

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Soto offered the following:

Amendment (with directory and title amendments)

Remove lines 2428-2902 and insert:

Section 22. Paragraph (b) of subsection (2), paragraphs (a) and (c) of subsection (5), and paragraphs (b), (c), (d), (f), and (g) of subsection (6) of section 720.303, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

(b) Members have the right to attend all meetings of the board and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes. The

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17 association may adopt written reasonable rules expanding the
18 right of members to speak and governing the frequency, duration,
19 and other manner of member statements, which rules must be
20 consistent with this paragraph and may include a sign-up sheet
21 for members wishing to speak. Notwithstanding any other law, ~~the~~
22 ~~requirement that board meetings and committee meetings be open~~
23 ~~to the members is inapplicable to~~ meetings between the board or
24 a committee and the association's attorney to discuss proposed
25 or pending litigation, or with respect to meetings of the board
26 held for the purpose of discussing personnel matters, are not
27 required to be open to the members other than directors.

28 (5) INSPECTION AND COPYING OF RECORDS.—The official
29 records shall be maintained within the state and must be open to
30 inspection and available for photocopying by members or their
31 authorized agents at reasonable times and places within 10
32 business days after receipt of a written request for access.
33 This subsection may be complied with by having a copy of the
34 official records available for inspection or copying in the
35 community. If the association has a photocopy machine available
36 where the records are maintained, it must provide parcel owners
37 with copies on request during the inspection if the entire
38 request is limited to no more than 25 pages.

39 (a) The failure of an association to provide access to the
40 records within 10 business days after receipt of a written
41 request submitted by certified mail, return receipt requested,
42 creates a rebuttable presumption that the association willfully
43 failed to comply with this subsection.

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44 (c) The association may adopt reasonable written rules
45 governing the frequency, time, location, notice, records to be
46 inspected, and manner of inspections, but may not require ~~impose~~
47 ~~a requirement that~~ a parcel owner to demonstrate any proper
48 purpose for the inspection, state any reason for the inspection,
49 or limit a parcel owner's right to inspect records to less than
50 one 8-hour business day per month. The association may impose
51 fees to cover the costs of providing copies of the official
52 records, including, without limitation, the costs of copying.
53 The association may charge up to 50 cents per page for copies
54 made on the association's photocopier. If the association does
55 not have a photocopy machine available where the records are
56 kept, or if the records requested to be copied exceed 25 pages
57 in length, the association may have copies made by an outside
58 vendor or association management company personnel and may
59 charge the actual cost of copying, including any reasonable
60 costs involving personnel fees and charges at an hourly rate for
61 vendor or employee time to cover administrative costs to the
62 vendor or association. The association shall maintain an
63 adequate number of copies of the recorded governing documents,
64 to ensure their availability to members and prospective members.
65 Notwithstanding ~~the provisions of~~ this paragraph, the following
66 records are ~~shall~~ not be accessible to members or parcel owners:

67 1. Any record protected by the lawyer-client privilege as
68 described in s. 90.502 and any record protected by the work-
69 product privilege, including, but not limited to, any record
70 prepared by an association attorney or prepared at the
71 attorney's express direction which reflects a mental impression,
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72 conclusion, litigation strategy, or legal theory of the attorney
73 or the association and which was prepared exclusively for civil
74 or criminal litigation or for adversarial administrative
75 proceedings or which was prepared in anticipation of imminent
76 civil or criminal litigation or imminent adversarial
77 administrative proceedings until the conclusion of the
78 litigation or ~~adversarial~~ administrative proceedings.

79 2. Information obtained by an association in connection
80 with the approval of the lease, sale, or other transfer of a
81 parcel.

82 3. ~~Disciplinary, health, insurance, and Personnel records~~
83 of the association's employees, including, but not limited to,
84 disciplinary, payroll, health, and insurance records.

85 4. Medical records of parcel owners or community
86 residents.

87 5. Social security numbers, driver's license numbers,
88 credit card numbers, electronic mailing addresses, telephone
89 numbers, emergency contact information, any addresses for a
90 parcel owner other than as provided for association notice
91 requirements, and other personal identifying information of any
92 person, excluding the person's name, parcel designation, mailing
93 address, and property address.

