

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Robaina offered the following:

2  
3 **Amendment (with directory and title amendments)**

4 Between lines 278 and 279, insert:

5 (h) Amendment of bylaws.--

6 1. The method by which the bylaws may be amended  
7 consistent with the provisions of this chapter shall be stated.  
8 If the bylaws fail to provide a method of amendment, the bylaws  
9 may be amended if the amendment is approved by the owners of not  
10 less than two-thirds of the voting interests.

11 2. No bylaw shall be revised or amended by reference to  
12 its title or number only. Proposals to amend existing bylaws  
13 shall contain the full text of the bylaws to be amended; new  
14 words shall be inserted in the text underlined, and words to be  
15 deleted shall be lined through with hyphens. However, if the  
16 proposed change is so extensive that this procedure would

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17 hinder, rather than assist, the understanding of the proposed  
18 amendment, it is not necessary to use underlining and hyphens as  
19 indicators of words added or deleted, but, instead, a notation  
20 must be inserted immediately preceding the proposed amendment in  
21 substantially the following language: "Substantial rewording of  
22 bylaw. See bylaw \_\_\_\_\_ for present text."

23 3. Nonmaterial errors or omissions in the bylaw process  
24 will not invalidate an otherwise properly promulgated amendment.

25 4. If the bylaws provide for amendment by the board of  
26 administration, no bylaw may be amended unless it is heard and  
27 noticed at two consecutive meetings of the board of  
28 administration that are at least 1 week apart.

29 Section 2. Subsection (11) is added to section 718.116,  
30 Florida Statutes, to read:

31 718.116 Assessments; liability; lien and priority;  
32 interest; collection.--

33 (11) During the pendency of any foreclosure action of a  
34 condominium unit, if the unit is occupied by a tenant and the  
35 unit owner is delinquent in the payment of regular assessments,  
36 the association may demand that the tenant pay to the  
37 association the future regular assessments related to the  
38 condominium unit. The demand shall be continuing in nature, and  
39 upon demand the tenant shall continue to pay the regular  
40 assessments to the association until the association releases  
41 the tenant or the tenant discontinues tenancy in the unit. The  
42 association shall mail written notice to the unit owner of the  
43 association's demand that the tenant pay regular assessments to  
44 the association. The tenant shall not be liable for increases in

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45 the amount of the regular assessment due unless the tenant was  
46 reasonably notified of the increase prior to the day that the  
47 rent is due. The tenant shall be given a credit against rents  
48 due to the unit owner in the amount of assessments paid to the  
49 association. The association shall, upon request, provide the  
50 tenant with written receipts for payments made. The association  
51 may issue notices under s. 83.56 and may sue for eviction under  
52 ss. 83.59-83.625 as if the association were a landlord under  
53 part II of chapter 83 should the tenant fail to pay an  
54 assessment. However, the association shall not otherwise be  
55 considered a landlord under chapter 83 and shall specifically  
56 not have any duty under s. 83.51. The tenant shall not, by  
57 virtue of payment of assessments, have any of the rights of a  
58 unit owner to vote in any election or to examine the books and  
59 records of the association. A court may supersede the effect of  
60 this subsection by appointing a receiver.

61 Section 3. Subsection (1) of section 718.501, Florida  
62 Statutes, is amended to read:

63 718.501 Authority, responsibility, and duties of Division  
64 of Florida Condominiums, Timeshares, and Mobile Homes.--

65 (1) The Division of Florida Condominiums, Timeshares, and  
66 Mobile Homes of the Department of Business and Professional  
67 Regulation, referred to as the "division" in this part, has the  
68 power to enforce and ensure compliance with the provisions of  
69 this chapter and rules relating to the development,  
70 construction, sale, lease, ownership, operation, and management  
71 of residential condominium units. In performing its duties, the  
72 division has complete jurisdiction to investigate complaints and

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73 enforce compliance with the provisions of this chapter with  
74 respect to associations that are still under developer control  
75 and complaints against developers involving improper turnover or  
76 failure to turnover, pursuant to s. 718.301. However, after  
77 turnover has occurred, the division shall only have jurisdiction  
78 to investigate complaints related to financial issues, failure  
79 to maintain common elements, elections, and unit owner access to  
80 association records pursuant to s. 718.111(12).

