

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 425 Condominiums

**SPONSOR(S):** Business & Professional Regulation Subcommittee; Civil Justice Subcommittee; Rodríguez

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Brown-Blake	Luczynski
3) Judiciary Committee	18 Y, 0 N	Cary	Havlicak

### SUMMARY ANALYSIS

A condominium is a form of ownership of real property created pursuant to Florida law that is comprised of units which are individually owned, but have an undivided share of access to common facilities. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." Further, the association delineates condominium association bylaws, which governs the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.

The bill partially deregulates commercial (nonresidential) condominium associations by removing certain regulatory requirements. Areas of deregulation include board inquiries, proxy voting, board member qualifications, training and certification of board members, fire safety, mandatory nonbinding arbitration, hurricane shutters, and phase condominiums.

The bill also extends the bulk assignee and bulk buyer provisions for an additional year, from July 1, 2015, to July 1, 2016.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities.<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>2</sup> A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>3</sup>

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights.<sup>4</sup> The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."<sup>5</sup>

Further, the association enacts condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.<sup>6</sup>

A condominium association may be classified as residential, nonresidential (commercial), mixed-use, or timeshare.

- A residential condominium is defined as a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence. However, a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use.<sup>7</sup>
- A condominium which contains both commercial and residential units is a mixed-use condominium.
- A timeshare condominium association is one in which the majority of condominium units are used for timeshares.
- A nonresidential condominium is a condominium that is not included in any of the other categories of condominiums. Examples of nonresidential condominium associations include small office condominiums and small retail centers.

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

<sup>3</sup> Section 718.104(5), F.S.

<sup>4</sup> Section 718.103(2), F.S.

<sup>5</sup> Section 718.103(4), F.S.

<sup>6</sup> Section 718.112, F.S.

<sup>7</sup> Section 718.103(23), F.S.

## Effect of the Bill

### *Board Inquiries*

Current law requires a condominium board to respond in writing within 30 days to a written inquiry that is sent by certified mail from a unit owner. The board's response must either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (hereinafter "Division"). If the board requests advice from the Division, the board must provide a substantive response to the inquirer within 10 days of receiving the response from the Division.<sup>8</sup>

The bill amends s. 718.112(2)(a)2., F.S., to exempt a nonresidential condominium board from the requirement to either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division. The bill also exempts nonresidential condominium boards from the requirement to respond with a substantive response within 10 days of receiving a response from the Division. In effect, the bill exempts nonresidential condominium boards from any response requirement to an inquiry provided by a unit owner.

### *Proxy Voting*

Current law generally does not allow condominium unit owners to vote by general proxy. However, general and limited proxies may be used to establish a quorum. Limited proxies may be used for a few specific purposes:

- To waive or reduce reserves;
- For votes taken to waive financial reporting requirements;
- For votes taken to amend the declaration;
- For votes taken to amend the articles of incorporation or bylaws; and
- For any other matter for which ch. 718 requires or allows.<sup>9</sup>

A proxy is only effective for the specific meeting for which it was given and is valid for only 90 days after the first meeting for which it was given. Proxies are revocable at any time by the unit owner.<sup>10</sup>

There is a general exemption for a timeshare condominium with respect to the proxy-voting limitations.<sup>11</sup> Furthermore, an association of 10 or fewer units may provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures, which in turn may provide for elections to be conducted by limited or general proxy.<sup>12</sup>

The bill amends s. 718.112(2)(b)2., F.S., to allow proxy voting in a nonresidential condominium association. The bill also amends s. 718.112(2)(d)10., F.S., to provide that a nonresidential condominium has the same exemption to proxy-voting limitations as a timeshare condominium.

### *Board of Directors*

Current law generally requires a board member's term in office to expire at the annual meeting, however a condominium may allow for 2-year terms if allowed by the bylaws or articles of

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<sup>8</sup> Section 718.112(2)(a)2., F.S.

<sup>9</sup> Section 718.112(2)(b)2., F.S.

<sup>10</sup> Section 718.112(2)(b)3., F.S.

<sup>11</sup> Section 718.112(2)(d)10., F.S.

