

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 348

SPONSOR: Regulated Industries Committee and Senators Pruitt & Geller

SUBJECT: Condominiums/Election

DATE: April 19, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides for expedited arbitration of condominium elections disputes, provides that condominium association assessment liens are included within those liens which are reinstated if a foreclosure judgment is vacated, clarifies current law regarding multicondominium associations, clarifies current law regarding the ability of condominium unit owners to restrict leasing rights through amendments of condominium, clarifies unit owners' ability to amend declarations of condominium to permit the transfer of limited common elements, extends the filing deadline for financial reports, clarifies current law regarding condominium bylaws, clarifies current law regarding an association's right to amend declarations to provide for material alterations or substantial additions to common elements and association property, and makes certain laws applicable to associations in existence on the date this bill takes effect.

This bill substantially amends the following sections of the Florida Statutes: 718.1255, 702.09, 718.104, 718.106, 718.110, 718.111, 718.112, 718.113, 718.115, 718.405, and 718.504.

II. Present Situation:

Chapter 718, F.S., the "Condominium Act," governs condominium associations. A condominium is "that form of ownership of real property which is created pursuant to the provisions of this chapter, which is comprised of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements." The term "multicondominium" is defined in ch. 718, F.S., to mean a real estate development containing two or more condominiums, all of which are operated by the same association." Further discussion regarding the present situation is addressed within the section-by-section analysis below.

III. Effect of Proposed Changes:

Section 1. Amends s. 718.1255, F.S., regarding mandatory arbitration of controversies over condominium association election of a director of the board of administration.

Present Situation: Pursuant to s. 718.1255(4)(a), F.S., arbitration of certain disputes involving condominium (or cooperative) associations and unit owners is required before an action in court may be pursued. Section 718.1255(1)(b)1., F.S., provides that the failure of a condominium association to “properly conduct elections” is one type of dispute that must be referred to arbitration.

Section 718.1255(4)(c), F.S., provides that, upon receipt of a petition for arbitration, the petition must be promptly reviewed by the division to determine the existence of a dispute and compliance with filing requirements. If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. A verified petition alleging facts that, if proven, would support entry of a temporary injunction must accompany the motion. If an appropriate motion and supporting papers are filed, the division may place the arbitration on hold pending a court hearing and disposition of a motion for temporary injunction.

An arbitration decision may not be a final adjudication of the issues presented. Section 718.1255(4)(k), F.S., provides that, within 30 days of an arbitration decision, either party may file an action in state court regarding the dispute that had been presented for arbitration. If neither party files a state court action within 30 days of the arbitration decision, the decision is final and may be enforced.

Effect of Proposed Changes: This bill adds a new subsection (5) to s. 718.1255, F.S., entitled “Disputes Involving Election Irregularities.” The new subsection provides that a challenge to the legality of the election of a director of the board of administration of a condominium received by the division in a petition for arbitration must be handled on an expedited basis. The division is required to respond to the challenge in the same manner as provided in division rule for recall arbitration disputes.

Section 2. Amends s. 702.09, F.S., to amend the definition of “mortgage” to include association assessment liens within the definition of the term “mortgage” and, as such, to provide that such liens are included within those liens that are reinstated if a foreclosure judgment is vacated. The term “foreclosure proceedings” is also amended to include actions in county court.

Section 3. Amends s. 718.104, F.S., regarding the creation of multicondominiums and the contents of declarations of condominium (“declaration”).

Present Situation: Chapter 2000-302, L.O.F., created paragraph (h) of subsection (4) of section 718.104, F.S., relating to declarations. A declaration recorded on or after July 1, 2000, in which the developer reserves the right to create a multicondominium development, must state, or provide a specific formula for determining, the fractional or percentage shares of liability for common expenses and of ownership of the common surplus to be allocated to the units in each condominium to be operated by the association. If the declaration does not set forth such information, then the share of liability for the common expenses of the association and

ownership of the common surplus of the association allocated to each unit shall be a fraction of the whole where the numerator is 1 and the denominator is the total number of units in the condominiums operated by the association.

Subsection (5) of section 718.104, F.S., provides that a declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units. There is conflicting case law on whether a restriction created by an amendment to a declaration may apply to current owners. In Woodside Village Condominium v. Jahren, 754 So.2d 831 (Fla. App.2 Dist. 2000), a suit that is now before the Florida Supreme Court, condominium unit owners brought suit against their association to challenge declarations amendments that prohibited unit owners from leasing units for more than nine months. The Second District Court of Appeal held that those unit owners who had acquired units for annual rental purposes acquired substantial rights, which could not be taken away without their consent. Other courts have held the opposite. See Seagate Condominium Association v. Duffy, 330 So.2d 484 (Fla. 4th DCA 1976) and Flagler Federal Savings & Loan Association v. Crestview Towers Condominium Association, 595 So.2d 198 (Fla. 3d DCA 1992).

