

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1033 Homeowners' Associations
SPONSOR(S): Regulatory Reform Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice & Property Rights Subcommittee			
3) State Administration & Technology Appropriations Subcommittee			
4) Commerce Committee			

SUMMARY ANALYSIS

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

Within the Division is the Condominium Ombudsman. HOAs do not have an Ombudsman. The Condominium Ombudsman is an attorney who is a neutral resource for unit owners and associations, with powers such as:

- Assisting with the resolution of disputes between condominiums and unit owners;
- Making recommendations to the Division for changes to its rules and procedures;
- Developing policies and procedures to help affected parties understand their rights; and
- Monitoring and review procedures and disputes concerning elections and meetings.

The Condominium Act also provides for an arbitration program within the Division for certain disputes between unit owners and condominiums. The HOA Act requires certain disputes between a parcel owner and an HOA to go through pre-suit mediation before a party can file an action in civil court. Condominium disputes eligible for arbitration may go through pre-suit mediation in lieu of arbitration, but HOA disputes required to go through pre-suit mediation may not go to arbitration unless pre-suit mediation fails.

The HOA Act requires owners, tenants, and guests to comply with an HOA's governing documents. HOAs may levy fines against or suspend an owner, occupant, or a guest for failing to comply with the governing documents. Before an HOA levies a fine or a suspension, it must give the person receiving the fine or suspension the opportunity for a hearing before a fine and suspension committee.

The bill:

- Creates an appeal process for a person to challenge an HOA fine and suspension committee's confirmation of a fine or suspension.
 - A person who appeals must be given a hearing before an appeals committee, and the fine or suspension must be reduced by half if the violation has been corrected.
- Creates an Office of the HOA Ombudsman, which is located in DBPR. The HOA Ombudsman is an attorney who is a neutral resource for parcel owners and HOAs. The HOA Ombudsman's authority is similar to the authority of the Condominium Ombudsman.
- Allows certain HOA disputes, which are required to go through pre-suit mediation, to go through arbitration within the Division in lieu of pre-suit mediation.

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

The bill provides for an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

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.

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 condominiums and other 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).

The Division is the agency charged with ensuring that condominium associations comply with the requirements of the Condominium Act.³ The Division does this by a variety means including enforcing the Condominium Act, providing declaratory statements, providing educational programs, **providing dispute resolution, and housing the office of the Condominium Ombudsman.**⁴

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.⁵ The lease payment amount is the pro-rata share of the cooperative’s operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are largely identical to those regulating condominiums.

¹ S. 718.103(11), F.S.

² S. 718.104(2), F.S.

³ S. 718.501, F.S.

⁴ *Id.*

⁵ S. 719.103(2) and (26), F.S.

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.⁶ Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA 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.⁷

No state agency has direct oversight over HOAs. However, Florida law provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes.⁸

HOA Fines and Suspensions – Current Situation

Owners, tenants, and guests must comply with an HOA's declaration, bylaws, and rules. HOAs may **levy fines against or suspend** the right of a parcel owner, occupant, or a guest of an owner or occupant, to use the common areas⁹ or any other association property for failing to comply with any provision in the HOA's governing documents. A suspension for failing to comply with an HOA's declaration, bylaws, or rules may not be for an unreasonable amount of time.¹⁰

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 may exceed \$1,000 if the HOA's governing documents authorize it. Fines may not become a lien on the property unless the fines exceed \$1,000.¹¹

Before an HOA levies a fine or a suspension, it must give the person receiving the fine or suspension at least 14 days notice of an opportunity for a hearing. A fine and suspension committee of at least three members selected by the board must hold a hearing to reject or approve the fine or suspension. Board directors, officers, and employees of the HOA and family of such people may not serve on the committee. The committee must approve the fine or suspension by majority vote otherwise the proposed fine or suspension may not be imposed.¹²

A fine is due five days after written notice of the approved fine is provided to the parcel owner, occupant, or guest. Written notice of the fine or suspension must be provided to the person by **mail or hand delivery**.¹³

HOA Fines and Suspensions – Effect of the Bill

The bill requires the notice of the fine or suspension and the opportunity for hearing to be **in writing**.

The bill requires the hearing to be conducted within 14 days after the board receives a written request for the hearing by the parcel owner, the occupant, or guest of the parcel owner or occupant sought to be fined or suspended, unless the parcel owner, occupant, or guest requests in writing a later date.