<sup>12</sup> Section 718.112(2)(d), F.S.

incorporation.<sup>13</sup> Coowners of a unit may not both serve as members of the board at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election and must be eligible to serve on the board at the time of the deadline for submitting a notice of intent to run in order to be listed as a candidate.<sup>14</sup>

The bill amends s. 718.112(2)(d)2., F.S., to exempt nonresidential condominiums from the board membership term requirements. A board member in a nonresidential condominium may serve a term of longer than one year (or two years, if allowed by the bylaws or articles of incorporation), and the term is not required to expire at the annual meeting. The bill also allows coowners of a unit in a nonresidential condominium to serve simultaneously without restriction. Finally, a candidate for board membership in a nonresidential condominium would not need to be eligible to serve as a board member at the time of the deadline for submitting a notice of intent to run.

### *Training and Certification*

Current law requires that with 90 days of being elected or appointed, a newly elected or appointed director of a condominium association must certify in writing that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Alternatively, he or she may submit a certificate of having satisfactorily completed a Division-approved educational curriculum. A director who fails to timely file such certification is suspended from service on the board until he or she does so.<sup>15</sup>

The bill amends s. 718.112(2)(d)4.b., F.S., to exempt a newly-elected or newly-appointed director of a nonresidential condominium from the requirement to certify that he or she has completed the educational curriculum or that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members.

### *Arbitration*

Current law requires that a condominium's bylaws must provide for mandatory nonbinding arbitration conducted by the Division as provided for in s. 718.1255, F.S.<sup>16</sup> Arbitration requires a \$50 filing fee and must precede litigation.<sup>17</sup> This mandatory arbitration in residential condominiums is generally used to settle disputes filed between residents of residential condominiums.

The bill amends s. 718.112(2)(k), F.S., to exempt a nonresidential condominium's bylaws from containing a provision for mandatory nonbinding arbitration. The bill also amends s. 718.1255, F.S., to exempt nonresidential condominiums from mandatory nonbinding arbitration.

### *Fire Safety*

Current law requires bylaws to contain a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the board as evidence of compliance of the condominium units with the applicable fire and life safety code. An association, condominium, or unit owner is not required to retrofit common elements, association property, or units of a residential

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<sup>13</sup> There are exceptions to the general rule when: (1) the condominium is a timeshare; (2) the board member is on a staggered term that does not expire until a later meeting; (3) if all the members' terms would expire but there are not candidates.

<sup>14</sup> Section 718.112(2)(d)2., F.S.

<sup>15</sup> Section 718.112(2)(d)4.b., F.S.

<sup>16</sup> Section 718.112(2)(k), F.S.

<sup>17</sup> Section 718.1255(4)(a), F.S.

condominium to meet current codes in a building that has been certified for occupancy by the applicable government entity if the unit owners vote to forego retrofitting by majority vote. Local governments may not require retrofitting with a fire sprinkler system before the end of 2019.<sup>18</sup>

The bill amends s. 718.112(2)(l), F.S., providing that an association, residential condominium, or unit owner is not required to retrofit the common elements, association property, or units of a residential condominium to meet current codes if the unit owners vote to forego the retrofitting by majority vote. The current law and the bill both only apply to residential condominiums; therefore, the amendment does not appear to change the meaning of the provision.

Additionally, s. 718.112(2)(l)4., F.S., is amended to provide that only residential condominiums may vote to forego the retrofitting of any improvements required by s. 553.509(2), F.S.

### *Hurricane Shutters*

Current law requires each condominium board to adopt hurricane shutter specifications. Upon approval by a majority of voting interests, the board may also install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection.<sup>19</sup>

The bill amends s. 718.113(5), F.S., to only require hurricane shutter specifications in a residential condominium.

