

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1229 CS Homeowners' and Condominium Associations  
**SPONSOR(S):** Robaina and others  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Billmeier</u>	<u>Billmeier</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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### SUMMARY ANALYSIS

HB 1229 substantially amends Part VIII of ch. 468, F.S. Part VIII of Chapter 468, F.S., creates a regulatory scheme for community association managers. This bill creates a regulatory scheme for "community association management firms", or companies that manage community associations. It provides that disciplinary actions may be taken upon a finding of violation by either the Division of Florida Land Sales, Condominiums, and Mobile Homes or by the Department of Business and Professional Regulation.

This bill requires a condominium association to make "reasonable provisions" for a mobility-disabled person to transfer the rights to use a limited common element parking place that does not accommodate his or her vehicle to a space that will accommodate the vehicle. If alterations are required to make the accommodation, the person requesting the accommodation shall pay for the alterations. This bill provides alterations made pursuant to the bill's provisions regarding parking for mobility-disabled persons are not material alterations requiring approval of all unit owners.

This bill prohibits certain condominium and cooperative associations from waiving certain audit requirements for more than 2 consecutive years. It limits the ability of condominium associations to alter statutory response times to requests by unit owners and limits the ability of condominium bylaws to alter statutory procedures for election of condominium board members. This bill eliminates the ability for the condominium association to waive or reduce reserves and gives condominium associations until January 1, 2011, to comply with reserve requirements. This bill permits a condominium association to use reserve funds to mitigate damages or make the condominium accessible for repairs after a catastrophic event. It permits the condominium association board to install hurricane protection that complies with or exceeds applicable building codes. This bill amends notice requirements when certain violations are alleged.

This bill amends s. 719.1055, F.S., to provide that any amendment restricting cooperative unit owners' rights relating to rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of the amendment.

This fiscal impact of this bill is uncertain. See "Fiscal Comments."

This bill takes effect July 1, 2005.

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

**STORAGE NAME:** h1229a.CJ.doc  
**DATE:** 4/19/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill provides for new regulation of community association management firms. It restricts the ability of cooperative associations from limiting unit rentals but increases the freedom of cooperative owners regarding unit rentals. It places restrictions on condominium associations relating to audits and elections to the boards.

#### B. EFFECT OF PROPOSED CHANGES:

This bill amends various sections of law relating to community associations. Sections 1-5 of this bill revise sections of law relating to community association management. Sections 6-11 of this bill amend chapter 718, F.S., relating to condominiums. Sections 12-13 amend chapter 719, F.S., relating to cooperatives.

##### Sections 1-5 of HB 1229

This bill substantially amends Part VIII of ch. 468, F.S. Part VIII of Chapter 468, F.S., creates a regulatory scheme for community association managers. Section 468.431(2), F.S. defines “community association management”:

“Community association management” means 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 50 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 person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

Section 468.431(3), F.S., defines a community association manager:

“Community association manager” means a person who is licensed pursuant to this part to perform community association management services.

Section 1 of this bill creates a regulatory scheme for “community association management firms.” The bill defines “community association management firm:”

“Community association management firm” means a corporation, limited liability company, partnership, trust, association, sole proprietorship or other like organization engaging in the business of community association management to provide any of the services described in subsection (2).

This bill limits the definition of “community association manager” to natural persons.

Section 468.4315, F.S., creates the Regulatory Council of Community Association Managers within the department. The council consists of seven members appointed by the Governor and confirmed by the

Senate. The council establishes rules relating to the licensure of association managers and approves the licensure examination.<sup>1</sup> Section 2 of this bill requires that two council members be members of either a homeowners' association, a condominium association, or a cooperative association.

Section 3 of this bill creates a regulatory system for community association management firms. It requires that, effective January 1, 2006, a community association management firm shall not engage in the business of community association management unless it is licensed by the Department of Business and Professional Regulation ("department"). This bill allows a firm to file an application for licensure with the department. It requires a firm applying for licensure to be authorized to conduct business in Florida. The department shall license each applicant who the department certifies as meeting the requirements of the bill. This bill creates a management firm license fee of \$250.

