

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 615 Community Association Assessment Notices

**SPONSOR(S):** Regulatory Reform Subcommittee, Rodriguez

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 56

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Mawn	Jones
3) Commerce Committee	19 Y, 0 N	Brackett	Hamon

### SUMMARY ANALYSIS

A condominium is a form of ownership of real property comprised of units which may be owned by one or more persons along with an undivided right of access to common elements. A cooperative is real property owned by the cooperative association, with individual units leased to the residents who own shares in the cooperative association. A homeowners' association ("HOA") is an association that is authorized to impose assessments, responsible for the operation of a community in which voting membership is made up of unit or parcel owners and membership is a mandatory condition of unit or parcel ownership. Condominium associations, cooperative associations, and HOAs are collectively referred to as "associations."

The bill relates to an association's collection of assessments and notices to owners relating to such assessments, it requires:

- Associations that send account statements or invoices to owners to send them by first-class mail or by email.
- Associations to deliver written notice to every owner at least 30 days before changing their method of delivering account statements.
- Owners to affirmatively acknowledge that they understand the association has changed its method of delivering account statements before a community association may change its method of delivery.
- Associations to maintain the owners' affirmative acknowledgments as an official record.

The bill prohibits associations from collecting attorney fees related to delinquent assessments without first delivering a written notice of the delinquent assessments to the unit or parcel owner.

- An association must deliver the written notice at least 30 days before the association takes further action against the owner's unit or parcel.
- The written notice must specify the amount owed and provide the unit or parcel owner an opportunity to pay the delinquent assessments without paying attorney fees.
- There is a rebuttable presumption that an association mailed a notice of delinquent assessment if a board member, officer, agent of the association, or a licensed community association manager provides a sworn affidavit attesting to such mailing.

The bill also aligns condominium and cooperative law to HOA law by increasing the period of time a condominium or cooperative unit owner has to pay a delinquent assessment after receiving an association's notice of intent to record a lien or foreclose on a lien from 30 days to 45 days.

The bill does not have a fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium associations;
- Cooperative associations;
- Florida mobile home parks and related associations;
- Vacation units and timeshares;
- Yacht and ship brokers and related business entities; and
- Homeowners' associations (limited to arbitration of election and recall disputes).

#### **Condominiums**

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>2</sup> A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, commonly referred to as a “board of administration.” The board enacts bylaws which govern the administration of the association.

#### **Cooperatives**

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.<sup>3</sup> The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

#### **Homeowners' Associations**

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, 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.<sup>4</sup> Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. However, Florida law provides procedures

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<sup>1</sup> S. 718.103(11), F.S.

<sup>2</sup> S. 718.104(2), F.S.

<sup>3</sup> Ss. 719.103(2) and (26), F.S.

<sup>4</sup> S. 720.301(9), F.S.

and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes.

## Official Records

Condominiums, cooperatives, and HOAs (associations) are required to maintain official records for at least 7 years. The official records must include:<sup>5</sup>

- A copy of the articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association, which includes:
  - Accurate, itemized, and detailed records of all receipts and expenditures.
  - A current account and a periodic statement of the account for each unit or parcel designating the name of the owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.
  - All audits, reviews, accounting statements, and financial reports of the association or condominium.
  - All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.
- All contracts for work to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the operation of the association.

An association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.<sup>6</sup>

Unit owners may request to inspect and make copies of an association's official records. An association must make the records available for inspection within 10 business days of receiving a written request. Failure to provide an owner or renter the requested records within 10 business days of receiving a request creates a rebuttable presumption that the association willfully failed to provide the records. An owner who is denied access to the records is entitled to damages and costs.<sup>7</sup>

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or in an electronic format viewable on a computer screen.<sup>8</sup> Additionally, condominium associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.<sup>9</sup>

However, the following records are not available for inspection by owners:<sup>10</sup>

- Records protected by the lawyer-client privilege;
- Information obtained by an association in connection with the transfer of a unit or parcel;
- Personnel records of association or management company employees;
- Unit owner medical records;

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<sup>5</sup> Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.