94 6. Any electronic security measure that is used by the
95 association to safeguard data, including passwords.

96 7. The software and operating system used by the
97 association which allows the manipulation of data, even if the
98 owner owns a copy of the same software used by the association.
99 The data is part of the official records of the association.

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100 (6) BUDGETS.—

101 (b) In addition to annual operating expenses, the budget
102 may include reserve accounts for capital expenditures and
103 deferred maintenance for which the association is responsible.
104 If reserve accounts are not established pursuant to paragraph
105 (d), funding of such reserves is limited to the extent that the
106 governing documents do not limit increases in assessments,
107 including reserves. If the budget of the association includes
108 reserve accounts established pursuant to paragraph (d), such
109 reserves shall be determined, maintained, and waived in the
110 manner provided in this subsection. Once an association provides
111 for reserve accounts pursuant to paragraph (d) in the budget,
112 the association shall thereafter determine, maintain, and waive
113 reserves in compliance with this subsection. This section does
114 not preclude the termination of a reserve account established
115 pursuant to this paragraph upon approval of a majority of the
116 total voting interests of the association. Upon such approval,
117 the terminating reserve account shall be removed from the
118 budget.

119 (c) 1. If the budget of the association does not provide
120 for reserve accounts pursuant to paragraph (d) governed by this
121 subsection and the association is responsible for the repair and
122 maintenance of capital improvements that may result in a special
123 assessment if reserves are not provided, each financial report
124 for the preceding fiscal year required by subsection (7) must
125 shall contain the following statement in conspicuous type:
126

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127 THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR
128 RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED
129 MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
130 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS
131 PURSUANT TO ~~THE PROVISIONS OF~~ SECTION 720.303(6),
132 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT~~
133 ~~LESS THAN~~ A MAJORITY OF THE TOTAL VOTING INTERESTS OF
134 THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR
135 BY WRITTEN CONSENT.

136
137 2. If the budget of the association does provide for
138 funding accounts for deferred expenditures, including, but not
139 limited to, funds for capital expenditures and deferred
140 maintenance, but such accounts are not created or established
141 pursuant to paragraph (d), each financial report for the
142 preceding fiscal year required under subsection (7) must also
143 contain the following statement in conspicuous type:

144
145 THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED
146 VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING
147 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT
148 TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING
149 DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
150 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION
151 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT
152 SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET
153 FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN
154 ACCORDANCE WITH THAT STATUTE.

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156 (d) An association is ~~shall be~~ deemed to have provided for
157 reserve accounts if ~~when~~ reserve accounts have been initially
158 established by the developer or if ~~when~~ the membership of the
159 association affirmatively elects to provide for reserves. If
160 reserve accounts are not initially provided ~~for~~ by the
161 developer, the membership of the association may elect to do so
162 upon the affirmative approval of ~~not less than~~ a majority of the
163 total voting interests of the association. Such approval may be
164 obtained ~~attained~~ by vote of the members at a duly called
165 meeting of the membership or by the ~~upon a~~ written consent of
166 ~~executed by not less than~~ a majority of the total voting
167 interests of the association ~~in the community~~. The approval
168 action of the membership must ~~shall~~ state that reserve accounts
169 shall be provided for in the budget and must designate the
170 components for which the reserve accounts are to be established.
171 Upon approval by the membership, the board of directors shall
172 include ~~provide for~~ the required reserve accounts ~~for inclusion~~
173 in the budget in the next fiscal year following the approval and
174 ~~in~~ each year thereafter. Once established as provided in this
175 subsection, the reserve accounts must ~~shall~~ be funded or
176 maintained or ~~shall~~ have their funding waived in the manner
177 provided in paragraph (f).

