

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 307 Law Enforcement Vehicles

SPONSOR(S): Business & Professions Subcommittee, LaMarca and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 476

FINAL HOUSE FLOOR ACTION: Y's 116 N's 0 **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 307 passed the House on February 5, 2020, as CS/SB 476.

Condominium associations, homeowners' associations, and cooperatives are allowed to create and enforce restrictive covenants that limit the use of association property. Owners, tenants, and guests must comply with these restrictions or they could be subject to monetary fines or suspension of their right to use the association's common elements.

A common restrictive covenant created by such associations includes a restriction or prohibition on parking certain vehicles, such as commercial vehicles, in certain location within the association's property.

The bill prohibits condominium associations, homeowners' associations, and cooperatives from preventing a law enforcement officer who is an owner, or an owner's tenant, guest, or invitee, from parking his or her assigned law enforcement vehicle in an area where the owner, or the owner's tenant, guest, or invitee, has a right to park.

The bill does not have a fiscal impact on state and local governments.

The bill was approved by the Governor on February 21, 2020, ch. 2020-05, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

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 real property ownership created pursuant to ch. 718, F.S., the Condominium Act, comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. 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 association's administration.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S., the Cooperative Act. 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 to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners 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.⁴ Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act. Like a condominium or cooperative, an HOA is

¹ S. 718.103(11), F.S.

² S. 718.104(2), F.S.

³ S. 719.103(2) and (26), F.S.

⁴ S. 720.301(9), F.S.

administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the Homeowners' Association Act, and in the association's governing documents, 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. However, Florida law provides HOA procedures, minimum operating requirements, and for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes.

Community Association Fines and Suspensions

Owners, tenants, and guests must comply with a condominium, cooperative, or HOA's declaration, bylaws, and rules. Condominium associations, cooperatives, and HOAs (community associations) may levy fines against or suspend the right of an owner, occupant, or a guest of an owner or occupant, to use the common elements or any other association property for failing to comply with any provision in the association's governing documents. A suspension for failing to comply with the community association's declaration, bylaws, or rules may not be for an unreasonable amount of time.⁵

No fine may exceed \$100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed \$1,000. However, a fine levied by an HOA may exceed \$1,000 if the governing documents authorize it. Fines levied by condominium associations and cooperatives may not become a lien on the property, and fines levied by an HOA that do not exceed \$1,000 may not become a lien on the property.⁶

A community association may suspend an owner, tenant, or guest's ability to use the association's common elements or any other association property if the owner is more than 90 days delinquent in paying a monetary obligation, including a fine. The suspension may remain in effect until the fine is paid.⁷ A community association may also suspend an owner's voting rights for any monetary obligation that exceeds \$1,000 and is more than 90 days delinquent.⁸

Restrictive Covenants

A community association may enact and enforce covenants as a condition for living in the association. A covenant is an agreement or contract, which grants a right or imposes a liability. Covenants can range from requiring owners to pay a portion of the common expenses to restrictions on the age of permanent residents.⁹

A restrictive covenant limits the use of community association property. Restrictive covenants imposed by a community association's declaration are valid unless they are clearly ambiguous, wholly arbitrary, or violate a public policy or a constitutional right. Restrictions imposed by a community association's board of directors must also be reasonable.¹⁰

⁵ Ss. 718.303, 719.303, and 720.305, F.S.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ss. 718.104(5), 718.112(3), 719.1035, 719.106(2), 720.301(4), and 720.304(1), F.S.; Peter Dunbar, *The Condominium Concept*, 10-11 (15th ed. 2017-18).

¹⁰ *Beachwood Villas Condominium v. Poor*, 448 So. 2d 1143, 1144 (Fla. 4th DCA 1984); *Hidden Harbour Estates, Inc. v. Basso*, 393 So. 2d 637, 639-40 (Fla. 3rd DCA 1981).

Commercial Vehicles

A common community association restrictive covenant is restricting or prohibiting the parking of certain vehicles, such as commercial vehicles, on association property. However, many times the community association's governing documents do not define the term "commercial vehicle," which can lead to confusion about what constitutes a commercial vehicle.¹¹

Florida Courts have upheld HOA provisions restricting the parking of commercial vehicles even where the HOA has failed to define "commercial vehicle."¹²

In June of 2005, the Town of Davie (Davie) requested an advisory opinion from the Florida Office of the Attorney General on the definition of commercial vehicle.¹³ Specifically, Davie inquired as to whether a marked law enforcement vehicle is a commercial vehicle for the purposes of parking in a community association, which was related to a situation where an HOA in Davie prohibited commercial vehicles from parking in the driveways within the HOA and informed a property owner that the owner's law enforcement vehicle was a commercial vehicle and could not be parked in the driveway.¹⁴

