

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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The Council for Smarter Government offered the following:

Amendment (with title amendment)

On page 66, line 10, through page 72, line 7,
remove from the bill: all of said lines

and insert in lieu thereof:

Section 68. Section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; ~~voluntary mediation;~~ mandatory nonbinding arbitration and mediation; local resolution; exemptions; legislative findings.--

(1) APPLICABILITY DEFINITIONS.--

(a) The provisions of subsection (3) apply to ~~As used in this section, the term "dispute" means any disagreement between two or more parties that involves+~~

~~(a) The authority of the board of directors, under this chapter or association document to+~~

~~1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.~~

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1 ~~2. Alter or add to a common area or element.~~
2 ~~(b) the failure of a governing body, when required by~~
3 ~~this chapter or an association document, to:~~
4 ~~1. properly conduct elections or to recall a board~~
5 ~~member.~~
6 ~~(b) The provisions of subsection (4) apply to any~~
7 ~~disagreement between two or more parties that involves:~~
8 ~~1. The authority of the board of directors, under this~~
9 ~~chapter or an association document, to:~~
10 ~~a. Require any owner to take any action, or not to~~
11 ~~take any action, involving that owner's unit or the~~
12 ~~appurtenances thereto; or~~
13 ~~b. Alter or add to a common area or element.~~
14 ~~2. The failure of a governing body, when required by~~
15 ~~this chapter or an association document, to:~~
16 ~~a.2. Give adequate notice of meetings or other~~
17 ~~actions; or~~
18 ~~b.3. Properly conduct meetings; or~~
19 ~~c.4. Allow inspection of books and records.~~
20
21 ~~"Dispute" does not include any disagreement that primarily~~
22 ~~involves: title to any unit or common element; the~~
23 ~~interpretation or enforcement of any warranty; the levy of a~~
24 ~~fee or assessment, or the collection of an assessment levied~~
25 ~~against a party; the eviction or other removal of a tenant~~
26 ~~from a unit; alleged breaches of fiduciary duty by one or more~~
27 ~~directors; or claims for damages to a unit based upon the~~
28 ~~alleged failure of the association to maintain the common~~
29 ~~elements or condominium property.~~
30 ~~(2) VOLUNTARY MEDIATION. -- Voluntary mediation through~~
31 ~~Citizen Dispute Settlement Centers as provided for in s.~~

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1 ~~44.201 is encouraged.~~

2 (2)~~(3)~~ LEGISLATIVE FINDINGS.--

3 (a) The Legislature finds that unit owners are
4 frequently at a disadvantage when litigating against an
5 association. Specifically, a condominium association, with its
6 statutory assessment authority, is often more able to bear the
7 costs and expenses of litigation than the unit owner who must
8 rely on his or her own financial resources to satisfy the
9 costs of litigation against the association.

10 (b) The Legislature finds that the courts are becoming
11 overcrowded with condominium and other disputes, and further
12 finds that alternative dispute resolution has been making
13 progress in reducing court dockets and trials and in offering
14 a more efficient, cost-effective option to court litigation.
15 However, the Legislature also finds that alternative dispute
16 resolution should not be used as a mechanism to encourage the
17 filing of frivolous or nuisance suits.

18 (c) There exists a need to develop a flexible means of
19 alternative dispute resolution that directs disputes to the
20 most efficient means of resolution.

21 (d) The high cost and significant delay of circuit
22 court litigation faced by unit owners in the state can be
23 alleviated by requiring nonbinding arbitration and mediation
24 in appropriate cases, thereby reducing delay and attorney's
25 fees while preserving the right of either party to have its
26 case heard by a jury, if applicable, in a court of law.

