

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1257 Community Associations

SPONSOR(S): Judiciary Committee, Tomkow

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Wright	Anstead
2) Ways & Means Committee	10 Y, 5 N	Curry	Langston
3) Judiciary Committee	14 Y, 1 N, As CS	Mawn	Luczynski

SUMMARY ANALYSIS

A condominium is a form of ownership of real property comprised of units which may be owned by one or more persons along with an undivided right of access to common elements. A cooperative is real property owned by the cooperative association, with individual units leased to the residents who own shares in the cooperative association. A homeowners' association ("HOA") is an association responsible for the operation of a community in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments. The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation ("DBPR"), investigates complaints related to financial issues, elections, recalls, and unit owner access to official records for condominium and cooperative associations but does not regulate HOAs (with the exception of arbitration of election and recall disputes).

CS/HB 1257:

- Provides a mechanism for unit and parcel owner notice of a condominium, cooperative, or mobile home park homeowners' association's intention to challenge a tax assessment.
- Clarifies that where an association has filed a single joint petition to challenge a tax assessment, an association may continue to represent and defend the unit owners through any related subsequent proceeding in any tribunal on appeal and provides unit owner notice requirements.
- Requires condominium associations to maintain official records in a manner determined by DBPR.
- When a unit owner or renter requests to inspect condominium association records, the association must provide the owner or renter with a checklist of all the records that are and are not being made available for inspection, which must be signed by a manager or accompanied by a sworn affidavit.
- Defines "financial issues" and allows DBPR to adopt rules to further define the term.
- Allows DBPR to adopt rules to establish requirements for DBPR training programs and adopt a checklist for association records.
- Exempts pools for HOAs that have 32 parcels or less and are not being operated as public lodging establishments from Department of Health requirements for public pools, except for water quality standards.
- Provides that an HOA governing document amendment relating to specified rental provisions applies only to a parcel owner who acquires title to the parcel after the amendment's effective date, but creates exceptions.

The Revenue Estimating Conference estimated that the bill will reduce local government revenue by \$5.5 million in FY 2020-21 and by \$5.6 million in FY 2021-22, with a recurring reduction of approximately \$2.0 million each fiscal year thereafter.

The bill has an effective date of July 1, 2020.

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

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DATE: 2/20/2020

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (“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).

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., also referred to as the Condominium Act,¹ comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.² A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.³ 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 and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, commonly referred to as a “board of administration.” The board enacts bylaws which govern the administration of the association.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, while individual units are leased to the residents who own shares in the cooperative association.⁴ 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 to those regulating condominiums.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.⁵ Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁶ Real property is anything that is permanent, fixed, and immovable, such as land or a building. At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.⁷

In Florida, a cooperative is also treated as real property for certain homestead purposes. Even though the legal definition of homestead follows the common law, requiring an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a

¹ S. 718.101, F.S.

² “Common elements” means the portions of the condominium property not included in the units. S. 718.103(11), F.S.

³ S. 718.104(2), F.S.

⁴ S. 719.103(2)(26), F.S.

⁵ *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996).

⁶ Am. Jur. 2d Property § 18.

⁷ *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); See generally, The Florida Bar, *Practice Under Florida Probate Code* Chapter 19 (9th ed. 2017).

cooperative unit⁸ for purposes of exemption from forced sale by creditors⁹ and for purposes of the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent.¹⁰

In contrast, the Condominium Act specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property. There is no corresponding statute in the Cooperative Act.¹¹ Florida courts have recognized that there is some confusion in this area and that there is a need for clarification on whether a cooperative ownership interest is an interest in real property or personal property.¹²

Homeowners' Associations

A homeowners' association ("HOA") is an association in which voting membership is made up of parcel owners and 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.¹³ Only an HOA with covenants and restrictions including mandatory assessments is 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 include the powers and duties provided in ch. 720, F.S., and in the HOA's governing documents, including the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of an HOA. However, 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.

Tax Assessments

Background

Condominium association unit owners and cooperative association unit owners are assessed yearly ad valorem¹⁴ taxes by the county property appraiser.¹⁵ For condominium unit owners, ad valorem taxes for common elements are divided and levied proportionally among individual condominium unit owners.¹⁶

A taxpayer who objects to a tax assessment may file a petition with the value adjustment board¹⁷ of the county in which his or her taxable property is located to contest the assessment.¹⁸ However, current law permits condominium and cooperative associations to file a single joint petition to the VAB contesting the tax assessment of all units within the condominium or cooperative.¹⁹ The association must notify each unit owner of its intent to petition the VAB and of his or her right to opt out of inclusion in the petition, but current law does not specify a mechanism for such notice.²⁰

⁸ Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").

