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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/25/2008	.	
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1 The Committee on Regulated Industries (Rich) recommended the
 2 following **amendment**:

3
 4 **Senate Amendment (with title amendment)**

5 Delete line(s) 33-295

6 and insert:

7 Section 1. Subsection (11) of section 718.111, Florida
 8 Statutes, is amended to read:

9 718.111 The association.--

10 (11) INSURANCE.--In order to protect the safety, health,
 11 and welfare of the people of the State of Florida and to ensure
 12 consistency in the provision of insurance coverage to
 13 condominiums and their unit owners, this subsection applies
 14 ~~paragraphs (a), (b), and (c) are deemed to apply to every~~
 15 residential condominium in the state, regardless of the date of
 16 its declaration of condominium. It is the intent of the

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17 Legislature to encourage lower or stable insurance premiums for
18 associations described in this subsection ~~section~~.

19 (a) Adequate hazard insurance, regardless of any
20 requirement in the declaration of condominium for coverage by the
21 association for full insurable value, replacement cost, or
22 similar coverage, shall be based upon the replacement cost of the
23 property to be insured as determined by an independent insurance
24 appraisal or update of a prior appraisal. The full insurable
25 value shall be determined at least once every 36 months.

26 1. An association or group of associations may provide
27 adequate hazard insurance through a self-insurance fund that
28 complies with the requirements of ss. 624.460-624.488.

29 2. The association may also provide adequate hazard
30 insurance coverage individually or for a group of no fewer than
31 three communities created and operating under this chapter,
32 chapter 719, chapter 720, or chapter 721 by obtaining and
33 maintaining for such communities insurance coverage sufficient to
34 cover an amount equal to the probable maximum loss for the
35 communities for a 250-year windstorm event. Such probable maximum
36 loss must be determined through the use of a competent model that
37 has been accepted by the Florida Commission on Hurricane Loss
38 Projection Methodology. No policy or program providing such
39 coverage shall be issued or renewed after July 1, 2008, unless it
40 has been reviewed and approved by the Office of Insurance
41 Regulation. The review and approval shall include approval of
42 the policy and related forms pursuant to ss. 627.410 and 627.411,
43 approval of the rates pursuant to s. 627.062, a determination
44 that the loss model approved by the Commission was accurately and
45 appropriately applied to the insured structures to determine the
46 250-year probable maximum loss, and a determination that complete



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47 | and accurate disclosure of all material provisions is provided
48 | to condominium unit owners prior to execution of the agreement by
49 | a condominium association.

50 | 3. When determining the adequate amount of hazard insurance
51 | coverage, the association may consider deductibles as determined
52 | by this subsection.

53 | (b) If an association is a developer-controlled
54 | association, the association shall exercise its best efforts to
55 | obtain and maintain insurance as described in paragraph (a).
56 | Failure to obtain and maintain adequate hazard insurance during
57 | any period of developer control constitutes a breach of fiduciary
58 | responsibility by the developer-appointed members of the board of
59 | directors of the association, unless the members can show that
60 | despite such failure, they have made their best efforts to
61 | maintain the required coverage.

62 | (c) Policies may include deductibles as determined by the
63 | board.

64 | 1. The deductibles shall be consistent with industry
65 | standards and prevailing practice for communities of similar size
66 | and age, and having similar construction and facilities in the
67 | locale where the condominium property is situated.

68 | 2. The deductibles may be based upon available funds,
69 | including reserve accounts, or predetermined assessment authority
70 | at the time the insurance is obtained.

71 | 3. The board shall establish the amount of deductibles
72 | based upon the level of available funds and predetermined
73 | assessment authority at a meeting of the board. Such meeting
74 | shall be open to all unit owners in the manner set forth in s.
75 | 718.112(2)(e). The notice of such meeting must state the proposed
76 | deductible and the available funds and the assessment authority



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77 relied upon by the board and estimate any potential assessment
78 amount against each unit, if any. The meeting described in this
79 paragraph may be held in conjunction with a meeting to consider
80 the proposed budget or an amendment thereto.

