

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1938
SPONSOR: Senator Geller
SUBJECT: Retrofitting of Common Areas of Condominiums and Cooperatives With Fire Sprinkler Systems
DATE: February 25, 2004 REVISED: 03/01/04 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill allows condominium association members, as well as members of a cooperative, to vote by limited proxy or a ballot when voting to forego the retrofitting of common elements or units of a residential condominium or cooperative with a fire sprinkler system or other engineered lifesafety system. It also requires the condominium association or cooperative to mail, hand deliver, or electronically transmit written notice to each unit owner at least 14 days prior to the meeting at which the vote to forego retrofitting will occur. The bill deletes the requirement that a condominium or cooperative association send notice of the vote to forego retrofitting to each unit owner within 20 days after the vote. Also, the bill deletes the requirement that a unit owner provide notice of the vote to forego retrofitting to a new owner prior to closing or to a renter prior to signing the lease.

This bill amends sections 718.112 and 719.1055 of the Florida Statutes.

II. Present Situation:

Condominiums

A condominium is that form of ownership of real property created pursuant to ch. 718, F.S., "which is comprised entirely of units that may be owned by one or more persons, and in which

there is, appurtenant to each unit, an undivided share in common elements.”¹ A condominium association may be a corporation for profit or a corporation not for profit.² The board of administration of a condominium is the board of directors or other representative body which is responsible for the administration of the association.³

Condominium unit owner meetings must take place at least once a year.⁴ At condominium unit owner meetings, unit owners have the right to vote on matters specified in the association’s bylaws, to purchase any land or recreational lease, to elect members of the board of administration, to adopt a budget, to recall board members, and to approve the transfer of a condominium unit and other decisions.⁵ Written notice of condominium unit owner meeting, including an agenda, must be provided to a unit owner by mail, hand-delivery, or electronic transmission at least 14 days prior to the meeting.⁶ The notice must also be posted conspicuously on the condominium property, if possible. The person who provides notice of a condominium unit owner meeting must execute an affidavit or provide a certificate of mailing stating to be included in association records for purposes of demonstrating that a meeting notice was provided to unit owners in compliance with the law.⁷

When unit owners vote by proxy, limited proxies must be used to waive or reduce reserve accounts for capital expenditures and deferred maintenance; to amend the declaration creating the condominium; to amend the bylaws or articles of incorporation; and to decide almost any other matter, including votes to reduce a condominium’s financial reporting requirements.⁸ A limited proxy form records how an owner has decided to vote on an issue and does not authorize a proxy holder to decide how the owner’s vote will be cast.⁹ Section 718.112(2)(d)3., F.S., contains specific provisions governing elections for condominium associations and proxies may not be used to elect board members or fill vacancies unless otherwise provided in ch. 718, F.S.

Cooperatives

A cooperative is a “form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.”¹⁰ The cooperative’s association may be a corporation for profit or a corporation not for profit that owns the record interest or a leasehold of the cooperative property and is responsible for its operation.¹¹ The board of administration (board) is the board of directors or other representative body which is responsible for the administration of a cooperative association.¹²

¹ S. 718.103(11), F.S.

² S. 718.104(4)(i) and 718.111(1)(a), F.S.

³ S. 718.103(4), F.S.

⁴ S. 718.112(2)(d)1., F.S.

⁵ Ss. 718.112(2)(d)4, 718.111(8), and 718.112(2)(d)1., (f), (i), and (j), F.S.

⁶ S. 718.112(2)(d)2., F.S.

⁷ *Supra* note 10.

⁸ Ss. 718.112(2)(b)2. and 718.111(13)(d), F.S.

⁹ See Department of Business and Professional Regulation, *General Information About Proxies*, which are instructions for BPR Form 33-033. Revised 11/23/93.

¹⁰ S. 719.103(12), F.S.

¹¹ S. 719.103(2), F.S.

¹² S. 719.103(3), F.S.

