



## **SB 580 TO BE CONSIDERED IN SENATE RULES COMMITTEE-- CALL ALERT FOR APRIL 16, 2013**

The Senate HOA bill, [SB 580](#) (Sen. Hays), is on the agenda for the Rules Committee on Wednesday, April 17 at 2:30 p.m.

It is very likely that the bill will be changed before tomorrow's meeting. The developers are lobbying against it (or at least those sections that impact their interests) and the House and Senate sponsors must resolve the differences between the House and Senate versions of the HOA bills.

The main impacts of SB 580 include:

- (1) provides that community association managers (CAMs) can be disciplined for failing to report certain information to the division regarding the HOAs that they manage and for violating any provision of chapters 718, 719 and 720 during the course of performing CAM services;
- (2) requires that the official records be maintained for at least 7 years and be made available for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee;
- (3) allows the records to be made available to a parcel owner via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request;
- (4) allows a member or his or her authorized representative to take photographic images of official records with a portable device, including a smartphone, tablet, etc. at no charge;
- (5) amends the provision that currently allows the association to personnel fees related to official records' inspections. The new language would allow personnel

costs to be charged if retrieving the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour;

(6) reduces the copy charges for official records from .50 to .25 per page;

(7) provides that if reserve accounts are established by the developer, the budget must designate the components for which the reserve accounts may be used;

(8) requires every CAM, or the association when there is no CAM, to report to the Division by November 22, 2013, and annually thereafter, the name of the association, the FEIN number, the mailing and physical address, the number of parcels, and the total amount of revenues and expenses from the annual budget of the association;

(9) provides that if the association is still under the control of the developer, the information provided to the division must also include the name and address of the developer and the number of parcels owned by the developer;

(10) requires the Department of Business and Professional Regulation (DBPR) to establish and implement, by no later than October 1, 2013, a registration system through an Internet website that will allow the reporting to take place through the website;

(11) requires DBPR to, by no later than December 1, 2013, submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives providing HOA data reported;

(12) provides that the reporting requirement will expire on July 1, 2016, unless reenacted by the Legislature.

(13) requires that within 90 days after being elected or appointed to the board, each director shall certify in writing to the secretary of the association that he or she has read the association's declaration of covenants, articles of incorporation, bylaws and current written rules and policies, that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members; or in the alternative, take an education class.

(14) provides that the written certification or education class is valid for the uninterrupted tenure of the director on the board and provides that the director is suspended from the board until he or she complies with the requirement and that the board may temporarily fill the vacancy during the period of suspension;

(15) requires the secretary to retain each director's written certification or educational certificate for 5 years after the director's election, however, the failure to retain the certificate does not affect the validity of any board action;

(16) provides for certain disclosures if the association enters into a contract or other transaction with any of its directors and allows the contract or transaction to be canceled by a majority vote of the members present at the next regular or special meeting of the members;

(17) prohibits an officer, director or manager from soliciting or accepting anything or service of value for which consideration has not been provided from any person providing or proposing to provide goods or services to the association. Any officer, director, who violates the provision must be removed from office and the vacancy must be filled. However, an officer, director, or manager is not prohibited from accepting food to be consumed at a business meeting with a value of less than \$25 per individual or services or items received in connection with trade fairs or education programs;

(18) provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office and the vacancy filled. A director or officer who has criminal charges pending may not be appointed or elected to a position as a director or officer;

(19) requires all associations to maintain insurance or a fidelity bond for all persons who control or disburse funds of the association in an amount to cover the maximum funds that will be in the custody of the association or its management agent at any one time;

(20) amends the section dealing with HOA elections to clarify that nominations from the floor are not required if the election process allows candidates to nominate themselves in advance of the balloting and further amends that section to provide that an election is not required unless more candidates are nominated than vacancies exist;