81 (d) An association controlled by unit owners operating as a
82 residential condominium shall use its best efforts to obtain and
83 maintain adequate insurance to protect the association, the
84 association property, the common elements, and the condominium
85 property that is required to be insured by the association
86 pursuant to this subsection.

87 (e) The declaration of condominium as originally recorded,
88 or as amended pursuant to procedures provided therein, may
89 provide that condominium property consisting of freestanding
90 buildings comprised of no more than one building in or on such
91 unit need not be insured by the association if the declaration
92 requires the unit owner to obtain adequate insurance for the
93 condominium property. An association may also obtain and maintain
94 liability insurance for directors and officers, insurance for the
95 benefit of association employees, and flood insurance for common
96 elements, association property, and units.

97 (f) Every hazard insurance policy issued or renewed on or
98 after January 1, 2009, for the purpose of protecting the
99 condominium shall provide primary coverage for:

100 1. All portions of the condominium property as originally
101 installed or replacement of like kind and quality, in accordance
102 with the original plans and specifications.

103 2. All alterations or additions made to the condominium
104 property or association property pursuant to s. 718.113(2).

105 3. The coverage shall exclude all personal property within
106 the unit or limited common elements, and floor, wall, and ceiling



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107 coverings, electrical fixtures, appliances, water heaters, water
108 filters, built-in cabinets and countertops, and window
109 treatments, including curtains, drapes, blinds, hardware, and
110 similar window treatment components, or replacements of any of
111 the foregoing.

112 (g) Every hazard insurance policy issued or renewed on or
113 after January 1, 2009, to an individual unit owner must contain a
114 provision stating that the coverage afforded by such policy is
115 excess coverage over the amount recoverable under any other
116 policy covering the same property. Such policies must include
117 special assessment coverage of no less than \$2,000 per
118 occurrence. An insurance policy issued to an individual unit
119 owner providing such coverage does not provide rights of
120 subrogation against the condominium association operating the
121 condominium in which such individual's unit is located.

122 1. All improvements or additions to the condominium
123 property that benefit fewer than all unit owners shall be insured
124 by the unit owner or owners having the use thereof, or may be
125 insured by the association at the cost and expense of the unit
126 owners having the use thereof.

127 2. The association shall require each owner to provide
128 evidence of a currently effective policy of hazard and liability
129 insurance upon request, but not more than once per year. Upon the
130 failure of an owner to provide a certificate of insurance issued
131 by an insurer approved to write such insurance in this state
132 within 30 days after the date on which a written request is
133 delivered, the association may purchase a policy of insurance on
134 behalf of an owner. The cost of such a policy, together with
135 reconstruction costs undertaken by the association but which are



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136 the responsibility of the unit owner, may be collected in the
137 manner provided for the collection of assessments in s. 718.116.

138 3. All reconstruction work after a casualty loss shall be
139 undertaken by the association except as otherwise authorized in
140 this section. A unit owner may undertake reconstruction work on
141 portions of the unit with the prior written consent of the board
142 of administration. However, such work may be conditioned upon the
143 approval of the repair methods, the qualifications of the
144 proposed contractor, or the contract that is used for that
145 purpose. A unit owner shall obtain all required governmental
146 permits and approvals prior to commencing reconstruction.

147 4. Unit owners are responsible for the cost of
148 reconstruction of any portions of the condominium property for
149 which the unit owner is required to carry casualty insurance, and
150 any such reconstruction work undertaken by the association shall
151 be chargeable to the unit owner and enforceable as an assessment
152 pursuant to s. 718.116. The association must be an additional
153 named insured and loss payee on all casualty insurance policies
154 issued to unit owners in the condominium operated by the
155 association.