Effect of Proposed Changes: This bill clarifies that the provisions of s. 718.104(4)(h), F.S., apply to multicondominium declarations recorded on or after July 1, 2000.

The bill modifies s. 718.104 (5), F.S., to specify that amendments to a declaration apply to owners of record existing on the effective date of the amendments. The modification is intended to clarify existing law and applies to associations in existence at the time of enactment of this change.

Section 4. Amends 718.106, F.S., regarding transfer of limited common elements.

Present Situation: A condominium unit is a real property interest. When a condominium unit is sold, certain legal rights must be sold with the unit, known as appurtenances. Section 718.107, F.S., prohibits a unit owner from transferring the rights in common elements separate from sale or transfer of the appurtenant condominium unit. Case law provides that s. 718.107, F.S. prohibits the conveyance of a limited common elements that has been assigned to a particular unit. See Brown v. Rice, 716 So.2d 807 (Fla. 5th DCA 1998). Parking spaces are the most common example of a limited common element.

During the 2000 legislative session, major legislation was passed into law as ch. 2000-302, L.O.F., which, in part, related to condominiums. The act created the right to transfer limited common elements to a condominium unit to another unit owner, if otherwise permitted by the declaration. The intent of the legislation was to overrule the effect of Brown v. Rice. The act also allowed an association to amend its declaration under the provisions of s. 718.110(2), F.S., to provide for the transfer of appurtenances, if the declaration does not already allow it.

Effect of Proposed Changes: This bill is intended to further clarify the statutory authority to transfer use rights to other unit owners and to apply the law, as clarified, to associations in existence at the time of enactment of this change. The bill specifies that amendments to declarations of condominiums providing for the transfer of use rights with respect to common elements are not amendments that materially modify unit appurtenances as described in s.

718.110(4), F.S. The bill further provides that such transfers are to essentially be handled with the formalities of deeds, reflect the legal description of the transferor and transferee unit, and be recorded in the local land records. This process assists in title transfers and title insurance. Finally, the bill clarifies that any amendment will be accomplished pursuant to the provisions contained in the declaration. This provides for amendments by vote of the unit owners. The bill deletes a reference to s. 718.110(2), F.S., which provides for an amendment simply upon signature of the association officers.

Section 5. Amends s. 718.110, F.S., relating to amendments of declaration.

Present Situation: Section 718.110(4), F.S., prohibits amendments of declaration that materially alter or modify the appurtenances to the units.

Effect of Proposed Changes: The bill is intended to clarify existing law and create consistency with the changes discussed in Sections 3 and 4 above. The bill clarifies that amendments of declaration providing for transfer of use rights in limited common elements pursuant to s. 718.106(2)(b), F.S., and amendments restricting or modifying the right to lease condominium units do not constitute a material alteration or modification of the appurtenance to the units. The bill provides that such amendments may be applied to owners of units existing on the effective date of the amendment. The bill makes these clarifications applicable to associations in existence on the effective date of this bill.

Section 6. Amends s. 718.111, F.S., regarding preparation of financial reports and leasing of association property.

Present Situation: During the 2000, legislative session major legislation was passed into law as chapter 2000-302, L.O.F., which, in part, related to condominiums. The act created, in part, substantial revisions to the reporting requirements of condominium associations pursuant to s. 718.111(13), F.S. The act extended from 60 to 90 days the time within which the board must prepare or cause to be prepared by a third party the annual financial report. It also required the association to either mail or hand deliver a copy of the financial report to all unit owners within 21 days after the association receives the report. The current law also provides associations with the authority to lease common elements (property owned by the unit owners), but not association property (property owned by the association).

Effect of Proposed Changes: The bill clarifies that associations have the authority to lease association property and common elements. The bill also extends the deadline for making the financial report available to 120 days from the end of the fiscal year or earlier if provided in the bylaws.

Section 7. Amends s. 718.112, F.S., relating to bylaws.

Present Situation: The operation of a condominium association is governed by its articles of incorporation (if the association is incorporated) and bylaws. Section 718.112 (3), F.S., provides that the bylaws may provide for “a method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements” and

“restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements.”

Effect of Proposed Changes: As discussed in Sections 3 and 5 above, this bill clarifies that declarations may be amended to make certain restrictions applicable to existing unit owners. The bill clarifies that the same is applicable under the association bylaws. The bill applies to associations in existence on the effective date of this change.

Section 8. Amends s. 718.113, F.S., relating to material alterations or substantial additions to the condominium property.