<sup>6</sup> Ss. 718.111(12)(b)-(c), 719.104(2)(b)-(c), and 720.303(5), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Ss. 718.111(12)(b), and (g), F.S.

<sup>10</sup> Ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S.

- Personnel identifying information such as social security numbers, driver license numbers, and credit card numbers;
- Electronic security measures that are used to safeguard data; and
- The software and operating system used by the association which allow the manipulation of data.

## Statements of the Account

A statement of the account<sup>11</sup> is an account statement that details the outstanding amount that a unit or parcel owner owes to the association. Associations must maintain a current account and a periodic<sup>12</sup> statement of the account for each unit or parcel, which designates the name of the owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.<sup>13</sup>

Statements of the account for each unit or parcel owner are part of the official records, which are available for inspection.<sup>14</sup> Associations may also deliver statements of the account or invoices for assessment to the unit or parcel owners. However, current law does not specify how an association must deliver statements of the account to owners or invoices for assessment, e.g., by regular mail or email. Current law also does not provide a process to notify unit or parcel owners, if an association alters its method of delivering statements of the account.

## Assessments

Current law gives associations the ability to levy and collect assessments from unit or parcel owners. This allows the association to carry out its responsibility for the association's management, operation, and maintenance.<sup>15</sup> In addition to levying assessments, associations also have the power to establish the time when each assessment is due, including when an assessment becomes delinquent.<sup>16</sup>

The most common assessments are those required to fund an association's common expenses identified in an association's annual budget. The amount to fund the common expenses and the assessments required to meet that amount are determined when an association's budget is adopted.<sup>17</sup> In contrast, a special assessment is an assessment levied against unit or parcel owners for unexpected expenses that are over and above those anticipated by the annual budget.<sup>18</sup>

When the amount of an assessment has been determined, the association must establish a payment schedule for the owners in accordance with the association's bylaws. For condominium and cooperative associations, payments must be made in advance and they must be paid at least quarterly. The payments must be sufficient to provide the funds necessary to pay all the anticipated operating expenses and all unpaid expenses previously incurred.<sup>19</sup>

A unit or parcel owner may not avoid paying assessments by waiving the use of common elements or services in the association. No unit or parcel owner may be relieved from liability for all or part of an assessment.<sup>20</sup> Boards must keep account of the assessments levied against every unit or parcel owner

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<sup>11</sup> A statement of the account is different from an estoppel certificate. An estoppel certificate issued by an association certifies the total debt owed to the association for unpaid financial obligations by a parcel owner or unit owner as of a specified date. An association is legally bound by the amount stated in the estoppel certificate. A unit or parcel purchaser or a mortgage holder who relies on an estoppel certificate is protected from any assessments or other monies owed to the association that are not in the certificate. Ss. 718.116(8), 719.108(6), and 720.30851, F.S.

<sup>12</sup> Condominium and cooperative associations must maintain a monthly, bimonthly, or quarterly statement of the account. Ss. 718.111(12)(a), and 719.104(2), F.S.

<sup>13</sup> Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> S. 718.111(4), 719.104(5), 720.301(1), and 720.308(1), F.S.

<sup>16</sup> *See generally*, ch. 718, 719, and 720, F.S.

<sup>17</sup> Ss. 718.103(1), 718.112(2)(f), 719.103(9), and 719.106(1)(j), and 720.303(6)(a), F.S.

<sup>18</sup> Ss. 718.103(24), 718.116(10), 719.103(23), 719.108(9), and 720.303(6), F.S.

<sup>19</sup> Ss. 718.112(2)(g), 719.106(1)(g), and 720.30851(1), F.S.

