bill amends the disclosure form to further disclose that the developer may only amend the covenants without association approval if the association is still under developer control. This bill also adds two new disclosures:

- That there may be an obligation to pay assessments to a community development district for the purpose of retiring bond obligations used to construct the infrastructure or other improvements.

- The purchaser is jointly and severally liable with the previous owner for all unpaid assessments up to the time of the title transfer.

Homeowners' Association – Dispute Resolution Procedures - In General

Current law at s. 720.311, F.S., requires that certain disputes related to homeowners associations are subject to pre-suit mediation or to arbitration. A party that fails to initiate the mediation procedure, or who fails to participate in the procedure, may not recover attorney's fees in any subsequent litigation regarding the dispute. This bill repeals s. 720.311, F.S., and creates a new Part IV of ch. 720, F.S., entitled "Dispute Resolution."

The general rule of civil litigation is that each party bears his or her own legal fees. Many statutes and contracts contain a fee-shifting provision that requires the losing party to pay the legal fees of the winning party, which acts as a deterrent to frivolous lawsuits and unreasonable demands. It is typical for the covenants of a homeowners association to provide that the prevailing party in litigation to enforce the covenants is entitled to attorney's fees. Current law provides that any party that does not follow the statutory dispute resolution procedures over a dispute may not seek attorney's fees in litigation regarding that dispute. This revised dispute resolution procedures in this bill continue that penalty, that is, a party that fails to refer the case to presuit mediation or arbitration, or a fails to participate, may not seek attorney's fees in litigation over that dispute.

The following sections discuss the changes related to dispute resolution in detail.

Homeowners' Association - Dispute Resolution - Applicability

In general, ch. 720, F.S., only applies to mandatory homeowners associations, that is, an association that has mandatory periodic assessments and the right to impose a lien against a parcel for the failure of a parcel owner to pay an assessment.[13] The current dispute resolution procedures also apply to non-mandatory associations.[14] This bill changes a legislative intent section at s. 720.302(2), F.S., to state an intent for dispute resolution procedures to apply to "deed-restricted communities," which appears to reference non-mandatory associations. However, the provisions in the new Part IV only reference homeowners associations, a defined term that only applies to mandatory associations.

Elections. -- Section 720.311, F.S., requires election disputes to be arbitrated through DBPR, this bill requires elections disputes to be referred to private arbitration. See below for further detail.

Between association and member. -- Section 720.311, F.S., requires disputes between an association and a member regarding use of or changes to the parcel, covenant enforcement, amendments to controlling documents, meetings, or access to association records are subject to presuit mediation. This bill appears to refer the same disputes to presuit mediation or arbitration, but lists specific disputes that are not subject to presuit mediation or arbitration, namely: title disputes, warranties, levy of a fine or assessment, collection, eviction, breach of fiduciary duty by a director, or foreclosure.

[13] Section 720.301(9), F.S.
[14] Section 720.311(2)(e), F.S.

Between members. -- Although a homeowners association is generally expected to take the lead in enforcing the covenants of the association, every member of an association has an independent right to sue his or her neighbor to enforce the covenants. Current law does not require disputes between members of an association to refer the dispute to presuit mediation prior to filing of the action. This bill requires that dispute between members of a homeowners association must follow the same provisions for referral to presuit mediation or arbitration.

Current law provides that cases requiring emergency relief are not required to participate in statutory dispute resolution requirements. This bill provides that, after the court has dealt with the emergency, the court may refer the remainder of the case to the mediation or arbitration requirements.

Homeowners Associations -- Dispute Resolution - Elections

Section 720.303(10)(d), F.S., requires the parties to a dispute regarding a recall election to refer the matter to arbitration by the Department of Business and Professional Regulation. Section 720.306(9), F.S., similarly requires the parties to a dispute regarding a general election to refer the matter to arbitration by the department. Section 720.311(1), F.S., requires the department to charge an initial filing fee of $200 for such arbitrations, and requires the department to charge the parties the actual cost of the arbitration.

This bill requires the parties to any election dispute to refer the matter to private arbitration under new s. 720.507. The bill also amends ss. 720.303(10)(d) or 720.306(9), F.S., to conform.