⁶ S. 720.301(9), F.S.

⁷ See *generally* ch. 720, F.S.

⁸ S. 720.311, F.S.

⁹ This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.

¹⁰ S. 720.305, F.S.

¹¹ S. 720.305(2), F.S.

¹² *Id.*

¹³ *Id.*

The request for a hearing must be made by mail, hand delivery, or by e-mail to the board, a manager, the fine and suspension committee, or a designated officer.

The parcel owner, occupant, or guest has a right to appear before the fine and suspension committee and may do so in person or by telephone, real-time videoconferencing, or similar real-time electronic or video communication.

The bill allows a committee to reduce a fine or suspension in addition to confirming or rejecting the fine.

If the committee confirms the fine or suspension, the HOA must provide the written notice of the fine or suspension to the parcel owner's email address, if the owner's email address is maintained in the HOA's official records, in addition to providing the notice by mail or hand delivery.

The bill **creates an appeal process** for a parcel owner, occupant, or a guest of an owner or occupant, to challenge a committee's decision to confirm a fine or suspension.

Within 3 days after receiving written notice that the fine or suspension was approved by the committee, a parcel owner, occupant, or a guest of an owner or occupant may appeal the fine or suspension by providing written notice of such appeal to the board, a manager, the fine and suspension committee, or a designated officer by mail, hand delivery, or e-mail.

An HOA must give a parcel owner, occupant, or a guest of an owner or occupant, who appeals a fine or suspension, an opportunity for a hearing before an **appeals committee**. The appeals committee must be made up of at least **five members** appointed by the board who are not officers, board directors, employees of the association, members of the fine and suspension committee, or family members of such persons.

The parcel owner, occupant, or a guest who is fined or suspended has a right to appear before the appeals committee and may do so in person or by telephone, real-time videoconferencing, or similar real-time electronic or video communication.

The role of the appeals committee is limited to determining whether to confirm, reject, or reduce the fine or suspension confirmed by the fine and suspension committee. If the appeals committee, by majority vote, does not approve the fine or suspension or reduce the fine or suspension, the fine or suspension may not be imposed.

If the violation that resulted in the fine or suspension is corrected before the hearing, the appeals committee must **reduce** the fine or suspension **by at least 50 percent**.

An HOA must provide written notice of the appeals committee's decision by mail or hand delivery to the parcel owner, occupant, or guest who received the fine or suspension. The HOA must also provide the notice to the parcel owner's email address, if the owner's email address is maintained in the HOA's official records.

Payment of a fine that is appealed is due 5 days after notice of the appeals committee's decision is provided to the parcel owner, the occupant, guest who is fined or suspended.

Ombudsman – Current Situation

Within the Division is the Office of the Condominium Ombudsman. The Condominium Ombudsman is an attorney admitted to practice in Florida who is appointed by the Governor, and is a neutral resource for unit owners and associations. The Condominium Ombudsman may employ professional and clerical staff as necessary to efficiently operate the ombudsman's office.¹⁴

¹⁴ Ss. 718.5011(1), and 718.5012(2), F.S.
STORAGE NAME: h1033b.RRS
DATE: 1/21/2022

An officer or full-time employee of the Condominium Ombudsman's office may not:¹⁵

- actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office;
- serve as the representative of any political party, executive committee, or other governing body of a political party;
- serve as an executive, officer, or employee of a political party;
- receive remuneration for activities on behalf of any candidate for public office; or
- engage in soliciting votes or other activities on behalf of a candidate for public office

The Condominium Ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.¹⁶

The Condominium Ombudsman must maintain his or her principal office at a place convenient to the offices of the Division which will enable the Condominium Ombudsman to expeditiously carry out the duties and functions of his or her office. The Condominium Ombudsman may establish branch offices elsewhere in the state with the approval of the Governor. The Office of the Condominium Ombudsman is funded by the Division's Trust Fund.¹⁷