81 (a)1. The division may make necessary public or private  
82 investigations within or outside this state to determine whether  
83 any person has violated this chapter or any rule or order  
84 hereunder, to aid in the enforcement of this chapter, or to aid  
85 in the adoption of rules or forms hereunder.

86 2. The division may submit any official written report,  
87 worksheet, or other related paper, or a duly certified copy  
88 thereof, compiled, prepared, drafted, or otherwise made by and  
89 duly authenticated by a financial examiner or analyst to be  
90 admitted as competent evidence in any hearing in which the  
91 financial examiner or analyst is available for cross-examination  
92 and attests under oath that such documents were prepared as a  
93 result of an examination or inspection conducted pursuant to  
94 this chapter.

95 (b) The division may require or permit any person to file  
96 a statement in writing, under oath or otherwise, as the division  
97 determines, as to the facts and circumstances concerning a  
98 matter to be investigated.

99 (c) For the purpose of any investigation under this  
100 chapter, the division director or any officer or employee  
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101 designated by the division director may administer oaths or  
102 affirmations, subpoena witnesses and compel their attendance,  
103 take evidence, and require the production of any matter which is  
104 relevant to the investigation, including the existence,  
105 description, nature, custody, condition, and location of any  
106 books, documents, or other tangible things and the identity and  
107 location of persons having knowledge of relevant facts or any  
108 other matter reasonably calculated to lead to the discovery of  
109 material evidence. Upon the failure by a person to obey a  
110 subpoena or to answer questions propounded by the investigating  
111 officer and upon reasonable notice to all persons affected  
112 thereby, the division may apply to the circuit court for an  
113 order compelling compliance.

114 (d) Notwithstanding any remedies available to unit owners  
115 and associations, if the division has reasonable cause to  
116 believe that a violation of any provision of this chapter or  
117 related rule has occurred, the division may institute  
118 enforcement proceedings in its own name against any developer,  
119 association, officer, or member of the board of administration,  
120 or its assignees or agents, as follows:

121 1. The division may permit a person whose conduct or  
122 actions may be under investigation to waive formal proceedings  
123 and enter into a consent proceeding whereby orders, rules, or  
124 letters of censure or warning, whether formal or informal, may  
125 be entered against the person.

126 2. The division may issue an order requiring the  
127 developer, association, developer-designated officer, or  
128 developer-designated member of the board of administration,  
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129 developer-designated assignees or agents, community association  
130 manager, or community association management firm to cease and  
131 desist from the unlawful practice and take such affirmative  
132 action as in the judgment of the division will carry out the  
133 purposes of this chapter. If the division finds that a  
134 developer, association, officer, or member of the board of  
135 administration, or its assignees or agents, is violating or is  
136 about to violate any provision of this chapter, any rule adopted  
137 or order issued by the division, or any written agreement  
138 entered into with the division, and presents an immediate danger  
139 to the public requiring an immediate final order, it may issue  
140 an emergency cease and desist order reciting with particularity  
141 the facts underlying such findings. The emergency cease and  
142 desist order is effective for 90 days. If the division begins  
143 nonemergency cease and desist proceedings, the emergency cease  
144 and desist order remains effective until the conclusion of the  
145 proceedings under ss. 120.569 and 120.57.

146 3. If a developer fails to pay any restitution determined  
147 by the division to be owed, plus any accrued interest at the  
148 highest rate permitted by law, within 30 days after expiration  
149 of any appellate time period of a final order requiring payment  
150 of restitution or the conclusion of any appeal thereof,  
151 whichever is later, the division shall bring an action in  
152 circuit or county court on behalf of any association, class of  
153 unit owners, lessees, or purchasers for restitution, declaratory  
154 relief, injunctive relief, or any other available remedy. The  
155 division may also temporarily revoke its acceptance of the

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156 filing for the developer to which the restitution relates until  
157 payment of restitution is made.