⁹ Ss. 222.01, and 222.05, F.S.

¹⁰ Devise and descent is the transfer of real property *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978); Black's Law Dictionary (11th ed. 2019).

¹¹ S. 718.106(1), F.S.; See generally Ch. 719, F.S.

¹² *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008).

¹³ S. 720.301(9), F.S.

¹⁴ "Ad valorem tax" means a tax based upon the assessed value of property. S. 192.001(1), F.S.

¹⁵ S. 194.011, F.S.

¹⁶ S. 718.120(1), F.S.; Office of the Attorney General, Advisory Legal Opinion – AGO 99-12, Mar. 8, 1999.

¹⁷ Section 194.015, F.S., creates a value adjustment board for each county consisting of two members of the county's governing body, one member of the school board, and two citizen members.

¹⁸ S. 194.011(2), F.S.

¹⁹ S. 194.011(3)(e), F.S.

²⁰ *Id.*

A decision by the VAB may be appealed to the circuit court.²¹ While current law is clear that an association is authorized to act on behalf of all unit owners when filing a petition to the VAB and when initiating an appeal of the VAB's decision, it is unclear whether the association may defend, on behalf of unit owners, an appeal of the VAB's decision by the property appraiser.²²

The court in *Central Carillon Beach Condo. Ass'n Inc. v. Garcia* took up this issue in a case of first impression.²³ Petitioners were two condominium associations ("Associations") that had represented their unit owners in a tax assessment challenge before a VAB. Respondent was the property appraiser for Miami-Dade County ("Appraiser").²⁴ When the Associations initially challenged their tax assessment, the VAB substantially lowered their assessed property values.²⁵ As a result, the Appraiser challenged the decision in an appeal to the Miami-Dade Circuit Court, naming as defendants the individual unit owners instead of the Associations.²⁶ In response, the Associations motioned to dismiss the appeal and for certification of the unit owners as a defense class. The circuit court denied both motions, and the Associations appealed the denial to the Third District Court of Appeal.²⁷

The Appraiser argued that defense class certification should be denied and that the appeal should name individual unit owners because statutes governing tax assessment challenge procedures require that individual unit owners be named on appeal.²⁸ Specifically, section 194.181(2), F.S., states that in any case brought by the:

- **Taxpayer or association** contesting the assessment of any property, the county property appraiser shall be party defendant.
- Property appraiser alleging specific legal violations in the VAB's decision or claiming a certain monetary variance between the assessed value of the property by the property appraiser and the VAB,²⁹ **the taxpayer shall be party defendant.**

The Associations argued that this law conflicts with condominium association law, which generally allows associations to represent unit owners through their rights of collective representation.³⁰ Section 718.111(3), F.S., in pertinent part, states that:

the association may institute...or appeal actions or hearings in its name on behalf of all unit owners **concerning matters of common interest to most or all unit owners, including, but not limited to**, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and **protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain** or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. (*Emphasis added*).

The court found that the Associations' argument was unsupported, stating that s. 718.111(3), F.S., only addresses ad valorem taxes in one phrase, i.e., "protesting ad valorem taxes on commonly used facilities and on units." The Associations protested the ad valorem taxes on behalf of all units, but the lawsuits brought by the Appraiser against the unit owners were not "protests." Rather, they were judicial

²¹ *Id.*

²² *Id.*

²³ *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d 869 (Fla. 3d DCA 2018).

²⁴ *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d at 869.

²⁵ *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d at 870.

²⁶ *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d at 871.

²⁷ *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d at 869.

²⁸ *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d at 871.

²⁹ In cases where the property appraiser is claiming a systematic violation of legal requirements, the VAB is the defendant. S. 194.036(1)(a), (b), F.S.

³⁰ *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d at 871, 872.

review proceedings in which the unit owners were defendants. However, an association may only defend an action on behalf of all unit owners in “actions in eminent domain.”³¹

The Associations also argued that because they could bring a class action if they were appealing a VAB decision, they “**may** be joined in an action as a representative of that class with reference to litigation....” However, the court found that s. 718.111(3), F.S., was not as precisely applied to the Appraiser’s lawsuits against the unit owners as the ad valorem litigation provision, s. 194.181(2), F.S., which states that when an appraiser is the plaintiff seeking circuit court review of the VAB decision, “**the taxpayer shall be the party defendant....**”³² Based on this statutory interpretation, the court in *Central Carillon* found that current law does not allow an association to act on behalf of unit owners on appeal where a VAB decision is appealed by the property appraiser.³³