156 5. A multicondominium association may elect, by a majority
157 vote of the collective members of the condominiums operated by
158 the association, to operate such condominiums as a single
159 condominium for purposes of insurance matters, including, but not
160 limited to, the purchase of the hazard insurance required by this
161 section and the apportionment of deductibles and damages in
162 excess of coverage. The election to aggregate the treatment of
163 insurance premiums, deductibles, and excess damages constitutes
164 an amendment to the declaration of all condominiums operated by
165 the association, and the costs of insurance shall be stated in

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166 the association budget. The amendments shall be recorded as
167 required by s. 718.110.

168 (h) The association shall maintain insurance or fidelity
169 bonding of all persons who control or disburse funds of the
170 association. The insurance policy or fidelity bond must cover the
171 maximum funds that will be in the custody of the association or
172 its management agent at any one time. As used in this paragraph,
173 the term "persons who control or disburse funds of the
174 association" includes, but is not limited to, those individuals
175 authorized to sign checks on behalf of the association, and the
176 president, secretary, and treasurer of the association. The
177 association shall bear the cost of any such bonding.

178 (i) The association may amend the declaration of
179 condominium without regard to any requirement for approval by
180 mortgagees of amendments affecting insurance requirements for the
181 purpose of conforming the declaration of condominium to the
182 coverage requirements of this subsection.

183 (j) Any portion of the condominium property required to be
184 insured by the association against casualty loss pursuant to
185 paragraph (f) which is damaged by casualty shall be
186 reconstructed, repaired, or replaced as necessary by the
187 association as a common expense. All hazard insurance
188 deductibles, uninsured losses, and other damages in excess of
189 hazard insurance coverage under the hazard insurance policies
190 maintained by the association are a common expense of the
191 condominium, except that:

192 1. A unit owner is responsible for the costs of repair or
193 replacement of any portion of the condominium property not paid
194 by insurance proceeds, if such damage is caused by intentional
195 conduct, negligence, or failure to comply with the terms of the



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196 declaration or the rules of the association by a unit owner, the
197 members of his or her family, unit occupants, tenants, guests, or
198 invitees, without compromise of the subrogation rights of any
199 insurer as set forth in paragraph (g).

200 2. The provisions of subparagraph 1. regarding the
201 financial responsibility of a unit owner for the costs of
202 repairing or replacing other portions of the condominium property
203 also applies to the costs of repair or replacement of personal
204 property of other unit owners or the association, as well as
205 other property, whether real or personal, which the unit owners
206 are required to insure under paragraph (g).

207 3. To the extent the cost of repair or reconstruction for
208 which the unit owner is responsible under this paragraph is
209 reimbursed to the association by insurance proceeds, and, to the
210 extent the association has collected the cost of such repair or
211 reconstruction from the unit owner, the association shall
212 reimburse the unit owner without the waiver of any rights of
213 subrogation.

214 4. The association is not obligated to pay for repair or
215 reconstruction or repairs of casualty losses as a common expense
216 if the casualty losses were known or should have been known to a
217 unit owner and were not reported to the association until after
218 the insurance claim of the association for that casualty was
219 settled or resolved with finality, or denied on the basis that it
220 was untimely filed.

221 (k) An association may, upon the approval of a majority of
222 the total voting interests in the association, opt out of the
223 provisions of paragraph (j) for the allocation of repair or
224 reconstruction expenses and allocate repair or reconstruction
225 expenses in the manner provided in the declaration as originally



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226 recorded or as amended. Such vote may be approved by the voting
227 interests of the association without regard to any mortgagee
228 consent requirements.

229 (l) In a multicondominium association that has not
230 consolidated its financial operations under s. 718.111(6), any
231 condominium operated by the association may opt out of the
232 provisions of paragraph (j) with the approval of a majority of
233 the total voting interests in that condominium. Such vote may be
234 approved by the voting interests without regard to any mortgagee
235 consent requirements.

