

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 426

INTRODUCER: Regulated Industries Committee and Senators Garcia and Jones

SUBJECT: Community Associations

DATE: January 5 , 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			AEG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 426 establishes a Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program (pilot program) within the Department of Legal Affairs, Office of the Attorney General, for the purpose of investigating condominium and homeowners' association-related economic crime, fraud, and corruption in Florida.

The bill authorizes the Department of Legal Affairs to contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud or, alternatively, to hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program. The pilot program's primary office must be located in Miami-Dade County.

The bill renames the Office of Condominium Ombudsman within the Department of Business and Professional Regulation to the Office of the Condominium and Homeowners' Ombudsman (ombudsman), and expands the powers and duties of the ombudsman to include ch. 720, F.S., relating to homeowners' associations, in addition to ch. 718, F.S, relating to condominium associations.

The bill provides that a person may submit a complaint to the ombudsman, who must review all submitted complaints and determine which complaints to forward to the Department of Legal Affairs, which may issue subpoenas and conduct audits for investigations, and may administer oaths, subpoena witnesses, and compel the production of books, papers, or other records relevant

to such investigations. If the Department of Legal Affairs finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate state attorney for prosecution.

The bill provides that the Department of Legal Affairs must fund the pilot program from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as specifically appropriated annually in the General Appropriations Act. The authority for the pilot program is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also:

- Exempts the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, from the eight percent service charge required by s. 215.20(1), F.S.
- Requires the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) to monitor associations' compliance with the requirement in this paragraph that associations must maintain insurance or fidelity bonding of all persons who control or disburse funds of the association, and to issue fines and establish penalties for failure to maintain the required insurance policy or fidelity bond.
- Requires the division to establish, by July 1, 2026, a searchable cloud-based database that contains specified information and documentation regarding each condominium association operating within Florida, which must allow a user to search the name by which a condominium property is identified to find the association that governs such property.
- Requires the division to forward complaints that allege economic crimes, fraud, or corruption to the ombudsman for review pursuant to pilot program requirements in the bill, and for the ombudsman to refer complaints alleging economic crimes, fraud, or corruption to the pilot program.
- Expands the duties and powers of the ombudsman by authorizing the condominium ombudsman to void an election in a condominium or homeowners' association if he or she determines violations have occurred, to petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners, and to issue subpoenas and conduct audits for investigations for the purposes of the pilot program.

The bill takes effect July 1, 2024.

II. Present Situation:

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718, F.S., for condominium associations.

Section 718.501, F.S., provides the investigative and enforcement authority of the division. The division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899, F.S. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control, including investigating complaints against developers involving improper turnover or failure to transfer control to the

association.¹ After control of the condominium is transferred from the developer to the unit owners, the division only has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.²

Fees and Trust Fund

The Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund (trust fund) is used for administration and operation of ch. 718, F.S., relating to condominium associations, ch. 719, F.S., relating to cooperative associations, s. 721, F.S., relating to vacation and timeshare plans, and ch. 723, F.S., relating to mobile homes, by the division. All moneys collected by the division from fees, fines, penalties, or from costs awarded to the division by a court or administrative final order must be deposited in the trust fund.³

The operation of the trust fund is subject to s. 215.20, F.S., which provides an eight percent service charge from all income of a revenue nature deposited in all trust funds except those which are exempted in s. 215.22, F.S.

Each condominium association which operates more than two units is required to pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association is assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid. These fees must be deposited in the trust fund.

Condominiums

A condominium is a “form of ownership of real property created under ch. 718, F.S.”⁴ the “Condominium Act.” Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.⁵ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁶ Condominiums are created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed.⁷

The term “condominium” is defined in the Condominium Act to mean:⁸

...that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more

¹ *Id.*

² Section 718.501(1), F.S.

³ Section 718.509, F.S.

⁴ Section 718.103(11), F.S.

⁵ *See* s. 718.103, F.S., for the terms used in the Condominium Act.

⁶ *Id.*

⁷ Section 718.104(2), F.S.

⁸ Section 718.103(12), F.S.

persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

Condominium Ombudsman

The Office of the Ombudsman (condominium ombudsman) within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the condominium ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁹

The condominium ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.¹⁰

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹¹

A "homeowners' association" is defined as a:¹²

Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, 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.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.¹³

Homeowners' associations are administered by a board of directors that is elected by the members of the association.¹⁴ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-

⁹ Sections 718.5011 and 718.5012, F.S.

