

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty -- This bill decreases regulations on association swimming pools with 32 or less units.

B. EFFECT OF PROPOSED CHANGES:

Background

Homeowners' association means a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which 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.¹ Homeowners' associations are regulated under chapter 720, F.S.

Effect of Bill

Swimming Pools and Spas

Current Law

Public swimming pools must be supervised by the Department of Health.² Swimming pools serving 32 or less condominium or cooperative units, which are not operated as public lodging, are exempt from supervision by the Department of Health.³ However, pools owned by homeowners' associations are considered public and, therefore, must be supervised.⁴

According to the United States Consumer Product Safety Commission, there were 74 cases of body entrapment, including 13 confirmed deaths, between January 1990 and August 2004. The deaths were the result of drowning after the body, or a limb, was held against the drain by the suction of the circulation pump. The incidents occurred in both residential and public settings.⁵

The Virginia Graeme Baker Pool and Spa Safety Act of 2007 was signed into federal law by President Bush on December 17, 2007, which provides that all new and existing public pools and spas must be equipped with drain covers conforming to the American National Standard ASME A112.19.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas and Hot Tubs published by the American Society of Mechanical Engineers. It also requires one of five design features that minimize entrapment hazards. The Act provides, among other things, an incentive grant program for states to adopt comprehensive pool and spa safety laws requiring certain safety devices in swimming pools and spas to protect children. The Act also requires states who receive the grants to use the funds to hire and train personnel for the proper enforcement of state law and to educate pool owners and operators, pool construction and installation companies, pool service companies and the public about the state law. The Act does not require the design features on private pools which are owned by an individual homeowner.

¹ Section 720.301(9), F.S.

² Section 514.0115, F.S.

³ Section 514.0115, F.S.

⁴ *Supra at note 7.*

⁵ U.S. Consumer Product Safety Commission, Washington, D.C. 20207 (2005).

Proposed Changes

This bill adds homeowners' associations serving 32 units or less to the list of swimming pools exempt from supervision by the Department of Health, except for water quality. This bill adds the definition of homeowners' associations to s. 514.011, F.S., as provided in s. 720.301, F.S.⁶

This bill creates s. 515.295, F.S., which provides that all residential spas and swimming pools built after January 1, 2009, must have more than one drain, one or more unblockable drains, or no main drain. This bill defines an "unblockable drain" as any size or shape of drain which a human body cannot sufficiently block to create a suction-entrapment hazard. The bill defines a "main drain" as a submerged suction outlet located at the bottom of a pool or spa to conduct water to a recirculating pump.

This bill provides that all residential spas and swimming pools built on or after January 1, 2009, must also have one or more of the following devices and systems:

- a safety vacuum release system⁷, which ceases operation of the pump, reverses circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected. This system must have been tested by an independent third party who finds that it conforms to ASME/ANSI standard A112.19.17 or ASTM standard F2387⁸;
- a suction vent system that has a tamper resistant atmospheric opening⁹;
- a gravity drainage system that uses a collector tank¹⁰;
- an automatic pump shut-off system¹¹;
- a device or system that disables the drain; or
- any other system that the department determines is equally effected, or better than, the systems described above at preventing or eliminating the risk of injury or death related to swimming pool and spa drainage system.

This bill further provides that any device or system above must meet the requirements of any ASME/ANSI or ASTM performance standard, if there is such a standard for the device or system, or any applicable consumer product safety standard.

This bill provides that the Department of Health must apply for a federal grant and implement, if awarded the grant, swimming pool and safety standards education and enforcement under the State Swimming Pool Safety Grant Program.¹² The Department of Health, in coordination with the Department of Community Affairs and the Florida Building Commission, is required under this bill to determine if actual changes are necessary and to ensure compliance with federal standards regarding swimming pool and spa safety. The Department of Health must provide the assessment to the Legislature by January 1, 2009.

⁶ Section 720.301, F.S., provides that a homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision where voting members are made up of parcel owners or agents and membership is mandatory for parcel ownership. A homeowners' association is authorized to impose assessments and create a lien on the parcel if they are not paid.