178 (f) After one or more ~~Once a reserve account or~~ reserve
179 accounts are established, the membership of the association,
180 upon a majority vote at a meeting at which a quorum is present,
181 may provide for no reserves or less reserves than required by
182 this section. If a meeting of the unit owners has been called to
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183 determine whether to waive or reduce the funding of reserves and
184 ~~ne~~ such result is not achieved or a quorum is not present, the
185 reserves as included in the budget ~~shall~~ go into effect. After
186 the turnover, the developer may vote its voting interest to
187 waive or reduce the funding of reserves. Any vote taken pursuant
188 to this subsection to waive or reduce reserves is ~~shall be~~
189 applicable only to one budget year.

190 (g) Funding formulas for reserves authorized by this
191 section must ~~shall~~ be based on ~~either~~ a separate analysis of
192 each of the required assets or a pooled analysis of two or more
193 of the required assets.

194 1. If the association maintains separate reserve accounts
195 for each of the required assets, the amount of the contribution
196 to each reserve account is ~~shall be~~ the sum of the following two
197 calculations:

198 a. The total amount necessary, if any, to bring a negative
199 component balance to zero.

200 b. The total estimated deferred maintenance expense or
201 estimated replacement cost of the reserve component less the
202 estimated balance of the reserve component as of the beginning
203 of the period ~~for which~~ the budget will be in effect. The
204 remainder, if greater than zero, shall be divided by the
205 estimated remaining useful life of the component.

206
207 The formula may be adjusted each year for changes in estimates
208 and deferred maintenance performed during the year and may
209 include factors such as inflation and earnings on invested
210 funds.

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211 2. If the association maintains a pooled account of two or
212 more of the required reserve assets, the amount of the
213 contribution to the pooled reserve account as disclosed on the
214 proposed budget may ~~shall~~ not be less than that required to
215 ensure that the balance on hand at the beginning of the period
216 ~~for which~~ the budget will go into effect plus the projected
217 annual cash inflows over the remaining estimated useful life of
218 all of the assets that make up the reserve pool are equal to or
219 greater than the projected annual cash outflows over the
220 remaining estimated useful lives of all ~~of~~ the assets that make
221 up the reserve pool, based on the current reserve analysis. The
222 projected annual cash inflows may include estimated earnings
223 from investment of principal and accounts receivable minus the
224 allowance for doubtful accounts. The reserve funding formula may
225 ~~shall~~ not include any type of balloon payments.

226 (12) COMPENSATION PROHIBITED.—A director, officer, or
227 committee member of the association may not directly receive any
228 salary or compensation from the association for the performance
229 of duties as a director, officer, or committee member and may
230 not in any other way benefit financially from service to the
231 association. This subsection does not preclude:

232 (a) Participation by such person in a financial benefit
233 accruing to all or a significant number of members as a result
234 of actions lawfully taken by the board or a committee of which
235 he or she is a member, including, but not limited to, routine
236 maintenance, repair, or replacement of community assets.

237 (b) Reimbursement for out-of-pocket expenses incurred by
238 such person on behalf of the association, subject to approval in

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239 accordance with procedures established by the association's
240 governing documents or, in the absence of such procedures, in
241 accordance with an approval process established by the board.

242 (c) Any recovery of insurance proceeds derived from a
243 policy of insurance maintained by the association for the
244 benefit of its members.

245 (d) Any fee or compensation authorized in the governing
246 documents.

247 (e) Any fee or compensation authorized in advance by a
248 vote of a majority of the voting interests voting in person or
249 by proxy at a meeting of the members.

250 (f) A developer or its representative from serving as a
251 director, officer, or committee member of the association and
252 benefiting financially from service to the association.

253 Section 23. Paragraph (b) of subsection (2) of section
254 720.304, Florida Statutes, is amended to read:

255 720.304 Right of owners to peaceably assemble; display of
256 flag; SLAPP suits prohibited.—

257 (2)

258 (b) Any homeowner may erect a freestanding flagpole no
259 more than 20 feet high on any portion of the homeowner's real
260 property, regardless of any covenants, restrictions, bylaws,
261 rules, or requirements of the association, if the flagpole does
262 not obstruct sightlines at intersections and is not erected
263 within or upon an easement. The homeowner may further display in
264 a respectful manner from that flagpole, regardless of any
265 covenants, restrictions, bylaws, rules, or requirements of the
266 association, one official United States flag, not larger than 4

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267 1/2 feet by 6 feet, and may additionally display one official
268 flag of the State of Florida or the United States Army, Navy,
269 Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such
270 additional flag must be equal in size to or smaller than the
271 United States flag. The flagpole and display are subject to all
272 building codes, zoning setbacks, and other applicable
273 governmental regulations, including, but not limited to, noise
274 and lighting ordinances in the county or municipality in which
275 the flagpole is erected and all setback and locational criteria
276 contained in the governing documents.

