

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.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 2062

SPONSOR: Regulated Industries Committee and Senator Campbell

SUBJECT: Community Associations

DATE: April 20, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute (CS) provides the following emergency powers to the boards of condominium associations in response to a state of emergency declared in accordance with s. 252.36(2), F.S., or a mandatory evacuation order is issued by civil or law enforcement authorities. A condominium association board may:

- Conduct board meetings with notice given only to directors with whom it is practicable to communicate;
- The directors attending such meetings constitute a quorum, regardless of any quorum requirements;
- Provide notice of board meetings and decisions by any means of communication which the board deems reasonable under the circumstances;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Implement a disaster plan prior to, during or after a catastrophic event;
- Declare any portion of the condominium property unavailable for entry or occupancy in order to protect the health, safety, or welfare of such persons;
- Determine whether the condominium property can be safely inhabited or occupied;
- Mitigate further damage, even if the unit owner is obligated by the declaration or law to insure or replace the damage;
- Contract for services which are necessary to prevent further damage;
- Levy special assessments;

- Borrow money and pledge association assets as collateral without unit owner approval; and
- Establish a reserve category for uninsured casualty losses, based upon a formula the board considers appropriate.

The CS provides that the use of the special powers authorized under this section is limited to circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs. The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill.

The CS delays from 2010 to 2014 the year by which the local authorities can require high-rise condominiums to complete retrofitting common areas with a sprinkler system.

The CS also provides that voluntary homeowners' associations that are not otherwise subject to ch. 720, F.S., may use the procedures provided in ss. 720.401 through 720.407, F.S., to revive a declaration of covenants and restrictions which were extinguished pursuant to ch. 712, F.S.

The CS provides that this act shall take effect upon becoming law.

This CS creates section 718.1265, Florida Statutes.

This CS substantially amends section 718.112, Florida Statutes.

II. Present Situation:

Condominiums

A condominium is the form of ownership of real property created under 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 a condominium unit owner meeting, unit owners have the right to vote on matters specified in the association's bylaws, to purchase any land or recreation 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 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.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

¹ Section 718.103(11), F.S.

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

³ Section 718.103(4), F.S.

⁴ Section 718.112(2)(d)1., F.S.

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

⁶ Section 718.112(2)(d)2., F.S.

must execute an affidavit or provide a certificate of mailing to be included in association records for the purpose of demonstrating that a meeting notice was provided to unit owners in compliance with the law.⁷

A condominium association may enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities. The authority of a condo association's board is governed by the association's articles of incorporation and the bylaws.⁸

Contracts for Products and Services

Section 718.3026, F.S., provides that most contracts entered into by an association for the provisions of services must be in writing. An association must use competitive bidding if a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment in the aggregate that exceeds five percent of the total annual budget of the association, including reserves. The association is not required to accept the lowest bid. Contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are exempt from the bidding requirement.

Section 718.3026, F.S., also provides that “[n]othing contained herein is intended to limit the ability of an association to obtain needed products and services in an emergency.”⁹

Association Bylaws

A condominium association's bylaws provide the specific powers and duties of an association. Section 718.112(2), F.S., provides items that must be included in an association's bylaws, and provides that, if not included, are deemed by operation of law to be included in the bylaws. Required provisions include:

- The powers, duties and the appointment of a condominium board;
- A board meeting notice must include an agenda and must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency.

If the notice cannot be posted on condominium or association property, notices of board meetings must be mailed, delivered, or electronically transmitted at least 14 days before the meeting to the owner of each unit.¹⁰

Assessments by Condominium Associations

A condominium association has the authority to make and collect assessments from unit owners for the purpose of maintaining, leasing, or repairing association property.¹¹ Assessments must be made against condominium units in an amount sufficient to cover the association's estimated current operating expenses and unpaid operating expenses previously incurred.¹² A unit owner is

⁷ Section 718.112(2)(d)2., F.S.

⁸ Section 718.112(1)(a), F.S.

⁹ Section 718.3026(2)(b), F.S.

¹⁰ Section 718.112(c), F.S.

¹¹ Sections 718.103(1) and 718.111(4), F.S.

¹² Section 718.112(2)(g), F.S.

jointly and severally liable with the previous owner for all of a previous condominium unit owner's unpaid assessments that came due before the purchase of the condominium unit.¹³ The association's bylaws must provide for the manner of collecting assessments from unit owners. Section 718.112(2)(g), F.S., provides that assessments cannot be made less frequently than quarterly.

An association may impose a special assessment. To impose a special assessment, the specific purpose of the assessment must be stated in writing and delivered to each unit owner. Funds collected from special assessments may only be used for the specific purpose stated in the notice. Any remaining funds are considered common surplus, and at the discretion of the board may be returned to the unit owners or applied as a credit toward future assessments.¹⁴

Right of Access

Section 718.111(5), F.S., provides:

The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units.

