

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 747 w/CS Fire Sprinklers/Condos/Cooperatives

**SPONSOR(S):** Culp

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1938

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government &amp; Veterans' Affairs</u>	<u>15 Y, 1 N w/CS</u>	<u>Morris</u>	<u>Cutchins</u>
2) <u>Judiciary</u>	<u>7 Y, 7 N</u>	<u>Thomas</u>	<u>Havlicak</u>
3) <u>House Calendar</u>	<u></u>	<u></u>	<u></u>
4) <u>Judiciary</u>	<u></u>	<u>Thomas</u>	<u>Havlicak</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill amends voting and notice procedures of condominium associations and cooperatives relating to retrofitting common areas and residential units with fire sprinkler systems. The bill provides that condominium and cooperative association members may vote by limited proxy or by ballot when voting whether to forego retrofitting of common elements or units of the condominium or cooperative with a fire sprinkler system or other engineered lifesafety system. The bill further requires the condominium association or cooperative to transmit written notice to each unit owner at least 14 days prior to the vote. The bill removes the requirement from present law that a condominium association or cooperative must send notice of the vote to each unit owner within 20 days after the vote. Finally, the bill removes the requirement from present law that a unit owner must provide notice of the vote to forego retrofitting to a new owner or tenant.

The bill does not appear to have a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0747d.ju.doc

**DATE:** March 30, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

The bill amends voting and notice procedures of condominium associations and cooperatives relating to retrofitting common areas with fire sprinkler systems. The bill provides that condominium association and cooperative members may vote by limited proxy or by ballot when voting whether to forego retrofitting of common elements or residential units of the condominium or cooperative with a fire sprinkler system or other engineered lifesafety system. The bill further requires the condominium association or cooperative to 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 removes the requirement from present law that a condominium association or cooperative must send notice of the vote to forego retrofitting to each unit owner within 20 days after the vote. Finally, the bill removes the requirement from present law that a unit owner must provide notice of the vote to forego retrofitting to a new owner or tenant.

#### Condominiums

A condominium is a form of ownership of real property “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>1</sup> A condominium association may be a corporation for profit or a corporation not for profit.<sup>2</sup> 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.<sup>3</sup>

Condominium unit owner meetings must take place at least once a year.<sup>4</sup> 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.<sup>5</sup> Written notice of a 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.<sup>6</sup> 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 to be included in the association records.<sup>7</sup>

<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Sections 718.104(4)(i) and 718.111(1)(a), F.S.

<sup>3</sup> Section 718.103(4), F.S.

<sup>4</sup> Section 718.112(2)(d)1., F.S.

<sup>5</sup> Sections 718.112(2)(d)4, 718.111(8), and 718.112(2)(d)1., (f), (i), and (j), F.S.

<sup>6</sup> Section 718.112(2)(d)2., F.S.

<sup>7</sup> *Id.*

Limited proxies may 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.<sup>8</sup> Proxies may not be used to elect board members or fill vacancies.<sup>9</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>10</sup> 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.<sup>11</sup> The board of administration (board) is the board of directors or other representative body which is responsible for the administration of a cooperative association.<sup>12</sup>

Shareholder meetings must take place at least once a year.<sup>13</sup> 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.<sup>14</sup> The cooperative association must provide notice of shareholder meetings that includes an agenda by mail to each unit owner at least 14 days before the meeting.<sup>15</sup> Notice of shareholder meetings must also be posted conspicuously on cooperative property at least 14 days before a shareholder meeting. 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.<sup>16</sup> An officer of the association must provide an affidavit or certificate of mailing to be included in the official record of the association.<sup>17</sup>

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 and decisions must be made by the owners of a majority of the voting interests represented at a meeting at which a quorum is present.<sup>18</sup> 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).<sup>19</sup> 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.<sup>20</sup> Proxy voting, either limited or general, may not be used in the election of board members.<sup>21</sup> General proxies may be used where limited proxies are not required and for nonsubstantive changes to items for which a limited proxy is given or

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<sup>8</sup> Sections 718.112(2)(b)2. and 718.111(13)(d), F.S.

<sup>9</sup> Section 718.112(2)(d)3., F.S.