<sup>20</sup> Ss. 718.111(4), and 718.116(1)(a), 719.108(1), and 720.3085(2)(a), F.S.

and the assessments paid by every owner. These records are part of the association's official records.<sup>21</sup>

## Liability for Assessments

A unit or parcel owner is liable for all assessments coming due while he or she owns the unit or parcel. The unit or parcel serves as security for the payment of all assessments owed by an owner.<sup>22</sup>

If a unit or parcel is sold, the buyer becomes jointly and severally liable with the seller for all unpaid assessments due prior to the time of the sale. The buyer may attempt to recover the unpaid assessments from the seller, but the association may look to both the seller and the buyer for the unpaid assessments.<sup>23</sup>

Assessments that are not paid on time bear interest at a rate provided in the declaration, which may not be higher than the highest rate allowed by law, or at a rate of 18 percent per year if no rate is provided. Interest begins accruing the date a payment becomes delinquent. Additionally, an association may levy a late fee for any delinquent payment. The amount of the late fee may not exceed \$25 or five percent of the payment, whichever is greater. Associations are entitled to recover any attorney fees and costs incurred in collecting delinquent payments.<sup>24</sup>

If an association receives a payment for a delinquent assessment, the payment must first be applied to any accrued interest, then to any late fee, then to any attorney's fees or costs, and finally to the principle balance of the assessment.<sup>25</sup>

Currently, associations are not required to send a delinquent assessment notice prior to charging late fees, interest, or attorney fees. According to news reports, this can result in unit or parcel owners being charged attorney fees that exceed the delinquent assessment.<sup>26</sup> According to industry blogs, allowing associations to collect attorney fees ensures associations are not left holding the bill when they take legal action.<sup>27</sup> However, industry blogs also state that sending a delinquent assessment notice before taking any action against a unit or parcel owner can help remind owners of their payment obligation and the majority of owners make a payment upon receiving such notice.<sup>28</sup>

## Claim of Lien

An association has a lien for all unpaid assessments, but not for unpaid fines<sup>29</sup>. An association may file a claim of lien for a delinquent assessment with the Clerk of Court in the county where the association is located. The claim of lien must state the legal description of the unit or parcel, the owner of the unit or parcel, the association's name and address, and the assessment amount owed and the due date. An officer or agent of the association must sign the claim of lien. A filed claim of lien is valid for one year.<sup>30</sup>

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<sup>21</sup> Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.

<sup>22</sup> Ss. 718.111(4), and 718.116(1)(a), 719.108(1), and 720.3085(2)(a), F.S.

<sup>23</sup> *Id.*; *Karpay v. Las Brisas Condominium Association, Inc.*, 517 So. 2d 756, 757 (Fla. 2nd DCA 1987).

<sup>24</sup> Ss. 718.116(3), 719.108(3), and 720.3085(3), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Fox 13 Tampa Bay, *FOX 13 Investigates: HOA attorney fees a homeowner's nightmare*, Fox 13 Tampa Bay (Jan. 20, 2016) <https://www.fox13news.com/news/fox-13-investigates-hoa-attorney-fees-a-homeowners-nightmare> (last visited Mar. 26, 2021); Todd Ulrich, *'They put me through hell': Homeowner battles HOA, gets thousands in settlement*, WFTV (Feb. 16, 2021) <https://www.wftv.com/news/action9/they-put-me-through-hell-homeowner-battles-hoa-gets-thousands-settlement/YD26MECEZVBTMX7E3HOS7JT2I/> (last visited Mar. 26 2021).

<sup>27</sup> Jimerson Birr, *Condominium Association Recovery of Attorneys' Fees in Florida*, Jimerson Birr, (Dec. 29, 2015) <https://www.jimersonfirm.com/blog/2015/12/condominium-association-recovery-of-attorneys-fees-in-florida/> (last visited Mar. 26, 2021).

<sup>28</sup> Jimerson Birr, *Five Steps for Collecting Assessment Revenue Through a Condominium Assessment Lien*, Jimerson Birr, (Aug. 9, 2018) <https://www.jimersonfirm.com/blog/2018/08/florida-condominium-assessment-lien/> (last visited Mar. 26, 2021); Christopher R. Moore, *Step-By-Step Guide To The HOA Assessment Collections Process*, Homeowners Protection Bureau, LLC, <https://www.hopb.co/blog/guide-to-hoa-assessment-collections-process#notice-of-delinquency> (last visited Mar. 26, 2021).