⁷ This bill defines a "safety vacuum release system" as a vacuum release system capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to a suction outlet flow blockage.

⁸ The ASME/ANSI safety standard is a standard which is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

⁹ A suction limiting vent is a pipe perpendicular to the suction side of the circulation system on one end and open to the atmosphere on the opposite end, which is normally full of water. When a blockage occurs at the main drain, air is introduced into the suction line and causes the pump to lose prime and relieve the suction forces at the main drain.

¹⁰ A gravity drainage system with a collector tank has a pool circulation pump that draws water from this tank, removing direct suction from the pool.

¹¹ An automatic pump shut-off system is a device that can sense a drain blockage and shut off the pump.

¹² The State Swimming Pool Safety Grant program is established in s. 1405 of Title XIV of the federal Energy Independence and Security Act of 2007.

Homeowners' Association -- Board Meetings

Current Law

Section 720.303(2), F.S., provides procedures for homeowners' association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for meetings between the board and its attorney relating to proposed or pending litigation. Members also have the right to attend all board meetings and speak for at least 3 minutes on any matter placed on the agenda by petition of the voting interests. However, a meeting between the board or a committee and the association's attorney held to discuss personnel matters is not open to the members.

Proposed Changes

This bill provides that board meetings are not open to board members when the meeting is between the board or a committee "to discuss proposed or pending litigation" with the association's attorney in addition to a discussion regarding personnel matters.

Homeowners' Association -- Records

Current Law

Homeowners' associations must provide access to their records at all reasonable times within 10 business days of a written request for inspection or copying of the records. The failure of an association to provide access to records within 10 business days after receipt of a written request to do so creates a rebuttable presumption that the association willfully failed to comply.

Proposed Changes

This bill adds that the written request to see records must have been submitted by certified mail, return receipt requested. Therefore, unless the association receives a written request by certified mail, return receipt requested to inspect the official records, they will not be held to have willfully not complied. This bill further provides that if the copies exceed 25 pages then in addition to allowing an outside vendor to copy the records, association management company personnel can also copy the records. This bill provides that in addition to the actual costs of copying that the member may be charged, all reasonable costs, including personnel fees, may also be charged.

Homeowners' Association -- Budgets and Reserve Accounts

Current Law

Section 720.03, F.S., provides that, in addition to annual operating expenses, the association budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible, to the extent that the association's governing documents do not limit increases in assessments. An association is deemed to have provided reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves.

If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so by an affirmative vote of a majority of the total voting interests. Once established, the reserve accounts must be funded, maintained, or have their funding waived.¹³ If the budget of the association does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in special assessments if reserves are not

¹³ Section 720.03(6)(d), F.S.

provided, then each financial report for the preceding fiscal year must contain a statement in conspicuous type.

Funding formulas for reserves can be based on either a separate analysis for each of the required assets or a pooled analysis of two or more of the required assets. If the association maintains a pooled account, then the amount of the contribution to the pooled reserve account must not be less than required to ensure the balance on hand at the beginning of the period for which the budget will go into effect, plus the projected annual cash inflows over the remaining estimated useful life of the assets. The projected annual cash inflows may include earning statements from investment principle.

Proposed Changes

This bill provides that if reserve accounts are not initially provided by the developer or elected by the membership, then reserve accounts are limited to the extent that the governing documents limit increases in assessments, including reserves. This bill further provides that if the reserve accounts are created initially by a developer or elected by the membership majority, then the reserves will be determined, maintained, and waived according to s. 720.01, F.S.

This bill declares that it does not preclude termination of a reserve account upon approval of a majority of the association voting interests. Upon such approval, this bill provides that the reserve account must be removed from the budget.

This bill also provides that if the budget of the association does not provide for reserve accounts created or established initially by the developer or elected by the majority of the voting interests, then there must be a statement in bold print on each financial report for the preceding fiscal year which states in part that the association does not provide reserve accounts for capital expenditures and owners may select to provide for reserve accounts themselves by a majority vote at a meeting or by a majority of the voting interests who provide written consent.

The bill provides that if the budget provides for funding of accounts for deferred expenditures, then each financial report for the preceding fiscal year must contain a statement in conspicuous type that states in part that the budget does provide for limited, voluntary deferred expenditure accounts and that those funds are not subject to the restrictions on use of funds set forth in that statute.

