1 A bill to be entitled 2 An act relating to condominiums; amending s. 718.112, 3 F.S.; limiting the application of certain requirements 4 relating to bylaws to residential condominiums and 5 their associations and boards; providing an effective 6 date. 7 8 Be It Enacted by the Legislature of the State of Florida: 9 10 Section 1. Paragraphs (a), (b), (d), (k), and (l) of 11 subsection (2) of section 718.112, Florida Statutes, are amended 12 to read: 13 718.112 Bylaws.-REQUIRED PROVISIONS.-The bylaws shall provide for the 14 (2)15 following and, if they do not do so, shall be deemed to include 16 the following: Administration.-17 (a) The form of administration of the association shall be 18 1. 19 described indicating the title of the officers and board of 20 administration and specifying the powers, duties, manner of 21 selection and removal, and compensation, if any, of officers and 22 boards. In the absence of such a provision, the board of 23 administration shall be composed of five members, except in the case of a condominium which has five or fewer units, in which 24 25 case in a not-for-profit corporation the board shall consist of 26 not fewer than three members. In the absence of provisions to Page 1 of 16

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27 the contrary in the bylaws, the board of administration shall 28 have a president, a secretary, and a treasurer, who shall 29 perform the duties of such officers customarily performed by 30 officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant 31 32 them the duties it deems appropriate. Unless otherwise provided 33 in the bylaws, the officers shall serve without compensation and 34 at the pleasure of the board of administration. Unless otherwise 35 provided in the bylaws, the members of the board shall serve 36 without compensation.

When a unit owner files a written inquiry by certified 37 2. mail with the board of administration, the board shall respond 38 39 in writing to the unit owner within 30 days after of receipt of 40 the inquiry. If the condominium is a residential condominium, 41 the board's response shall either give a substantive response to 42 the inquirer, notify the inquirer that a legal opinion has been 43 requested, or notify the inquirer that advice has been requested from the division. If the board in a residential condominium 44 45 requests advice from the division, the board shall, within 10 46 days after of its receipt of the advice, provide in writing a 47 substantive response to the inquirer. If a legal opinion is 48 requested, the board shall, within 60 days after the receipt of 49 the inquiry, provide in writing a substantive response to the 50 inquiry. The failure to provide a substantive response to the 51 inquiry as provided herein precludes the board from recovering 52 attorney attorney's fees and costs in any subsequent litigation, Page 2 of 16

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53 administrative proceeding, or arbitration arising out of the 54 inquiry. The association may through its board of administration adopt reasonable rules and regulations regarding the frequency 55 and manner of responding to unit owner inquiries, one of which 56 may be that the association is only obligated to respond to one 57 58 written inquiry per unit in any given 30-day period. In such a 59 case, any additional inquiry or inquiries must be responded to 60 in the subsequent 30-day period, or periods, as applicable.

61

(b) Quorum; voting requirements; proxies.-

Unless a lower number is provided in the bylaws, the 62 1. 63 percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting 64 interests. Unless otherwise provided in this chapter or in the 65 declaration, articles of incorporation, or bylaws, and except as 66 67 provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at 68 69 which a quorum is present.

70 Except as specifically otherwise provided herein, unit 2. 71 owners in a residential condominium may not vote by general 72 proxy, but may vote by limited proxies substantially conforming 73 to a limited proxy form adopted by the division. A voting 74 interest or consent right allocated to a unit owned by the 75 association may not be exercised or considered for any purpose, 76 whether for a quorum, an election, or otherwise. Limited proxies 77 and general proxies may be used to establish a quorum. Limited 78 proxies shall be used for votes taken to waive or reduce

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79 reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); 80 for votes taken to amend the declaration pursuant to s. 718.110; 81 for votes taken to amend the articles of incorporation or bylaws 82 pursuant to this section; and for any other matter for which 83 84 this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a proxy, limited or 85 86 general, may not be used in the election of board members in a 87 residential condominium. General proxies may be used for other matters for which limited proxies are not required, and may be 88 89 used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this 90 subparagraph, unit owners may vote in person at unit owner 91 meetings. This subparagraph does not limit the use of general 92 93 proxies or require the use of limited proxies for any agenda 94 item or election at any meeting of a timeshare condominium 95 association or a nonresidential condominium association.

96 3. <u>A</u> Any proxy given is effective only for the specific 97 meeting for which originally given and any lawfully adjourned 98 meetings thereof. A proxy is not valid longer than 90 days after 99 the date of the first meeting for which it was given. <u>Each</u> Every 100 proxy is revocable at any time at the pleasure of the unit owner 101 executing it.

4. A member of the board of administration or a committee
may submit in writing his or her agreement or disagreement with
any action taken at a meeting that the member did not attend.

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105 This agreement or disagreement may not be used as a vote for or 106 against the action taken or to create a quorum.

5. If any of the board or committee members meet by telephone conference, those board or committee members may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

113

(d) Unit owner meetings.-

114 1. An annual meeting of the unit owners shall be held at 115 the location provided in the association bylaws and, if the 116 bylaws are silent as to the location, the meeting shall be held 117 within 45 miles of the condominium property. However, such 118 distance requirement does not apply to an association governing 119 a timeshare condominium.