(21) provides new turnover triggers including: (a) two years after the developer has ceased construction or ceased to offer parcels for sale in the ordinary course of business; (b) when the developer has abandoned or deserted its responsibility to maintain and complete the advertised amenities or infrastructure; (c) when the developer files a petition for bankruptcy under Chapter 7 of the Bankruptcy Code; (d) when the developer loses title to the property through foreclosure or the transfer of a deed in lieu of foreclosure; (e) when a receiver has been appointed and not discharged within 30 days unless the court determines that transfer of control would be detrimental to the association;

(22) permits members other than the developer to elect at least one member of the board when 15% of the parcels in all phases that will ultimately be operated by the HOA have been conveyed to the members;

(23) permits members other than the developer to elect at least two members of the board if 50% of the parcels in all phases that will ultimately be operated by the HOA have been conveyed to members;

(24) provides that before turnover, the annual budget may not be increased, and special assessments may not be levied, without the approval of the majority of nondeveloper voting interests, unless the budget specifically describes and justifies the increased assessment or the levy of the special assessment.

(25) provides language, which is currently in the Condominium Act, and which is also in HB 73 by Representative Moraitis, which streamlines the procedure for obtaining mortgagee consent of amendments.

(26) provides that developers may not include a clause in association documents which would give the developer the unilateral ability to make changes to the governing documents prior to turnover that unreasonably modifies the original plan of development, prejudices the rights of parcel owners to use and enjoy the common property, radically changes the community scheme, reduces the size of the common area or limits the access of parcel owners to the common area.

(27) provides language which is intended to address the *Aventura Management, LLC v. Spiaggia Ocean Condominium Association* case which was discussed in a blog post from [January 23, 2013](#). The new language states that the association is not considered a “previous owner” when it takes title to a delinquent parcel through foreclosure or by deed in lieu of foreclosure. The intent is to allow the association to demand past due assessments from the owner that takes title to the property after the association.

Some of the major differences between HB 7119 and SB 580 are:

(1) HB 7119 will provide that the insurance and fidelity bonding requirement will apply only to associations with total annual revenues of more than \$100,000 (the Senate version requires all associations, regardless of the total annual revenues, to maintain insurance or a fidelity bond on all persons who control or disburse association funds).

(2) HB 7119 will require all associations to adopt an internal dispute resolution process which can be adopted by Board Rule (the previous version required an amendment to the Bylaws) and if not adopted, it would allow either party to initiate an internal dispute resolution procedure as set forth in the statute. This internal dispute resolution process is not in the Senate version. Note that HB 7119 would not delete the pre-suit mediation provisions, but rather, adds the internal dispute resolution process to the statute.

(3) HB 7119 does not include the provisions mentioned above in SB 580 regarding mortgage consent, developer amendments, and the association's liability for past due assessments.

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The House bill has been withdrawn from its last committee and the Senate Rules Committee is the last committee of reference for the Senate bill. So this will likely be the last time that the HOA bills are considered by any committees. Therefore, this may be your last chance to comment on these bills before they move to the floor of the House and Senate. If you wish to contact the members of the Senate Rules Committee regarding SB 580, I have included their contact information below. I have also included the contact information for the House Sponsor, Representative LaRosa, and the Senate Sponsor, Senator Hays.

### **Senate Rules Committee**

Senator John Thrasher (Chair) - [thrasher.john.web@flsenate.gov](mailto:thrasher.john.web@flsenate.gov)

Senator Christopher Smith (Vice Chair) - [smith.chris.web@flsenate.gov](mailto:smith.chris.web@flsenate.gov)

Senator Lizbeth Benacquisto - [benacquisto.lizbeth.web@flsenate.gov](mailto:benacquisto.lizbeth.web@flsenate.gov)

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Senator Eleanor Sobel - [sobel.eleanor.web@flsenate.gov](mailto:sobel.eleanor.web@flsenate.gov)

**Bill Sponsors**

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Representative Mike LaRosa - [Mike.LaRosa@myfloridahouse.gov](mailto:Mike.LaRosa@myfloridahouse.gov)

Very Truly Yours,

**Yeline Goin, Executive Director**

Community Association Leadership Lobby (CALL)

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