In addition to the projected annual cash inflows which may include earning statements from investment principle, this bill provides that accounts receivable, minus the allowance for doubtful accounts, may be included in the projected annual cash inflow.

This bill provides that a director, officer or committee member may not receive any salary or compensation from the association for the performance of his or her duties and may not benefit in any other way financially from service to the association. This bill provides that this does not prohibit:

- Participation in a financial benefit accruing to all or a significant number of members as a result of lawful actions taken by the board including in part maintenance or repair of community assets;
- Reimbursement for out-of-pocket expenses subject to approve in accordance with procedures established by the governing documents;
- Recovery of insurance proceeds which are derived from a policy of insurance maintained by the association for the benefit of its members;
- Any fee or compensation authorized in the governing documents; or
- Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by a proxy at the meeting of the members.

Homeowners' Association -- Remedies at Law

Current Law

Section 720.305, F.S., provides members and their tenants, guests and invitees must adhere to association rules and that the association may take action at law for failure or refusal to comply. The prevailing party in such litigation is entitled to attorney's fees and costs.

The association may levy a fine for each day a violation is continued and must provide only a single notice and opportunity to be heard. The fine cannot exceed \$1,000, unless otherwise provided by the governing documents. A fine cannot become a lien against a parcel.

Proposed Changes

This bill provides that liens less than \$1,000 cannot become a lien on the parcel. Therefore, a lien by the association which exceeds \$1,000 may become a lien against a parcel.

Homeowners' Association -- Meetings and Elections

Current Law

Section 720.303(2), F.S., provides procedures for association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for those meetings between the board and its attorney relating to proposed or pending litigation.

Directors may not vote by proxy or secret ballot at board meetings, except that secret ballots may be used in the election of officers. This also applies to meetings of any committee or similar body when a final decision will be made regarding the spending of association funds. Proxy voting or secret ballots are not allowed when a final decision will be made on approving or disapproving architectural decisions with respect to a specific parcel of residential property owned by a member of the community.¹⁴

Elections of the board of directors must be conducted as provided in an association's governing documents. All members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself. The board of directors must be elected by plurality of votes. Any election dispute must be submitted to mandatory arbitration if it is between the association and a member.

Proposed Changes

The bill provides that if secret ballots are permitted under the governing documents, then an absentee ballot must be inside a blank inner envelope and mailed or delivered to the association inside another envelope with the required information on the outer envelope, which includes the name of the owner, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting the ballot. Once the eligibility to vote is verified and it is confirmed that there are no other ballots submitted for that lot or parcel, the inner envelope must be removed and added to the ballots of members who voted personally and must be opened when the ballots are counted. If there is more than one ballot submitted for a lot or parcel, the ballots for that lot or parcel are disqualified. This bill provides that no ballots received after the close of balloting by a vote of the membership will be considered.

¹⁴ Section 720.303(2)(c)3, F.S.

This bill also provides that within 30 days of being elected to the board of directors, the director must certify in writing to the association secretary that he or she has read the governing documents¹⁵ and that he or she will uphold and discharge the fiduciary responsibility of the members to the best of his or her ability. The bill provides that if the statement is not filed timely, then it will automatically disqualify the member from serving on the board of directors. The bill provides that the association secretary must keep the certification for 5 years after he or she is elected. However, the bill provides that failure to keep it on file does not affect the validity of any appropriate action.

Homeowners' Association -- Prospective Purchaser Disclosure

Current Law

Prospective parcel owners must be given a disclosure summary before the contract for sale is executed. It must be substantially similar in form to the one provided in s. 720.401, F.S. Statements on the form must declare in part that:

- A purchaser will be required to be a member of the homeowners' association;
- There are restrictive covenants;
- The purchaser will have to pay assessments;
- The purchaser may have to pay special assessments;
- Failure to pay assessments could result in a lien; and
- The developer may have the right to amend restrictive covenants without association approval.