This bill requires an applicant to designate a licensed community association manager to respond to all inquiries from and investigations by the department or division.<sup>2</sup> It requires each licensed community association management firm to notify the department within thirty days of the change of information contained in the application upon which licensure is based and provides that licenses expire September 30 of even numbered years and shall be renewed every two years. An application for renewal shall be accompanied by the renewal fee as required by s. 468.435.<sup>3</sup>

Any community association management firm agrees by being licensed that it will employ only licensed persons in the direct provision of community association management services. The bill further provides that if the license of at least one natural person individual active community association manager member is not in force, the license of the community association management firm is cancelled automatically during that time.

Section 5 of this bill amends s. 468.436, F.S., relating to disciplinary proceedings. It provides that disciplinary actions may be taken upon a finding of violation by either the Division of Florida Land Sales, Condominiums, and Mobile Homes or by the department. Current law provides that only the department will make this finding. The bill amends s. 468.436, F.S., to permit the department or the Division of Florida Land Sales, Condominiums, and Mobile Homes to take disciplinary action against community association management firms.

This bill also provides that it is a violation for an community association manager or management firm to contract on behalf of an association with any entity in which the licensee has a financial interest if the licensee does not disclose the financial interest.

#### Sections 6-11 of HB 1229

Section 7 of this bill creates s. 718.111(15), F.S., to require a condominium association to make "reasonable provisions" for a mobility-disabled person to transfer the rights to use a limited common element parking place that does not accommodate his or her vehicle to a space that will accommodate the vehicle. If alterations are required to make the accommodation, the person requesting the accommodation shall pay for the alterations.

Under s. 718.110(4), F.S., certain alterations or additions to common elements of the condominium cannot be made unless all unit owners approve. This bill provides alterations made pursuant to the bill's provisions regarding parking for mobility-disabled persons are not material alterations requiring approval of all unit owners under s. 718.110(4), F.S.

Section 7 of this bill also creates new requirements for a condominium association to prepare audited financial statements. Section 718.111(13)(a)3., F.S., requires a condominium association with total

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<sup>1</sup> See ss. 468.4315 – 468.435, F.S.

<sup>2</sup> "Division" is not defined by the bill.

<sup>3</sup> Section 468.435, F.S., sets forth various fees relating to community association management.

annual revenues of \$400,000 or more to prepare an audited financial statement. Section 718.111(13)(d), F.S., permits a condominium association to prepare a report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of the audit, if a majority of the voting interests at a meeting approve that alternative to an audit. This bill prohibits the condominium association from waiving the audit requirement for more than 2 consecutive years.

Current law requires a condominium association to respond to written inquiries by unit owners within 30 days of receipt.<sup>4</sup> The response must either by substantive, must notify the owner that a legal opinion has been requested, or must notify that unit owner that assistance has been requested from the Division of Florida Land Sales, Condominiums, and Mobile Homes.<sup>5</sup> Condominium associations may adopt rules and regulations regarding the frequency and manner of required responses, including limiting each unit owner to one request every 30 days.<sup>6</sup> This bill repeals the provision permitting different rules for responding to requests and requires all requests be answered within the statutory timeframe.

Current law permits the condominium bylaws to set the terms for condominium board members.<sup>7</sup> This bill requires that terms of condominium association board members expire at the annual meeting. It permits members to stand for reelection and provides that there is no limit to the number of times a member may be elected. It prohibits co-owners of a unit from serving on a board at the same time. This bill also prohibits a condominium association for "opting out" of the statutory election process set by s. 718.112(2)(d)3., F.S.

Section 718.112(2)(f), F.S., requires a condominium association to include in its budget reserve accounts for capital expenditures and deferred maintenance. However, it permits the condominium association to provide for no reserves. This bill eliminates the ability for the condominium association to waive or reduce reserves and gives condominium associations until January 1, 2011, to comply with reserve requirements. This bill repeals portions of s. 718.112(2)(f)2, F.S., which permit a develop to waive the reserves or reduce the funding of the reserves for the first two fiscal years of the condominium association's operation.

This bill creates s. 718.112(2)(f)5, F.S., to permit a condominium association to use reserve funds to mitigate damages or make the condominium accessible for repairs after a catastrophic event. It amends s. 718.113, F.S., to permit the condominium association board to install hurricane protection that complies with or exceeds applicable building codes.