The Condominium Ombudsman is authorized to:¹⁸

- Have access to and use all of the files and records of the Division.
- Assist with the resolution of disputes between associations and unit owners that is not within the jurisdiction of the Division.
- Issue reports and recommendations to the Governor, the Division, the Advisory Council on Condominiums, and the Legislature on any matter or subject within the jurisdiction of the Division.
- Make recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints.
- Act as a liaison among the Division, unit owners, community association managers (CAMs),¹⁹ and boards of directors, and other affected parties.
 - The Condominium Ombudsman must develop policies and procedures to assist unit owners, boards of directors, CAMs, and other affected parties to understand their rights and responsibilities under the Condominium Act and their condominium documents.
 - The Condominium Ombudsman must coordinate and assist in the preparation and adoption of educational and reference material, and endeavor to coordinate with private or volunteer providers of these services, so the materials are widely available.
- Develop policies and procedures to help affected parties understand their rights and responsibilities.
- Monitor and review procedures and disputes concerning elections or meetings, including recommending that the Division pursue enforcement action.
- Provide resources to assist board members and officers to carry out their powers and duties consistent with the Condominium Act, and their governing documents.
- Encourage and facilitate voluntary meetings between unit owners, board members, CAMs, and other affected parties to assist in resolving a dispute before a person submits a dispute for a formal or administrative remedy.

¹⁵ S. 718.5011(2), F.S.

¹⁶ *Id.*

¹⁷ Ss. 718.5011 and 718.5014, F.S.

¹⁸ Ss. 718.5011, and 718.5012, F.S.

¹⁹ Management companies and managers of residential condominiums with more than ten units or having an annual budget in excess of \$100,000 are required to have a community association manager license from DBPR. The Community Association Management Practice Act (Part VIII of ch. 468, F.S.) governs the licensure and regulation of CAMs.

The Condominium Ombudsman must appoint a board of director election monitor, when fifteen percent of the total voting interests in a condominium or six unit owners, whichever is greater, petition the Condominium Ombudsman to appoint an election monitor to attend the annual meeting and conduct the election of board members.²⁰

The Condominium Ombudsman must appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. The condominium association is responsible for all costs associated with the election monitoring process.²¹

Currently, there is no Ombudsman for HOAs, and the Office of the Condominium Ombudsman has no jurisdiction or authority over HOAs.

Ombudsman – Effect of the Bill

The bill creates an Office of the HOA Ombudsman within DBPR, which is similar to the Office of the Condominium Ombudsman.

The HOA Ombudsman must be an attorney admitted to practice in Florida who is appointed by the Governor, and is a neutral resource for parcel owners and HOAs. The HOA Ombudsman may employ professional and clerical staff as necessary to efficiently operate the Ombudsman's office.

An officer or full-time employee of the HOA Ombudsman's office may not:

- actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office;
- serve as the representative of any political party, executive committee, or other governing body of a political party;
- serve as an executive, officer, or employee of a political party;
- receive remuneration for activities on behalf of any candidate for public office; or
- engage in soliciting votes or other activities on behalf of a candidate for public office

The HOA Ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

The HOA Ombudsman must maintain his or her principal office at a place convenient to DBPR, which will enable the HOA Ombudsman to expeditiously carry out the duties and functions of his or her office. The HOA Ombudsman may establish branch offices elsewhere in the state with the approval of the Governor. The Office of the HOA Ombudsman is funded by the General Appropriations Act.

The authority of the HOA Ombudsman is similar to the Condominium Ombudsman. The HOA Ombudsman is authorized to:

- Issue reports and recommendations to the Governor, DBPR, and the Legislature on any matter or subject within the jurisdiction of the HOA Act.
- Act as a liaison between DBPR, parcel owners, CAMs, boards of directors, and other affected parties.
 - The HOA Ombudsman must develop policies and procedures to assist parcel owners, boards of directors, CAMs, and other affected parties to understand their rights and responsibilities under the HOA Act and their governing documents.
 - The HOA Ombudsman must coordinate and assist in the preparation and adoption of educational and reference material, and endeavor to coordinate with private or volunteer providers of these services, so the materials are widely available.
- Monitor and review procedures and disputes concerning elections or meetings.

²⁰ S. 718.5012(10), F.S.

²¹ *Id.*

- Provide resources to assist board members and officers to carry out their powers and duties consistent with the HOA Act, and their governing documents;
- Encourage and facilitate voluntary meetings between parcel owners, board members, CAMs, and other affected parties to assist in resolving a dispute before a person submits a dispute for a formal or administrative remedy.
- Assist with the resolution of disputes between parcel owners and the HOA or between parcel owners when the dispute is not within the jurisdiction of DBPR to resolve.

