

By the Committee on Comprehensive Planning; and Senator Geller

316-2370-04

1                                   A bill to be entitled  
2           An act relating to condominium and cooperative  
3           associations; amending ss. 718.112, 719.106,  
4           F.S.; providing for unit owners or shareholders  
5           to petition the Division of Florida Land Sales,  
6           Condominiums, and Mobile Homes of the  
7           Department of Business and Professional  
8           Regulation to appoint an election monitor to  
9           attend the annual association meeting and  
10          conduct the election of directors; providing  
11          for the adoption of rules; providing an  
12          effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16           Section 1. Paragraph (d) of subsection (2) of section  
17 718.112, Florida Statutes, is amended to read:

18           718.112 Bylaws.--

19           (2) REQUIRED PROVISIONS.--The bylaws shall provide for  
20 the following and, if they do not do so, shall be deemed to  
21 include the following:

22           (d) Unit owner meetings.--

23           1. There shall be an annual meeting of the unit  
24 owners. Unless the bylaws provide otherwise, a vacancy on the  
25 board caused by the expiration of a director's term shall be  
26 filled by electing a new board member, and the election shall  
27 be by secret ballot; however, if the number of vacancies  
28 equals or exceeds the number of candidates, no election is  
29 required. If there is no provision in the bylaws for terms of  
30 the members of the board, the terms of all members of the  
31 board shall expire upon the election of their successors at

1 the annual meeting. Any unit owner desiring to be a candidate  
2 for board membership shall comply with subparagraph 3. A  
3 person who has been convicted of any felony by any court of  
4 record in the United States and who has not had his or her  
5 right to vote restored pursuant to law in the jurisdiction of  
6 his or her residence is not eligible for board membership. The  
7 validity of an action by the board is not affected if it is  
8 later determined that a member of the board is ineligible for  
9 board membership due to having been convicted of a felony.

10 2. The bylaws shall provide the method of calling  
11 meetings of unit owners, including annual meetings. Written  
12 notice, which notice must include an agenda, shall be mailed,  
13 hand delivered, or electronically transmitted to each unit  
14 owner at least 14 days prior to the annual meeting and shall  
15 be posted in a conspicuous place on the condominium property  
16 at least 14 continuous days preceding the annual meeting. Upon  
17 notice to the unit owners, the board shall by duly adopted  
18 rule designate a specific location on the condominium property  
19 or association property upon which all notices of unit owner  
20 meetings shall be posted; however, if there is no condominium  
21 property or association property upon which notices can be  
22 posted, this requirement does not apply. In lieu of or in  
23 addition to the physical posting of notice of any meeting of  
24 the unit owners on the condominium property, the association  
25 may, by reasonable rule, adopt a procedure for conspicuously  
26 posting and repeatedly broadcasting the notice and the agenda  
27 on a closed-circuit cable television system serving the  
28 condominium association. However, if broadcast notice is used  
29 in lieu of a notice posted physically on the condominium  
30 property, the notice and agenda must be broadcast at least  
31 four times every broadcast hour of each day that a posted

1 notice is otherwise required under this section. When  
2 broadcast notice is provided, the notice and agenda must be  
3 broadcast in a manner and for a sufficient continuous length  
4 of time so as to allow an average reader to observe the notice  
5 and read and comprehend the entire content of the notice and  
6 the agenda. Unless a unit owner waives in writing the right to  
7 receive notice of the annual meeting, such notice shall be  
8 hand delivered, mailed, or electronically transmitted to each  
9 unit owner. Notice for meetings and notice for all other  
10 purposes shall be mailed to each unit owner at the address  
11 last furnished to the association by the unit owner, or hand  
12 delivered to each unit owner. However, if a unit is owned by  
13 more than one person, the association shall provide notice,  
14 for meetings and all other purposes, to that one address which  
15 the developer initially identifies for that purpose and  
16 thereafter as one or more of the owners of the unit shall so  
17 advise the association in writing, or if no address is given  
18 or the owners of the unit do not agree, to the address  
19 provided on the deed of record. An officer of the association,  
20 or the manager or other person providing notice of the  
21 association meeting, shall provide an affidavit or United  
22 States Postal Service certificate of mailing, to be included  
23 in the official records of the association affirming that the  
24 notice was mailed or hand delivered, in accordance with this  
25 provision.

