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CHAMBER ACTION

Senate

House

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5/2/2008 2:41 PM

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1 Senator Posey moved the following **amendment**:

2  
3 **Senate Amendment (with title amendment)**

4 Between lines 130 and 131

5 insert:

6 Section 4. Paragraph (d) of subsection (2) of section  
7 718.112, Florida Statutes, is amended to read:

8 718.112 Bylaws.--

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

12 (d) Unit owner meetings.--

13 1. There shall be an annual meeting of the unit owners held  
14 at the location provided in the association bylaws and, if the  
15 bylaws are silent as to the location, the meeting shall be held  
16 within 45 miles of the condominium property. However, such  
17 distance requirement does not apply to an association governing a



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18 timeshare condominium. Unless the bylaws provide otherwise, a  
19 vacancy on the board caused by the expiration of a director's  
20 term shall be filled by electing a new board member, and the  
21 election shall be by secret ballot; however, if the number of  
22 vacancies equals or exceeds the number of candidates, no election  
23 is required. ~~If there is no provision in the bylaws for terms of~~  
24 ~~the members of the board,~~ The terms of all members of the board  
25 shall expire ~~upon the election of their successors~~ at the annual  
26 meeting and such board members may stand for reelection unless  
27 otherwise permitted by the bylaws. In the event that the bylaws  
28 permit staggered terms of no more than 2 years and upon approval  
29 of a majority of the total voting interests, the association  
30 board members may serve 2-year staggered terms. If no person is  
31 interested in or demonstrates an intention to run for the  
32 position of a board member whose term has expired according to  
33 the provisions of this subparagraph, such board member whose term  
34 has expired shall be automatically reappointed to the board of  
35 administration and need not stand for reelection. In a  
36 condominium association of more than 10 units, coowners of a unit  
37 may not serve as members of the board of directors at the same  
38 time. Any unit owner desiring to be a candidate for board  
39 membership shall comply with subparagraph 3. A person who has  
40 been suspended or removed by the division under this chapter, or  
41 who is delinquent in the payment of any fee or assessment as  
42 provided in paragraph (n), is not eligible for board membership.  
43 A person who has been convicted of any felony in this state or by  
44 any court of record in a the United States District or  
45 Territorial Court, or who has been convicted of any offense in  
46 another jurisdiction that would be considered a felony if  
47 committed in this state, and who has not had his or her right to



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48 ~~vote restored pursuant to law in the jurisdiction of his or her~~  
49 ~~residence~~ is not eligible for board membership unless such  
50 felon's civil rights have been restored for a period of no less  
51 than 5 years as of the date on which such person seeks election  
52 to the board. The validity of an action by the board is not  
53 affected if it is later determined that a member of the board is  
54 ineligible for board membership due to having been convicted of a  
55 felony.

56       2. The bylaws shall provide the method of calling meetings  
57 of unit owners, including annual meetings. Written notice, which  
58 notice must include an agenda, shall be mailed, hand delivered,  
59 or electronically transmitted to each unit owner at least 14 days  
60 prior to the annual meeting and shall be posted in a conspicuous  
61 place on the condominium property at least 14 continuous days  
62 preceding the annual meeting. Upon notice to the unit owners, the  
63 board shall by duly adopted rule designate a specific location on  
64 the condominium property or association property upon which all  
65 notices of unit owner meetings shall be posted; however, if there  
66 is no condominium property or association property upon which  
67 notices can be posted, this requirement does not apply. In lieu  
68 of or in addition to the physical posting of notice of any  
69 meeting of the unit owners on the condominium property, the  
70 association may, by reasonable rule, adopt a procedure for  
71 conspicuously posting and repeatedly broadcasting the notice and  
72 the agenda on a closed-circuit cable television system serving  
73 the condominium association. However, if broadcast notice is used  
74 in lieu of a notice posted physically on the condominium  
75 property, the notice and agenda must be broadcast at least four  
76 times every broadcast hour of each day that a posted notice is  
77 otherwise required under this section. When broadcast notice is



