

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 841 Community Associations
SPONSOR(S): Careers & Competition Subcommittee, Moraitis, Jr.
TIED BILLS: IDEN./SIM. **BILLS:** SB 1274

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice & Claims Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located within the Department of Business and Professional Regulation, has regulatory authority over condominium and cooperative associations. The Division has limited authority regarding homeowner's associations (HOA).

The bill:

- Removes the time limit on acquisition for classification as a bulk buyer, extending indefinitely the applicability of bulk buyer provisions previously limited to a specific time period.
- Extends the time that condominium associations have to post documents on a website to January 1, 2019.
- Provides that a condominium is not liable for disclosing restricted information unless the disclosure was with a knowing disregard of the restricted information.
- Provides that condominiums must permanently maintain certain official records.
- Removes the term limit provision for condominium board members.
- Allows condominiums to hire attorneys who represent the condominium's management company.
- Provides that condominium board members are recalled if the board determines the recall is facially valid; provides attorney's fees for a recalled board member who prevails in arbitration, and attorney's fees for condominium associations if the arbitrator determines the recalled board member's petition is frivolous.
- Provides that a condominium association may not waive the financial reporting requirements for two years if it fails to respond to the Division's request to provide a financial report to a unit owner.
- Increases the time in which a condominium or cooperative must respond to a unit owners' request to inspect records; requires electronic records related to voting to be retained as official records, and allows notice of board meetings by website.
- Requires that a vote authorizing an alteration or addition to a condominium be held prior to beginning work.
- Amends cooperative law to mirror condominium law regarding removal of board members who are 90 days or more delinquent on payments and restricting co-owners from serving on the board of directors.
- Allows HOAs to provide electronic notice to any member who has provided a fax number or email.
- Amends cooperative common expenses to include communication and information services in bulk contracts.
- Clarifies that HOAs may apply payments for late assessments to interest, fines, and fees before applying the payments to assessments.

The bill is not expected to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2018.

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

STORAGE NAME: h0841a.CCS

DATE: 1/23/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Condominiums, Timeshares and Mobile Homes (the Division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.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 governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.³ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.⁴ Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. Florida law provides procedures and minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes.

¹ s. 718.103(11), F.S.

² s. 718.104(2), F.S.

³ s. 719.103(2)(26), F.S.

⁴ s. 720.301(9), F.S.

Official Records – Current Situation

Condominium and cooperative associations are required to maintain official records for at least 7 years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- Meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association;
- All contracts for work to be performed including bids;
- A copy of the plans, permits, warranties, and other items provided by the developer;
- All other written records which are related to the operation of the association; and
- All ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.⁵

Unit owners are able to inspect the official records, and a condominium or cooperative must have the records available for inspection within 5 working days of receiving a request to inspect them.⁶

Official Records – Effect of the Bill

The bill:

- Extends the deadline condominium and cooperative associations have to make records available to unit owners from 5 working days to 10 working days.
- Includes electronic records relating to voting to the list of official records that must be kept by condominium and cooperative associations.
- Provides that a condominium association must permanently maintain the following documents:
 - A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
 - Meeting minutes; and
 - A copy of the plans, permits, warranties, and other items required by the developer.

Condominium websites – Current Situation and Effect of the Bill

By July 1, 2018, a condominium association with 150 or more units that does not manage timeshare units must post certain documents on a website that is only accessible to unit owners and employees of the condominium association. If The condominium association's website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment to each declaration;
- The recorded bylaws of the condominium association and each amendment to the bylaws;
- The articles of incorporation of the condominium association, or other documents creating the condominium association and each amendment thereto. The copy posted must be a copy of the articles of incorporation filed with the Department of State;
- The rules of the condominium association;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year;
- The annual budget and any proposed budget to be considered at the annual meeting;

⁵ s. 718.111(12)(a), F.S. and s. 719.104(2), F.S.

⁶ *Id.*

- The financial report and any proposed financial report to be considered at a meeting;
- The certification of each director;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association or any other entity in which an condominium association director is also a director or officer and financially interested;
- Any contract or document regarding a conflict of interest or possible conflict of interest by a community association manager or a board member;
- The notice of any unit owner meeting and the agenda for the meeting, posted at least 14 days before the meeting. The notice must be posted in plain view on the front page of the website or on a separate subpage of the website labeled “Notices” which is conspicuously visible and linked from the front page; and
- Any documents to be considered during a meeting or listed on the agenda for a meeting. These must be posted at least 7 days before the meeting where the document will be considered.⁷

A condominium may not post the following protected documents or restricted information to its website unless the information or documents are redacted:

- Any record protected by the lawyer-client privilege or the work-product privilege;
- Information obtain by the condominium association in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records of condominium association or management company employees;
- Medical records of the unit owners;
- Social security numbers, driver license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, and addresses of a unit owner other than as provided to fulfill notice requirements;
- Electronic security measures that are used to safeguard data, including passwords; and
- The software and operating system used by the condominium association, which allows the manipulation of the data.⁸

The bill extends the deadline condominium associations have to post certain documents to a website from July 1, 2018 to January 1, 2019.