26           3. The members of the board shall be elected by  
27 written ballot or voting machine. Proxies shall in no event be  
28 used in electing the board, either in general elections or  
29 elections to fill vacancies caused by recall, resignation, or  
30 otherwise, unless otherwise provided in this chapter. Not less  
31 than 60 days before a scheduled election, the association

1 shall mail, deliver, or electronically transmit, whether by  
2 separate association mailing or included in another  
3 association mailing, delivery, or transmission, including  
4 regularly published newsletters, to each unit owner entitled  
5 to a vote, a first notice of the date of the election. Any  
6 unit owner or other eligible person desiring to be a candidate  
7 for the board must give written notice to the association not  
8 less than 40 days before a scheduled election. Together with  
9 the written notice and agenda as set forth in subparagraph 2.,  
10 the association shall mail, deliver, or electronically  
11 transmit a second notice of the election to all unit owners  
12 entitled to vote therein, together with a ballot which shall  
13 list all candidates. Upon request of a candidate, the  
14 association shall include an information sheet, no larger than  
15 8 1/2 inches by 11 inches, which must be furnished by the  
16 candidate not less than 35 days before the election, to be  
17 included with the mailing, delivery, or transmission of the  
18 ballot, with the costs of mailing, delivery, or electronic  
19 transmission and copying to be borne by the association. The  
20 association is not liable for the contents of the information  
21 sheets prepared by the candidates. In order to reduce costs,  
22 the association may print or duplicate the information sheets  
23 on both sides of the paper. The division shall by rule  
24 establish voting procedures consistent with the provisions  
25 contained herein, including rules establishing procedures for  
26 giving notice by electronic transmission and rules providing  
27 for the secrecy of ballots. Elections shall be decided by a  
28 plurality of those ballots cast. There shall be no quorum  
29 requirement; however, at least 20 percent of the eligible  
30 voters must cast a ballot in order to have a valid election of  
31 members of the board. No unit owner shall permit any other

1 person to vote his or her ballot, and any such ballots  
2 improperly cast shall be deemed invalid, provided any unit  
3 owner who violates this provision may be fined by the  
4 association in accordance with s. 718.303. A unit owner who  
5 needs assistance in casting the ballot for the reasons stated  
6 in s. 101.051 may obtain assistance in casting the ballot. The  
7 regular election shall occur on the date of the annual  
8 meeting. The provisions of this subparagraph shall not apply  
9 to timeshare condominium associations. Notwithstanding the  
10 provisions of this subparagraph, an election is not required  
11 unless more candidates file notices of intent to run or are  
12 nominated than board vacancies exist.

13           4. Any approval by unit owners called for by this  
14 chapter or the applicable declaration or bylaws, including,  
15 but not limited to, the approval requirement in s. 718.111(8),  
16 shall be made at a duly noticed meeting of unit owners and  
17 shall be subject to all requirements of this chapter or the  
18 applicable condominium documents relating to unit owner  
19 decisionmaking, except that unit owners may take action by  
20 written agreement, without meetings, on matters for which  
21 action by written agreement without meetings is expressly  
22 allowed by the applicable bylaws or declaration or any statute  
23 that provides for such action.

24           5. Unit owners may waive notice of specific meetings  
25 if allowed by the applicable bylaws or declaration or any  
26 statute. If authorized by the bylaws, notice of meetings of  
27 the board of administration, unit owner meetings, except unit  
28 owner meetings called to recall board members under paragraph  
29 (j), and committee meetings may be given by electronic  
30 transmission to unit owners who consent to receive notice by  
31 electronic transmission.

1           6. Unit owners shall have the right to participate in  
2 meetings of unit owners with reference to all designated  
3 agenda items. However, the association may adopt reasonable  
4 rules governing the frequency, duration, and manner of unit  
5 owner participation.

6           7. Any unit owner may tape record or videotape a  
7 meeting of the unit owners subject to reasonable rules adopted  
8 by the division.

9           8. Unless otherwise provided in the bylaws, any  
10 vacancy occurring on the board before the expiration of a term  
11 may be filled by the affirmative vote of the majority of the  
12 remaining directors, even if the remaining directors  
13 constitute less than a quorum, or by the sole remaining  
14 director. In the alternative, a board may hold an election to  
15 fill the vacancy, in which case the election procedures must  
16 conform to the requirements of subparagraph 3. unless the  
17 association has opted out of the statutory election process,  
18 in which case the bylaws of the association control. Unless  
19 otherwise provided in the bylaws, a board member appointed or  
20 elected under this section shall fill the vacancy for the  
21 unexpired term of the seat being filled. Filling vacancies  
22 created by recall is governed by paragraph (j) and rules  
23 adopted by the division.