277 Section 24. Subsection (2) of section 720.305, Florida
278 Statutes, is amended to read:

279 720.305 Obligations of members; remedies at law or in
280 equity; levy of fines and suspension of use rights.—

281 (2) If a member is delinquent for more than 90 days in
282 paying a monetary obligation due the association ~~the governing~~
283 ~~documents so provide~~, an association may suspend, until such
284 monetary obligation is paid ~~for a reasonable period of time~~, the
285 rights of a member or a member's tenants, guests, or invitees,
286 or both, to use common areas and facilities and may levy
287 reasonable fines of up to, ~~not to exceed~~ \$100 per violation,
288 against any member or any tenant, guest, or invitee. A fine may
289 be levied for ~~on the basis of~~ each day of a continuing
290 violation, with a single notice and opportunity for hearing,
291 except that a no-such fine may not ~~shall~~ exceed \$1,000 in the
292 aggregate unless otherwise provided in the governing documents.
293 A fine of less than \$1,000 may ~~shall~~ not become a lien against a
294 parcel. In any action to recover a fine, the prevailing party is

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295 entitled to collect its reasonable attorney's fees and costs
296 from the nonprevailing party as determined by the court. The
297 provisions regarding the suspension-of-use rights do not apply
298 to the portion of common areas that must be used to provide
299 access to the parcel or utility services provided to the parcel.

300 (a) A fine or suspension may not be imposed without ~~notice~~
301 ~~of~~ at least 14 days' notice ~~days~~ to the person sought to be
302 fined or suspended and an opportunity for a hearing before a
303 committee of at least three members appointed by the board who
304 are not officers, directors, or employees of the association, or
305 the spouse, parent, child, brother, or sister of an officer,
306 director, or employee. If the committee, by majority vote, does
307 not approve a proposed fine or suspension, it may not be
308 imposed. If the association imposes a fine or suspension, the
309 association must provide written notice of such fine or
310 suspension by mail or hand delivery to the parcel owner and, if
311 applicable, to any tenant, licensee, or invitee of the parcel
312 owner.

313 ~~(b) The requirements of this subsection do not apply to~~
314 ~~the imposition of suspensions or fines upon any member because~~
315 ~~of the failure of the member to pay assessments or other charges~~
316 ~~when due if such action is authorized by the governing~~
317 ~~documents.~~

318 (b)(e) Suspension of common-area-use rights do ~~shall~~ not
319 impair the right of an owner or tenant of a parcel to have
320 vehicular and pedestrian ingress to and egress from the parcel,
321 including, but not limited to, the right to park.

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322 Section 25. Subsections (7), (8), and (9) of section
323 720.306, Florida Statutes, are amended to read:

324 720.306 Meetings of members; voting and election
325 procedures; amendments.—

326 (7) ADJOURNMENT.—Unless the bylaws require otherwise,
327 adjournment of an annual or special meeting to a different date,
328 time, or place must be announced at that meeting before an
329 adjournment is taken, or notice must be given of the new date,
330 time, or place pursuant to s. 720.303(2). Any business that
331 might have been transacted on the original date of the meeting
332 may be transacted at the adjourned meeting. If a new record date
333 for the adjourned meeting is or must be fixed under s. 607.0707
334 ~~s. 617.0707~~, notice of the adjourned meeting must be given to
335 persons who are entitled to vote and are members as of the new
336 record date but were not members as of the previous record date.

337 (8) PROXY VOTING.—The members have the right, unless
338 otherwise provided in this subsection or in the governing
339 documents, to vote in person or by proxy.

