

# 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 2536

SPONSOR: Senator Geller

SUBJECT: Condominium and Cooperative Associations

DATE: March 19, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill creates new subsections in the condominium and cooperative chapters of the Florida Statutes<sup>1</sup> that provide that ten percent of the total voting interests in a condominium or cooperative association, or six unit owners, whichever is greater, may petition the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) to appoint an election monitor to attend the annual meeting of the shareholders and supervise the election of directors. The division may appoint a division employee or an attorney licensed to practice in this state as the election monitor or the board may retain an attorney licensed to practice in this state to serve as the election monitor.

All costs associated with the election monitoring process shall be paid by the association. The division shall, by rule, establish procedures for the appointment of election monitors and the scope and extent of such monitor's role in the election process.

This bill substantially amends sections 718.112 and 719.106, Florida Statutes.

## II. Present Situation:

Condominiums and Cooperatives are regulated by the division within the Department of Business and Professional Regulation (department).<sup>2</sup>

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<sup>1</sup> Chapters 718 and 719, F.S.

<sup>2</sup> Section 489.203, F.S.

## 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.<sup>3</sup> A condominium association may be a corporation for profit or a corporation not for profit.<sup>4</sup>

## 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.”<sup>5</sup> A cooperative also may be a corporation for profit or a corporation not for profit.<sup>6</sup>

## Bylaws

The bylaws requirements for condominiums and cooperatives are essentially the same and provide in part that:

- there shall be an annual meeting of the unit owners;
- the method and notice requirements of calling meetings of unit owners, including annual meetings;
- the board shall be elected by written ballot or voting machine;
- proxies may not be used in electing the board, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless provided in ch. 718 or 719, F.S.
- the method of providing notice of the date of the election;
- the requirements and format for giving notice if a person desires to be a candidate for the board;
- elections shall be decided by a plurality of the ballots; however at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of members of the board;
- any approval by unit owners called for by ch. 718 or 719, F.S. or the applicable declaration or bylaws shall be made at a duly noticed meeting of unit owners and subject to all requirements of ch. 718 or 719, F.S. or the applicable condominium documents relating to unit owner’s decision making; unit owners may take action by written agreement without meeting when expressly allowed;
- unit owners may waive notice of specific meetings if allowed by applicable bylaws or declaration or any statute;
- unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items;

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<sup>3</sup> Section 718.103(11), F.S.

<sup>4</sup> Sections 718.104(4)(i) and 718.111(1)(a), F.S.

<sup>5</sup> Section 719.103(12), F.S.

<sup>6</sup> Section 719.103(2), F.S.

- unit owners may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division; and
- unless otherwise provided in the bylaws, vacancies on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director.

### **Election Monitor**

There is currently no provision in chs. 418 or 419, F.S., that permits the division to actively monitor an election in a condominium or cooperative as it is occurring. According to the division, if an owner seeks to challenge the conduct of an election that has already occurred, the owner is permitted to file a complaint for investigation by the division<sup>7</sup>, or the owner may file a petition for arbitration.<sup>8</sup> According to the department, the division may order that a new election be conducted under appropriate circumstances. If the procedures used by an association leading up to an election are suspect or if the association has failed to provide adequate notice of the election or has failed to include all qualified candidates on the ballot distributed to the owners in advance of an election, it is possible that either by division complaint or petition for arbitration, the defective election may be cancelled and a new election scheduled before the defective election is actually held. Associations are free to retain the services of a private attorney to coordinate the election effort and to monitor the election; many associations currently do hire attorneys for this purpose.<sup>9</sup> According to the department, some associations, particularly larger ones, use a professional election service, and some simply rely on their managers for the election.

### **III. Effect of Proposed Changes:**

The bill provides that ten percent of the total voting interests in a condominium or cooperative association, or six unit owners, whichever is greater, may petition the division to appoint an election monitor to attend the annual meeting of the shareholders and supervise the election of directors. The division may appoint a division employee or an attorney licensed to practice in this state as the election monitor or the board may retain an attorney licensed to practice in this state to serve as the election monitor.