### *Phase Condominiums*

Current law allows a developer to develop a condominium in phases if the original declaration of condominium, or an amendment to that declaration, provides for and describes in detail all anticipated phases and the impact that the completion of subsequent phases will have upon the initial phase. The time period for completion of the proposed phases cannot exceed seven years from the date of the recording of the declaration, unless unit owners vote to approve an extension of up to an additional three years. If the phases are not added within seven years from the date of the recording of the declaration, or up to 10 years if an extension has been approved, the right to add additional phases expires.<sup>20</sup>

Current law also requires the declaration of condominium to describe the land which may become part of the condominium and the land on which each phase is to be built. The plot plan may be modified by the developer as to unit or building types to the extent that such modifications are described in the declaration.<sup>21</sup>

The declaration or amendment to the declaration must also include:

- The minimum and maximum numbers and general size of units to be included in each phase;<sup>22</sup>
- Each unit's percentage of ownership in the common areas;<sup>23</sup>
- The recreational areas and facilities which will be owned as common elements by all unit owners;<sup>24</sup>
- The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed;<sup>25</sup> and
- Whether timeshare estates will or may be created with respect to units in any phase and the attributes of such estates.<sup>26</sup>

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<sup>18</sup> Section 718.112(2)(l), F.S.

<sup>19</sup> Section 718.113(5), F.S.

<sup>20</sup> Section 718.403(1), F.S.

<sup>21</sup> Section 718.403(2), F.S.

<sup>22</sup> Section 718.403(2)(b), F.S.

<sup>23</sup> Section 718.403(2)(c), F.S.

<sup>24</sup> Section 718.403(2)(d), F.S.

<sup>25</sup> Section 718.403(2)(e), F.S.

<sup>26</sup> Section 718.403(2)(f), F.S.

The bill reenacts s. 718.403(1), F.S., to resolve a conflict from the 2013 session, where two bills amended this section. The bill also amends s. 718.403(2), F.S., to only require residential condominiums to describe unit or building type changes to the plot plan in the declaration, and adds a new s. 718.403(9), F.S., to provide that a declaration of condominium for a nonresidential condominium does not need to describe:

- The minimum and maximum numbers and general size of units to be included in each phase;
- Each unit's percentage of ownership in the common areas;
- The recreational areas and facilities which will be owned as common elements by all unit owners;
- The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed; and
- Whether or not timeshare estates will or may be created with respect to units in any phase and the attributes of such estates.

### *Bulk Assignees and Bulk Buyer*

In 2010, the Legislature passed the Distressed Condominium Relief Act in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities, so as to enable economic opportunities for successor purchasers of distressed condominiums.<sup>27</sup>

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents.<sup>28</sup>

Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to: conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal.<sup>29</sup>

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for "a specific and defined period."<sup>30</sup>

Originally, the time limitation for classification as a bulk assignee or bulk buyer was until July 1, 2012.<sup>31</sup> In 2012, the Legislature extended the time limitation to July 1, 2015.<sup>32</sup> This bill amends s. 718.707, F.S., to extend the Distressed Condominium Relief Act to July 1, 2016.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 718.112, F.S., relating to bylaws of a condominium.

Section 2 amends s. 718.113, F.S., relating to maintenance, limitation upon improvement, display of flag, hurricane shutters and protection, and display of religious decorations.

Section 3 amends s. 718.1255, F.S., relating to alternative dispute resolution, voluntary mediation, mandatory nonbinding arbitration, and legislative findings.

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<sup>27</sup> Chapter 2010-174, L.O.F.

<sup>28</sup> Section 718.703(1), F.S.

<sup>29</sup> Section 718.703(2), F.S.

<sup>30</sup> Section 718.702, F.S.

<sup>31</sup> Chapter 2010-174, L.O.F.

<sup>32</sup> Chapter 2012-61, L.O.F.

Section 4 amends s. 718.403, F.S., relating to phase condominiums.

Section 5 amends s. 718.707, F.S., relating to time limitation for classification as bulk assignee or bulk buyer.

Section 6 provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 5, 2014, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment reworded a provision for clarity but did not provide a substantive change. The second amendment reworded certain provisions for clarity and added new sections to exempt nonresidential condominiums from hurricane shutter requirements, mandatory nonbinding arbitration, insurance risk classification, and phase condominium requirements. The amendment also extends the Distressed Condominium Relief Act until July 1, 2016.

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment deleted Section 4, which provided that only residential condominiums shall be classed as residential property for the purpose of property and casualty insurance risk classification.

This staff analysis is drafted to the committee substitute as passed by the Business & Professional Regulation Subcommittee.