24           9. Ten percent of the total voting interests in a  
25 condominium association, or six unit owners, whichever is  
26 greater, may petition the division to appoint an election  
27 monitor to attend the annual meeting of the unit owners and  
28 conduct the election of directors. The division shall appoint  
29 a division employee, a person or persons specializing in  
30 condominium election monitoring, or an attorney licensed to  
31 practice in this state as the election monitor. All costs

1 associated with the election monitoring process shall be paid  
2 by the association. The division shall adopt a rule  
3 establishing procedures for the appointment of election  
4 monitors and the scope and extent of the monitor's role in the  
5 election process.

6  
7 Notwithstanding subparagraphs (b)2. and (d)3., an association  
8 may, by the affirmative vote of a majority of the total voting  
9 interests, provide for different voting and election  
10 procedures in its bylaws, which vote may be by a proxy  
11 specifically delineating the different voting and election  
12 procedures. The different voting and election procedures may  
13 provide for elections to be conducted by limited or general  
14 proxy.

15 Section 2. Paragraph (d) of subsection (1) of section  
16 719.106, Florida Statutes, is amended to read:

17 719.106 Bylaws; cooperative ownership.--

18 (1) MANDATORY PROVISIONS.--The bylaws or other  
19 cooperative documents shall provide for the following, and if  
20 they do not, they shall be deemed to include the following:

21 (d) Shareholder meetings.--There shall be an annual  
22 meeting of the shareholders. All members of the board of  
23 administration shall be elected at the annual meeting unless  
24 the bylaws provide for staggered election terms or for their  
25 election at another meeting. Any unit owner desiring to be a  
26 candidate for board membership shall comply with subparagraph  
27 1. The bylaws shall provide the method for calling meetings,  
28 including annual meetings. Written notice, which notice shall  
29 incorporate an identification of agenda items, shall be given  
30 to each unit owner at least 14 days prior to the annual  
31 meeting and shall be posted in a conspicuous place on the

1 cooperative property at least 14 continuous days preceding the  
2 annual meeting. Upon notice to the unit owners, the board  
3 shall by duly adopted rule designate a specific location on  
4 the cooperative property upon which all notice of unit owner  
5 meetings shall be posted. In lieu of or in addition to the  
6 physical posting of notice of any meeting of the shareholders  
7 on the cooperative property, the association may, by  
8 reasonable rule, adopt a procedure for conspicuously posting  
9 and repeatedly broadcasting the notice and the agenda on a  
10 closed-circuit cable television system serving the cooperative  
11 association. However, if broadcast notice is used in lieu of a  
12 notice posted physically on the cooperative property, the  
13 notice and agenda must be broadcast at least four times every  
14 broadcast hour of each day that a posted notice is otherwise  
15 required under this section. When broadcast notice is  
16 provided, the notice and agenda must be broadcast in a manner  
17 and for a sufficient continuous length of time so as to allow  
18 an average reader to observe the notice and read and  
19 comprehend the entire content of the notice and the agenda.  
20 Unless a unit owner waives in writing the right to receive  
21 notice of the annual meeting, the notice of the annual meeting  
22 shall be sent by mail, hand delivered, or electronically  
23 transmitted to each unit owner. An officer of the association  
24 shall provide an affidavit or United States Postal Service  
25 certificate of mailing, to be included in the official records  
26 of the association, affirming that notices of the association  
27 meeting were mailed, hand delivered, or electronically  
28 transmitted, in accordance with this provision, to each unit  
29 owner at the address last furnished to the association.  
30 1. After January 1, 1992, the board of administration  
31 shall be elected by written ballot or voting machine. Proxies

1 shall in no event be used in electing the board of  
2 administration, either in general elections or elections to  
3 fill vacancies caused by recall, resignation, or otherwise  
4 unless otherwise provided in this chapter. Not less than 60  
5 days before a scheduled election, the association shall mail,  
6 deliver, or transmit, whether by separate association mailing,  
7 delivery, or electronic transmission or included in another  
8 association mailing, delivery, or electronic transmission,  
9 including regularly published newsletters, to each unit owner  
10 entitled to vote, a first notice of the date of the election.  
11 Any unit owner or other eligible person desiring to be a  
12 candidate for the board of administration shall give written  
13 notice to the association not less than 40 days before a  
14 scheduled election. Together with the written notice and  
15 agenda as set forth in this section, the association shall  
16 mail, deliver, or electronically transmit a second notice of  
17 election to all unit owners entitled to vote therein, together  
18 with a ballot which shall list all candidates. Upon request of  
19 a candidate, the association shall include an information  
20 sheet, no larger than 8 1/2 inches by 11 inches, which must  
21 be furnished by the candidate not less than 35 days prior to  
22 the election, to be included with the mailing, delivery, or  
23 electronic transmission of the ballot, with the costs of  
24 mailing, delivery, or transmission and copying to be borne by  
25 the association. The association has no liability for the  
26 contents of the information sheets provided by the candidates.  
27 In order to reduce costs, the association may print or  
28 duplicate the information sheets on both sides of the paper.  
29 The division shall by rule establish voting procedures  
30 consistent with the provisions contained herein, including  
31 rules establishing procedures for giving notice by electronic