158 4. The division may petition the court for the appointment  
159 of a receiver or conservator. If appointed, the receiver or  
160 conservator may take action to implement the court order to  
161 ensure the performance of the order and to remedy any breach  
162 thereof. In addition to all other means provided by law for the  
163 enforcement of an injunction or temporary restraining order, the  
164 circuit court may impound or sequester the property of a party  
165 defendant, including books, papers, documents, and related  
166 records, and allow the examination and use of the property by  
167 the division and a court-appointed receiver or conservator.

168 5. The division may apply to the circuit court for an  
169 order of restitution whereby the defendant in an action brought  
170 pursuant to subparagraph 4. shall be ordered to make restitution  
171 of those sums shown by the division to have been obtained by the  
172 defendant in violation of this chapter. Such restitution shall,  
173 at the option of the court, be payable to the conservator or  
174 receiver appointed pursuant to subparagraph 4. or directly to  
175 the persons whose funds or assets were obtained in violation of  
176 this chapter.

177 6. The division may impose a civil penalty against a  
178 developer or association, or its assignee or agent, for any  
179 violation of this chapter or a rule adopted under this chapter.  
180 The division may impose a civil penalty individually against any  
181 officer or board member who willfully and knowingly violates a  
182 provision of this chapter, adopted rule, or a final order of the  
183 division; may order the removal of such individual as an officer

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184 or from the board of administration or as an officer of the  
185 association; and may prohibit such individual from serving as an  
186 officer or on the board of a community association for a period  
187 of time. The term "willfully and knowingly" means that the  
188 division informed the officer or board member that his or her  
189 action or intended action violates this chapter, a rule adopted  
190 under this chapter, or a final order of the division and that  
191 the officer or board member refused to comply with the  
192 requirements of this chapter, a rule adopted under this chapter,  
193 or a final order of the division. The division, prior to  
194 initiating formal agency action under chapter 120, shall afford  
195 the officer or board member an opportunity to voluntarily comply  
196 with this chapter, a rule adopted under this chapter, or a final  
197 order of the division. An officer or board member who complies  
198 within 10 days is not subject to a civil penalty. A penalty may  
199 be imposed on the basis of each day of continuing violation, but  
200 in no event shall the penalty for any offense exceed \$5,000. By  
201 January 1, 1998, the division shall adopt, by rule, penalty  
202 guidelines applicable to possible violations or to categories of  
203 violations of this chapter or rules adopted by the division. The  
204 guidelines must specify a meaningful range of civil penalties  
205 for each such violation of the statute and rules and must be  
206 based upon the harm caused by the violation, the repetition of  
207 the violation, and upon such other factors deemed relevant by  
208 the division. For example, the division may consider whether the  
209 violations were committed by a developer or owner-controlled  
210 association, the size of the association, and other factors. The  
211 guidelines must designate the possible mitigating or aggravating

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212 circumstances that justify a departure from the range of  
213 penalties provided by the rules. It is the legislative intent  
214 that minor violations be distinguished from those which endanger  
215 the health, safety, or welfare of the condominium residents or  
216 other persons and that such guidelines provide reasonable and  
217 meaningful notice to the public of likely penalties that may be  
218 imposed for proscribed conduct. This subsection does not limit  
219 the ability of the division to informally dispose of  
220 administrative actions or complaints by stipulation, agreed  
221 settlement, or consent order. All amounts collected shall be  
222 deposited with the Chief Financial Officer to the credit of the  
223 Division of Florida Condominiums, Timeshares, and Mobile Homes  
224 Trust Fund. If a developer fails to pay the civil penalty and  
225 the amount deemed to be owed to the association, the division  
226 shall issue an order directing that such developer cease and  
227 desist from further operation until such time as the civil  
228 penalty is paid or may pursue enforcement of the penalty in a  
229 court of competent jurisdiction. If an association fails to pay  
230 the civil penalty, the division shall pursue enforcement in a  
231 court of competent jurisdiction, and the order imposing the  
232 civil penalty or the cease and desist order will not become  
233 effective until 20 days after the date of such order. Any action  
234 commenced by the division shall be brought in the county in  
235 which the division has its executive offices or in the county  
236 where the violation occurred.