Proposed Changes

This bill adds language that must be on the disclosure form. This bill adds that *if the association is still under developer control*, then the developer may have the right to amend restrictive covenants without association approval. The bill further provides that the disclosure form must state that there may be an obligation to pay assessments to a community development district for the purpose of retiring bond obligations used to construct the infrastructure or other improvements. This bill also provides that the declaration must state that the purchaser is jointly and severally liable with the previous owner for all unpaid assessments up to the time of the title transfer.

Homeowners' Association – Pre-suit Mediation and Pre-suit Arbitration

Current Law

Current law provides that a party is subject to pre-suit mediation initiated by an aggrieved party but not pre-suit arbitration before a dispute between a homeowners' association and a parcel owner may be filed in court. There is no provision for pre-suit arbitration of such disputes.

Proposed Changes

This bill provides for mandatory pre-suit mediation and mandatory pre-suit arbitration for disputes between a homeowners' association and an owner or owners and between parcel owners within the same homeowners' association when a suit is brought. However, the parties may mutually agree to pre-suit mediation and pre-suit arbitration prior to filing a suit.

This bill repeals s. 720.311, F.S., for disputes subject to dispute resolution by the department after the effective date of this act, and creates ss. 720.501, 720.502, 720.503, 720.504, F.S., 720.505, F.S., 720.506, F.S., 720.507, F.S., 720.508, F.S., 720.509, F.S., and 720.510, F.S., related to pre-suit

¹⁵ The documents that must be certified in writing to have read are as follows: association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies.

dispute resolution in homeowners' associations. This bill provides that these sections may be cited as the "Home Court Advantage Dispute Resolution Act (HCADRA)."

This bill provides that mandatory mediation and arbitration is limited to disputes between homeowners' associations and a parcel owner or owners and between parcel owners in the same homeowners' association regarding:

- The use of or changes to the parcel or common areas;
- Other disputes regarding violations of the declaration of covenants or other governing documents;
- Disputes regarding the enforcement of governing documents or amendments; or
- Access to official records.

This bill provides that the following disputes are not subject to pre-suit mediation and pre-suit arbitration:

- Disputes concerning title to any parcel or common area;
- Interpretation or enforcement of a warranty;
- Levy of a fee or assessment;
- Collection of an assessment levied against a party;
- Eviction or other removal of a tenant;
- Alleged breaches of fiduciary duty by a director; or
- Any action to collect mortgage indebtedness or foreclose on a mortgage.

This bill provides that disputes involving recall of any member of the board or the election of the board of directors, which occurs after the effective date of this bill, is not subject to pre-suit mediation but is subject to pre-suit arbitration.

Furthermore, this bill provides that any dispute subject to pre-suit mediation or pre-suit arbitration may file a motion for temporary injunctive relief without complying with pre-suit mediation or pre-suit arbitration if emergency relief is required. This bill provides that once the issues relating to temporary relief are resolved, then the court may refer the parties to mediation administered by the courts or require mediation or arbitration according to HCADRA.

Notice of Violation

This bill provides that the aggrieved party must first provide written notice of the alleged violation to the alleged violator prior to giving statutory notice to proceed under pre-suit mediation or pre-suit arbitration. The notice of violation must be delivered by certified mail, return receipt requested¹⁶ or hand delivered and the person who delivers must file their notice of mediation with proof of the receipt of mailing or an affidavit stating the date and time of the hand delivery. This bill provides that if the violator refuses delivery of the certified mail, return receipt requested, then the notice will be considered delivered.

Furthermore, this bill provides that the notice must state with specificity the nature of the violation alleged including the date, time, and location of each violation and the action requested to correct the violation. The notice must also include the text of any provision in the governing documents that has allegedly been violated.

¹⁶ Currently the price for a certified letter, return receipt requested is \$5.21. Current postage for a first-class mail letter is \$0.41; current cost for certified mail of a letter is \$2.65; current cost for return receipt requested of a letter is \$2.15. See www.usps.com. (Last accessed on March 25, 2008.)

This bill provides that the party receiving the notice has 10 days from the date of receipt to correct the violation, unless the parties have agreed to a longer period in writing. If the violation is not fixed within 10 days or the time period agreed to by the parties, then the party alleging the violation may proceed. This bill provides that a copy of the notice, the text of the provision in the governing documents or rules and regulations that is allegedly violated, and proof of service must be included as exhibits to any mediation or arbitration demand under HCADRA.