The HOA Ombudsman must appoint a board of director election monitor, when fifteen percent of the total voting interests in an HOA or six parcel owners, whichever is greater, petition the HOA Ombudsman to appoint an election monitor to attend the annual meeting and conduct the election of board members.

The HOA Ombudsman must appoint a Division employee, a person or persons specializing in HOA election monitoring, or an attorney licensed to practice in this state as the election monitor. The HOA is responsible for all costs associated with the election monitoring process.

The Division must adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

Alternative Dispute Resolution – Current Situation

Condominiums and Cooperatives

The Condominium Act and Cooperative Act provides for an arbitration program within the Division for certain disputes between unit owners and associations. The Division employs full time arbitrators and certifies private attorneys for mandatory nonbinding arbitration. An arbitrator's final decision is not binding, and any party may further pursue a matter in civil court. However, the parties may agree to be bound by the arbitrator's decision.²²

The Condominium Act and Cooperative Act require a party to petition for arbitration with the Division before filing a complaint in civil court for the following disputes between an association and a unit owner:²³

- Termination of an association.
- Recall of a board member.
- Disputes where the board:
 - Requires an owner to take an action or refrain from any action involving the owner's unit.
 - Alters or adds to a common element.
 - Fails to provide proper notice for meetings or other actions.
 - Fails to properly conduct elections.
 - Fails to properly notice meetings.
 - Fails to allow inspection of the association's records.

The Division does not have jurisdiction for arbitration for the following disputes between a unit owner and an association:²⁴

- Disagreements regarding the interpretation or enforcement of a warranty;
- The charging of a fee or assessment;
- The eviction or other removal of a tenant from unit;
- Alleged breaches of fiduciary duty by one or more board members; and

²² Ss. 718.1255, and 719.1255, F.S; DBPR *Condominium Unit-Owner Rights and Responsibilities*, <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumUORREngishMaster4162014.pdf> (last visited Jan. 15, 2022).

²³ *Id.*

²⁴ *Id.*

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The cost to petition the Division for arbitration is a \$50 filing fee. The petition must include the specific nature of the dispute, demand for relief, and include proof that the petitioner provided the opposing party a notice of intent to petition for arbitration. Upon receipt of a petition for arbitration, the Division must determine if the dispute qualifies for arbitration. If the dispute qualifies for arbitration then the arbitrator must conduct the arbitration within 30 days.²⁵ The arbitrator must render his or her decision within 30 days of the arbitration.²⁶

At the request of any party to the arbitration, an arbitrator must issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to a court for orders compelling such attendance and production.²⁷

Either party in an arbitration proceeding may petition the arbitrator to have the proceeding sent to mediation. Upon the request for mediation, the arbitrator must contact all parties in the proceeding to determine if mediation is agreeable. An arbitrator may refer a proceeding to mediation even if all parties do not agree to mediation.²⁸

If a matter is referred to mediation, the parties must select a mutually agreeable mediator. The arbitrator must provide a list of available mediators. Mediation is conducted in accordance with the Florida Rules of Civil Procedure. The parties in a mediation are required to equally share the costs of mediation.²⁹

An arbitration decision is not final unless the parties have agreed to be bound by the decision, or if a civil complaint is not filed within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute.³⁰

The prevailing party in an arbitration proceeding must be awarded the costs of the arbitration and reasonable attorney fees in an amount determined by the arbitrator. This includes the costs and reasonable attorney fees incurred in the arbitration proceeding as well as the costs and reasonable attorney fees incurred in preparing for and attending any scheduled mediation.³¹

During the 2020 Legislative Session, the Legislature provided that in lieu of nonbinding arbitration, parties to a dispute may elect to resolve disputes through pre-suit mediation in the same manner of HOA dispute resolution.³²

HOAs

Instead of arbitration, the HOA Act provides for a pre-suit mediation program for certain disputes between parcel owners and HOAs. The HOA act does not require mandatory arbitration by the Division unless the dispute involves elections or recalls of board members.³³

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Ch. 21-99, Laws of Fla.

³³ S. 720.311, F.S.