The bill provides that a condominium association may post the complete copies of the bids for materials, equipment, or services in lieu of summaries of bids for materials, equipment, or services. The condominium association must post the copies or summaries of the bids after the bidding has closed.

The bill also provides that a condominium association or agent of a condominium association is not liable for disclosing protected or restricted information unless the disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information.

Condominium Financial Reporting – Current Situation and Effect of the Bill

Condominium associations are required to complete an annual financial report of the previous year’s financial activities and provide the report to their unit owners. To comply with financial reporting requirements associations must:

- Complete an annual financial report for the previous fiscal year within 90 days after the end of the fiscal year, calendar year, or annually on a date provided in the bylaws;
- Provide unit or parcel owners the financial report or notice that the report is available upon request without charge within 21 days after the final financial report is completed by the condominium or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws; and

⁷ s. 718.112(12)(g), F.S.

⁸ *Id.*

- Prepare financial statements according to generally accepted accounting principles and in a manner dictated by the total revenue of the association, namely:
 - A condominium having total annual revenues between \$150,000 and less than \$300,000 must prepare compiled financial statements;
 - A condominium having total annual revenues of at least \$300,000 but less than \$500,000 must prepare reviewed financial statements;
 - An association having total revenues of \$500,000 or more must prepare audited financial statements; and
 - An association with total annual revenue of less than \$150,000 must prepare a report of cash receipts and expenditures.⁹

An association may vote to waive the annual financial reporting requirements and prepare a report of cash receipts and expenditures by approval of a majority of voting interests.

If a unit owner does not receive the financial report, he or she may contact the Division to report an association's failure to provide a copy of the financial report within the required time. If the Division determines that the association failed to provide the financial report in a timely manner, the Division will require the association to provide the financial report to the unit owner and the Division within five business days. If the association fails to comply with the Division's request the association may not waive the financial annual financial reporting requirements.

The bill provides that if an association fails to comply with the Division's request the association may not waive the financial annual financial reporting requirements for the fiscal year in which the unit owner's request is made and the following fiscal year.

Alterations or Additions to Condominium Property-Current Situation and Effect of the Bill

Condominiums are required to maintain the property of the condominium. In order to maintain condominium property, condominiums may provide a specific procedure to approve material alterations or additions to condominium property in the condominium's declaration, which is the document creating the condominium. If a condominium's declaration does not provide a procedure to approve material alterations or additions then approval by 75 percent of the voting interests is required to approve any material alterations or additions. It is not clear in current statute if the approval must occur before work begins on the additions or alterations.

The bill provides that approval by 75 percent of voting interests must be obtained prior to work beginning on the material alterations or additions of condominium property.

Condominium Conflicts of Interest – Current Law and Effect of the Bill

Current law provides that a condominium may not hire an attorney who represents the condominium's management company.¹⁰

The bill repeals the provision that a condominium may not hire an attorney who represents the condominium's management company.

Condominium, Cooperative, HOA Fines and Suspension – Current Law and Effect of the Bill

Condominium and cooperative associations and HOAs may levy fines and suspensions against a unit or parcel owner, the unit or parcel's occupant, or a guest of the unit owner for failing to comply with any provision in the condominium's declaration, bylaws, or the condominium's rules.¹¹

⁹ s. 718.111(13), F.S.,

¹⁰ s. 718.111(3), F.S.

¹¹ ss. 718.303(3), 719.303(3), & 720.305(2), F.S.

A board may not impose a fine or suspension unless it gives at least 14 days written notice of the imposed fine or suspension, and the opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension. For condominiums, the committee must approve the fine or suspension by a majority vote otherwise the board may not impose the fine or suspension. The committee for cooperative associations must agree with the fine or suspension otherwise the cooperative may not approve the fine or suspension.¹² HOAs must provide written notice of any fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.¹³ Current law does not provide a date for when a fine is due once the committee has approved the fine.

The bill provides that a fine approved by the committee is due five days after the date of the committee meeting.