Homeowners Associations -- Dispute Resolution - Statutes of Limitation

Current law at s. 720.311(1), F.S., provides that the filing of a petition for arbitration or a demand for mediation tolls any applicable statute of limitation. A statute of limitation is a bar to the filing of a lawsuit that occurs after a certain period of time has elapsed since the event that gives rise to the lawsuit. Tolling of a statute of limitations is a day for day extension of the statute of limitations deadline based on the occurrence or nonoccurrence of some event. Current law does not specify when the tolling concludes. This bill provides that the tolling of the statute of limitations ends upon the conclusion of the arbitration or mediation and for 30 days thereafter.

Homeowners Associations -- Dispute Resolution - Notice Before Mediation

Current law at s. 720.311, F.S., allows a party to immediately proceed to the applicable dispute resolution procedure (arbitration or mediation). This bill creates a new s. 720.504 that requires an aggrieved party to first given notice to the other party of the dispute. Notice must be by certified mail. The notice must specifically describe the offense, state the date time and location of the offense, and the text of any provision in the governing documents that applies. The offending party has 10 days to resolve the dispute, after which the aggrieved party may seek arbitration or mediation. A copy of the notice and any responses thereto must be included in any demand for arbitration or mediation. The statute of limitations is not tolled during this 10 day reply period.

Homeowners Associations -- Dispute Resolution - Mediation Required

Current law at s. 720.311, F.S., requires an aggrieved party to serve a statutory offer to participate in presuit mediation. This bill creates a new s. 720.505 that requires the parties to refer the dispute to presuit mediation by use of a similar form entitled "Statutory Notice of Presuit Mediation." Alternatively, this bill also allows the parties to refer the dispute to presuit arbitration.

The form of the Statutory Notice of Pre-suit Mediation is set in new s. 720.505(1), F.S. Service of the form must be by personal service according to ch. 48, F.S., or by certified mail, return receipt

requested. An additional copy of the form must be sent by first-class mail to the responding party's address as it last appears in the association records, or if not available, then as it last appears in the official records of the county property appraiser. The notice informs the offending party that:

- The aggrieved party demands pre-suit mediation.
- Notice of the dispute was previously sent (note that a copy of the previous notice must be attached).
- This notice is required before a lawsuit may be filed.
- The party receiving the notice may opt for arbitration.
- The mediation process will be conducted under specified terms.
- Failure to participate in mediation will result in a bar on collecting attorney's fees should the dispute go to trial.
- The aggrieved party has selected 5 mediators, whose name and rate are stated, and that the party receiving the notice may select one of the five.
- The recipient must reply within 20 days by certified mail.

The form then provides room for the respondent to fill out an Agreement to Mediate, in which the respondent indicates that he or she will participate, the name of the mediator chosen, and three dates within the next 90 days that he or she is available.

The mediator is required to set the mediation within 10 days of notice of selection, and must complete mediation within 90 days unless the parties all agree to an extension.

Homeowners Associations -- Dispute Resolution - Arbitration (not related to election)

Current law does not provide an alternative to the mandatory pre-suit mediation of certain disputes. This bill creates new s. 720.506 that allows the party served with a Statutory Notice of Pre-Suit Mediation to reply by requesting pre-suit arbitration instead.

Homeowners Associations -- Dispute Resolution - Arbitration

Current law requires election disputes to be referred to arbitration through DBPR, and does not provide for other homeowners' association disputes to be referred to arbitration. Current law has little statutory guidance for the arbitration process. This bill requires elections disputes to be referred to private arbitration and allows other disputes to be referred to arbitration. The new arbitration procedures at new s. 720.507 apply to all pre-suit arbitration.

Arbitration is different from mediation in that mediation involves a trained intermediary who guides the parties towards a mutually agreeable settlement, whereas arbitration is a hearing similar to trial in which the parties present evidence and the arbitrator makes a ruling.

