HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 463 Community Association Pools
SPONSOR(S): Professions & Public Health Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Professions & Public Health Subcommittee		Woodruff	McElroy

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, 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.

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions. County health departments are responsible for the routine surveillance of water quality in all public swimming pools. Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishes are exempt from DOH's public pools requirements, except for maintaining water quality standards. HOA pools are not exempt from DOH regulation even where the HOA has 32 homes or less.

HB 463 specifies that HOAs and other property associations with 32 units or less and which are not operated as pubic lodging establishments are exempt from supervision under ch. 514, F.S., except for supervision necessary to ensure water quality and under ss. 514.0315, 514.05, and 514.06, F.S.

There is an insignificant, negative fiscal impact on DOH. There is no fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Homeowners' Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation, 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 Homeowners' Associations (limited to arbitration of election and recall disputes).

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, 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] 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 include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. Current law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division for certain election and recall disputes, but no state agency has direct oversight of HOAs.

HOA Swimming Pools

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools[2] in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected, to be operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. DOH is authorized to establish a schedule of fees for plan approval and permitting.[3] Operating permits must be renewed annually and may be transferred from one name or owner to another.[4]

The Virginia Graeme Baker federal Pool and Spa Safety Act of 2007[5] implemented by the Consumer Product Safety Commission, and duplicated in s. 514.0315, F.S., requires all public swimming pools to assure compliance for anti-entrapment safety features to prevent drowning and entrapment injuries.

DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions.[6] County health departments are responsible for the routine surveillance of water quality in all public swimming pools.[7]

---

[1] S. 720.301(9), F.S.

[2] S. 514.011(2) defines "public swimming pool" or "public pool" to include a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool means a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

[3] S. 514.033, F.S.

[4] Ss. 514.031(2) and (3), F.S.

[5] 15 U.S.C. §8003

Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishments are exempt from DOH's public pools requirements, except for maintaining water quality standards.[8] HOA pools are not exempt from DOH regulation, even where the HOA has 32 homes or less.

DOH estimates that 200 public swimming pools would be effected if HOA pools were exempt from DOH regulation.[9]

Effect of Proposed Changes

HB 463 specifies that HOAs and other property associations which have no more than 32 units or parcels and which are not operated as pubic lodging establishments are exempt from supervision under ch. 514, F.S., except for:

- Supervision necessary to ensure water quality.
- Section 514.0315, F.S., related to required safety features for public swimming pools and spas.
- Section 514.05, F.S., related to denial, suspension, or revocation of permit; administrative fines.
- Section 514.06, F.S., related to injunction to restrain violations.

B. SECTION DIRECTORY:

Section 1: Amending s. 514.0115, F.S., related to exemptions from supervision or regulation; venues.
Section 2: Amending s. 553.77, F.S., related to specific powers of the commission.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOH estimates it could lose a total of $50,000 in annual operating permits if the 200 HOA public swimming pools are exempt from DOH regulation.[10]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

---

[6] S. 514.04, F.S.
[7] S. 514.025, F.S.
[8] S. 514.0115(2), F.S.
[9] Email from Gary Landry, Florida Department of Health, re: data request, (Mar. 30, 2021)(on file with Professions & Public Health Subcommittee staff).
[10] *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES