

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1243 Homeowners' Associations

SPONSOR(S): Judiciary Committee, Regulatory Reform & Economic Development Subcommittee, Porras and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Larkin	Anstead
2) Judiciary Committee	21 Y, 0 N, As CS	Mawn	Kramer
3) Commerce Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs, regulated under Chapter 720, F.S., may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents. Additionally, Florida law requires the officers and directors of an HOA to comply with certain requirements.

The bill:

- Provides educational requirements for community association managers (CAMs) and HOA directors.
- Requires a CAM meeting specified conditions to take specified actions, including attending at least one member or board meeting annually and providing the members with specified information.
- Requires an HOA with 1,000 parcels or more to prepare audited financial statements, and prohibits an HOA from preparing a financial statement for consecutive fiscal years.
- Defines "kickback" and provides that an HOA officer, director, or manager who knowingly solicits, offers to accept, or accepts a kickback commits a third-degree felony and is subject to monetary damages.
- Prohibits an HOA, and the officers, directors, employees, and agents thereof, from using a debit card issued in the HOA's name, or billed directly to the HOA, for the payment of any association expenses, and provides that any person who uses a debit card issued in the HOA's name, or billed directly to the HOA, for any expense that is not a lawful HOA obligation commits theft.
- Provides that, where a director or officer is charged with any specified crime and therefore must be removed from office under current law, a vacancy must also be declared, and adds to the list of crimes triggering such a removal and declaration any criminal violation under chapter 720, F.S.
- Requires an HOA or its specified committees to uniformly apply and enforce on all parcel owners the architectural and construction improvement standards set forth in the governing documents, and to provide specified written notice to a parcel owner whose improvement request was denied.
- Requires HOAs with 100 or more parcels to, by January 1, 2025, post a current digital copy of specified records on its website or make such records available through an application, under specified conditions.
- Provides that, if an HOA receives a subpoena for records from a law enforcement agency, the HOA must provide a copy of such records or otherwise make the records available to the agency for inspection and copying within 5 business days unless otherwise directed by the agency or subpoena.
- Creates new criminal penalties for specified records offenses, which penalties range from a second-degree misdemeanor to a third-degree felony.

The bill may have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2024.

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

STORAGE NAME: h1243c.JDC

DATE: 2/14/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Association Managers- Current Situation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR) pursuant to part VIII of ch. 468, F.S., and the seven-member Regulatory Council of Community Association Managers (council) housed within DBPR.¹

Section 468.431(2), F.S., defines “community association management” to mean any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000:

- Controlling or disbursing funds of a community association;
- Preparing budgets or other financial documents for a community association;
- Assisting in the noticing or conduct of community association meetings; and
- Coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A CAM license is not required for a person who:

- Performs clerical or ministerial functions under the direct supervision and control of a licensed CAM, or
- Performs only the maintenance of a community association and does not assist in any of the management services.²

To become licensed as a CAM, a license applicant must:

- Submit to a background check for a good moral character determination by DBPR,
- Attend a DBPR-approved in-person training prior to taking the licensure examination, and
- Pass the licensure examination.³

CAMs must also complete not more than 10 hours of continuing education hours as approved by the council to renew and maintain their licenses.⁴

Section 468.4334, F.S., outlines the professional practice standards for CAMs and CAM firms, including the duty to “discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.”

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including:

- Committing acts of gross misconduct or gross negligence in connection with the profession.
- Contracting, on behalf of an association, with any entity in which the CAM has a financial interest that is not disclosed.
- Violating any provision of chapter 718 (relating to condominiums), chapter 719 (relating to cooperatives), or chapter 720 (relating to homeowners’ associations) during the course of performing community association management services pursuant to a contract with a community association.⁵

¹ S. 468.4315(1), F.S.

² S. 468.431(2), F.S.

³ S. 468.433, F.S.

⁴ S. 468.4336 and 468.4337, F.S.

⁵ S. 468.436(2)(b)5.-7., F.S.