<sup>29</sup> An HOA has a lien on a parcel for a fine that is \$1,000 or more. S. 720.305(2), F.S.

<sup>30</sup> Ss. 718.116(5), and 718.303(3), 719.108(4), 720.301(1), and (11), 720.305(2), and 720.3085(1), F.S.F.S.

Prior to filing a claim of lien, an association must give a unit or parcel owner the opportunity to pay a delinquent assessment. At least **30 days** before filing a claim of lien, a condominium or cooperative association must provide written notice of the association's intent to file a lien to the unit owner. However, an HOA must provide a parcel owner the written notice at least **45 days** before filing the claim of lien. The notice must include the following information:<sup>31</sup>

- The amount owed on the owner's account;
- The interest rate for the amounts owed;
- A statement that the owner has 30 or 45 days to pay the amount owed or the association will file a claim of lien against the unit or parcel; and
- A breakdown of the amount owed including:
  - Maintenance costs due;
  - Late fee;
  - Interest; and
  - Total amount owed.

The notice must be sent by first class and certified mail to the owner's address listed in the official records.<sup>32</sup> If the address is different than the unit or parcel address, the notice must also be sent to the unit or parcel. If the address is different than the unit or parcel address and the address is outside the United States, the association may send the notice by first class mail, instead of first class and certified mail. Service is deemed delivered upon mailing the notice for condominium and cooperative associations.<sup>33</sup>

A unit or parcel owner may challenge a claim of lien by filing a notice of contest of lien with the Clerk of Court. After a unit owner files a notice of contest, an association has 90 days to commence enforcement of the lien. The grounds for which a unit owner may not pay an assessment are limited, such as when the assessment is discriminatory or has been improperly levied by the board.<sup>34</sup>

An association may bring an action to foreclose on a unit or parcel for unpaid assessments in circuit court in the same way that a mortgage on real estate is foreclosed. The homestead protections provided by Florida's Constitution do not prevent the foreclosure and sale of a unit or parcel. In addition to an action of foreclosure, an association may also bring a civil action to recover a money judgment for the unpaid assessments without waiving any claim of lien.<sup>35</sup>

Prior to foreclosing on a lien, a condominium association or an HOA must provide written notice to the owner of its intent to foreclose on the lien. A condominium association must provide the notice at least **30 days** before foreclosing on the lien. However, an HOA must give a parcel owner the written notice at least **45 days** before foreclosing on the lien. The notice must include the following information:<sup>36</sup>

- A claim of lien has been filed against the owner's property for failing to pay an assessment(s);
- The association intends to foreclose on the lien in 30 or 45 days;
- The total amount owed;
- The interest rate and the interest owed; and
- The contact information for the association's attorney or representative.

A condominium association must deliver the notice to the unit owner or mail the notice by certified mail to the unit owner's last known address. Service is deemed delivered upon mailing the notice.<sup>37</sup> The

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<sup>31</sup> S. 718.121(4) and 718.108(4), 719.108(4), and 720.3085(4), F.S.

<sup>32</sup> A cooperative association is only required to send the written notice by certified mail. S. 719.108(4).

<sup>33</sup> *Id.*

<sup>34</sup> Ss. 718.116(5), 719.108(4), and 720.3085(1), F.S.; *Coral Way Condominium Investments, Inc. v. 21/22 Condominium Ass'n, Inc.*, 66 So. 3d 1038, 1041 (Fla. 3rd DCA 2011).

<sup>35</sup> S. 718.116(6)(a), 719.108(5), and 720.3085(1) F.S. *Bessemer v. Gersten*, 381 So. 2d 1344, 1347 (Fla. 1980).

<sup>36</sup> Ss. 718.116(6)(a) and 720.3085(5), F.S.

<sup>37</sup> *Id.*

notice must be sent by first class and certified mail to the owner's address listed in the official records. If the address is different than the unit or parcel address, the notice must also be delivered to the unit or parcel. If the address is different than the unit or parcel address and the address is outside the United States, the association may send the notice by first class mail.