237 7. If a unit owner presents the division with proof that  
238 the unit owner has requested access to official records in  
239 writing by certified mail, and that after 10 days the unit owner  
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240 again made the same request for access to official records in  
241 writing by certified mail, and that more than 10 days has  
242 elapsed since the second request and the association has still  
243 failed or refused to provide access to official records as  
244 required by this chapter, the division shall issue a subpoena  
245 requiring production of the requested records where the records  
246 are kept pursuant to s. 718.112.

247 8. In addition to subparagraph 6., the division may seek  
248 the imposition of a civil penalty through the circuit court for  
249 any violation for which the division may issue a notice to show  
250 cause under paragraph (r). The civil penalty shall be at least  
251 \$500 but no more than \$5,000 for each violation. The court may  
252 also award to the prevailing party court costs and reasonable  
253 attorney's fees and, if the division prevails, may also award  
254 reasonable costs of investigation.

255 9. Notwithstanding subparagraph 6., when the division  
256 finds that an officer or director has intentionally falsified  
257 association records with the intent to conceal material facts  
258 from the division, the board, or unit owners, the division shall  
259 prohibit the officer or director from acting as an officer or  
260 director of any condominium, cooperative, or homeowners'  
261 association for at least 1 year.

262 10. When the division finds that any person has derived an  
263 improper personal benefit from a condominium association, the  
264 division shall order the person to pay restitution to the  
265 association and shall order the person to pay to the division  
266 the costs of investigation and prosecution.

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267 (e) The division may prepare and disseminate a prospectus  
268 and other information to assist prospective owners, purchasers,  
269 lessees, and developers of residential condominiums in assessing  
270 the rights, privileges, and duties pertaining thereto.

271 (f) The division has authority to adopt rules pursuant to  
272 ss. 120.536(1) and 120.54 to implement and enforce the  
273 provisions of this chapter.

274 (g) The division shall establish procedures for providing  
275 notice to an association and the developer during the period  
276 where the developer controls the association when the division  
277 is considering the issuance of a declaratory statement with  
278 respect to the declaration of condominium or any related  
279 document governing in such condominium community.

280 (h) The division shall furnish each association which pays  
281 the fees required by paragraph (2) (a) a copy of this act,  
282 subsequent changes to this act on an annual basis, an amended  
283 version of this act as it becomes available from the Secretary  
284 of State's office on a biennial basis, and the rules adopted  
285 thereto on an annual basis.

286 (i) The division shall annually provide each association  
287 with a summary of declaratory statements and formal legal  
288 opinions relating to the operations of condominiums which were  
289 rendered by the division during the previous year.

290 (j) The division shall provide training and educational  
291 programs for condominium association board members and unit  
292 owners. The training may, in the division's discretion, include  
293 web-based electronic media, and live training and seminars in  
294 various locations throughout the state. The division shall have  
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295 the authority to review and approve education and training  
296 programs for board members and unit owners offered by providers  
297 and shall maintain a current list of approved programs and  
298 providers and shall make such list available to board members  
299 and unit owners in a reasonable and cost-effective manner.

300 (k) The division shall maintain a toll-free telephone  
301 number accessible to condominium unit owners.

302 (l) The division shall develop a program to certify both  
303 volunteer and paid mediators to provide mediation of condominium  
304 disputes. The division shall provide, upon request, a list of  
305 such mediators to any association, unit owner, or other  
306 participant in arbitration proceedings under s. 718.1255  
307 requesting a copy of the list. The division shall include on the  
308 list of volunteer mediators only the names of persons who have  
309 received at least 20 hours of training in mediation techniques  
310 or who have mediated at least 20 disputes. In order to become  
311 initially certified by the division, paid mediators must be  
312 certified by the Supreme Court to mediate court cases in county  
313 or circuit courts. However, the division may adopt, by rule,  
314 additional factors for the certification of paid mediators,  
315 which factors must be related to experience, education, or  
316 background. Any person initially certified as a paid mediator by  
317 the division must, in order to continue to be certified, comply  
318 with the factors or requirements imposed by rules adopted by the  
319 division.