Community Association Managers- Effect of the Bill

The bill requires CAMs and CAM firms authorized by a contract to provide community association management to a homeowners' association (HOA) to:

- Attend in person at least one HOA member meeting or board meeting annually;
- Provide HOA members:
 - The name and contact information for each CAM or representative of the CAM firm assigned to the HOA.
 - The CAM's or representative's hours of availability.
 - A summary of the duties for which the CAM or representative is responsible.

The bill requires that the HOA post this information on the HOA website or application. The bill requires that a CAM or CAM firm must update the HOA and its members within 14 business days after any change to such information.

A CAM or CAM firm is required to provide to any HOA member the contract between the HOA and the CAM or CAM firm upon the member's request, and include such contract with the HOA's governing documents.

The bill mandates that, every two years, a CAM that provides services to an HOA must complete at least 5 hours of continuing education that pertains specifically to HOAs, 3 hours of which must relate to recordkeeping.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments that, if unpaid, may become a lien on the parcel.⁶ In Florida, approximately 45 percent of homes are part of an HOA.⁷

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 HOA's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.⁸

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located.

After control of the HOA is obtained by members other than the developer, the HOA may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The HOA may defend actions in eminent domain or bring inverse condemnation actions. Any individual member or class of members may bring any action without participation by the HOA, but a member does not have authority to act for the HOA by virtue of being a member.⁹

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes (division), within DBPR, for certain election and recall disputes.¹⁰

⁶ S. 720.301(9), F.S.

⁷ Patrick Regan, "45% of Florida Homes Are Part of an HOA, the Highest Percentage in the Nation." *South Florida Agent Magazine*, Apr. 21, 2023, <https://southfloridaagentmagazine.com/2023/04/20/45-of-florida-homes-are-part-of-an-hoa-the-highest-percentage-in-the-nation/> (last visited Feb. 14, 2024).

⁸ See generally ch. 720, F.S.

⁹ S. 720.303(1), F.S.

¹⁰ S. 720.311, F.S.

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.¹¹

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.¹² The articles of incorporation establish the HOA's existence, basic structure, and governance.¹³ The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.¹⁴

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.¹⁵ Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.¹⁶

Official Records- Current Situation

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:¹⁷

- A copy of the HOA's governing documents, as follows:
 - the declaration of covenants and each amendment,
 - bylaws and each amendment,
 - articles of incorporation and each amendment, and
 - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the HOA requesting that a different mailing address be used for all required notices.
 - The HOA shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the HOA requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from HOA records when the member revokes consent to receive notice by electronic transmission.
- All of the HOA's insurance policies, which must be retained for at least 7 years.

¹¹ S. 720.301(8), F.S.

¹² Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), <https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/> (last visited Feb. 14, 2024).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ S. 720.306(1), F.S.

¹⁶ *Id.*

¹⁷ S. 720.303(4), F.S.

- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility.
 - Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
 - Accurate, itemized, and detailed records of all receipts and expenditures.
 - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - All tax returns, financial statements, and financial reports of the HOA.
 - Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3., F.S.
- All other written records of the HOA which are related to the operation of the HOA.

The HOA bylaws must require the HOA to post all notices of board meetings in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.¹⁸

The official records must be maintained within the state for at least 7 years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within 10 business days after receipt by the board or its designee of a written request. An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

If the HOA has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. However, an HOA may impose fees to cover the costs of providing copies of the official records.¹⁹ An HOA must allow a member or authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or authorized representative with a copy of such records. The HOA may not charge a fee to a member or his or her authorized representative for the use of a portable device.²⁰

The failure of an HOA to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the HOA willfully failed to comply with this requirement.²¹

A member who is denied access to official records is entitled to his or her actual damages or minimum damages, as established in law, for the HOA's willful failure to comply with this requirement.²² The

¹⁸ S. 720.303(2)(c), F.S.

¹⁹ The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. S. 720.303(5)(c), F.S.