The bill provides that the committee for a condominium and cooperative association must be made up of at least three members who are appointed by the board, and are not officers, board members, employees of the association, or a spouse, parent, child, brother, or sister of an officer, board member, or employee of the association.

The committee for a cooperative association must approve the fine or suspension by majority vote otherwise the association may not impose the fine or suspension.

The condominium or cooperative must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.

Notice of Board Meetings for Condominiums, Cooperatives, and HOAs – Current Situation

Associations are required to notice all board meetings by posting notice in a conspicuous place on the association's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding unit use is considered.¹⁴

If a parcel owner in a HOA provides written consent, the HOA may provide the parcel owner notice by electronic transmission for board meetings, committee meetings, annual meetings, and special meetings.¹⁵

Condominium and cooperative associations are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice at least 14 days before the meeting. They must also post notice in a conspicuous place at least 14 days before the meeting. If a condominium or cooperative association opts to broadcast notice in lieu of posting notice it must broadcast notice at least four times every broadcast hour of each day for 14 days.¹⁶

Notice of Board Meetings – Effect of the Bill

The bill allows condominium and cooperative associations to adopt rules for noticing all board and unit owner meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice providing a hyperlink to the website where the notice is posted, to all unit owners

¹² s. 719.303(3), F.S.

¹³ s. 720.305(2), F.S.

¹⁴ ss. 718.112(2)(c), 720.303(2)(c), & 719.106(1)(c)(1), F.S.

¹⁵ s. 720.303(2)(c), F.S.

¹⁶ ss. 718.112(2)(d) & 719.106(1)(d), F.S.

whose email addresses are part of the official records, and in the same manner as notice for a meeting of the members. Notice by website must be in addition to the other notice requirements.

Any owner who consents to receiving notice for a meeting by electronic transmission is responsible for removing or bypassing any filters that block receipt of mass emails sent to members by an association for the purpose of giving notice.

The bill allows a HOA to give notice by electronic transmission to any parcel owner who provided written consent and a fax number or email address to the HOA.

Communication by Board Members for Cooperatives and HOAs – Current Situation and Effect of the Bill

It is not clear if board members for cooperative associations and HOAs may use email as a form of communication. Board members for condominium associations may use email as a form of communication.¹⁷

The bill allows members of the board of directors for cooperative associations and HOAs to use email as a form of communication. However, a board member may not cast a vote via email.

Cooperative Common Expenses and Bulk Contracts – Current Situation and Effect of the Bill

Common expenses are normal costs incurred by a cooperative association and include:

- Costs for the operation, maintenance, repair, or replacement of cooperative property;
- Costs of carrying out the powers and duties of the cooperative; or
- Costs designated by the cooperative as a common expense.¹⁸

Common expenses are paid by the unit owners of a cooperative association and are included in a cooperative association's annual budget to its members.¹⁹

Cooperative associations may provide in their bylaws that bulk contracts for the cost of a master antenna television system or franchised cable television service are common expenses. Unlike condominiums, cooperatives may not provide bulk contracts for the cost of communication services defined in ch. 202, F.S., information services, or internet services as common expenses.²⁰

Chapter 202, F.S., defines communication services to mean the transmission, conveyance, or routing of:

- voice, data, audio, video; or
- any other information or signals, including:
 - video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave; or
 - other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.
- The term also includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

¹⁷ s. 718.112(2)(c), F.S.

¹⁸ ss. 719.103(9), & 719.107, F.S.

¹⁹ s. 719.103(1), & 719.106(1)(j), F.S.

²⁰ ss. 719.107, & 718.115(1)(d), F.S.

Examples of communication services include:

- Cable and satellite television
- Video and music streaming
- Telephones
- Mobile communications, and similar services²¹

Information service is defined as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using or making available information via communications services.²² The term also includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

The bill amends cooperative association law to mirror condominium association law by providing that bulk contracts for communication services defined in ch. 202, F.S., internet services, and information services may be considered a common expense.

Cooperatives' Board of Directors and Board Members – Current Situation and Effect of the Bill

Cooperative associations are administered by a board of directors whose members are elected. The board consists of unit owners who have been elected to serve on the board. Directors of the board nominate officers, including president, secretary, and treasurer. The officers are responsible for the duties that are customarily performed by their counterparts in corporations.²³

Unlike condominiums, cooperative associations are not required to have a provision that a director or officer is deemed to have abandoned their post if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association.²⁴

Additionally, cooperative associations do not have a provision that prevents co-owners of a unit in residential condominiums that are more than 10 units from serving on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.²⁵

Condominium association board members serve one year terms, but a board member may serve a two year term if the association's bylaws or articles of incorporation allow it. Board members may not serve more than four consecutive 2-year terms, unless approved by two-thirds of the total voting interests or there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.²⁶

The bill amends cooperative association law to mirror condominium association law by providing that:

- A director or officer is deemed to have abandoned their office if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association; and
- In residential cooperatives that are more than 10 units, co-owners of a unit may not serve as members on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.