Present Situation: Prior to 1992, material alterations or substantial additions to common elements or association real property were prohibited unless provided for in the declaration. Chapter 92-49, L.O.F., provided that 75% total voting interests of the association could approve such alterations if not contained in the declaration. Chapter 2000-302, L.O.F., amended s. 718.113, F.S., to make this provision applicable to multicondominium associations. Case law holds, however, that declarations recorded prior to ch. 92-49, L.O.F., that are silent regarding material alterations cannot be subsequently amended. See Wellington Property Management v. Parc Corniche Condominium Association, 755 So.2d 824 (Fla. 5th DCA 2000). In Wellington, unit owners attempted to amend their declaration based upon a general power in the declaration that allowed for amendment by a 51% vote of the owners. The Court held that the amendment would defeat the vested rights of pre-amendment owners and that retroactive application of s. 718.113, F.S., would be a substantive change that would unconstitutionally interfere with the unit owners' contractual rights with the developer regarding the original use of the common elements. Wellington at 828.

Effect of Proposed Changes:

The bill amends s. 718.113 (2) (a), (b) and (c), F.S., to allow for amendment of the declaration for the purposes set forth above, to clarify existing law, to make such changes applicable to existing associations.

Section 9. Amends s. 718.115, F.S., relating to common expenses.

Present Situation: Section 718.115, F.S., defines common expenses of a condominium association, places limits on how certain funds may be used, and specifies that collection of the funds necessary for common expenses shall be by assessment. Chapter 2000-302, L.O.F., amended s. 718.115 (1), F.S., to specify, as to multicondominium associations, that common expenses of a multicondominium association are those not directly attributable to the operation of a specific condominium. The common expenses may include categories of expenses related to property within a specific condominium if all members of the association have use rights therein or receive a tangible economic benefit, and requires that such common expenses be identified in the declaration or bylaws.

Effect of proposed Changes: The bill amends s. 718.115 (1) (b) and (c), F.S., to specify that these paragraphs clarify existing law and apply retroactively to associations in existence at the time of enactment of the changes to these provisions.

Section 10. Amends s. 718.405, F.S., relating to multicondominiums as created by section 59 of chapter 2000-302, L.O.F.

Present Situation: Chapter 2000-302, L.O.F., created s. 718.405, F.S., to specifically address multicondominiums and multicondominium associations. The act provided, in part, that an association may operate more than one condominium if the declarations of affected condominiums so provide and disclose or describe the following: the manner or formula by which assets, liabilities, and common expenses will be apportioned; whether unit owners in other condominiums, or any other persons, will have use rights to recreational areas, facilities, or amenities, and the formula by which other users will share the common expenses related thereto; the recreational facilities or amenities the developer has committed to provide that are owned or leased by the association but are not included within any condominium, and requiring, if applicable, specific disclosure language in the prospectus for each condominium; and the voting rights of the owners of each unit in the election of directors and other matters.

The legislation also provided for the formation of a multicondominium association by the merger or consolidation of two or more condominium associations.

Effect of Proposed Changes: The bill amends s. 718.405, F.S., to require that the disclosures requirements set forth above apply to multicondominiums created after July 1, 2000. It also specifies this section is clarifying existing law and applies retroactively to associations in existence at the time of enactment of the changes to these provisions.

Section 11. Amends s. 718.504, F.S., relating to the prospectus or offering circular.

Present Situation: Chapter 2000-302, L.O.F., created s. 718.504 (15), F.S., to specifically address multicondominiums. It required that if a condominium is or may become part of a multicondominium, the following information must be disclosed in the prospectus or offering circular:

A statement in conspicuous type stating that the condominium is or may be part of a multicondominium; a summary of the provisions in the declaration and bylaws which establish and provide for the operation of the multicondominium development; the minimum and maximum number of condominiums and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact numbers will be finally determined; whether any of the condominiums may include nonresidential units, and the permitted purpose of such units; and a general description of the land on which any additional condominiums to be operated by the association may be located.

Effect of proposed Changes:

The bill amends s. 718.504, F.S., to require that the information and disclosures apply to condominiums created after July 1, 2000.

Section 12. Provides that this bill take effect on July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill applies certain provisions to condominium associations in existence on the date the bill takes effect. Of these, certain provisions merely clarify existing law. Others apply procedural statutes retroactively. Section 8 would make s. 718.113, F.S., applicable to existing associations, thus being applicable to associations in existence prior to the enactment of ch. 92-94, L.O.F. As discussed earlier, the Fifth District Court of Appeal in the Wellington case has found that retroactive application of s. 718.113, F.S., by a condominium association constitutes a substantive change to unit owners' rights of contract. Although this case pertains to a change made by an association, courts have held that retroactive application of a statute by the Legislature may be invalid as an impairment of contractual rights under Article I, Section 10 of the Florida Constitution unless the declaration allows for modification based upon subsequent amendments to the Condominium Act. See Fleeman v. Case, 342 So.2d 815 (Fla. 1976) and Association of Golden Glades Condominium Club, Inc. v. Security Management Corp., 557 So.2d 1350 (Fla. 1990).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