²⁰ S. 720.303(5), F.S.

²¹ S. 720.303(5)(a), F.S.

minimum damages are to be \$50 per calendar day up to 10 days, with the calculation to begin on the 11th business day after receipt of the written request.²³

The HOA may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month.²⁴

The following records are not accessible to members or parcel owners:²⁵

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.²⁶
- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.
- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Official Records- Effect of the Bill

The bill mandates that an HOA adopt written rules governing the method of retaining official records and length of such retention and clarifies that the 10-day response time is triggered only upon receipt of a written request by a parcel owner.

The bill also requires every HOA with 100 parcels or more to, by January 1, 2025, post a current digital copy of specified official records on its website, or make such documents available through an application that can be downloaded on a mobile device. Such application or website must be accessible through the Internet and have a subpage or portal inaccessible to the general public, and that is accessible only to HOA parcel owners and employees, and the HOA must provide a parcel owner a username and password giving the parcel owner access to the restricted subpage or portal, upon the parcel owner's written request.

Further, the bill:

- Provides that if an HOA receives a subpoena for records from a law enforcement agency, the HOA must provide a copy of such records or otherwise make the records available to the agency within 5 business days after receipt of the subpoena, unless directed otherwise by the agency or subpoena. Under the bill, an HOA must assist a law enforcement agency in its investigation to the extent permissible by law.
- Requires an HOA to ensure that the information and records which are not allowed to be accessible to parcel owners are not posted on the HOA's website or application, and that, if

²² "Actual damages" are those damages a party actually suffered. Legal Information Institute, *Actual Damages*, https://www.law.cornell.edu/wex/actual_damages (last visited Feb. 14, 2024).

²³ S. 720.303(5)(b), F.S.

²⁴ S. 720.303(5)(c), F.S.

²⁵ S. 720.303(5)(c)1.-9., F.S.

²⁶ The "work-product privilege" protects from disclosure documents and tangible things prepared in anticipation of litigation or for trial, in order to protect an attorney's mental impressions, conclusions, opinions, or legal theories. Legal Information Institute, *Attorney Work Product Privilege*, https://www.law.cornell.edu/wex/attorney_work_product_privilege (last visited Feb. 14, 2024).

protected or restricted information is included in documents that must be posted on the HOA's website or application, the information is redacted before the documents are posted. However, the bill provides that the HOA is not liable for disclosing protected or restricted information unless such disclosure was made with a knowing or intentional disregard of the information's protected or restricted nature.

- Creates criminal penalties for specified records violations, as follows:
 - Any director, board member, or CAM who knowingly, willfully, and repeatedly²⁷ violates provisions relating to records maintenance and access in s. 720.303(5)(a), F.S., with the intent of causing harm to the HOA or one or more of its members, commits a second-degree misdemeanor.²⁸
 - Any person who knowingly and intentionally defaces or destroys accounting records during the period in which such records must be maintained, or who knowingly or intentionally fails to create or maintain accounting records that must be created or maintained, with the intent of causing harm to the HOA or one or more of its members, commits a first-degree misdemeanor.²⁹
 - Any person who willfully and knowingly refuses to release or otherwise produce HOA records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a third-degree felony.³⁰

Finally, the bill appears to authorize an HOA to shorten the amount of time that records must be retained to some time less than 7 years if such shorter time is specified in the governing documents, but elsewhere preserves the requirement that the records be retained for at least 7 years.

Financial Reporting - Current Situation

Florida law does not required a financial audit of all HOAs; instead, it requires certain HOAs to prepare and complete, or contract with a third party to prepare and complete, a financial report for the preceding fiscal year within 90 days after the fiscal year's end, or annually on the date provided in the governing documents.³¹ Specifically, under Florida law, an HOA that meets the criteria specified below must prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy, which financial statements shall be based on the HOA's total annual revenues, as follows:³²

- An HOA with total annual revenues of \$150,000 or more, but less than \$300,000, must prepare compiled financial statements.³³
- An HOA with total annual revenues of at least \$300,000, but less than \$500,000, must prepare reviewed financial statements.³⁴
- An HOA with total annual revenues of \$500,000 or more must prepare audited financial statements.³⁵

²⁷ The bill defines "repeatedly" to mean two or more violations within a 12-month period.