27 (3)~~(4)~~ MANDATORY NONBINDING ARBITRATION AND MEDIATION
28 OF DISPUTES.--~~The division of Florida Land Sales,~~
29 ~~Condominiums, and Mobile Homes of the Department of Business~~
30 ~~and Professional Regulation shall provide ~~employ full-time~~~~
31 ~~attorneys to act as~~ arbitrators to conduct the arbitration

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1 hearings as required ~~provided~~ by this chapter. The department
2 may employ attorneys to act as arbitrators, and the division
3 may also certify attorneys who are not employed by the
4 division to act as arbitrators to conduct the arbitration
5 hearings provided by this chapter ~~section~~. No person may be
6 employed by the department as an ~~a full-time~~ arbitrator unless
7 he or she is a member in good standing of The Florida Bar. The
8 department shall promulgate rules of procedure to govern such
9 arbitration hearings including mediation incident thereto.
10 The decision of an arbitrator shall be final; however, such a
11 decision shall not be deemed final agency action. Nothing in
12 this provision shall be construed to foreclose parties from
13 proceeding in a trial de novo unless the parties have agreed
14 that the arbitration is binding. If such judicial proceedings
15 are initiated, the final decision of the arbitrator shall be
16 admissible in evidence in the trial de novo.

17 (a) Prior to the institution of court litigation, a
18 party to a dispute shall petition the division for nonbinding
19 arbitration. The petition must be accompanied by a filing fee
20 in the amount of \$50. Filing fees collected under this
21 section must be used to defray the expenses of the alternative
22 dispute resolution program.

23 (b) The petition must recite, and have attached
24 thereto, supporting proof that the petitioner gave the
25 respondents:

26 1. Advance written notice of the specific nature of
27 the dispute;

28 2. A demand for relief, and a reasonable opportunity
29 to comply or to provide the relief; and

30 3. Notice of the intention to file an arbitration
31 petition or other legal action in the absence of a resolution

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1 of the dispute.

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3 Failure to include the allegations or proof of compliance with
4 these prerequisites requires dismissal of the petition without
5 prejudice.

6 (c) Upon receipt, the petition shall be promptly
7 reviewed by the division to determine the existence of a
8 dispute and compliance with the requirements of paragraphs (a)
9 and (b). If emergency relief is required and is not available
10 through arbitration, a motion to stay the arbitration may be
11 filed. The motion must be accompanied by a verified petition
12 alleging facts that, if proven, would support entry of a
13 temporary injunction, and if an appropriate motion and
14 supporting papers are filed, the division may abate the
15 arbitration pending a court hearing and disposition of a
16 motion for temporary injunction.

17 (d) Upon determination by the division that a dispute
18 exists and that the petition substantially meets the
19 requirements of paragraphs (a) and (b) and any other
20 applicable rules, a copy of the petition shall forthwith be
21 served by the division upon all respondents.

22 (e) Either before or after the filing of the
23 respondents' answer to the petition, any party may request
24 that the arbitrator refer the case to mediation under this
25 section and any rules adopted by the division. Upon receipt
26 of a request for mediation, the division shall promptly
27 contact the parties to determine if there is agreement that
28 mediation would be appropriate. If all parties agree, the
29 dispute must be referred to mediation. Notwithstanding a lack
30 of an agreement by all parties, the arbitrator may refer a
31 dispute to mediation at any time.

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1 (f) Upon referral of a case to mediation, the parties
2 must select a mutually acceptable mediator. To assist in the
3 selection, the arbitrator shall provide the parties with a
4 list of both volunteer and paid mediators that have been
5 certified by the division under s. 718.501. If the parties
6 are unable to agree on a mediator within the time allowed by
7 the arbitrator, the arbitrator shall appoint a mediator from
8 the list of certified mediators. If a case is referred to
9 mediation, the parties shall attend a mediation conference, as
10 scheduled by the parties and the mediator. If any party fails
11 to attend a duly noticed mediation conference, without the
12 permission or approval of the arbitrator or mediator, the
13 arbitrator must impose sanctions against the party, including
14 the striking of any pleadings filed, the entry of an order of
15 dismissal or default if appropriate, and the award of costs
16 and attorneys' fees incurred by the other parties. Unless
17 otherwise agreed to by the parties or as provided by order of
18 the arbitrator, a party is deemed to have appeared at a
19 mediation conference by the physical presence of the party or
20 its representative having full authority to settle without
21 further consultation, provided that an association may comply
22 by having one or more representatives present with full
23 authority to negotiate a settlement and recommend that the
24 board of administration ratify and approve such a settlement
25 within 5 days from the date of the mediation conference. The
26 parties shall share equally the expense of mediation, unless
27 they agree otherwise.