²¹ Florida Department of Revenue, *Florida Communications Services Tax*, <http://floridarevenue.com/taxes/taxesfees/Pages/cst.aspx> (last visited on Jan. 20, 2018).

²² s. 202.11(5), F.S.

²³ s. 719.106(1), F.S.

²⁴ s. 718.112(2), F.S.

²⁵ *Id.*

²⁶ s. 718.112(2)(d), F.S.

The bill repeals the provision that condominium association board members may not serve more than four consecutive 2-year terms. The bill also provides that board member terms are two years, unless a shorter term is specified by an association's bylaws or articles of incorporation.

Board Member Recall – Current Situation

A member of a condominium association board may be recalled and removed from office by a majority of all the voting interests of the association at a special meeting or by an agreement in writing by a majority of all voting interests.²⁷

If a recall is approved by a majority of all voting interests by vote at a special meeting, the board must notice and hold a board meeting within 5 business days of the special meeting to recall the board member or members. The recall is effective immediately and the recalled member or members must turn any records and association property in their possession to the board within 10 days of the vote.²⁸

If a recall is approved in writing by a majority of all voting interests, the agreement or a copy of the agreement must be served on the condominium by certified mail or personnel service. The board must notice and hold a meeting to recall the board member or members within 5 business days of being served. The recall is effective immediately and the recalled member or members must turn any records and association property in their possession to the board within 10 days.²⁹

If a board fails to notice and hold a meeting within 5 business days of the unit owner's vote or receiving the written agreement, the recall is deemed effective and the recalled board member or members must turn over any records and association property to the board within 10 days.³⁰

If the board fails to notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition to the Division for arbitration challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5 business day period. However, the Division may not accept the petition if there are 60 days or fewer until the reelection of the board member or 60 days or less have elapsed since the election of the board member. The review of a petition is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.³¹

A recalled board member may file a petition to the Division for arbitration challenging the validity of the recall. The petition must be filed within 60 days of the recall. The petition must name the condominium and the unit owner as the respondents.³²

The prevailing party in arbitration shall be awarded attorney's fees in the amount determined by the arbitrator.³³

Board Member Recall – Effect of the Bill

The bill provides the requirement that a board must hold a meeting within 5 days of the unit owners' vote or receiving a written agreement, in order to determine if the vote or written agreement is facially valid. If the board determines the vote or written agreement is facially valid, the recall becomes effective upon the conclusion of the meeting.

²⁷ 718.112(2)(j), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ 718.1255(4)(k), F.S.

The bill provides that a recalled board member may challenge the facial validity of the written agreement to recall, the ballots filed, or the substantial compliance with the procedural requirements for the recall.

If an arbitrator determines a board member's recall is invalid, the recall is null and void and the board member must be immediately reinstated. A board member who successfully challenges a recall is entitled to reasonable costs and attorney's fees from the respondents. An arbitrator may award reasonable costs and attorney's fees to the respondents if the arbitrator determines a recalled board member's request for arbitration is frivolous.

Bulk Assignees and Bulk Buyer – Current Situation

In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities so as to enable economic opportunities for successor purchasers of distressed condominiums.

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents. Similarly, a bulk buyer is 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; be exempt from payment of working capital contributions; and be exempt from rights of first refusal.³⁴

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for a specific and defined period:³⁵

“The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period.”

Originally, the time limitation for classification as a bulk assignee or bulk buyer was until July 1, 2012.³⁶ In 2012, the Legislature extended the time limitation to July 1, 2015.³⁷ In 2014, the legislature again amended s. 718.707, F.S., to extend to July 1, 2016.

Finally, in 2015, the legislature again amended s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the parcels were acquired between July 1, 2010, and July 1, 2018.

Bulk Assignees and Bulk Buyer – Effect of the Bill

The bill removes the time limit on acquisition for classification as a bulk buyer, extending the applicability of the bulk buyer provisions indefinitely.

³⁴ s. 718.703, F.S.

³⁵ s. 718.702, F.S.

³⁶ Ch. 10-174, Laws of Fla.

³⁷ Ch. 12-61, Laws of Fla.