²⁸ A second-degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

²⁹ A first-degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

³⁰ A third-degree felony is punishable by up to five years' imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

³¹ S. 720.303(7), F.S.

³² *Id.*

³³ "Compiled financial statements" involve the placement of an HOA's accounting data into a financial statement format but no comparison is made by a CPA firm between the financial statement's data and the HOA's financial records. Thus, there are no assurances as to the financial statement's accuracy. John H. Stroemer, *Understanding Annual Financial Reporting Requirements for Associations*, https://www.stroemercpa.com/reporting_requirements.php (last visited Feb. 14, 2024).

³⁴ "Reviewed financial statements" involve an analytical review of the HOA's balance sheet, income statement, and board meeting minutes, and an interview of the HOA's management personnel, by a Certified Public Accountant (CPA). The CPA firm then provides "negative assurances"; in other words, the CPA firm states that nothing came to its attention that would indicate that the financial statements were not in accordance with generally accepted accounting principles. *Id.*

Within 21 days after the final financial report is completed by the HOA or received from the third party, but no later than 120 days after the fiscal year's end or other date as provided in the governing documents, the HOA must, within specified time limits, provide each member with a copy of the annual financial report or a written notice that a copy thereof is available upon request at no charge to the member.³⁶ However, if approved by a majority of the voting interests present at a properly called HOA meeting, an HOA may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.³⁷

Florida law also provides that an HOA with total annual revenues of less than \$150,000 must prepare a report of cash receipts and expenditures, which report must disclose the amount of receipts by accounts and receipt classifications, and the amount of expenses by accounts and expense classifications, including, but not limited to the following:

- Costs for security, professional, and management fees and expenses;
- Taxes;
- Recreation facilities costs;
- Refuse collection and utility services expenses;
- Lawn care expenses;
- Building maintenance and repair costs;
- Insurance costs;
- Administration and salary expenses; and
- Reserves, if maintained by the HOA.

However, parcel owners may petition the board for a level of financial reporting higher than that required under law, and if 20 percent of the parcel owners bring such a petition, the board must notice and hold a member meeting within 30 days of the petition's receipt for the purpose of voting on raising the reporting level.³⁸ Upon approval by a majority of the total voting interests of the parcel owners, the HOA must provide within 90 days of the meeting or fiscal year's end, whichever occurs later:

- Compiled, reviewed, or audited financial statements, if the HOA is otherwise required to prepare a report of cash receipts and expenditures;
- Reviewed or audited financial statements, if the HOA is otherwise required to prepare compiled financial statements; or
- Audited financial statements if the HOA is otherwise required to prepare reviewed financial statements.³⁹

Financial Reporting - Effect of the Bill

The bill requires an HOA with 1,000 parcels or more to prepare audited financial statements, notwithstanding the HOA's total annual revenue, and prohibits an HOA from preparing any financial statement for consecutive fiscal years.

Debit Cards – Current Situation

³⁵ "Audited financial statements" involve an in-depth audit of the HOA's financial records and come with the CPA firm's expression of an opinion on the financial statements taken as a whole. Such statements provide the highest level of accuracy. *Id.*

³⁶ S. 720.303(7), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Nothing in the HOA Act expressly prohibits an HOA, or the officers, directors, or employees thereof, from using a debit card issued in the HOA's name, or billed directly to the HOA.⁴⁰

Debit Cards – Effect of the Bill

The bill prohibits an HOA and its officers, directors, employees, and agents from using a debit card issued in the HOA's name, or billed directly to the HOA, for the payment of any association expenses. Further, the bill specifies that any person who uses a debit card issued in the HOA's name, or billed directly to the HOA, for any expense that is not a lawful HOA obligation⁴¹ commits theft as provided under s. 812.014, F.S.