Shareholder meetings must take place at least once a year.¹³ At shareholder meetings, shareholders of a cooperative have the authority to vote on matters specified in the cooperative documents such as the cooperative's articles of incorporation or bylaws; to impose fees for the use of cooperative property; to purchase land or acquire a recreational lease; to modify a cooperative unit; to amend the cooperative documents; and to vote on other matters.¹⁴ The cooperative association must provide notice of shareholder meetings including an agenda by mail to each unit owner at least 14 days before the meeting.¹⁵ Notice of shareholder meetings must also be posted conspicuously on cooperative property at least 14 days before a shareholder meeting. After notice to the unit owners, the board may designate, by rule, a specific location where notice of all unit owner meetings shall be posted. Alternatively, the association may broadcast the notice provided the broadcast meets certain statutory requirements. Unless the unit owner waives in writing the right to receive notice, the notice of the annual meeting must be mailed, hand delivered, or electronically transmitted to each unit owner. An officer of the association must provide an affidavit or certificate of mailing to be included in the official record of the association for purposes of demonstrating that notice requirements were met.

Unless otherwise provided by the bylaws of a cooperative, the presence of a majority of the voting interests at a membership meeting constitutes a quorum.¹⁶ Decisions shall be made by the owners of a majority of the voting interests represented at a meeting at which a quorum is present unless otherwise specified in the association's bylaws or ch. 719, F.S. Although limited proxies and general proxies may be used to establish the presence of a quorum, owners that are not present may only vote by limited proxy on certain issues if they use a form that substantially conforms to a form adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (division).¹⁷ Limited proxies are allowed for votes taken to waive or reduce reserves, to waive the financial reporting requirements, or for votes taken to amend the articles of incorporation or bylaws. Proxy voting, either limited or general, may not be used in the election of board members. General proxies may be used where limited proxies are not required and, also, for nonsubstantive changes to items for which a limited proxy is given or required. These provisions regarding voting procedures for cooperatives do not apply to timeshare cooperatives.¹⁸

Firesafety Requirements

The State Fire Marshall's Office is required under s. 633.0215(1), F.S., to adopt the Florida Fire Prevention Code and ss. 125.01 and 125.56, F.S., grant county government the authority to enforce the code. The Florida Fire Prevention Code incorporates by reference the National Fire Protection Association (NFPA) 1, the Fire Prevention Code, 2000 edition, and the NFPA 101, the Life Safety Code, 2000 edition, as amended.¹⁹ Under the Florida Fire Prevention Code, all high rise buildings are required to be retrofitted with fire sprinkler systems.²⁰ In 2000, the State

¹³ S. 719.106(1)(d), F.S.

¹⁴ Ss. 719.104(5) and (6), 719.1055(1), and 719.304(1), F.S.

¹⁵ S. 719.106(1)(d), F.S.

¹⁶ S. 719.106(1)(b)1., F.S.

¹⁷ S. 719.106(1)(b)2., F.S.

¹⁸ S. 719.106(1)(b)2., F.S.

¹⁹ Rules 4A-60.003 and 4A-60.004, Fla. Admin. Code.

²⁰ Rule 4A-60.003(2)(k), Fla. Admin. Code.

Fire Marshall adopted the Florida Fire Prevention Code by administrative rule, to be effective July 1, 2001.

Chapter 2001-186, L.O.F., delayed the effective date of the Florida Fire Prevention Code to January 1, 2002. However, an amendment to the code was adopted which extends the retrofitting requirement for 12 years after the effective date of the act. The effect of this rule is to require some older buildings, including condominiums and cooperatives, to complete installation of fire sprinkler systems by January 1, 2014, unless a change is made in the Florida Fire Prevention Code. Section 718.112(2)(1), F.S., requires that the by-laws of a condominium association must provide for a certificate of compliance from a licensed electrical contractor or electrician which may be accepted by the association's board as proof of compliance to the applicable fire and life safety code. The National Fire Prevention Association has data that demonstrates fire sprinklers substantially reduce the loss of life and property associated with fires.