Effect of the Bill

The bill amends current law to specify the methods by which a condominium, cooperative, or mobile home park homeowners’ association must provide the unit or parcel owners notice of its intent to challenge a tax assessment by petitioning the VAB and of their right to respond to the notice within at least 20 days to opt out of inclusion in the petition. Specifically, such notice must be hand-delivered or sent by certified mail, return receipt requested, to each unit or parcel owner, and if the association is a condominium or cooperative association, the notice must be posted on association property in the same manner as notice of board meetings. However, the notice may be electronically transmitted to any unit or parcel owner who expressly consented in writing to receiving such a notice by electronic transmission.

The bill also clarifies that where a condominium or cooperative association filed a single joint petition to challenge a tax assessment, the association may continue to represent, prosecute, and defend the unit owners through any related subsequent proceeding in any tribunal and any appeals. This provision would apply to cases pending on July 1, 2020. Further, the bill provides that in any case brought by the property appraiser concerning a value adjustment board decision on a single joint petition filed by a condominium or cooperative association, the association and all unit owners included in the single joint petition are the party defendants.

In order to represent unit owners in such a proceeding, the condominium or cooperative association must provide unit owners with notice of its intent to respond to or answer the property appraiser's complaint, and advise the unit owners that they may elect to:

- Retain their own counsel to defend the appeal;
- Choose not to defend the appeal; or
- Be represented together with other unit owners in the response or answer filed by the association.

Such notice must be hand-delivered or sent by certified mail, return receipt requested, to the unit owners and posted conspicuously on the condominium or cooperative property in the same manner as notice of board meetings. However, such notice may be electronically transmitted to any unit owner who expressly consented in writing to receiving such a notice by electronic transmission. Any unit owner who does not respond to the association's notice will be represented in the response or answer filed by the association.

Specific to the Condominium Act (“Act”), the bill also provides that a condominium association, in its own name or on behalf of some or all unit owners, may institute, file, protest, maintain, or defend any administrative challenge, lawsuit, appeal, or other challenge to ad valorem taxes assessed on units for commonly used facilities or common elements. The affected association members are not necessary or indispensable parties to such actions. This provision is intended to clarify existing law and would apply to cases pending on July 1, 2020.

³¹ *Central Carillon Beach Condo. Ass’n, Inc. v. Garcia*, 245 So. 3d at 872.

³² *Central Carillon Beach Condo. Ass’n, Inc. v. Garcia*, 245 So. 3d. at 872.

³³ *Central Carillon Beach Condo. Ass’n, Inc. v. Garcia*, 245 So. 3d. at 873.

Condominium Association Financial Issues

Background

The Division is the agency charged with ensuring that condominium associations comply with the requirements of the Act. The Division also handles complaints alleging violations of the Act and has complete jurisdiction to investigate complaints and enforce compliance with the Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee.³⁴ However, once a developer turns control of the condominium over to the association, the Division only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.³⁵

The term “financial issues” is not defined in the Act. According to DBPR, this causes confusion for unit owners and associations in determining what types of complaints the Division can investigate. Defining “financial issues” will give unit owners and associations a better understanding of the types of issues that the Division may investigate.³⁶

Effect of the Bill

The bill defines “financial issues” to mean an issue related to:

- Operating budgets;
- Reserve schedules;
- Accounting records;
- Notices of meetings;
- Minutes of meetings discussing budget or financial issues;
- Assessments for common expenses, fees, or fines;
- The commingling of funds; and
- Any other record necessary to determine the revenues and expenses of the association.

The bill also provides that the Division may adopt rules to further define “financial issues.”

Condominium Association Records

Background

Condominium associations must maintain official records for at least seven years, including:³⁷

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

An association must maintain the official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.³⁸ Unit owners may request to inspect and make copies of an association’s official records while renters

³⁴ A bulk assignee is a person who buys more than seven units in a single condominium and receives assignment of any of the developer’s rights. A bulk buyer is a person who buys more than seven units in a single condominium but does not receive any of the developer’s rights. S. 718.703, F.S.

³⁵ Ss. 718.117, & 718.501, F.S.

³⁶ Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 1257 Community Associations (Jan. 22, 2020).

³⁷ S. 718.111(12)(a), F.S.