236 (m) Any association or condominium voting to opt out of the
237 guidelines for repair or reconstruction expenses as described in
238 paragraph (j) must record a notice setting forth the date of the
239 opt-out vote and the page of the official records book on which
240 the declaration is recorded. The decision to opt out is effective
241 upon the date of recording of the notice in the public records by
242 the association. An association that has voted to opt out of
243 paragraph (j) may reverse that decision by the same vote required
244 in paragraphs (k) and (l), and notice thereof shall be recorded
245 in the official records.

246 (n) The association is not obligated to pay for any
247 reconstruction or repair expenses due to casualty loss to any
248 improvements installed by a current or former owner of the unit
249 or by the developer if the improvement benefits only the unit for
250 which it was installed and is not part of the standard
251 improvements installed by the developer on all units as part of
252 original construction, whether or not such improvement is located
253 within the unit. This paragraph does not relieve any party of its
254 obligations regarding recovery due under any insurance
255 implemented specifically for any such improvements.



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256 (o) The provisions of this subsection shall not apply to
257 timeshare condominium associations. Insurance for timeshare
258 condominium associations shall be maintained pursuant to s.
259 721.165.

260 ~~Therefore, the Legislature requires a report to be prepared by~~
261 ~~the Office of Insurance Regulation of the Department of Financial~~
262 ~~Services for publication 18 months from the effective date of~~
263 ~~this act, evaluating premium increases or decreases for~~
264 ~~associations, unit owner premium increases or decreases,~~
265 ~~recommended changes to better define common areas, or any other~~
266 ~~information the Office of Insurance Regulation deems appropriate.~~

267 ~~(a) A unit owner controlled association operating a~~
268 ~~residential condominium shall use its best efforts to obtain and~~
269 ~~maintain adequate insurance to protect the association, the~~
270 ~~association property, the common elements, and the condominium~~
271 ~~property required to be insured by the association pursuant to~~
272 ~~paragraph (b). If the association is developer controlled, the~~
273 ~~association shall exercise due diligence to obtain and maintain~~
274 ~~such insurance. Failure to obtain and maintain adequate insurance~~
275 ~~during any period of developer control shall constitute a breach~~
276 ~~of fiduciary responsibility by the developer appointed members of~~
277 ~~the board of directors of the association, unless said members~~
278 ~~can show that despite such failure, they have exercised due~~
279 ~~diligence. The declaration of condominium as originally recorded,~~
280 ~~or amended pursuant to procedures provided therein, may require~~
281 ~~that condominium property consisting of freestanding buildings~~
282 ~~where there is no more than one building in or on such unit need~~
283 ~~not be insured by the association if the declaration requires the~~
284 ~~unit owner to obtain adequate insurance for the condominium~~
285 ~~property. An association may also obtain and maintain liability~~

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286 ~~insurance for directors and officers, insurance for the benefit~~
287 ~~of association employees, and flood insurance for common~~
288 ~~elements, association property, and units. Adequate insurance,~~
289 ~~regardless of any requirement in the declaration of condominium~~
290 ~~for coverage by the association for "full insurable value,"~~
291 ~~"replacement cost," or the like, may include reasonable~~
292 ~~deductibles as determined by the board based upon available funds~~
293 ~~or predetermined assessment authority at the time that the~~
294 ~~insurance is obtained.~~

295 ~~1. Windstorm insurance coverage for a group of no fewer~~
296 ~~than three communities created and operating under this chapter,~~
297 ~~chapter 719, chapter 720, or chapter 721 may be obtained and~~
298 ~~maintained for the communities if the insurance coverage is~~
299 ~~sufficient to cover an amount equal to the probable maximum loss~~
300 ~~for the communities for a 250-year windstorm event. Such probable~~
301 ~~maximum loss must be determined through the use of a competent~~
302 ~~model that has been accepted by the Florida Commission on~~
303 ~~Hurricane Loss Projection Methodology. Such insurance coverage is~~
304 ~~deemed adequate windstorm insurance for the purposes of this~~
305 ~~section.~~