Powers and Duties of Officers and Directors- Current Situation

The officers and directors of an HOA have a fiduciary relationship to the members who are served by the HOA.⁴²

HOA Director Education Requirements

Within 90 days after being elected or appointed to the board, each director shall either:

- Certify in writing to the secretary of the HOA that:
 - he or she has read the HOA's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies;
 - he or she will work to uphold such documents and policies to the best of his or her ability; and
 - he or she will faithfully discharge his or her fiduciary responsibility to the HOA members; or
- Submit a certification showing satisfactory completion of the educational curriculum administered by a division-approved education provider within 1 year before or 90 days after the date of election or appointment.

The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board. A director who does not timely file the written certification or educational certificate shall be suspended from the board until he or she complies with the requirement, and the board may temporarily fill the vacancy during the period of suspension.

The HOA must retain each director's written certification or educational certificate for inspection by the members for 5 years after the director's election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.⁴³

Kickbacks

An HOA officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the HOA is subject to monetary damages.⁴⁴ If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office. The vacancy must be filled according to law until the end of the director's term of office. However, an officer, director, or

⁴⁰ Contrast this to s. 718.111(15), F.S., governing condominium associations, which prohibits a condominium association, and the officers, directors, employees, and agents thereof, from using a debit card issued in the association's name, or billed directly to the association, for the payment of any association expense, and provides that use of a debit card issued in the association's name, or billed directly to the association, for any expense that is not a lawful association obligation may be prosecuted as credit card fraud under s. 817.61, F.S.

⁴¹ The bill defines "lawful HOA obligation" to mean an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

⁴² S. 720.303(1), F.S.

⁴³ S. 720.3033(1)(a)-(c), F.S.

⁴⁴ Monetary damages are provided for in s. 617.0834, F.S.

manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs.⁴⁵

Conflicts of Interest

If the HOA enters into a contract or other transaction with any of its directors or a corporation, firm, or association that is not an affiliated HOA, or other entity in which a director is also a director or officer or is financially interested, the board must:⁴⁶

- Comply with the requirements for conflicts of interest in a corporation not for profit.⁴⁷
- Enter certain disclosure requirements into the written minutes of the meeting.
- Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the HOA is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

The directors and officers of an HOA who are appointed by the developer must disclose to the HOA their relationship to the developer each calendar year in which they serve as a director or an officer.⁴⁸ A developer's appointment of an officer or director does not create a presumption that the officer or director has a conflict of interest with regard to the performance of his or her official duties.

Directors and officers of an HOA are required to disclose to the HOA any activity that may reasonably be construed to be a conflict of interest at least 14 days prior to voting on the subject of such conflict or entering into such contract. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior disclosure to the HOA:⁴⁹

- A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the HOA.
- A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability company, partnership, limited liability partnership, or other business entity that conducts business with the HOA or proposes to enter into a contract or other transaction with the HOA.

Removal from Office for Charges or Indictments

Florida law provides that any director or officer charged by information or indictment with any of the following crimes must be removed from office:⁵⁰

- Forgery of a ballot envelope or voting certificate used in an HOA election as provided in s. 831.01, F.S.
- Theft or embezzlement involving the HOA's funds or property as provided in s. 812.014, F.S.
- Destruction of or the refusal to allow inspection or copying of an official record of the HOA which is accessible to parcel owners within the time periods required by general law, in furtherance of any crime, which act constitutes tampering with physical evidence as provided in s. 918.13, F.S.
- Obstruction of justice as provided in chapter 843, F.S.

⁴⁵ S. 720.3033(3), F.S.

⁴⁶ S. 720.3033(2), F.S.

⁴⁷ A contract or transaction with a conflict of interest is not voidable if the relationship or interest is disclosed or known to the board; the board authorized, approved, or ratified it by vote or written consent; or the contract or transaction is fair and reasonable at the time it is authorized. Such contract or transaction must be authorized, approved, or ratified by a majority of the directors on the board who have no relationship or interest in such transaction. S. 617.0832, F.S.