28 (g) The purpose of mediation as provided for by this
29 section is to present the parties with an opportunity to
30 resolve the underlying dispute in good faith, and with a
31 minimum expenditure of time and resources.

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1 (h) Mediation proceedings must generally be conducted
2 in accordance with the Florida Rules of Civil Procedure, and
3 these proceedings are privileged and confidential to the same
4 extent as court-ordered mediation. Persons who are not parties
5 to the dispute are not allowed to attend the mediation
6 conference without the consent of all parties, with the
7 exception of counsel for the parties and corporate
8 representatives designated to appear for a party. If the
9 mediator declares an impasse after a mediation conference has
10 been held, the arbitration proceeding terminates, unless all
11 parties agree in writing to continue the arbitration
12 proceeding, in which case the arbitrator's decision shall be
13 either binding or nonbinding, as agreed upon by the parties;
14 in the arbitration proceeding, the arbitrator shall not
15 consider any evidence relating to the unsuccessful mediation
16 except in a proceeding to impose sanctions for failure to
17 appear at the mediation conference. If the parties do not
18 agree to continue arbitration, the arbitrator shall enter an
19 order of dismissal, and either party may institute a suit in a
20 court of competent jurisdiction. The parties may seek to
21 recover any costs and attorneys' fees incurred in connection
22 with arbitration and mediation proceedings under this section
23 as part of the costs and fees that may be recovered by the
24 prevailing party in any subsequent litigation.

25 (i) Arbitration shall be conducted according to rules
26 promulgated by the division. The filing of a petition for
27 arbitration shall toll the applicable statute of limitations.

28 (j) At the request of any party to the arbitration,
29 such arbitrator shall issue subpoenas for the attendance of
30 witnesses and the production of books, records, documents, and
31 other evidence and any party on whose behalf a subpoena is

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1 issued may apply to the court for orders compelling such
2 attendance and production. Subpoenas shall be served and shall
3 be enforceable in the manner provided by the Florida Rules of
4 Civil Procedure. Discovery may, in the discretion of the
5 arbitrator, be permitted in the manner provided by the Florida
6 Rules of Civil Procedure. Rules adopted by the division may
7 authorize any reasonable sanctions except contempt for a
8 violation of the arbitration procedural rules of the division
9 or for the failure of a party to comply with a reasonable
10 nonfinal order issued by an arbitrator which is not under
11 judicial review.

12 (k) The arbitration decision shall be presented to the
13 parties in writing. An arbitration decision is final in those
14 disputes in which the parties have agreed to be bound. An
15 arbitration decision is also final if a complaint for a trial
16 de novo is not filed in a court of competent jurisdiction in
17 which the condominium is located within 30 days. The right to
18 file for a trial de novo entitles the parties to file a
19 complaint in the appropriate trial court for a judicial
20 resolution of the dispute. The prevailing party in an
21 arbitration proceeding shall be awarded the costs of the
22 arbitration and reasonable attorney's fees in an amount
23 determined by the arbitrator. Such an award shall include the
24 costs and reasonable attorney's fees incurred in the
25 arbitration proceeding as well as the costs and reasonable
26 attorney's fees incurred in preparing for and attending any
27 scheduled mediation.