306 ~~2. An association or group of associations may self-insure~~
307 ~~against claims against the association, the association property,~~
308 ~~and the condominium property required to be insured by an~~
309 ~~association, upon compliance with the applicable provisions of~~
310 ~~ss. 624.460-624.488, which shall be considered adequate insurance~~
311 ~~for the purposes of this section. A copy of each policy of~~
312 ~~insurance in effect shall be made available for inspection by~~
313 ~~unit owners at reasonable times.~~



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314 ~~(b) Every hazard insurance policy issued or renewed on or~~
315 ~~after January 1, 2004, to protect the condominium shall provide~~
316 ~~primary coverage for:~~

317 ~~1. All portions of the condominium property located outside~~
318 ~~the units;~~

319 ~~2. The condominium property located inside the units as~~
320 ~~such property was initially installed, or replacements thereof of~~
321 ~~like kind and quality and in accordance with the original plans~~
322 ~~and specifications or, if the original plans and specifications~~
323 ~~are not available, as they existed at the time the unit was~~
324 ~~initially conveyed; and~~

325 ~~3. All portions of the condominium property for which the~~
326 ~~declaration of condominium requires coverage by the association.~~

327
328 ~~Anything to the contrary notwithstanding, the terms "condominium~~
329 ~~property," "building," "improvements," "insurable improvements,"~~
330 ~~"common elements," "association property," or any other term~~
331 ~~found in the declaration of condominium which defines the scope~~
332 ~~of property or casualty insurance that a condominium association~~
333 ~~must obtain shall exclude all floor, wall, and ceiling coverings,~~
334 ~~electrical fixtures, appliances, air conditioner or heating~~
335 ~~equipment, water heaters, water filters, built-in cabinets and~~
336 ~~countertops, and window treatments, including curtains, drapes,~~
337 ~~blinds, hardware, and similar window treatment components, or~~
338 ~~replacements of any of the foregoing which are located within the~~
339 ~~boundaries of a unit and serve only one unit and all air~~
340 ~~conditioning compressors that service only an individual unit,~~
341 ~~whether or not located within the unit boundaries. The foregoing~~
342 ~~is intended to establish the property or casualty insuring~~
343 ~~responsibilities of the association and those of the individual~~

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344 ~~unit owner and do not serve to broaden or extend the perils of~~
345 ~~coverage afforded by any insurance contract provided to the~~
346 ~~individual unit owner. Beginning January 1, 2004, the association~~
347 ~~shall have the authority to amend the declaration of condominium,~~
348 ~~without regard to any requirement for mortgagee approval of~~
349 ~~amendments affecting insurance requirements, to conform the~~
350 ~~declaration of condominium to the coverage requirements of this~~
351 ~~section.~~

352 ~~(c) Every hazard insurance policy issued or renewed on or~~
353 ~~after January 1, 2004, to an individual unit owner shall provide~~
354 ~~that the coverage afforded by such policy is excess over the~~
355 ~~amount recoverable under any other policy covering the same~~
356 ~~property. Each insurance policy issued to an individual unit~~
357 ~~owner providing such coverage shall be without rights of~~
358 ~~subrogation against the condominium association that operates the~~
359 ~~condominium in which such unit owner's unit is located. All real~~
360 ~~or personal property located within the boundaries of the unit~~
361 ~~owner's unit which is excluded from the coverage to be provided~~
362 ~~by the association as set forth in paragraph (b) shall be insured~~
363 ~~by the individual unit owner.~~

364 ~~(d) The association shall obtain and maintain adequate~~
365 ~~insurance or fidelity bonding of all persons who control or~~
366 ~~disburse funds of the association. The insurance policy or~~
367 ~~fidelity bond must cover the maximum funds that will be in the~~
368 ~~eustody of the association or its management agent at any one~~
369 ~~time. As used in this paragraph, the term "persons who control or~~
370 ~~disburse funds of the association" includes, but is not limited~~
371 ~~to, those individuals authorized to sign checks and the~~
372 ~~president, secretary, and treasurer of the association. The~~
373 ~~association shall bear the cost of bonding.~~