320 (m) When a complaint is made, the division shall conduct  
321 its inquiry with due regard to the interests of the affected  
322 parties. Within 30 days after receipt of a complaint, the

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323 division shall acknowledge the complaint in writing and notify  
324 the complainant whether the complaint is within the jurisdiction  
325 of the division and whether additional information is needed by  
326 the division from the complainant. The division shall conduct  
327 its investigation and shall, within 90 days after receipt of the  
328 original complaint or of timely requested additional  
329 information, take action upon the complaint. However, the  
330 failure to complete the investigation within 90 days does not  
331 prevent the division from continuing the investigation,  
332 accepting or considering evidence obtained or received after 90  
333 days, or taking administrative action if reasonable cause exists  
334 to believe that a violation of this chapter or a rule of the  
335 division has occurred. If an investigation is not completed  
336 within the time limits established in this paragraph, the  
337 division shall, on a monthly basis, notify the complainant in  
338 writing of the status of the investigation. When reporting its  
339 action to the complainant, the division shall inform the  
340 complainant of any right to a hearing pursuant to ss. 120.569  
341 and 120.57.

342 (n) Condominium association directors, officers, and  
343 employees; condominium developers; community association  
344 managers; and community association management firms have an  
345 ongoing duty to reasonably cooperate with the division in any  
346 investigation pursuant to this section. The division shall refer  
347 to local law enforcement authorities any person whom the  
348 division believes has altered, destroyed, concealed, or removed  
349 any record, document, or thing required to be kept or maintained

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350 by this chapter with the purpose to impair its verity or  
351 availability in the department's investigation.

352 (o) The division may:

353 1. Contract with agencies in this state or other  
354 jurisdictions to perform investigative functions; or

355 2. Accept grants-in-aid from any source.

356 (p) The division shall cooperate with similar agencies in  
357 other jurisdictions to establish uniform filing procedures and  
358 forms, public offering statements, advertising standards, and  
359 rules and common administrative practices.

360 (q) The division shall consider notice to a developer to  
361 be complete when it is delivered to the developer's address  
362 currently on file with the division.

363 (r) In addition to its enforcement authority, the division  
364 may issue a notice to show cause, which shall provide for a  
365 hearing, upon written request, in accordance with chapter 120.

366 (s) The division shall submit to the Governor, the  
367 President of the Senate, the Speaker of the House of  
368 Representatives, and the chairs of the legislative  
369 appropriations committees an annual report that includes, but  
370 need not be limited to, the number of training programs provided  
371 for condominium association board members and unit owners, the  
372 number of complaints received by type, the number and percent of  
373 complaints acknowledged in writing within 30 days and the number  
374 and percent of investigations acted upon within 90 days in  
375 accordance with paragraph (m), and the number of investigations  
376 exceeding the 90-day requirement. The annual report shall also  
377 include an evaluation of the division's core business processes

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378 and make recommendations for improvements, including statutory  
379 changes. The report shall be submitted by September 30 following  
380 the end of the fiscal year.

381  
382 -----  
383 **D I R E C T O R Y   A M E N D M E N T**

384 Remove lines 70-71 and insert:

385 Section 1. Paragraphs (d) and (h) of subsection (2) of  
386 section 718.112, Florida Statutes, are amended to read:

387  
388 -----  
389 **T I T L E   A M E N D M E N T**

390 Remove line 14 and insert:

391 specified period of years after a director's election;  
392 providing requirements for bylaw amendments by a board of  
393 administration; amending s. 718.116, F.S.; authorizing  
394 association demands for assessment payments from tenants of  
395 delinquent owners during pendency of a foreclosure action  
396 of a condominium unit; providing for notice; providing for  
397 credits against rent for assessment payments by tenants;  
398 providing for eviction proceedings for nonpayment;  
399 providing for effect of provisions on rights and duties of  
400 the tenant and association; amending s. 718.501, F.S.;  
401 providing for division jurisdiction to investigate  
402 complaints concerning failure to maintain common elements;  
403 prohibiting an officer or director from acting as such for  
404 a specified period after having been found to have  
405 committed specified violations; providing for payment of

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406        restitution and costs of investigation and prosecution in  
407        certain circumstances;