<sup>10</sup> Section 719.103(12), F.S. A "muniment" is "documentary evidence by which a person can defend a title to property or a claim to rights." *The American Heritage Dictionary*, Second College Edition (Houghton Mifflin).

<sup>11</sup> Section 719.103(2), F.S.

<sup>12</sup> Section 719.103(3), F.S.

<sup>13</sup> Section 719.106(1)(d), F.S.

<sup>14</sup> Sections 719.104(5) and (6), 719.1055(1), and 719.304(1), F.S.

<sup>15</sup> Section 719.106(1)(d), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 719.106(1)(b)1., F.S.

<sup>19</sup> Section 719.106(1)(b)2., F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

required.<sup>22</sup> These provisions regarding voting procedures for cooperatives do not apply to timeshare cooperatives.<sup>23</sup>

## **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(1)(d) and 125.56(1), 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.<sup>24</sup> Under the Florida Fire Prevention Code, all high rise buildings are required to be retrofitted with fire sprinkler systems by 2014.<sup>25</sup> Section 718.112(2)(l), 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.

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 residential units with a fire sprinkler system or other engineered life safety system.<sup>26</sup> The vote to forego the retrofitting requires the approval of two-thirds of all voting interests in the affected condominium or cooperative.<sup>27</sup> 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.<sup>28</sup> The term "common areas" refers to an "enclosed hallway, corridor, lobby, stairwell, or entryway."<sup>29</sup> Sections 718.112(2)(l) 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.<sup>30</sup> 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.<sup>31</sup>

## **Proposed Changes**

Section 1 of the bill 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. This section further requires the association to mail, hand deliver, or electronically transmit written notice to each

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<sup>22</sup> *Id.*

<sup>23</sup> Section 719.106(1)(b)2., F.S.

<sup>24</sup> Rules 69A-60.003 and 69A-60.004, Fla. Admin. Code.

<sup>25</sup> Rule 69A-60.003(2)(k), Fla. Admin. Code.

<sup>26</sup> Chapter 2003-14, s. 6, L.O.F.

<sup>27</sup> Sections 718.112(2)(l) and 719.1055(5), F.S.

<sup>28</sup> Sections 718.112(2)(l) and 719.1055(5), F.S.

<sup>29</sup> Sections 718.112(2)(l) and 719.1055(5), F.S.

<sup>30</sup> Sections 718.112(2)(l)1. and 719.1055(5)(a), F.S.

<sup>31</sup> Sections 718.112(2)(l)1. and 719.1055(5)(a), F.S.

unit owner at least 14 days prior to the membership meeting at which the vote to forego retrofitting will occur.

Section 1 of 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. This section also 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 of the bill 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. This section further 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.

Section 2 of 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. This section also 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.

C. SECTION DIRECTORY:

**Section 1:** Amends s. 718.112(2)(l)1., F.S., relating to bylaw requirements of condominium associations.

**Section 2:** Amends s. 719.1055(5)(a), F.S., relating to bylaw requirements of cooperatives.

**Section 3:** Provides that the bill takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the requirement that condominium associations and cooperatives must send notice of votes regarding the decision whether to forego the retrofitting of common elements or residential units with a fire sprinkler system or other engineered lifesafety system by certified mail. Notice under the bill may be provided by regular U.S. mail, hand delivery, or electronic transmission, which will be less expensive than certified mail. The current United States Postal Service rate for certified mail is \$2.30, while the first-class letter rate is \$0.37.<sup>32</sup>

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Committee on Local Government & Veterans' Affairs adopted one amendment and passed the bill on March 3, 2004. The amendment clarifies the requirement of noticing for meetings that will discuss retrofitting common areas with fire sprinkler systems.

The Committee on Judiciary adopted two amendments to the bill prior to its final vote which laid the bill on the table on March 15, 2004. The amendments restored language stricken in the bill which requires an owner of a condominium or cooperative residential unit to disclose to a new owner or tenant the vote to forego the retrofitting of common elements or residential units with a fire sprinkler system or other engineered lifesafety systems.

Pursuant to House Rule 7.15(a), the bill was taken from the table without objection on the House Floor and placed on the Calendar on March 18, 2004. The bill was referred back to the Committee on Judiciary on March 25, 2004.

<sup>32</sup> For United States Postal Service rates, see their website at <http://www.usps.com/ratecase/special.htm>.