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

 Delete line(s) 2-21

and insert:

 An act relating to condominium associations amending s.
 718.111, F.S.; requiring that hazard insurance be based
 upon the replacement cost of the property to be insured as
 determined by an independent insurance appraisal or update
 of a prior appraisal; requiring that the full insurable
 value be determined at specified intervals; providing a
 means by which an association may provide adequate hazard
 insurance; authorizing an association to consider certain
 information when determining coverage amounts; providing
 for coverage by developer-controlled associations;
 providing that policies may include deductibles as
 determined by the association's board of directors;
 providing requirements and guidelines for the
 establishment of such deductibles; requiring that the
 amounts of deductibles be set at a meeting of the board;
 providing requirements for such meeting; requiring that an
 association controlled by unit owners operating as a
 residential condominium use its best efforts to obtain and
 maintain adequate insurance to protect the association and
 property under its supervision or control; providing that
 a declaration of condominium may provide that condominium
 property consisting of freestanding buildings comprised of
 no more than one building in or on such unit need not be
 insured by the association if the declaration requires the
 unit owner to obtain adequate insurance for the



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404 condominium property; authorizing an association to obtain
405 and maintain liability insurance for directors and
406 officers, insurance for the benefit of association
407 employees, and flood insurance for common elements,
408 association property, and units; requiring that every
409 hazard insurance policy issued or renewed on or after a
410 specified date for the purpose of protecting the
411 condominium provide certain coverage; requiring that such
412 policies contain certain provisions; providing that such
413 policies issued to individual unit owners do not provide
414 rights of subrogation against the condominium association;
415 providing for the insurance of improvements or additions
416 benefiting fewer than all unit owners; requiring that an
417 association require each owner to provide evidence of a
418 current policy of hazard and liability insurance upon
419 request; limiting the frequency with which an association
420 may make such a request; authorizing an association to
421 purchase coverage on behalf of an owner under certain
422 circumstances; providing for the collection of the costs
423 of such a policy; providing responsibilities of the unit
424 owner and association with regard to reconstruction work
425 and associated costs after a casualty loss; authorizing a
426 multicondominium association to operate such condominiums
427 as a single condominium for certain purposes by majority
428 vote of the members of all applicable condominiums;
429 providing that such election constitutes an amendment to
430 the declaration of all applicable condominiums; requiring
431 that an association maintain insurance or fidelity bonding
432 for all persons who control or disburse association funds;
433 requiring that such insurance policy or fidelity bond



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434 cover the maximum funds in the custody of the association
435 or its management agent at any one time; defining the term
436 "persons who control or disburse funds of the
437 association"; authorizing an association to amend the
438 declaration of condominium without regard to any
439 requirement for approval by mortgagees of amendments
440 affecting insurance requirements for the purpose of
441 conforming the declaration of condominium to certain
442 coverage requirements; providing that any portion of the
443 condominium property required to be insured by the
444 association against casualty loss which is damaged be
445 reconstructed, repaired, or replaced as necessary by the
446 association as a common expense; providing that all hazard
447 insurance deductibles, uninsured losses, and other damages
448 in excess of hazard insurance coverage under the hazard
449 insurance policies maintained by the association are a
450 common expense of the condominium; providing exceptions;
451 allocating responsibility for certain costs of repair or
452 reconstruction; authorizing an association to opt out of
453 certain requirements related to such allocation of
454 responsibility by majority vote; providing a procedure by
455 which a multicondominium association that has not
456 consolidated its financial operations may opt out of such
457 allocation of responsibility; requiring that a decision to
458 opt out be recorded; providing that such decision takes
459 effect on the date on which it is recorded; authorizing
460 the reversal of such decision; providing a procedure for
461 reversal; providing that an association is not obligated
462 to pay for any reconstruction or repair expenses for
463 improvements made by an owner or the development if an

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464 | improvement benefits only the unit for which it was
465 | installed; amending s. 718.113, F.S.;