## Effect of the Bill

The bill provides that if associations send statements of the account or invoices for assessments to their unit or parcel owners, they must send them by first class mail or email to the owner's email address in the association's official records.

The bill also provides that, before an association changes the method of delivering the statement of the account or an invoice for assessments, the association must deliver written notice of such change to every unit or parcel owner and a unit or parcel owner must acknowledge the association is changing its method of delivery. An owner may make the acknowledgement in writing or electronically. The written notice must be:

- Delivered to the owner at least 30 days before the association uses the new delivery method to send the statement of the account; and
- Sent by first class mail to an owner's address listed in the official records. If the address is different than the unit or parcel address, the notice must also be delivered to the unit or parcel owner by first class mail.
  - Service is deemed delivered upon mailing the notice.

The bill provides that a unit or parcel owner's written acknowledgment becomes part of an association's official records. However, the written acknowledgments are not available for inspection by the members of the association.

The bill mirrors condominium and cooperative law to HOA law by increasing the period of time a:

- Condominium or cooperative association has to wait before filing a lien from **30 days** after delivering the written notice of intent to file a lien to **45 days** after delivering the notice; and
- Condominium has to wait before foreclosing on a lien from **30 days** after delivering the written notice of intent to foreclose to **45 days** after delivering the notice.

The bill also provides that a condominium association must send the notice of intent to file a lien by certified and first class mail to the unit owner's address regardless of whether the unit owner's address is outside the United States.

The bill provides that before an association can require payment of attorney fees related to a delinquent assessment, the association must deliver written notice of the delinquent assessment to the unit or parcel owner. If the owner pays the delinquent assessment within 30 days, the association may not assess attorney fees. The written notice must include the following information:

- The amount owed on the owner's account;
- The interest rate for the amounts owed;
- A statement that the owner has 30 days to pay the amount owed or the association will take further collection action against the owner's property in 30 days;
- A breakdown of the amount owed including:
  - Maintenance costs due;
  - Late fee;
  - Interest; and
  - Total amount owed.

The bill requires that the written notice must be sent by first class mail to an owner's address listed in the official records. If the address is different than the unit or parcel address, the notice must also be mailed to the unit or parcel by first class mail. Service is deemed delivered upon mailing the notice.

The bill creates a rebuttable presumption that an association mailed the notice of a delinquent assessment if a board member, officer, agent of the association, or a licensed community association manager<sup>38</sup> provides a sworn affidavit attesting to such mailing.

**B. SECTION DIRECTORY:**

- Section 1. Amends s. 718.111, F.S., adding documents that are a part of a condominium association's official records.
- Section 2. Amends s. 718.116, F.S., extending the time a condominium association must wait until it forecloses on a lien.
- Section 3. Amends s. 718.121, F.S., relating to payments for assessments and lien claims.
- Section 4. Amends s. 719.104, F.S., adding documents that are a part of a cooperative association's official records.
- Section 5. Amends 719.108, F.S., relating to payments for assessments and lien claims.
- Section 6. Amends s. 720.303, F.S., adding documents that are a part of a HOA's official records.
- Section 7. Amends s. 720.3085, F.S., relating to payments for assessments and lien claims.
- Section 8. Provides an effective date of July 1, 2021.

**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.
- 2. Expenditures:  
None.

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

The additional notice requirements, restrictions on collecting attorney fees, and increased notice period for a claim of lien may provide a net positive fiscal impact for association residents.

**D. FISCAL COMMENTS:**

None.

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<sup>38</sup> Management companies and managers of residential condominiums with more than ten units or having an annual budget in excess of \$100,000 are required to have a community association manager license from DBPR. The Community Association Management Practice Act governs the licensure and regulation of community association managers. *See* part VIII of ch. 468, F.S.

### 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:

None.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2021, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Specifies that if associations provide account statements to their unit or parcel owners, they must comply with the delivery requirements in the bill.
- Creates a rebuttable presumption that an association mailed a notice of a delinquent assessment if a board member, officer, agent of the association, or a licensed community association manager provides a sworn affidavit attesting to such mailing.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.