Pre-suit Mediation

This bill provides that disputes between an association and a parcel owner or owners and between parcel owners of the same homeowners' association must be submitted to pre-suit mediation before the dispute may be filed in court. The party who initiates the suit may also submit the dispute to pre-suit arbitration before the dispute may be filed in court.

Statutory Notice of Pre-suit Mediation

This bill provides for a written notice to participate in pre-suit mediation entitled "Statutory Notice of Pre-suit Mediation." The notice must be in substantially the same form as s. 720.505(1), F.S., and must be served on the responding party. This bill provides that service of the notice must be by personal service according to ch. 48, F.S., or by certified mail, return receipt requested. Furthermore, this bill provides that a copy of the notice must be sent by first-class mail to the responding party's address as it last appears in the association records, or if not available, then as it last appears in the official records of the county property appraiser.

This bill provides that a copy of the prior notice of violation must be attached along with the applicable provisions of the governing documents believed to apply to the notice. The aggrieved party must select five certified mediators from a list of eligible qualified mediators. This bill provides that the responding party then has the right to select one of the five mediators. The parties must share the cost of the mediation equally, including any reasonable advance deposits unless they agree otherwise, but the parties are responsible for their own attorney's fees.

This bill provides that the responding party will have 20 days to respond in writing to the notice. The responding party must provide a list of at least three dates and times when he or she is available to participate in mediation which must be within 90 days of the postmarked date of the mailing of the notice of pre-suit mediation or 90 days after the date the party is served with a copy of the notice. Furthermore, this bill provides that if the responding party does not provide a list of dates and times, then the mediator may schedule a mediation without taking the responding party's schedule into consideration.

Process of Pre-suit Mediation

Within 10 days of selecting a mediator, the mediator must coordinate with the parties and notify the parties in writing of the date, time, and place of the mediation. This bill provides that the mediation cannot be later than 90 days after the notice of pre-suit mediation was served unless all parties agree. Once the parties have agreed on a mediator, though, the mediator may reschedule the mediation after the 90 day period upon mutual written agreement by the parties. This bill provides that if the mediation is not completed within the required time limits, then the mediator must declare an impasse.

This bill provides that the responding party may either provide a notice of opting out and demand arbitration or sign the agreement. If the responding party does not respond within 20 days after the date of the notice, fails to provide available dates or times, fails to agree to at least one mediator, fails to pay or prepay the mediator one-half of the costs, or fails to appear and participate in mediation, then the aggrieved party may proceed with a lawsuit without further notice. This bill also provides that the aggrieved party may seek an award of attorney's fees related to the attempted mediation. This bill provides that the response must be served by certified mail, return receipt requested to the aggrieved

party within 20 days of the postmark of the notice or within 20 days after the date the responding party was served with the notice. This bill also provides that a copy of the response must be sent by first-class mail to the address shown on the statutory notice.

This bill provides that if a party does not respond to pre-suit mediation within 20 days, the parties do not agree on a mediator, the responding party does not list dates and times when he or she is available to participate in mediation, or a party fails to appear for a scheduled mediation with the approval of the mediator, then this constitutes a failure or refusal to participate and constitutes an impasse entitling the other party to file a lawsuit and seek an award of costs and attorney's fees associated with the mediation. This bill provides that a person or persons who do not participate in mediation may not collect attorney's fees.

This bill provides that a party who is served with a notice of pre-suit mediation may opt out of the mediation and demand that the dispute go to non-binding arbitration instead. To do this, the responding party does not need to respond to the pre-suit mediation but may serve the aggrieved party a notice of opting out of mediation instead.

Pre-suit Arbitration

A party elects to pre-suit arbitration must serve the responding party a written notice of pre-suit arbitration which is substantially the same form as the statutory notice of pre-suit arbitration provided in s. 720.507(1), F.S. This bill provides that the statutory notice of pre-suit arbitration must be served by personal service according to ch. 48, F.S., or by certified mail, return receipt requested. This bill further provides that an additional copy must be sent by first-class mail to the responding party's address as it appears on the official records of the association, or if not available, as it appears on the official records for the county appraiser.