¹⁰ *Id.*

¹¹ *See* s. 720.302(1), F.S.

¹² Section 720.301(9), F.S.

¹³ Section 720.302(5), F.S.

¹⁴ *See* ss. 720.303 and 720.307, F.S.

adopted amendments to these documents.¹⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁶

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.], the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The division has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.¹⁷

Department of Legal Affairs

The Department of Legal Affairs (DLA) within the Office of the Attorney General provides a wide variety of legal services. The DLA defends the state in civil litigation cases, represents the people of Florida in criminal appeals in state and federal courts, operates consumer protection programs and victim service programs, prosecutes some criminal offenses, and investigates Medicaid fraud.¹⁸

III. Effect of Proposed Changes:

Condominium Fraud Investigation Pilot Program

Section 1 of the bill creates s. 16.0151, F.S., to establish the Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program (pilot program) within the DLA.

¹⁵ See ss. 720.301 and 720.303, F.S.

¹⁶ Section 720.303(1), F.S.

¹⁷ Section 720.306(9)(c), F.S.

¹⁸ Office of Program Policy Analysis and Government Accountability, *Office of the Attorney General (Department of Legal Affairs)*, at: <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026> (last visited January 31, 2024).

The term “corruption” is defined in the bill as the act of an “official or fiduciary person who unlawfully and wrongfully uses his or her position to procure some benefit for himself or herself or for another per, contrary to the duty and rights of others.”

Section 16.0151(1), F.S., provides that the purpose of the pilot program is to investigate condominium-related and homeowners’ association-related economic crime, fraud, and corruption in Florida.

The bill authorizes the DLA to contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud. If the DLA does not contract with a private entity, the DLA must hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program.

Section 16.0151(2), F.S., provides that a person may submit a complaint to the Office of the Condominium and Homeowners’ Association Ombudsman (ombudsman), as created by the bill, who must review all submitted complaints and determine which complaints to forward the complaint to the DLA for additional analysis and investigation under the pilot program.

If a complaint submitted to the pilot program does not contain allegations of economic crime, fraud, or corruption, the “task force” must forward the complaint to the division, which must investigate the complaint pursuant to its duties and powers set forth in s. 718.501, F.S., relating to the powers and duties of the division.

Section 16.0151(3), F.S., provides that the DLA has the power to issue subpoenas and conduct audits for investigations, and may administer oaths, subpoena witnesses, and compel the production of books, papers, or other records relevant to such investigations. If, after reviewing a complaint filed under the pilot program, the DLA finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate state attorney for prosecution.

Section 16.0151(4), F.S., provides the DLA shall fund the pilot program from the trust fund as specifically appropriated annually in the General Appropriations Act.

Section 16.0151(5), F.S., requires the pilot program’s primary office to be located in Miami-Dade County.

Section 16.0151(6), F.S., provides that this section is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Trust Funds

Section 2 of the bill revises s. 215.22, F.S., to exempt the trust fund, from the appropriation required by s. 215.20(1), F.S., which provides an eight percent service charge from all income of a revenue nature deposited in all trust funds except those which are exempted in s. 215.22, F.S.

Insurance of Fidelity Bonds

Section 3 of the bill revises s. 718.111(11)(h), F.S., to require the division to monitor associations' compliance with the requirement in this paragraph that associations must maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The bill authorizes the division to issue fines and establish penalties for failure to maintain the required insurance policy or fidelity bond.

Database for Condominium Association Information

Section 4 of the bill creates s. 718.13, F.S., to require the division to establish, by July 1, 2026, a searchable cloud-based database that contains information regarding each condominium association operating within Florida. The database must allow a user to search the name by which a condominium property is identified to find the association that governs such property.

Section 718.13(1), F.S., requires that the database include all of the following information for each association:

- The names, e-mail addresses, and other contact information of officers and directors of the association.
- An indication that the association is self-managed, or, if not self-managed, the contact information for any person licensed under part VIII of ch. 468, F.S., relating to the regulation of community association managers and management firms, and responsible for management of the association.
- A copy of the association's governing documents, including, but not limited to, declarations, bylaws, and rules and any amendments thereto.
- A copy of the association's adopted annual budget, in a file format that is compatible with the database, which includes the amount and purpose of any monthly assessments and current or pending special assessments levied by the association.
- A copy of any studies regarding funds in reserve accounts held by the association or any reports regarding the physical inspection of properties maintained by the association, including any structural integrity reserve studies conducted under s. 718.112(2)(g), F.S., of such properties.