⁴⁸ S. 720.3033(6)(a), F.S.

⁴⁹ S. 720.3033(6)(b), F.S.

⁵⁰ S. 720.3033(4), F.S.

Powers and Duties of Officers and Directors- Effect of the Bill

HOA Director Education Requirements

The bill:

- Eliminates the option for a newly elected or appointed director to submit a written certification stating that he or she has read the governing documents, thus only allowing such director to, within 90 days after being elected or appointed, submit a certificate showing satisfactory completion of the educational curriculum administered by a DBPR-approved education provider (certificate of completion).
- Provides that such educational curriculum, specific to newly elected or appointed directors, must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.
- Provides that the certificate of completion is valid up to four years.
- Requires a director to retake the DBPR-approved education curriculum at least every 4 years.

In addition to completing the educational curriculum, the bill requires a director of an association that:

- has **fewer than 2,500 parcels** to complete at least **4 hours** of continuing education annually.
- has **2,500 parcels or more** to complete at least **8 hours** of continuing education annually.

The bill also requires DBPR to adopt rules to implement and administer the aforementioned educational curriculum and continuing education requirements.

Prohibition of Kickbacks

The bill provides that an HOA officer, director, or manager who knowingly solicits, offers to accept, or accepts any kickback⁵¹ commits a third-degree felony and is subject to monetary damages.

⁵¹ The bill defines “kickback” to mean any thing or service of value for which consideration has not been provided for an officer’s, a director’s, or a member’s benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the HOA.

Removal from Office for Charges or Indictments

The bill provides that, where a director or officer is charged by information or indictment with specified criminal offense and therefore must be removed from office as provided under current law, a vacancy must also be declared. Further, the bill adds to the list of criminal offenses that trigger such removal and declaration any criminal violation under the HOA Act.

HOA Architectural and Construction Improvement Covenants and Rules- Current Situation

If the governing documents allow it, an HOA or its architectural review, construction improvement, or other similar committee (committee) may:⁵²

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

The HOA or committee may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.⁵³

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel, and such rights and privileges may not be unreasonably infringed upon or impaired by the HOA or committee. If an HOA or committee unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.⁵⁴

An HOA or committee may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.⁵⁵

HOA Architectural and Construction Improvement Covenants and Rules- Effect of the Bill

The bill provides that:

- An HOA or its committee must reasonably and equitably apply and enforce on all parcel owners the architectural and construction improvement standards authorized by the HOA governing documents.
- If the HOA or its committee denies a parcel owner's request or application for the construction of a structure or other improvement on a parcel, the HOA or its committee must provide written notice to the parcel owner stating with specificity the rule or covenant on which the HOA or its committee relied when denying the request or application.

Electronic Voting – Current Situation

Florida law authorizes an HOA to conduct elections and other membership votes through an Internet-based online voting system if a member consents, in writing, to online voting and the following requirements are met:⁵⁶

- The HOA provides each member with:
 - A method to authenticate the member's identity to the online voting system.
 - A method to confirm, at least 14 days before the voting deadline, that the member's electronic device can successfully communicate with the online voting system.

⁵² S. 720.3035(1), F.S.

⁵³ S. 720.3035(2), F.S.

⁵⁴ S. 720.3035(4), F.S.

⁵⁵ S. 720.3035(5), F.

⁵⁶ S. 720.317, F.S.