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78 | provided, the notice and agenda must be broadcast in a manner and  
79 | for a sufficient continuous length of time so as to allow an  
80 | average reader to observe the notice and read and comprehend the  
81 | entire content of the notice and the agenda. Unless a unit owner  
82 | waives in writing the right to receive notice of the annual  
83 | meeting, such notice shall be hand delivered, mailed, or  
84 | electronically transmitted to each unit owner. Notice for  
85 | meetings and notice for all other purposes shall be mailed to  
86 | each unit owner at the address last furnished to the association  
87 | by the unit owner, or hand delivered to each unit owner. However,  
88 | if a unit is owned by more than one person, the association shall  
89 | provide notice, for meetings and all other purposes, to that one  
90 | address which the developer initially identifies for that purpose  
91 | and thereafter as one or more of the owners of the unit shall so  
92 | advise the association in writing, or if no address is given or  
93 | the owners of the unit do not agree, to the address provided on  
94 | the deed of record. An officer of the association, or the manager  
95 | or other person providing notice of the association meeting,  
96 | shall provide an affidavit or United States Postal Service  
97 | certificate of mailing, to be included in the official records of  
98 | the association affirming that the notice was mailed or hand  
99 | delivered, in accordance with this provision.

100 |       3. The members of the board shall be elected by written  
101 | ballot or voting machine. Proxies shall in no event be used in  
102 | electing the board, either in general elections or elections to  
103 | fill vacancies caused by recall, resignation, or otherwise,  
104 | unless otherwise provided in this chapter. Not less than 60 days  
105 | before a scheduled election, the association shall mail, deliver,  
106 | or electronically transmit, whether by separate association  
107 | mailing or included in another association mailing, delivery, or



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108 transmission, including regularly published newsletters, to each  
109 unit owner entitled to a vote, a first notice of the date of the  
110 election. Any unit owner or other eligible person desiring to be  
111 a candidate for the board must give written notice to the  
112 association not less than 40 days before a scheduled election.  
113 Together with the written notice and agenda as set forth in  
114 subparagraph 2., the association shall mail, deliver, or  
115 electronically transmit a second notice of the election to all  
116 unit owners entitled to vote therein, together with a ballot  
117 which shall list all candidates. Upon request of a candidate, the  
118 association shall include an information sheet, no larger than  
119 8 1/2 inches by 11 inches, which must be furnished by the  
120 candidate not less than 35 days before the election, to be  
121 included with the mailing, delivery, or transmission of the  
122 ballot, with the costs of mailing, delivery, or electronic  
123 transmission and copying to be borne by the association. The  
124 association is not liable for the contents of the information  
125 sheets prepared by the candidates. In order to reduce costs, the  
126 association may print or duplicate the information sheets on both  
127 sides of the paper. The division shall by rule establish voting  
128 procedures consistent with the provisions contained herein,  
129 including rules establishing procedures for giving notice by  
130 electronic transmission and rules providing for the secrecy of  
131 ballots. Elections shall be decided by a plurality of those  
132 ballots cast. There shall be no quorum requirement; however, at  
133 least 20 percent of the eligible voters must cast a ballot in  
134 order to have a valid election of members of the board. No unit  
135 owner shall permit any other person to vote his or her ballot,  
136 and any such ballots improperly cast shall be deemed invalid,  
137 provided any unit owner who violates this provision may be fined



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138 | by the association in accordance with s. 718.303. A unit owner  
139 | who needs assistance in casting the ballot for the reasons stated  
140 | in s. 101.051 may obtain assistance in casting the ballot. The  
141 | regular election shall occur on the date of the annual meeting.  
142 | The provisions of this subparagraph shall not apply to timeshare  
143 | condominium associations. Notwithstanding the provisions of this  
144 | subparagraph, an election is not required unless more candidates  
145 | file notices of intent to run or are nominated than board  
146 | vacancies exist.

147 |         4. Any approval by unit owners called for by this chapter  
148 | or the applicable declaration or bylaws, including, but not  
149 | limited to, the approval requirement in s. 718.111(8), shall be  
150 | made at a duly noticed meeting of unit owners and shall be  
151 | subject to all requirements of this chapter or the applicable  
152 | condominium documents relating to unit owner decisionmaking,  
153 | except that unit owners may take action by written agreement,  
154 | without meetings, on matters for which action by written  
155 | agreement without meetings is expressly allowed by the applicable  
156 | bylaws or declaration or any statute that provides for such  
157 | action.