340 (a) To be valid, a proxy must be dated, must state the
341 date, time, and place of the meeting for which it was given, and
342 must be signed by the authorized person who executed the proxy.
343 A proxy is effective only for the specific meeting for which it
344 was originally given, as the meeting may lawfully be adjourned
345 and reconvened from time to time, and automatically expires 90
346 days after the date of the meeting for which it was originally
347 given. A proxy is revocable at any time at the pleasure of the
348 person who executes it. If the proxy form expressly so provides,

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349 any proxy holder may appoint, in writing, a substitute to act in
350 his or her place.

351 (b) If the governing documents permit voting by secret
352 ballot by members who are not in attendance at a meeting of the
353 members for the election of directors, such ballots must be
354 placed in an inner envelope with no identifying markings and
355 mailed or delivered to the association in an outer envelope
356 bearing identifying information reflecting the name of the
357 member, the lot or parcel for which the vote is being cast, and
358 the signature of the lot or parcel owner casting that ballot. If
359 the eligibility of the member to vote is confirmed and no other
360 ballot has been submitted for that lot or parcel, the inner
361 envelope shall be removed from the outer envelope bearing the
362 identification information, placed with the ballots which were
363 personally cast, and opened when the ballots are counted. If
364 more than one ballot is submitted for a lot or parcel, the
365 ballots for that lot or parcel shall be disqualified. Any vote
366 by ballot received after the closing of the balloting may not be
367 considered.

368 (9) ELECTIONS AND BOARD VACANCIES.—Elections of directors
369 must be conducted in accordance with the procedures set forth in
370 the governing documents of the association. All members of the
371 association are shall be eligible to serve on the board of
372 directors, and a member may nominate himself or herself as a
373 candidate for the board at a meeting where the election is to be
374 held or, if the election process allows voting by absentee
375 ballot, in advance of the balloting. Except as otherwise
376 provided in the governing documents, boards of directors must be

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377 | elected by a plurality of the votes cast by eligible voters. Any
 378 | election dispute between a member and an association must be
 379 | submitted to mandatory binding arbitration with the division.
 380 | Such proceedings must ~~shall~~ be conducted in the manner provided
 381 | by s. 718.1255 and the procedural rules adopted by the division.
 382 | Unless otherwise provided in the bylaws, any vacancy occurring
 383 | on the board before the expiration of a term may be filled by an
 384 | affirmative vote of the majority of the remaining directors,
 385 | even if the remaining directors constitute less than a quorum,
 386 | or by the sole remaining director. In the alternative, a board
 387 | may hold an election to fill the vacancy, in which case the
 388 | election procedures must conform to the requirements of the
 389 | governing documents. Unless otherwise provided in the bylaws, a
 390 | board member appointed or elected under this section is
 391 | appointed for the unexpired term of the seat being filled.
 392 | Filling vacancies created by recall is governed by s.
 393 | 720.303(10) and rules adopted by the division.

394 |
 395 |
 396 | -----
 397 | **D I R E C T O R Y A M E N D M E N T**

398 | Remove lines 2361-2362 and insert:
 399 | Florida Statutes, are amended to read:

400 |
 401 |
 402 | -----
 403 | **T I T L E A M E N D M E N T**

404 | Remove lines 178-203 and insert:

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405 amending s. 720.303, F.S.; revising provisions relating to
406 homeowners' association board meetings, inspection and copying
407 of records, and reserve accounts of budgets; expanding the list
408 of association records that are not accessible to members and
409 parcel owners; prohibiting certain association personnel from
410 receiving a salary or compensation; providing exceptions;
411 amending s. 720.304, F.S.; providing that a flagpole and any
412 flagpole display are subject to certain codes and regulations;
413 amending s. 720.305, F.S.; authorizing a homeowners' association
414 to suspend rights to use common areas and facilities if the
415 member is delinquent on the payment of a monetary obligation due
416 for a certain period of time; providing procedures and notice
417 requirements for levying a fine or imposing a suspension;
418 amending s. 720.306, F.S.; providing requirements for secret
419 ballots; providing procedures for filling a vacancy on the board
420 of directors of a homeowners' association; amending s. 720.31,
421 F.S.; authorizing an