The following disputes between parcel owners and HOAs must go to pre-suit mediation before a party can file suit in civil court:³⁴

- Disputes involving the use of or changes to an owner's parcel or the common areas;
- Covenant disputes;
- Disputes regarding meetings of the board or committees of the board;
- Disputes involving the meeting of owners that do not involve elections;
- Access to the official records disputes; and
- Disputes regarding amendments to the governing documents.

The following disputes are not subject to presuit mediation:³⁵

- Disputes involving the collection of assessments, fines, or other financial obligations; and
- Actions to enforce a prior mediation agreement.

An aggrieved party initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in statute and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. If emergency relief is required then a temporary injunction may be sought in court prior to the mediation.³⁶

The opposing party has 20 days to respond. If the opposing party fails to respond or refuses to mediate then the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days of the petition being sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential and persons who are not parties to the dispute may not attend the mediation.³⁷

If mediation is not successful in resolving all the issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration by the Division. All parties to the dispute must agree to enter into arbitration by the Division.³⁸

According to a 2020 DBPR analysis, arbitration is a more efficient and cost-effective option than mediation and civil litigation because the filing fee for arbitration is only \$50. Since 2006, less than 1 percent of arbitration cases are challenged in civil court and since 2009, 88 percent of the cases filed with arbitration are concluded by arbitration, with only 12 percent concluded by mediation.³⁹

According to the analysis, private mediators typically charge \$300 to \$500 per hour. The cost for pre-suit mediation for an owner can be \$900 for four hours of mediation, with two hours of preparation by the mediator, in addition to the cost to hire an attorney.⁴⁰

Alternative Dispute Resolution – Effect of the Bill

The bill provides that disputes between a parcel owner and an HOA, which are subject to pre-suit mediation, may be resolved through nonbinding arbitration with the Division in lieu of pre-suit mediation.

B. SECTION DIRECTORY:

Section 1. Amending s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

³⁴ S. 720.311(2)(a), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ S. 720.311(2)(a) and (b), F.S.

³⁸ S. 720.311(2)(c), F.S.

³⁹ Department of Business and Professional Regulation, Agency Analysis of 2020 HB 623, p. 6-7 (Feb. 7, 2020).

⁴⁰ *Id.*

- Section 2. Amending s. 720.311, F.S., relating to dispute resolution.
- Section 3. Creating s. 720.319, F.S., relating to homeowners' association ombudsman.
- Section 4. Providing an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill requires the Office of the HOA Ombudsman to be funded through the General Appropriations Act. The cost to fund the Office of the HOA Ombudsman is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on HOA parcel owners and HOAs by reducing the cost of resolving certain disputes. In lieu of pre-suit mediation or filing a complaint in civil court, such persons and HOAs may be able to resolve disputes through the Office of the HOA Ombudsman or arbitration with the Division.

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 expenditures 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:

The bill requires the Division to adopt a rule related to procedures for certain HOA elections.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 20, 2022, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Requires an HOA to give written notice of the right to a hearing to consider imposing a fine or suspension.
- Requires that a hearing to consider an HOA fine or suspension must be held within 14 days of the request for hearing, unless the person being fined or suspended requests a later date.
- Provides a fine and suspension committee may reduce a fine or suspension in addition to rejecting or confirming the fine or suspension.
- Provides that a person may appeal the decision of the fine and suspension committee before an appeals committee made up of five HOA members who:
 - Are not on the board, the fine and suspension committee, employed by the HOA, or a family member of such persons.
- Provides that a person being fined or suspended by an HOA has a right to appear at a hearing to consider the penalty or a subsequent appeal and may do so in person, by telephone, or electronically.
- Provides that an appeals committee may confirm, reject, or reduce a fine or suspension.
- Requires an appeals committee to reduce a fine or suspension by 50 percent if the violation resulting in the fine or suspension is corrected before the hearing.
- Provides that a fine is due 5 days after receiving the notice of the appeal committee's decision.
- Removes the ability for the HOA Ombudsman to have access to all the files and records of an HOA, and make recommendations to DBPR regarding HOA complaints.
- Provides that members of an HOA may petition the HOA Ombudsman to appoint an election monitor for an election of the board of directors.
- Requires DBPR to adopt a rule establishing the procedures for appointing an election monitor and the scope and extent of the monitor's role.