Section 718.303, F.S., requires that unit owners, condominium association, tenant, and invitee comply with the provisions of chapter 718, the condominium declaration, condominium association bylaws, and documents creating the condominium association. This bill creates a requirement that anyone subject to action for violations must be notified of the violation by certified mail and have 30 days to respond.

Section 718.50151, F.S., creates the Advisory Council on Condominiums and provides that the director of the Division of Florida Land Sales, Condominiums, and Mobile Homes shall serve as a ex officio member. This bill requires the director to appoint a designee to serve as the ex officio member.

### Sections 12-13 of HB 1229

Section 719.104(4)(b), F.S., requires a cooperative association to provide audited financial statements in certain situations but permits the association to waive the audit requirement by a majority vote. This bill prevents the association from waiving a required audit for more than two consecutive years.

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<sup>4</sup> See s. 718.112(2)(a)2., F.S.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> See s. 718.112(2)(d), F.S.

This bill amends s. 719.1055, F.S., to provide that any amendment restricting cooperative unit owners' rights relating to rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of the amendment. This provision is similar to s. 718.110(13), F.S., in the condominium statute.

Section 14 of this bill provides that the bill becomes effective July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amend s. 468.431, F.S., to provide a definition for "community association management firm" and amend the definition of "community association manager."

Section 2. Amends s. 468.4315, F.S., relating to the Regulatory Council of Community Association Managers.

Section 3. Amends s. 468.432, F.S., to require licensure of community association management firms.

Section 4. Amends s. 468.435, F.S., to create a new fee for the licensure of community association management firms.

Section 5. Amends s. 468.436, F.S., to give the Division of Florida Land Sales, Condominiums, and Mobile Homes the ability to take disciplinary actions.

Section 6. Amends s. 718.110, F.S., relating to the amendment of declarations of condominium.

Section 7. Amends s. 718.111, F.S., relating to financial reporting by condominium associations and guest parking in condominiums.

Section 8. Amends s. 718.112, F.S., relating to response requirements to requests by condominium unit owners, election of condominium association boards, and reserve requirements.

Section 9. Amends s. 718.113, F.S., relating to hurricane protection.

Section 10. Amends s. 718.303, F.S., relating to the notification of unit owners or condominium associations of alleged violations.

Section 11. Amends s. 718.50151, F.S., relating to the Advisory Council on Condominiums.

Section 12. Amends s. 719.104, F.S., relating to audit requirements of cooperative associations.

Section 13. Amends s. 719.1055, F.S., relating to the rental of cooperative units.

Section 14. Provides that the bill becomes effective July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments"

2. Expenditures:

See "Fiscal Comments"

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill does not appear to have a fiscal impact on local governments.

2. Expenditures:

This bill does not appear to have a fiscal impact on local governments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Section 7 of the bill places requirements on condominium associations relating to guest parking. Individuals who request accommodations will have to pay the costs to comply with these requirements. The cost, if any, is unknown.

This bill prohibits a condominium association from waiving certain reserve requirements. It is not known how this will affect assessments to individual unit owners.

**D. FISCAL COMMENTS:**

The Department of Business and Professional Regulation has not yet completed its fiscal analysis of the bill. In meeting with committee staff, the department has raised concerns that the bill creates new licensing requirements. At this time, it is not known whether the license fees will cover the cost of regulation.

The bill also gives more disciplinary responsibility to the Division of Florida Land Sales, Condominiums, and Mobiles Homes. The costs of implementing these requirements and the revenues that these requirements might generate are not known.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Civil Justice Committee considered this bill on April 13, 2005. The committee adopted an amendment that removed provisions of the bill regulating homeowners' associations and changing the name of the Division of Florida Land Sales, Condominiums, and Mobile Homes. It added provisions regulating community association management firms, requiring licensing of such firms, and requiring the Division of Florida Land Sales, Condominiums, and Mobile Homes to be involved in disciplinary proceedings. The amendment retained

provisions in the original bill relating to waiving reserve requirements and the rights to rent cooperative units. The bill, as amended, was reported favorably as a committee substitute.