Equitable Relief

Section 718.118, F.S., provides:

In the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.

Civil Liability for Association Officers, Director, Employees, or Agents

Section 617.0830(1), F.S., requires that directors of nonprofit corporations shall discharge their duties in the following manner:

- In good faith;
- With the care an ordinary prudent person in a like position would exercise under the circumstances; and
- In a manner he or she reasonably believes to be in the best interest of the corporation.

Section 617.0830(2), F.S., further provides that:

In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

¹³ Section 718.116(1)(a), F.S.

¹⁴ Section 718.116, F.S.

- (a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or
- (c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

Section 617.0830(4), F.S., provides that a director is not liable for any action, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Section 617.0834(1), F.S., also provides that an officer or director of a nonprofit corporation is not personally liable for money damages unless he or she breached or failed to perform his or her duties, and the act or omission:

- Violated a criminal law;
- Derived an improper personal benefit from the transaction; or
- Acted recklessly, in bad faith, or with malicious purpose.

Retrofitting Sprinkler Systems by Condominiums

Section 718.112(2)(1), F.S., provides that local authorities cannot require that condominium associations in high-rise buildings must retrofit their common areas with a fire sprinkler system before the end of the year 2014.

Reviving Association Covenants and Restrictions

Section 712.02, F.S., provides that:

Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03.

Section 712.02, F.S., provides the process for revival of covenants and restrictions for condominium associations with extinguished covenants and restrictions. Parcel owners in a community may revive a declaration of covenants with the approval of the Department of Community Affairs, if the following requirements are satisfied:

- All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;
- The revived declaration must be approved in the manner provided in s. 720.405(6), F.S.; and
- The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:
 - Have an effective term of longer duration than the term of the previous declaration;

- Omit restrictions contained in the previous declaration;
- Govern fewer than all of the parcels governed by the previous declaration;
- Provide for amendments to the declaration and other governing documents; and
- Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.¹⁵

Section 720.405(6), F.S., requires that a community must form an organizing committee to draft or obtain the correct documents to revive extinguished covenants. A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306, F.S.

The organizing committee must submit the documents to the Department of Community Affairs within 60 days of the parcel owners' approval. The department must determine within 60 days of submittal whether the documents comply or do not comply with the requirements of the statute, and inform the community of its decision.

No later than 30 days after receiving approval from the department, the organizing committee must file the articles of incorporation of the association with the Division of Corporations of the Department of State if the articles have not been previously filed with the division. No later than 30 days after receiving approval from the division, the president and secretary of the association must execute the revived declaration and other governing documents approved by the department in the name of the association and have the documents recorded with the clerk of the circuit court in the county where the affected parcels are located.¹⁶

III. Effect of Proposed Changes:

Emergency Powers for Condominium Boards

Section 1 creates s. 718.1265, F.S., to provide that the boards of condominium associations may exercise the following emergency powers in response to the declaration of a state of emergency in accordance with s. 252.36(2), F.S.,¹⁷ or a mandatory evacuation order is issued by civil or law enforcement authorities:

- Conduct board meetings with notice given only to directors with whom it is practicable to communicate;
- The directors attending such meetings constitute a quorum, regardless of any quorum requirements;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;
- Cancel and reschedule any association meeting;

¹⁵ Section 720.404, F.S.

¹⁶ Section 720.407(1) and (2), F.S.

¹⁷ Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. These emergency powers supplement the powers granted to condominium association boards in their articles of incorporation and bylaws.

The CS also provides that, consistent with the standards of s. 617.0830, F.S., the association may exercise the following powers:

- Implement a disaster plan prior to, during or after a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems or air conditioners;
- Declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons; and
- Determine whether the condominium property can be safely inhabited or occupied.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures, even if the unit owner is obligated by the declaration or law to insure or replace such items, and removing personal property from a unit;
- Contract for services which are necessary to prevent further damage, including:
 - drying of units,
 - boarding of broken windows or doors, and
 - replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property;
- Levy special assessments; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The CS provides that the grant of authority to condominium boards to borrow money is not intended to limit the general authority of the association to borrow money.

The CS provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Reserves for Uninsured Casualty Losses

Section 2 amends s. 718.112, F.S., to grant condominium associations the authority to establish a reserve category for uninsured casualty losses, based upon a formula the board considers appropriate.

Fire Sprinkler System Retrofitting

The CS also amends s. 718.112(2)(1), F.S., to delay from 2010 to 2014 the year by which the local authorities can require completion of retrofitting of condominium common areas in high-rise buildings with a sprinkler system.

Revival of Covenants and Restrictions

Section 3 creates s. 712.11, F.S., to provide that voluntary homeowners' associations that are not otherwise subject to ch. 720, F.S., may use the procedures provided in ss. 720.401 through 720.407, F.S., to revive a declaration of covenants and restrictions which were extinguished pursuant to ch. 712, F.S.

Effective Date

Section 4 provides that this act shall take effective upon becoming 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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