³⁸ S. 718.111(12)(b), F.S.

may inspect and make copies of an association's bylaws and rules, and the association must make the records available for inspection within ten business days of receiving a written inspection request.³⁹ Failure to provide an owner or renter the requested official records within ten business days of receiving a written request creates a rebuttable presumption that the association willfully failed to provide the requested records. A unit owner who is denied access to the official records is entitled to damages and costs.⁴⁰

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or to allow the records to be viewed in an electronic format. Additionally, associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.⁴¹

However, current law does not require a condominium association to maintain its official records in a specific manner or format.⁴² This can be frustrating and time-consuming for unit owners, as a unit owner wishing to inspect the official records may be given access to a room full of boxes or filing cabinets without understanding the association's organization methods or how to locate the desired records.

Effect of the Bill

The bill provides that a condominium association must maintain its official records in a manner and format determined by the Division so that the records are easily accessible for inspection and allows the Division to investigate complaints against condominiums related to the maintenance of the official records. The bill also specifies that a renter has the right to inspect and copy the declaration of condominium and the association's bylaws and rules.

Further, the bill provides that when a unit owner asks to inspect the official records, the association must give the owner a checklist of all the records that are being made available for inspection and those that are not being made available for inspection. Such a checklist must be signed by a licensed manager⁴³ certifying that the checklist is true to the best of his or her knowledge and belief, or the association must provide a sworn affidavit by the person responding to the unit owner's request attesting to the accuracy of the checklist. The bill also provides that delivery of the checklist and the sworn affidavit creates a rebuttable presumption that the association complied with the unit owner's request to inspect the official records, requires the association to keep a copy of the checklist and the affidavit, if provided, for at least seven years, and authorizes the Division to adopt by rule the association records checklist.

³⁹ S. 718.111(12)(c), F.S.

⁴⁰ *Id.*

⁴¹ S. 718.111(12)(b),(g), F.S.

⁴² See Ch. 718, F.S.

⁴³ Community association managers are licensed under part VIII of chapter 468, F.S.

Condominium Educational Material Published by DBPR

Background

The Division provides training and educational programs for condominium association board directors and unit owners and maintains a toll-free hotline to assist unit owners. The Division may also approve board director and unit owner education and training programs offered by third party providers. The Division must maintain a current list of all approved programs and third party providers and make the list available to board directors and unit owners.⁴⁴

Effect of the Bill

The bill provides that the Division may adopt rules to establish requirements for the training and educational programs provided by the Division.

HOA Swimming Pools

Background

The Department of Health (“DOH”) is responsible for the oversight and regulation of water quality and the safety of public swimming pools in Florida under ch. 514, F.S. In order to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. Operating permits must be renewed annually and may be transferred from one name or owner to another.⁴⁵

DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool’s sanitary and safety conditions.⁴⁶ County health departments are responsible for the routine surveillance of water quality in all public swimming pools.⁴⁷

Pools for condominiums or cooperatives with 32 units or less which are not being operated as public lodging establishments are exempt from DOH’s requirements for public pools. However, HOA pools are not exempt from DOH regulation, even where the HOA has 32 parcels or less.⁴⁸

Effect of the Bill

The bill provides that pools for HOAs that have 32 parcels or less and are not being operated as public lodging establishments are, like similar condominium and cooperative pools, exempt from DOH’s requirements for public pools, except for water quality standards.

Rental Provision Amendments to HOA Governing Documents

Background

An HOA’s governing documents may be amended by a two-thirds vote of the HOA’s voting interests, unless the governing documents or other law provides otherwise.⁴⁹ A governing document amendment is effective when recorded in the public records of the county in which the HOA is located.⁵⁰ Current law does not prevent a governing document amendment lawfully passed by the HOA members from restricting parcel rentals, and such amendment would apply to all parcel owners regardless of when

⁴⁴ S. 718.501(1)(j), F.S.

⁴⁵ S. 514.031(2) and (3), F.S.

⁴⁶ S. 514.04, F.S.

⁴⁷ S. 514.025, F.S.

⁴⁸ S. 514.0115(2), F.S.

⁴⁹ S. 720.306(1)(b), F.S.