28 (l) The party who files a complaint for a trial de
29 novo shall be assessed the other party's arbitration costs,
30 court costs, and other reasonable costs, including attorney's
31 fees, investigation expenses, and expenses for expert or other

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1 testimony or evidence incurred after the arbitration hearing
2 if the judgment upon the trial de novo is not more favorable
3 than the arbitration decision. If the judgment is more
4 favorable, the party who filed a complaint for trial de novo
5 shall be awarded reasonable court costs and attorney's fees.

6 (m) Any party to an arbitration proceeding may enforce
7 an arbitration award by filing a petition in a court of
8 competent jurisdiction in which the condominium is located. A
9 petition may not be granted unless the time for appeal by the
10 filing of a complaint for trial de novo has expired. If a
11 complaint for a trial de novo has been filed, a petition may
12 not be granted with respect to an arbitration award that has
13 been stayed. If the petition for enforcement is granted, the
14 petitioner shall recover reasonable attorney's fees and costs
15 incurred in enforcing the arbitration award. A mediation
16 settlement may also be enforced through the county or circuit
17 court, as applicable, and any costs and fees incurred in the
18 enforcement of a settlement agreement reached at mediation
19 must be awarded to the prevailing party in any enforcement
20 action.

21 (4) DISPUTES SUBJECT TO LOCAL RESOLUTION.--Disputes
22 shall be resolved in the county in which the dispute has
23 occurred by a local government alternative dispute resolution,
24 mediation, or arbitration program. Such cases shall be handled
25 by these programs without the necessity of the case being
26 filed in the court system. In the resolution of these cases on
27 the local level, past precedent of prior division arbitration
28 decisions shall be considered and followed where appropriate.
29 Local government alternative dispute resolution, mediation, or
30 arbitration programs may charge fees for handling these cases.
31 The division shall handle any of these cases arising in

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1 counties which do not have local government alternative
2 dispute resolution, mediation, or arbitration programs. The
3 division shall provide a list of these programs to anyone
4 requesting this information and shall act as a clearinghouse
5 for disputes, directing affected parties to the appropriate
6 local alternative dispute resolution, mediation, or
7 arbitration program within the county in which the dispute has
8 occurred.

9 (5) EXEMPTIONS.--A dispute is not subject to
10 resolution under this section if it includes any disagreement
11 that primarily involves:

12 (a) Title to any unit or common element;

13 (b) The interpretation or enforcement of any warranty;

14 (c) The levy of a fee or assessment or the collection
15 of an assessment levied against a party;

16 (d) The eviction or other removal of a tenant from a
17 unit;

18 (e) Alleged breaches of fiduciary duty by one or more
19 directors; or

20 (f) Claims for damages to a unit based upon the
21 alleged failure of the association to maintain the common
22 elements or condominium property.

23 Section 69. The Division of Condominiums, Timeshare,
24 and Mobile Homes of the Department of Business and
25 Professional Regulation shall continue the arbitration of any
26 cases which qualified for arbitration on the date the case was
27 filed with the division and which were filed with the division
28 prior to the date on which this act becomes law.

29 Section 70. There is hereby appropriated 1 FTE and
30 \$440,626 from the Division of Condominiums, Timeshare, and
31 Mobile Homes Trust Fund to the Department of Business and

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1 Professional Regulation for the purpose of investigating and
2 resolving disputes and dealing with compliance issues relating
3 to condominiums and cooperatives. This appropriation shall not
4 take effect if a similar amount of funding is included in the
5 various appropriations for compliance and enforcement in the
6 Florida Condominiums, Timeshare, and Mobile Homes program in
7 the fiscal year 2001-2002 General Appropriations Act.

8
9
10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 On page 5, line 18,

13
14 after the second semicolon insert:

15 providing and limiting arbitration of disputes
16 by the division to those regarding elections
17 and the recall of board members; deleting
18 reference to voluntary mediation; providing for
19 the resolution of certain other complaints at
20 the local level; providing exemptions;
21 requiring the continuation of arbitration of
22 cases filed by a certain date; providing a
23 contingent appropriation;