158 |         5. Unit owners may waive notice of specific meetings if  
159 | allowed by the applicable bylaws or declaration or any statute.  
160 | If authorized by the bylaws, notice of meetings of the board of  
161 | administration, unit owner meetings, except unit owner meetings  
162 | called to recall board members under paragraph (j), and committee  
163 | meetings may be given by electronic transmission to unit owners  
164 | who consent to receive notice by electronic transmission.

165 |         6. Unit owners shall have the right to participate in  
166 | meetings of unit owners with reference to all designated agenda  
167 | items. However, the association may adopt reasonable rules



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168 governing the frequency, duration, and manner of unit owner  
169 participation.

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

173 8. Unless otherwise provided in the bylaws, any vacancy  
174 occurring on the board before the expiration of a term may be  
175 filled by the affirmative vote of the majority of the remaining  
176 directors, even if the remaining directors constitute less than a  
177 quorum, or by the sole remaining director. In the alternative, a  
178 board may hold an election to fill the vacancy, in which case the  
179 election procedures must conform to the requirements of  
180 subparagraph 3. unless the association governs 10 units or less  
181 and has opted out of the statutory election process, in which  
182 case the bylaws of the association control. Unless otherwise  
183 provided in the bylaws, a board member appointed or elected under  
184 this section shall fill the vacancy for the unexpired term of the  
185 seat being filled. Filling vacancies created by recall is  
186 governed by paragraph (j) and rules adopted by the division.

187 9. Within 30 days after being elected to the board of  
188 directors, a new director shall certify in writing to the  
189 secretary of the association that he or she has read the  
190 association's declarations of covenants and restrictions,  
191 articles of incorporation, bylaws, and current written policies,  
192 he or she will work to uphold such documents and policies to the  
193 best of his or her ability, and he or she will faithfully  
194 discharge his or her fiduciary responsibility to the  
195 association's members. Failure to timely file the statement  
196 automatically disqualifies the director from service on the  
197 association's board of directors. The secretary shall cause the



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198 association to retain a director's certification for inspection  
199 by the members for 5 years after a director's election. Failure  
200 to have such certification on file does not affect the validity  
201 of any appropriate action.

202  
203 Notwithstanding subparagraphs (b)2. and (d)3., an association of  
204 10 or fewer units may, by the affirmative vote of a majority of  
205 the total voting interests, provide for different voting and  
206 election procedures in its bylaws, which vote may be by a proxy  
207 specifically delineating the different voting and election  
208 procedures. The different voting and election procedures may  
209 provide for elections to be conducted by limited or general  
210 proxy.

211  
212  
213 ===== T I T L E A M E N D M E N T =====

214 And the title is amended as follows:

215  
216 On line 7, after the second semicolon,  
217 insert:

218 amending s. 718.112, F.S.; providing requirements for the  
219 location of annual unit owner meetings; revising terms of  
220 service for board members; prohibiting certain persons  
221 from serving on the board; requiring the association to  
222 provide a certification form to unit owners for specified  
223 purposes; authorizing an association consisting of a  
224 specified maximum number of units to provide for different  
225 voting and election procedures in its bylaws by  
226 affirmative vote of a majority of the association's voting  
227 interests; revising requirements related to the annual





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228 budget; requiring proxy questions relating to reserves to  
229 contain a specified statement; providing for the removal  
230 of board members under certain circumstances; requiring  
231 that directors who are delinquent in certain payments owed  
232 in excess of certain periods of time be suspended from  
233 office or deemed to have abandoned their offices;  
234 requiring that directors charged with certain offenses  
235 involving an association's funds or property be suspended  
236 from office pending resolution of the charge; providing  
237 for the reinstatement of such officers or directors under  
238 certain circumstances; requiring each newly elected  
239 director to certify to the secretary of the association  
240 that he or she has read the association's declarations of  
241 covenants and restrictions, articles of incorporation,  
242 bylaws, and current written policies and will work to  
243 uphold such documents and policies to the best of his or  
244 her ability; providing that a failure to timely file the  
245 statement automatically disqualifies the director from  
246 service on the association's board of directors; requiring  
247 the secretary of the association to retain a director's  
248 certification for inspection by the members for a  
249 specified period of years after a director's election;