The Attorney General determined that a law enforcement vehicle is not a commercial vehicle because a commercial vehicle is used by a business for the purpose of economic gain, and law enforcement services are an integral part of government and are not provided for economic gain.¹⁵ The Attorney General also noted that assigning a police vehicle to an officer to drive during off-duty hours to provide a quicker response when called to an emergency would directly benefit the public, and the presence of a police vehicle in a neighborhood may serve as a crime deterrent.¹⁶

Recently, the media reported that a Clearwater police officer may be subject to hundreds of dollars in HOA fines if the officer continued to park a marked police cruiser in her driveway instead of her garage,¹⁷ as the HOA's declaration prohibits owners from parking commercial vehicles and marked law enforcement vehicles in driveways.¹⁸ According to the media reports, the HOA has changed its position and now lets the police officer park a marked cruiser in her driveway.¹⁹ However, media reports indicate that the exception only applies to that specific police officer, and all future owners with law enforcement vehicles may not park them in their driveways.²⁰

¹¹ Mike Antich, *Discrimination Against Vocational Vehicles*, Automotive Fleet (Dec. 22, 2017), <https://www.automotive-fleet.com/160128/discrimination-against-vocational-vehicles> (last visited Jan. 6, 2020); Clinton Morrell, *Are law enforcement vehicles subject to Community Association "commercial vehicle" bans?*, The Condo & HOA Law Bulletin (Feb. 8, 2016), <https://thecondoandhoalawbulletin.com/2016/02/08/are-law-enforcement-vehicles-subject-to-community-association-commercial-vehicle-bans/> (last visited Jan. 6, 2020).

¹² *Cottrell v. Miskove*, 605 So. 2d 572, 573 (Fla. 2nd DCA 1992) (The terms "commercial" and "vehicle" are well defined terms and when combined the term is not vague, ambiguous, or unclear.).

¹³ 05-36 Fla. Op. Att'y Gen.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Heather Leigh, *HOA Tells Clearwater Officer to Move Her Police Cruiser into Her Garage or Face Legal Action*, ABC Action News Tampa Bay, (Aug. 27, 2019), <https://www.abcactionnews.com/news/region-pinellas/hoa-tells-clearwater-officer-to-move-her-police-cruiser-into-her-garage-or-face-legal-action> (last visited Jan. 6, 2020); WFTS Staff, *HOA Tells Florida Officer to Move Her Police Cruiser off Her Driveway or Face Legal Action*, News Channel 5 Nashville (Sep. 1, 2019), <https://www.newschannel5.com/news/national/hoa-tells-florida-officer-to-move-her-police-cruiser-into-off-her-driveway-or-face-legal-action> (last visited Jan. 6, 2020).

¹⁸ Amended and Restated Master Declaration of Covenants and Restrictions for Cross Pointe, <http://crosspointehoa.com/wp-content/uploads/2013/06/Cross-Pointe-Declaration-Final-031813.pdf> (last visited Jan. 6, 2020).

¹⁹ Heather Leigh, *HOA Now Allowing Clearwater Police Officer to Park Cruiser in Driveway*, ABC Action News Tampa Bay, (Sep. 11, 2019), <https://www.abcactionnews.com/news/region-pinellas/hoa-now-allowing-clearwater-police-officer-to-park-cruiser-in-driveway> (last visited Jan. 6, 2020).

²⁰ *Id.*

Chapter 943, F.S., is the Department of Law Enforcement Act.²¹ Section 943.10(1), F.S, defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is crime prevention and detection or the enforcement of the state’s penal, criminal, traffic, or highway laws. The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time, part-time, and auxiliary law enforcement officers but does not include support personnel employed by the employing agency.²²

Effect of the Bill

The bill prohibits HOAs, condominium associations, and cooperatives from preventing a law enforcement officer, as defined in s. 943.10(1), F.S., who is an owner, or an owner’s tenant, guest, or invitee, from parking his or her assigned law enforcement vehicle in an area where the owner, or the owner’s tenant, guest, or invitee, has a right to park.

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:

The bill may save a law enforcement officer who is an owner, or an owner’s tenant, guest, or invitee, in a community association from being assessed and subsequently paying fines for parking his or her assigned law enforcement vehicle in an area where the owner, or the owner’s tenant, guest, or invitee, has a right to park. Other private sector economic impacts are unknown.

D. FISCAL COMMENTS:

²¹ S. 943.01, F.S.

²² S. 943.10(1), F.S.

None.