⁵⁰ *Id.*

they obtained title to their property or whether they voted in favor of the amendment. This differs from current law relating to condominium association governing document amendments, which provides that an amendment prohibiting condominium unit owners from renting their units, altering the duration of the rental term, or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the amendment's effective date.⁵¹

Effect of the Bill

The bill amends current HOA law regarding rental provision amendments to governing documents to mirror condominium law, providing that an HOA governing document amendment enacted after July 1, 2020, prohibiting a parcel owner from renting the parcel, altering the authorized duration of a rental term, or specifying or limiting the number of times a parcel owner may rent his or her parcel during a specified term applies only to a parcel owner who acquires title to the parcel after the amendment's effective date or to a unit owner who consents to the amendment. However, unlike condominium law, the bill provides that:

- An amendment prohibiting or regulating rentals for less than six months or prohibiting rentals more than three times in a calendar year applies to all parcel owners, regardless of when they acquired title to their parcels or whether they consented to the amendment; and
- The rental amendment provisions do not affect the amendment restrictions for an HOA with 15 or fewer parcel owners.⁵²

Further, the bill provides that:

- A change of ownership does not occur for purposes of the application of a rental provision amendment when a parcel owner conveys the parcel to an affiliated entity⁵³ or when beneficial ownership of the parcel does not change.
- For a conveyance to be recognized as one to an affiliated entity, the entity must give the HOA, at its request, a document certifying that the exception applies and any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

B. SECTION DIRECTORY:

Section 1: Amends s. 194.011, F.S., relating to assessment notice; objections to assessments..

Section 2: Amends s. 194.181, F.S., relating to parties to a tax suit.

Section 3: Amends s. 514.0115, F.S., relating to exemptions from supervision or regulation; variances.

Section 4: Amends s. 718.111, F.S., relating to the association.

Section 5: Amends s. 718.501, F.S., relating to authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.

Section 6: Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 7: Provides an effective date of July 1, 2020

⁵¹ S. 718.110(13), F.S.

⁵² An association with 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner. S. 720.303(1), F.S.

⁵³ The bill defines "affiliated entity" to mean an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity through a transfer, merger, consolidation, public offering, reorganization, dissolution of sale of stock, or transfer of membership partnership interests.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. DBPR may see an increase in expenditures relating to complaints filed for records maintenance or financial issues.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On January 31, 2020, the Revenue Estimating Conference estimated that the bill will reduce local government revenue by \$5.5 million in FY 2020-21 and by \$5.6 million in FY 2021-22, with a recurring reduction of approximately \$2.0 million each fiscal year thereafter.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners' associations may have less costs associated with maintaining swimming pools. Additionally, condominium unit owners may save money on legal costs by having the association represent them through all phases of a tax assessment appeal.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DBPR will need to adopt rules related to establishing requirements for education programs, setting standards and definitions for financial issues, and establishing procedures for the maintenance and sharing of condominium association records. The rulemaking authority provided in the bill is sufficient.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2020, the Judiciary Committee adopted five amendments and reported the bill favorably as a committee substitute. The amendments:

- Required that notice of a condominium, cooperative, or mobile home park homeowners' association's intent to petition a VAB be given to unit and parcel owners by hand delivery or certified mail, return receipt requested, and if the association is a condominium or cooperative association, conspicuously posted on the condominium or cooperative property in the same manner as board meeting notices.
 - Allowed such notice to be sent to a unit or parcel owner by electronic transmission if he or she expressly consented in writing to receiving such notice by electronic transmission.
- Required that notice of a condominium or cooperative association's intent to respond to or answer a property appraiser's complaint be given to the owners by hand delivery or certified mail, return receipt requested, and conspicuously posted on the condominium or cooperative property in the same manner as board meeting notices.
 - Allowed such notice to be sent to a unit owner by electronic transmission if he or she expressly consented in writing to receiving such notice by electronic transmission.
- Provided that a condominium unit renter has a right to inspect and copy the declaration of condominium in addition to the association's bylaws and rules.
- Required a condominium association checklist of association records that must be given to a person requesting association records to be signed by a manager certifying that the checklist is accurate to the best of his or her knowledge and belief, or that the association provide the person requesting the records a sworn affidavit attesting to the checklist's truth.
- Required the Division to adopt by rule the checklist of association records a condominium association must give to a person requesting association records.
- Provided that an amendment to an HOA's governing documents enacted after July 1, 2020, prohibiting a parcel owner from renting the parcel, altering the authorized rental term duration, or limiting the number of times that a parcel owner may rent his or her parcel during a specified term applies only to a parcel owner who acquires title to the parcel after the amendment's effective date, except that:
 - An amendment prohibiting or regulating rentals for terms of six months or less or prohibiting rentals more than three times per year applies to all parcel owners.
 - The provisions do not affect the amendment restrictions for an HOA with 15 or fewer parcel owners.
- Specified that, for the purpose of determining ownership periods related to rental provision amendment applicability, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership does not change.
 - Defined "affiliated entity" and provided that, for a conveyance to be recognized as one to an affiliated entity, an affiliated entity must provide the association with specified certificates and organizational documents at the association's request.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.