This bill provides that the responding party must respond in writing within 20 days after the postmarked date of the certified mailing of the statutory notice for pre-suit arbitration or 20 days after the responding party is personally served with the notice. This bill provides that the parties must share the costs of the pre-suit arbitration equally, including any reasonable advance payments. Each party is responsible for his or her own attorney's fees if he or she chooses to employ an attorney for the pre-suit arbitration. The responding party must sign the pre-suit arbitration notice and indicate which arbitrator is acceptable from a list provided by the aggrieved party. Furthermore, this bill provides that the responding party must provide three dates and times when he or she is available to participate in the arbitration within 90 days after the date the responding party was served with the pre-suit arbitration notice.

Process of Pre-suit Arbitration

This bill provides that the arbitrator must schedule the arbitration at a mutually convenient time and place, unless the responding party does not provide a list of times and dates available. This bill provides that within 10 days from the designation of the arbitrator, the arbitrator must notify the parties in writing of the date, time and place of the arbitration.

The arbitration may not be held later than 90 days after the notice of pre-suit arbitration was first served unless all parties mutually agree in writing. This bill provides that if the arbitration is not completed in the required time, then the arbitrator may issue an arbitration award. If the responding party does not respond within 20 days after the date of statutory notice of pre-suit arbitration, fails to agree to at least one arbitrator on the list, fails to pay or prepay the arbitrator one-half of the costs, or fails to appear and participate in the arbitration, then the aggrieved party may proceed with a request for an arbitration award. Furthermore, this bill provides that the failure of any party to respond to the statutory notice of pre-suit arbitration, the failure of a party to select one of the five arbitrators listed by the aggrieved party, the failure to provide a listing of dates and times when a party is available, the failure to pay fees and costs, or the failure to appear for an arbitration without the arbitrator's approval entitles the other

party to request an arbitration award including an award of reasonable costs and attorney's fees associated with the arbitration. This bill provides that persons who fail or refuse to participate are not entitled to attorney's fees in any subsequent litigation between the same parties relating to the same dispute.

This bill provides that the arbitrator may not consider any unsuccessful mediation in the arbitration proceeding. Furthermore, this bill provides that an arbitrator may shorten discovery or limit discovery in order to promote an expeditious alternative dispute resolution procedure. This bill provides that at the request of any party, the arbitrator must issue subpoenas for witnesses, the production of books, records, documents, and other evidence. This bill provides that subpoenas must be served and are enforceable as provided by the Florida Rules of Civil Procedure.

This bill provides that the final arbitration award must be sent to the parties in writing no later than 30 days after the date of the arbitration hearing, unless there are extraordinary circumstances, and an arbitration award is final when the parties have mutually agreed to be bound. An arbitration award is final unless a lawsuit seeking a trial de novo is filed within 30 days after the date of the award. This bill provides that the prevailing party in an arbitration must be awarded the costs of the arbitration and reasonable attorney's fees as determined by the arbitrator.

Furthermore, this bill provides that the party which files for a trial de novo must be assessed the other party's arbitration costs, court costs, and other reasonable costs which include attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration if the trial de novo is not more favorable than the arbitration award.

Procedure for Pre-suit Mediation and Pre-suit Arbitration

This bill provides that pre-suit mediation and pre-suit arbitration must be conducted according to the Florida Rules of Civil Procedure and ch. 44, F.S., regarding mediations and arbitrations. This bill provides that the HCADRA controls in the case of any conflict with other applicable rules or statutes. This bill provides that persons who are not parties to the dispute may not attend the pre-suit mediation without the consent of all parties, except for attorneys. This bill further provides that pre-suit mediations under HCADRA do not constitute a board meeting. This bill provides that attendance at mediation by the board of directors does not require notice or participation by non-board members. This bill provides that settlement agreements which result from a mediation or arbitration do not have precedential value in proceedings which involve other parties. However, this bill provides that arbitration awards by an arbitrator do have precedential value in other proceedings involving the same association or with respect to the same parcel owner.