A party that elects to pursue pre-suit arbitration must serve the other party a written notice of pre-suit arbitration. The statute creates a specific "Statutory Notice of Presuit Arbitration" at new s. 720.507(1). The notice must be served by personal service according to ch. 48, F.S., or by certified mail, return receipt requested. An additional copy must be sent by first-class mail to the responding party's address as it appears on the official records of the association, or if not available, as it appears on the official records for the county appraiser. The form, similar to the mediation form, notifies the party that:

- Arbitration is requested related to a dispute described in the notice.
- Arbitration is required before the filing of a lawsuit.
- The arbitration will be conducted according to the procedures set forth in the notice.
- The parties may settle the case before arbitration.
- Failure to participate will result in a loss of the party's right to recover attorney's fees should a lawsuit be filed.
- The party has selected 5 arbitrators for the other party to select from.
- A response to the notice is required within 20 days.

The form then provides room for the recipient to fill out an Agreement to Arbitrate, in which the recipient indicates that he or she will participate, the name of the arbitrator chosen, and three dates within the next 90 days that he or she is available.

The arbitrator is required to set the arbitration within 10 days of notice of selection, and must complete arbitration within 90 days unless the parties all agree to an extension.

An arbitrator may issue subpoenas for the attendance of witnesses and the production of documents or things. A final arbitration award must be issued within 30 days of the hearing. If the parties agree to binding arbitration, then the award is final; otherwise, any party may file for a trial de novo within 30 days of the award. A party filing a motion for trial de novo will be assessed the other party's costs and attorney's fees if the trial court award is not more favorable than the arbitration award.

Homeowners Associations -- Dispute Resolution - Procedure for Mediation or Arbitration

Current law has little procedure set forth for the conduct of mediation or arbitration proceedings involving homeowners associations. This bill creates new s. 720.508 to provide that:

- Mediation and arbitration are to be conducted according to ch. 44, F.S., and the Florida Rules of Civil Procedure.
- Mediation confidentiality laws apply.
- Only parties and their attorneys may attend mediation. Other persons may only attend if all parties agree.
- A mediation conference is not a board meeting that must be noticed.
- Settlement agreements are not precedent, but arbitration awards are.
- A person must be a certified circuit court mediator and a member of the Florida Bar in order to qualify as a mediator or arbitrator under Part IV.
- Mediation settlements and arbitration awards may be enforced by the courts.

This bill also creates s. 720.509, F.S., to require that a person who conducts mediation or arbitration of homeowners association disputes must be certified as a circuit court mediator and is a member of the Florida Bar.

This bill also creates s. 720.510, F.S., to provide for enforcement of mediation agreements and arbitration awards through the circuit courts. If a party must resort to court action to enforce either, the party is entitled to costs and attorneys fees.

Swimming Pools

This bill creates an unnumbered section of law to provide that all new residential construction of a condominium, a cooperative, or in a mandatory homeowners association must comply with the provisions of the Virginia Graeme Baker Pool and Spa Safety Act. This federal law requires, in part, that all newly constructed swimming pools utilize construction methods that limit entrapment hazards. In that the law already applies and is in effect, this provision in the bill has no practical effect.

B. SECTION DIRECTORY:

Section 1 amends s. 34.01, F.S., relating to the jurisdiction of the county court.

Section 2 amends s. 468.436, F.S., relating to regulation of community association managers.

Section 3 amends s. 718.103, F.S., relating to the definition of developer applicable to condominium regulatory laws.

Section 4 amends s. 718.111, F.S., relating to condominium associations in general.

Section 5 amends s. 718.112 F.S., relating to the bylaws of a condominium association.

Section 6 amends s. 718.115, F.S., relating to

Section 7 amends s. 718.116, F.S., relating to condominium association assessments.

Section 8 amends s. 718.1265, F.S., relating to condominium association emergency powers.

Section 9 amends s. 718.301, F.S., relating to transfer of control in an association.

Section 10 amends s. 718.303, F.S., relating to the obligations of owners in a condominium association.

Section 11 amends s. 718.501, F.S., relating to regulation of condominium associations, developers and directors by the Department of Business and Professional Regulation.

Section 12 amends s. 718.5012, F.S., relating to the Condominium Ombudsman.