- A method that is consistent with the election and voting procedures in the HOA's bylaws.
- The HOA uses an online voting system that is able to:
 - Authenticate the member's identity.
 - Authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
 - Transmit a receipt from the online voting system to each member who casts an electronic vote.
 - Permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific member (but only if the governing documents provide for secret elections).
 - Store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

A member voting electronically must be counted as having attended the meeting for the purposes of determining a quorum, and the electronic voting provisions apply only to an association that provides for and authorizes an online voting system by a board resolution.⁵⁷ Such a board resolution must:

- Provide that members receive notice of the opportunity to vote through an online voting system;
- Establish reasonable procedures and deadlines for members to consent, in writing, to online voting; and
- Establish reasonable procedures and deadlines for members to opt out of online voting after giving consent.⁵⁸

Further, written notice of a meeting at which the board resolution regarding online voting will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the HOA's property at least 14 days before the meeting, and a member's consent to online voting is valid until the member opts out of online voting pursuant to the procedures established by the board.⁵⁹

Electronic Voting – Effect of the Bill

The bill authorizes a member to consent to online voting electronically or in writing, and specifies that the requisite board resolution must establish reasonable procedures and deadlines for members to consent, electronically or in writing, to online voting.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amending s. 468.4334, F.S. relating to professional practice standards; liability.

Section 2: Amending s. 468.4337, F.S., relating to continuing education.

Section 3: Amending s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 4: Amending s. 720.3033, F.S., relating to officers and directors.

Section 5: Amending s. 720.3035, F.S., relating to architectural control covenants; parcel owner improvements; rights and privileges.

Section 6: Amending s. 720.3085, F.S., relating to payments for assessments; lien claims.

Section 7: Amending s. 720.317, F.S., relating to electronic voting.

Section 8: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state government to the extent that it increases criminal prosecutions in the state court system and thereby reduces the amount of available prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local governments to the extent that it leads to increased criminal prosecutions and thereby reduces the amount of available jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Provisions preventing HOA board members from soliciting, offering to accept, or accepting kickbacks, requiring certain HOAs to prepare or cause to be prepared audited financial statements, prohibiting debit card use in specified circumstances, and creating certain criminal penalties may prevent unlawful behavior from occurring, and, thus, save HOAs money. However, some HOAs may have to spend money to develop a website and certain HOAs may see an increase in expenditures related to the audited financial statement requirement. The bill may also have a negative financial impact on HOA board members charged with crimes created by the bill.

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:

DBPR is given rule-making authority to adopt rules to implement and administer an educational curriculum and continuing education requirements for HOA directors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that a newly elected or appointed HOA director must take the educational curriculum approved by the department at least every four years.
- Clarifies that, in addition to the educational curriculum, directors are also responsible for completing annual continuing education as follows:
 - 4 hours for directors in communities with less than 2,500 members.
 - 8 hours for directors in communities with 2,500 or more members.

On February 14, 2024, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Authorized a member to consent to online voting electronically and specifies that the requisite board resolution must establish reasonable procedures and deadlines for members to consent, electronically or in writing, to online voting.
- Narrowed the types of HOAs that must post a current digital copy of their official records on their respective websites or applications and the types of official records that must be so posted.
- Created new criminal penalties related to specified records violations.
- Removed a provision created by the bill requiring an HOA with 2,500 or more members to use an independent CPA to prepare the HOA's annual budget, and to retain an attorney for specified budget-related purposes.
- Required an HOA with 1,000 parcels or more to prepare audited financial statements, and prohibited an HOA from preparing a financial statement for consecutive fiscal years.
- Modified provisions relating to annual continuing education for board members to change the threshold determining whether a board member must complete four or eight hours annually from "2,500 members" to "2,500 parcels."
- Prohibited an HOA and its officers, directors, employees, and agents from using a debit card issued in the HOA's name, or billed directly to the HOA, for the payment of any association expenses, and specified that a person who uses a debit card issued in the HOA's name, or billed directly to the HOA, for any expense that is not a lawful HOA obligation commits theft.
- Defined "kickback" and modified the criminal penalties associated with accepting kickbacks created by the bill.
- Specified that, where a director or officer is charged by information or indictment with a specified criminal offense and must be removed from office as provided in current law, a vacancy must also be declared, and listed any criminal violation under the HOA Act as a criminal offense for which such removal and declaration is required.

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