HOA Elections – Current Situation and Effect of the Bill

HOAs are administered by a board of directors whose members are elected.³⁸ HOAs are required to hold board of director elections at its annual meeting or as provided in its governing documents.³⁹ Elections are conducted in accordance with the procedures set forth in the governing documents of the association. An election is not required unless more candidates are nominated than vacancies exist.⁴⁰

The bill provides that if an election is not required because there are fewer or equal candidates than vacancies, and nominations from the floor are not required, then write-in nominations are not permitted. The candidates will commence service on the board of directors regardless of whether a quorum was attained at the annual meeting.

Payment of HOA Assessments – Current Situation and Effect of the Bill

HOAs are authorized to impose assessments on owners. Assessments are sums of money owed by parcel owners to an HOA to fund the HOA.⁴¹ If assessments or installments of assessments are not paid timely, then they will accrue interest. Any payment received by a HOA for payment of an assessment or installment that accrued interest will first be applied to the interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees, and then to the delinquent assessment.⁴² The order of payments is the same as condominium law.

The Florida Uniform Commercial Code (UCC) allows a debtor to make a restrictive notation on a payment instrument. Accepting the payment instrument with the notation may then be considered an accord and satisfaction of the outstanding debt.⁴³

The bill provides that this application of the payment in HOA law applies notwithstanding the UCC. The bill further provides that this is intended to clarify existing law.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 718.111, F.S, providing that attorneys may represent condominiums and management companies, amending requirements of official records for condominiums, limiting a condominium's liability for inadvertent disclosure of protected or restricted information, and amending penalties for condominiums who fail to provide financial reports to unit owners.
- Section 2.** Amends s. 718.112, F.S., providing for meeting notices by website, removing term limits for board members, and amending the provisions for the recall of condominium board members.
- Section 3.** Amends s. 718.113, F.S., amending voting requirements for alterations or additions to condominium property.
- Section 4.** Amends s. 718.3026, F.S. removing requirements relating to conflicts of interest for condominiums.

³⁸ ss. 720.303 & 720.307, F.S.

³⁹ s. 720.306(2), F.S.

⁴⁰ *Id.*

⁴¹ Charles F. Dudley & Peter Dunbar, *The Law of Florida Homeowners Associations*, 5 (9th ed. 2012-13).

⁴² s. 720.3085(3), F.S.

⁴³ s. 673.3111, F.S. The UCC is a set of regulations adopted by all 50 states with the goal of harmonizing the laws of commercial transactions throughout the United States. Duke Law, *Uniform Commercial Code*, <https://law.duke.edu/lib/researchguides/ucc/> (last visited on Jan. 20, 2018).

- Section 5.** Amends s. 718.3027, F.S., providing requirements relating to conflicts of interest for condominiums.
- Section 6.** Amends s. 718.303, F.S., revising requirements for fines or suspensions for condominiums.
- Section 7.** Amends s. 718.707, F.S., revising the time period for classifications of bulk buyer and assignee for condominiums.
- Section 8.** Amends s. 719.104, F.S., amending requirements of official records for cooperatives.
- Section 9.** Amends s. 719.106, F.S., providing for meeting notices by website and revising requirements for cooperative board members.
- Section 10.** Amends s. 719.107, F.S., revising requirements for cooperative common expenses.
- Section 11.** Amends s. 719.303, F.S., revising requirements for cooperative fines and suspensions.
- Section 12.** Amends s. 720.303, F.S., revising email requirements for board members.
- Section 13.** Amends s. 720.305, F.S., revising requirements for HOA fines and suspensions.
- Section 14.** Amends 720.306, F.S., revising HOA board member election requirements.
- Section 15.** Amends s. 720.3085, F.S., providing for the payment of HOA assessments.
- Section 16.** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Careers & Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes the term limits for condominium association board members and provides that terms are for two years or less.
- Provides that a condominium association or agent of a condominium association is not liable for disclosing protected or restricted information unless the disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information.
- Provides that a condominium association must permanently maintain certain official records instead of for seven years.
- Extends the deadline for condominium associations required to create a website from July 1, 2018 to January 1, 2019.
- Provides that a condominium association must post any contract or document regarding a conflict of interest by a board member on its website, thereby maintaining current law.
- Provides that a condominium association must post complete copies of bids for materials, equipment, or summaries of bids after the bidding has closed.
- Removes the provision that homeowners' associations must fund reserve accounts, thereby maintaining current law.
- Removes the provision that homeowners' associations must notify potential owners that the budget of an association may not include sufficient funds for reserve funds, thereby maintaining current law.

This analysis is drafted to the committee substitute as passed by the Careers & Competition Subcommittee.