1 transmission and rules providing for the secrecy of ballots.  
2 Elections shall be decided by a plurality of those ballots  
3 cast. There shall be no quorum requirement. However, at least  
4 20 percent of the eligible voters must cast a ballot in order  
5 to have a valid election of members of the board of  
6 administration. No unit owner shall permit any other person  
7 to vote his or her ballot, and any such ballots improperly  
8 cast shall be deemed invalid. A unit owner who needs  
9 assistance in casting the ballot for the reasons stated in s.  
10 101.051 may obtain assistance in casting the ballot. Any unit  
11 owner violating this provision may be fined by the association  
12 in accordance with s. 719.303. The regular election shall  
13 occur on the date of the annual meeting. The provisions of  
14 this subparagraph shall not apply to timeshare cooperatives.  
15 Notwithstanding the provisions of this subparagraph, an  
16 election and balloting are not required unless more candidates  
17 file a notice of intent to run or are nominated than vacancies  
18 exist on the board.

19         2. Any approval by unit owners called for by this  
20 chapter, or the applicable cooperative documents, shall be  
21 made at a duly noticed meeting of unit owners and shall be  
22 subject to all requirements of this chapter or the applicable  
23 cooperative documents relating to unit owner decisionmaking,  
24 except that unit owners may take action by written agreement,  
25 without meetings, on matters for which action by written  
26 agreement without meetings is expressly allowed by the  
27 applicable cooperative documents or any Florida statute which  
28 provides for the unit owner action.

29         3. Unit owners may waive notice of specific meetings  
30 if allowed by the applicable cooperative documents or any  
31 Florida statute. If authorized by the bylaws, notice of

1 meetings of the board of administration, shareholder meetings,  
2 except shareholder meetings called to recall board members  
3 under paragraph (f), and committee meetings may be given by  
4 electronic transmission to unit owners who consent to receive  
5 notice by electronic transmission.

6 4. Unit owners shall have the right to participate in  
7 meetings of unit owners with reference to all designated  
8 agenda items. However, the association may adopt reasonable  
9 rules governing the frequency, duration, and manner of unit  
10 owner participation.

11 5. Any unit owner may tape record or videotape  
12 meetings of the unit owners subject to reasonable rules  
13 adopted by the division.

14 6. Ten percent of the total voting interests in a  
15 cooperative association, or six unit owners, whichever is  
16 greater, may petition the division to appoint an election  
17 monitor to attend the annual meeting of the shareholders and  
18 conduct the election of directors. The division shall appoint  
19 a division employee, a person or persons specializing in  
20 cooperative election monitoring, or an attorney licensed to  
21 practice in this state as the election monitor. All costs  
22 associated with the election monitoring process shall be paid  
23 by the association. The division shall adopt a rule  
24 establishing procedures for the appointment of election  
25 monitors and the scope and extent of the monitor's role in the  
26 election process.

27  
28 Notwithstanding subparagraphs (b)2. and (d)1., an association  
29 may, by the affirmative vote of a majority of the total voting  
30 interests, provide for a different voting and election  
31 procedure in its bylaws, which vote may be by a proxy

1 specifically delineating the different voting and election  
2 procedures. The different voting and election procedures may  
3 provide for elections to be conducted by limited or general  
4 proxy.

5 Section 3. This act shall take effect July 1, 2004.

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8 COMMITTEE SUBSTITUTE FOR  
9 Senate Bill 2536

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11 The CS differs from the bill as filed in that it requires,  
12 rather than allows, the Division of Land Sales, Condominiums,  
13 and Mobile Homes of the Department of Business and  
14 Professional Regulation to, upon petition from a condominium  
15 or cooperative association, or six unit owners, whichever is  
16 greater, to appoint an election monitor to attend the annual  
17 meeting of the shareholders and conduct, rather than  
18 supervise, the election of directors. In addition, the CS adds  
19 the option for the division to appoint a person or persons  
20 specializing in condominium or cooperative election monitoring  
21 to conduct the election.

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