Section 13 creates part VII of ch. 718., F.S., relating to distressed condominium associations.

Section 14 amends s. 720.302, F.S., relating to the purpose, scope and application of ch. 720, F.S., regarding homeowners' associations.

Section 15 amends s. 720.303, F.S., relating to homeowners association powers and duties.

Section 16 amends s. 720.304, F.S., relating to the right of an owner in a homeowners association to fly flags.

Section 17 amends s. 720.305, F.S., relating to obligations of members of a homeowners association, remedies at law or in equity, levy of fines and suspension of use rights.

Section 18 amends s. 720.306, F.S., relating to meetings of members of a homeowners association.

Section 19 amends s. 720.3085, F.S., relating to assessments and liens in homeowners associations.

Section 20 amends s. 720.3095, F.S., relating to management and maintenance agreements by homeowners associations.

Section 21 amends s. 720.3096, F.S., relating to limits on agreements by homeowners associations.

Section 22 repeals s. 720.311, F.S., relating to homeowners association dispute resolution.

Section 23 amends s. 720.401, F.S., relating to notices given to prospective purchasers of a property within a homeowners association.

Section 24 creates ss. 720.501, F.S., 720.502, F.S., 720.503, F.S., 720.504, F.S., 720.505, F.S., 720.506, F.S., 720.507, F.S., 720.508, F.S., 720.509, F.S., and 720.510, F.S., relating to dispute resolution in homeowners associations.

Section 25 requires new construction within an association under ch. 718 (condominiums), 719 (cooperatives), or 720 (homeowners associations), F.S., to comply with the Virginia Graeme Baker Pool and Spa Safety Act.

Section 26 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The portion of this bill redirecting homeowners association election disputes from DBPR arbitration to private arbitration may decrease annual revenues of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund by $8,464 and decrease General Revenue by $736.[15]

2. Expenditures:

   DBPR estimates that section 5 and sections 10 to 12 of the bill will increase regulatory oversight over condominium associations and will require an additional 6 FTE's. The department estimates the following expenditures, payable from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund:

	2010-2011	2011-2012	2012-2013
6 FTE's	$309,807	$309,807	$309,807
Expenses	$ 39,048	$ 39,048	$ 39,048
HR contract	$ 2,394	$ 2,394	$ 2,394
Expense	$ 23,262		
Total	$374,511	$351,249	$351,249

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[15] $9,200 revenue, minus the 8% service charge to General Revenue. DBPR analysis, October 15, 2009.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under current law, a private individual petitioning DBPR for arbitration of an election dispute in a homeowners association pays a $200 fee to the department, pursuant to s. 720.311(1), F.S. The department is supposed to assess the parties the actual cost to the department for conducting the arbitration, but historically has not enforced this. The bill requires the petitioner and the association to split the cost of a private arbitrator, which will likely cost at least $1,000. It is estimated that this bill will significantly increase the cost to private individuals for election arbitration in homeowners associations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions for hearings related to the suspension of use rights for nonpayment of assessments appear inconsistent. See lines 834-871.

It is unclear how the mediation and arbitration process created in Section 24 would proceed if there is more than one respondent.

The provisions allowing a homeowners association to collect and hold a security deposit from a tenant of a unit owner should perhaps be amended to match the provisions in the landlord tenant act. For instance, the provisions in the bill require the association to return or make a claim against the deposit within 15 days after the tenant moves out, but the similar landlord tenant law first requires the tenant to give notice of moving out. It is unclear under this bill how the association would know that a tenant has vacated the property, especially given that the association has no relationship with the tenant (that is, a landlord typically knows when the lease ends and knows that a tenant may have moved out early if the tenant stops paying rent). See lines 1827-1842 and s. 83.49, F.S.

The bill transfers responsibility for elections disputes in homeowners associations from DBPR to the private sector. To be consistent, the definitions of department and division should be removed at ss. 720.301(5) and 720.301(7), F.S., and references to the division should be removed from s. 720.303(10)(d), F.S. and from s. 720.306(9), F.S. (see line 1942 of bill).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a