This bill further provides that mailing a statutory notice of pre-suit mediation or pre-suit arbitration tolls the statute of limitations for the extent of the mediation or arbitration and 30 days after the conclusion of either proceeding beginning on the filing of the mediator's notice of impasse or the arbitrator's written arbitration award. If the parties mutually agree to participate in both pre-suit mediation and arbitration, then the tolling of the statute of limitations will be consecutive. This bill provides that a person may conduct mediation or arbitration under HCADRA if he or she has been certified as a circuit court civil mediator pursuant to s. 44.106, F.S., is a member in good standing with the bar, and otherwise meets all the requirements of ch. 44, F.S.

This bill provides that a mediation settlement may be enforced through the county or circuit court. This bill further provides that if a complaint is filed for a trial de novo, then the arbitration award must be stayed and a petition to enforce the award may not be granted. However, the award is admissible in the court proceeding seeking the trial de novo.

C. SECTION DIRECTORY:

Section 1 amends s. 34.01, F.S., relating to the jurisdiction of the county court.

Section 2 amends s. 514.011, F.S., relating to public swimming and bathing facilities.

Section 3 amends s. 514.0115, F.S., relating to exemptions from supervision or regulation.

Section 4 amends s. 515.25, F.S., relating to the residential swimming pool safety act.

Section 5 creates s. 515.295, F.S., relating to residential swimming pool and spa drain-cover safety.

Section 6 amends s. 720.302, F.S., relating to the purpose, scope and application regarding homeowners' associations.

Section 7 amends s. 720.303, F.S., relating to association powers and duties.

Section 8 amends s. 720.305, F.S., relating to obligations of members, remedies at law or in equity, levy of fines and suspension of use rights.

Section 9 amends s. 720.306, F.S., relating to meetings of members.

Section 10 repeals s. 720.311, F.S., relating to dispute resolution.

Section 11 amends s. 720.401, F.S., relating to prospective purchasers subject to association membership requirement.

Section 12 adds ss. 720.501, F.S., 720.502, F.S., 720.503, F.S., 720.504, F.S., 720.505, F.S., 720.506, F.S., 720.507, F.S., 720.508, F.S., 720.509, F.S., and 720.510, F.S., relating to the Home Court Advantage Dispute Resolution Act.

Section 13 provides that the Department of Health must apply for a federal grant and implement if awarded the grant swimming pool and safety standards education and enforcement under the State Swimming Pool Safety Grant Program.¹⁷

Section 14 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁷ The State Swimming Pool Safety Grant program is established in s. 1405 of Title XIV of the federal Energy Independence and security Act of 2007.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

This bill will require private individuals whose residential swimming pools or spas are built on or after January 1, 2009, to purchase either a safety vacuum release system, which costs approximately \$600 for the parts¹⁸; a suction-limiting vent system, which is a design feature whose cost is unknown; a gravity drainage system, whose cost is unknown because it is a design feature; an automatic pump shut-off system, whose parts cost approximately \$600¹⁹; or a drain disablement system whose cost is unknown because it is a design feature.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 9, 2008, the Safety & Security Council adopted one strike-all amendment to the bill. The amendment made the following changes:

¹⁸ See www.completepoolsafety.com (Last accessed April 7, 2008).

¹⁹ *Id.*

- Removes the provisions amending insurance rights and obligations of the condominium association and the unit owners to obtain and maintain certain insurance policies;
- Removes the provisions revising the financial reporting requirements for condominium associations and homeowners' associations;
- Removes the provisions revising what must be included in an association's budget;
- Removes the provisions creating emergency powers for condominiums;
- Removes the provisions revising the contract requirements for maintenance or management services for associations;
- Removes the provisions revising the procedures for committees relating to unpaid fines;
- Removes the revisions regarding the Ombudsman;
- Provides safe requirements for residential pools and spas; and
- Requires the Department of Health to apply for a federal grant under the State Swimming Pool Safety Grant Program.

The bill was then reported favorably as a council substitute.

On April 15, 2008, the Policy & Budget Council adopted one amendment to this bill. The amendment provides added provisions regarding pre-suit mediation and pre-suit arbitration. The bill was then reported favorably as a council substitute.