All costs associated with the election monitoring process shall be paid by the association. The division shall, by rule, establish procedures for the appointment of election monitors and the scope and extent of such monitor's role in the election process.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>7</sup> Sections 718.501 and 719.501, F.S.

<sup>8</sup> Sections 718.1255 and 719.1255, F.S.

<sup>9</sup> Sections 718.111 and 719.104, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The division would be required to develop a system to charge and collect moneys from associations in an amount sufficient to cover all expense incurred in providing the election monitoring service.

B. Private Sector Impact:

According to the department, an election monitor may decrease the number of election challenges and may increase the demand for attorneys in the election process. Further, those condominium and cooperative associations that request the division to provide an election monitor to attend the annual meeting of unit owners and supervise the elections of directors will be required to pay for election monitoring costs incurred by the department.

C. Government Sector Impact:

According to the department, the division would be required to develop a system to charge and collect moneys from associations in an amount sufficient to cover all expenses incurred in providing the election monitoring service. These moneys would be subject to the service charge to the General Revenue Fund.

The bill provides three options for delivery of election monitoring services to condominium and cooperative associations. One option utilizes department staff to monitor elections and administer the program, a second option utilizes department staff to administer the program and appoint private attorneys for monitoring, and a third option authorizes associations to contract directly with private attorneys. The department provides that it will be impacted by the first two options.

**Option I**

If the division implements the bill by appointing in-house election monitors, attorneys would need to be hired and trained for this purpose. Over a period of one year, 27 election disputes were filed for arbitration with the division pursuant to s. 718.1255, F.S., and 202 complaints were received regarding election issues. Assuming the division would receive approximately 229 requests for election monitors annually, it is estimated four Staff Attorneys and one Administrative Assistant II would be needed to handle the additional workload created by this bill. Travel for each election would be required at a

cost of approximately \$400 per election or an annual cost of \$91,600 for 229 election cases. It is possible that significantly more requests may be received due to the relatively low voting requirements of this bill. All costs associated with election monitoring are required to be charged back to those associations that utilize this service.

### **Option II**

If the division implements this bill by appointing attorneys, the division estimates that a Senior Attorney and Administrative Assistant I would be required to administer this program. Travel may not be necessary for these positions.

Both options are anticipated to impact the Division of Service Operations and Information Technology. Both options will require reimbursement of department expenses involved in providing the service, receipt and tracking of additional revenues, and the potential for additional calls, inquiries, and complaint resolution.

The Division of Service Operations is anticipating an increase in workload relating to the bill. The department will monitor the workload. The division is assuming that initially the impact will not require additional positions. However, the workload areas impacted in Division of Service Operations will include the:

- revenue section in the Central Intake Unit – it will need to process moneys collected for monitoring and/or administration of the program; and
- Customer Contact Center – it will need to be responsible for the additional calls, inquiries, and any complaints generated by the new responsibilities relating to the election monitoring.

The Division of Information Technology estimates they will need one-time set-up costs of \$25,000 to program the condominium and cooperative election monitoring into the LicenseEase system.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

According to the department, whether the division appoints private counsel or in-house counsel to monitor the elections, the division will be placed in a potentially compromised position where its duly appointed monitor allegedly commits an error, and subsequently, the division receives a complaint for investigation, and will be required to investigate or arbitrate an election that was supervised by a division employee or other appointee. The division arguably will be investigating the conduct of its own agent or employee and may be stopped by a court or by an administrative law judge from challenging the conduct of its appointee. Also if the agent or employee does commit an error, there is a potential for personal or departmental liability depending on the circumstances involved.

The department states that the precise role and authority of the election monitor is not stated in the bill. In order to provide certainty for the division, the monitor, the association, and its member, the department states that the bill should address the issues of whether the monitor has the authority to cancel an election if the monitor deems that notice was not in compliance with the statute and whether the monitor will rule on the validity of individual ballots and votes, voting certificates and notices, and similar issues that come up in many elections. The department points out that the nature and extent of the authority of the monitor needs to be stated.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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