Legislation was passed in the 2003 Regular Session that allows the unit owners in a residential condominium association or cooperative to vote to forego the retrofitting of the common elements or units with a fire sprinkler system or other engineered life safety system.²¹ The vote to forego the retrofitting requires the approval of two-thirds of all voting interests in the affected condominium or cooperative.²² However, the unit owners in a residential condominium or cooperative may not vote to forego the retrofitting of common areas in a high-rise building. The term "high-rise building" is defined as a building that is greater than 75 feet in height when measured from the lowest level of fire department access to the floor of the highest occupiable story.²³ The term "common areas" refers to an "enclosed hallway, corridor, lobby, stairwell, or entryway."²⁴ Sections 718.112(2)(1) and 719.1055(5), F.S., prohibit a local authority having jurisdiction from requiring the completion of retrofitting of common areas in residential condominiums or cooperatives with a fire sprinkler system before the end of 2014.

The vote to forego retrofitting may not be obtained by general proxy or limited proxy, but must be obtained by a vote personally cast at a membership meeting or by execution of a written consent by the member.²⁵ Such vote is effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium or cooperative is located. The association shall send written notice of the meeting, in at least 16-point bold type by certified mail, within 20 days after the vote to each unit owner. Such written notice must also be provided by the owner to a new owner prior to closing or to a renter prior to signing the lease.²⁶

The division is required to collect certain information from condominiums and cooperatives, to include the membership vote, recording of a certificate of the vote, whether the retrofitting has been undertaken, the per-unit cost of the work.²⁷ The division is required to report the number of condominiums and cooperative that have elected to forego retrofitting to the Division of State Fire Marshal annually. Based on the 2003 legislation, the division promulgated rules and

²¹ Ch. 2003-14, s. 6, L.O.F.

²² Ss. 718.112(2)(1) and 719.1055(5), F.S.

²³ Ss. 718.112(2)(1) and 719.1055(5), F.S.

²⁴ Ss. 718.112(2)(1) and 719.1055(5).

²⁵ Ss. 718.112(2)(1)1. and 719.1055(5)(a), F.S.

²⁶ Ss. 718.112(2)(1)1. and 719.1055(5)(a), F.S.

²⁷ Ss. 718.112(2)(1)2. and 719.1055(5)(b), F.S.

provided a form for condominium and cooperative associations to report information on any vote to forego retrofitting. The division has indicated that it will report this information to the Division of State Fire Marshall annually beginning on August 1, 2004.

III. Effect of Proposed Changes:

Section 1 amends s. 718.112(2)(l)1., F.S., to allow condominium association members to vote by limited proxy or a ballot when voting to forego the retrofitting of common elements or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system. It also requires the association to mail, hand deliver, or electronically transmit written notice to each unit owner at least 14 days prior to the membership meeting at which the vote to forego retrofitting will occur.

The bill deletes the requirement that the condominium association send notice of the vote to forego retrofitting, in at least 16 point bold type by certified mail, to each unit owner within 20 days after the association's vote. Also, the bill deletes the requirement that a unit owner provide notice of the vote to forego retrofitting to a new owner prior to closing or to a renter prior to signing the lease.

Section 2 amends s. 719.1055(5)(a), F.S., to allow members of a cooperative to vote by limited proxy or a ballot when voting to forego the retrofitting of common elements or units of a residential cooperative with a fire sprinkler system or other engineered lifesafety system. It also requires the association to mail, hand deliver, or electronically transmit written notice to each unit owner at least 14 days prior to the membership meeting at which the vote to forego retrofitting will occur.

The bill deletes the requirement that the cooperative association send notice of the vote to forego retrofitting, in at least 16 point bold type by certified mail, to each unit owner within 20 days after the association's vote. Also, the bill deletes the requirement that a unit owner provide notice of the vote to forego retrofitting to a new owner prior to closing or to a renter prior to signing the lease.

Section 3 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

There are no additional costs associated with the revised notice requirements because condominium associations and cooperatives are currently subject to similar provisions for certain meetings and this bill does allow for electronic notice to be sent to each member.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning Committee:

The amendment requires the notice of a meeting, during which a vote to forego retrofitting of the required fire sprinkler system will take place, to include a statement that such a vote will occur.