Section 718.13(2), F.S., requires associations to notify the division of any changes to the information related to the association which is included in the database within 30 days after such changes occur.

Section 718.13(3), F.S., provides that the expenses associated with the creation and administration of the database must be funded in part by proceeds from the annual fee paid by associations pursuant to s. 718.501(2)(a), F.S.

Although the bill requires associations to notify the division of any change to the information in the database within 30 days after such change occurs, the bill does not require condominium associations to submit or report any of the listed information to the division by any particular date or method for the purpose of the initial build of the database.

Condominium Ombudsman – Powers and Duties

Section 5 of the bill revises s. 718.501, F.S., to require the division to forward complaints that allege economic crimes, fraud, or corruption to the ombudsman pursuant to s. 16.0151, F.S.

Section 6 of the bill revises s. 718.5012, F.S., to rename the Office of Condominium Ombudsman to the Office as the Office of the Condominium and Homeowners' Ombudsman. The bill expands the duties and powers of the ombudsman to apply to homeowners' associations under ch. 720, F.S., and further authorizes the ombudsman to:

- Void an election if the ombudsman determines that a violation has occurred relating to condominium or homeowners' association elections.
- Petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners.
- Issue subpoenas and conduct audits for investigations for the purposes of the pilot program established under s. 16.0151, F.S.

Trust Fund

Section 7 of the bill revises s. 718.509, F.S., relating to the trust fund to delete the provision that subjects the operation of the trust fund to the eight percent service charge in s. 215.20, F.S.

Effective Date

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DBPR and the DLA have not submitted an agency analysis for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 16.0151(2), F.S., requires the “task force” to forward complaints to the division or the HOA ombudsman for investigation. This is the only use of the term “task force.” In context, the intent appears to be for the term to refer to the pilot program. In addition, it is not clear whether the division and the HOA ombudsman is required to perform multiple investigation or reviews of the same complaint. Under s. 16.0151, F.S., the condominium ombudsman and HOA ombudsman must review the complaint and make a referral to the pilot program. However, if a complaint submitted to the pilot program does not contain allegations of economic crime, fraud, or corruption, the “task force” must forward the complaint back to the division and the HOA ombudsman for further review or investigation.

The bill creates s. 718.13, F.S., to require the division to establish a cloud-based, searchable database that contains specified information and documentation. However, it is not clear how the division is to acquire the information and documentation because the bill does not require condominium associations to submit or report any of the listed information or documentation to the division.

The bill creates s. 16.0151, F.S., to provide for the investigation by the condominium ombudsman of complaints alleging fraud or corruption. The bill also revises s. 718.501, F.S., to require the division to forward complaints that allege economic crimes, fraud, or corruption to the condominium ombudsman pursuant to s. 16.0151, F.S. The term “economic crimes” is not defined in the bill or the Florida Statutes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.22, 718.111, 718.501, 718.5011, 718.5012, and 718.509.

This bill creates the following sections of the Florida Statutes: 16.0151 and 718.13.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on February 5, 2024:

The committee substitute”

- Renames the Condominium Fraud Investigation Pilot Program to the Condominium and Homeowners’ Association Economic Crime, Fraud, and Corruption Investigation Pilot Program (pilot program).
- Defines the term “corruption.”
- Requires the pilot program’s primary office to be located in Miami-Dade County.
- Renames the Office of Condominium Ombudsman to the Office of the Condominium and Homeowners’ Ombudsman (ombudsman).
- Expands the powers and duties of the ombudsman to include 720, F.S., relating homeowners’ associations.
- Removes from the bill the provision creating the Office of the Homeowners’ Association Ombudsman and conforming references.
- Includes complaints alleging “economic crimes” as one of the types of complaints the pilot program may investigate, and that the Division of Condominiums, Timeshares, and Mobile Homes, the Office of Condominium Ombudsman, and the Office of the Homeowners’ Association Ombudsman (HOA ombudsman) must forward to the pilot program.
- Corrects a technical deficiency in the bill by including paragraphs (a) through (s) of s. 718.501(1), F.S. (Section 6, Article III of the State Constitution require laws or be revised or amended by setting out in full the revised or amended act, section, subsection or paragraph of a subsection).

- B. **Amendments:**

None.