120 Unless the bylaws provide otherwise, a vacancy on the 2. board caused by the expiration of a director's term shall be 121 122 filled by electing a new board member, and the election must be 123 by secret ballot. An election is not required if the number of 124 vacancies equals or exceeds the number of candidates. For 125 purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as 126 described in sub-subparagraph 4.a., of his or her intention to 127 128 become a candidate. Except in a timeshare or nonresidential 129 condominium, or if the staggered term of a board member does not 130 expire until a later annual meeting, or if all members' terms Page 5 of 16

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131 would otherwise expire but there are no candidates, the terms of 132 all board members expire at the annual meeting, and such members 133 may stand for reelection unless prohibited by the bylaws. If the bylaws or articles of incorporation permit terms of no more than 134 2 years, the association board members may serve 2-year terms. 135 136 If the number of board members whose terms expire at the annual 137 meeting equals or exceeds the number of candidates, the 138 candidates become members of the board effective upon the 139 adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the 140 141 affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less 142 than a quorum or there is only one director. In a residential 143 144 condominium association of more than 10 units or in a 145 residential condominium association that does not include 146 timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time 147 148 unless they own more than one unit or unless there are not 149 enough eligible candidates to fill the vacancies on the board at 150 the time of the vacancy. A Any unit owner in a residential 151 condominium desiring to be a candidate for board membership must 152 comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the 153 154 deadline for submitting a notice of intent to run in order to 155 have his or her name listed as a proper candidate on the ballot 156 or to serve on the board. A person who has been suspended or Page 6 of 16

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157 removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the 158 159 association, is not eligible to be a candidate for board 160 membership and may not be listed on the ballot. A person who has 161 been convicted of any felony in this state or in a United States 162 District or Territorial Court, or who has been convicted of any 163 offense in another jurisdiction which would be considered a 164 felony if committed in this state, is not eligible for board 165 membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election 166 to the board. The validity of an action by the board is not 167 affected if it is later determined that a board member is 168 ineligible for board membership due to having been convicted of 169 170 a felony. This subparagraph does not limit the term of a member 171 of the board of a nonresidential condominium.

The bylaws must provide the method of calling meetings 172 3. 173 of unit owners, including annual meetings. Written notice must 174 include an agenda, must be mailed, hand delivered, or 175 electronically transmitted to each unit owner at least 14 days 176 before the annual meeting, and must be posted in a conspicuous 177 place on the condominium property at least 14 continuous days 178 before the annual meeting. Upon notice to the unit owners, the 179 board shall, by duly adopted rule, designate a specific location 180 on the condominium property or association property where all 181 notices of unit owner meetings shall be posted. This requirement 182 does not apply if there is no condominium property or

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183 association property for posting notices. In lieu of, or in 184 addition to, the physical posting of meeting notices, the 185 association may, by reasonable rule, adopt a procedure for 186 conspicuously posting and repeatedly broadcasting the notice and 187 the agenda on a closed-circuit cable television system serving 188 the condominium association. However, if broadcast notice is 189 used in lieu of a notice posted physically on the condominium 190 property, the notice and agenda must be broadcast at least four 191 times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is 192 193 provided, the notice and agenda must be broadcast in a manner 194 and for a sufficient continuous length of time so as to allow an 195 average reader to observe the notice and read and comprehend the 196 entire content of the notice and the agenda. Unless a unit owner 197 waives in writing the right to receive notice of the annual 198 meeting, such notice must be hand delivered, mailed, or 199 electronically transmitted to each unit owner. Notice for 200 meetings and notice for all other purposes must be mailed to 201 each unit owner at the address last furnished to the association 202 by the unit owner, or hand delivered to each unit owner. 203 However, if a unit is owned by more than one person, the 204 association must provide notice to the address that the 205 developer identifies for that purpose and thereafter as one or 206 more of the owners of the unit advise the association in 207 writing, or if no address is given or the owners of the unit do 208 not agree, to the address provided on the deed of record. An Page 8 of 16

209 officer of the association, or the manager or other person 210 providing notice of the association meeting, must provide an 211 affidavit or United States Postal Service certificate of 212 mailing, to be included in the official records of the 213 association affirming that the notice was mailed or hand 214 delivered in accordance with this provision.

4. The members of the board <u>of a residential condominium</u> shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

222 At least 60 days before a scheduled election, the a. 223 association shall mail, deliver, or electronically transmit, by 224 separate association mailing or included in another association 225 mailing, delivery, or transmission, including regularly 226 published newsletters, to each unit owner entitled to a vote, a 227 first notice of the date of the election. A Any unit owner or 228 other eligible person desiring to be a candidate for the board 229 must give written notice of his or her intent to be a candidate 230 to the association at least 40 days before a scheduled election. 231 Together with the written notice and agenda as set forth in 232 subparagraph 3., the association shall mail, deliver, or 233 electronically transmit a second notice of the election to all 234 unit owners entitled to vote, together with a ballot that lists Page 9 of 16

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all candidates. Upon request of a candidate, an information 235 236 sheet, no larger than 8 1/2 inches by 11 inches, which must be 237 furnished by the candidate at least 35 days before the election, 238 must be included with the mailing, delivery, or transmission of 239 the ballot, with the costs of mailing, delivery, or electronic 240 transmission and copying to be borne by the association. The 241 association is not liable for the contents of the information 242 sheets prepared by the candidates. In order to reduce costs, the 243 association may print or duplicate the information sheets on 244 both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, 245 including rules establishing procedures for giving notice by 246 247 electronic transmission and rules providing for the secrecy of 248 ballots. Elections shall be decided by a plurality of ballots 249 cast. There is no quorum requirement; however, at least 20 250 percent of the eligible voters must cast a ballot in order to 251 have a valid election. A unit owner may not permit any other 252 person to vote his or her ballot, and any ballots improperly 253 cast are invalid. A unit owner who violates this provision may 254 be fined by the association in accordance with s. 718.303. A 255 unit owner who needs assistance in casting the ballot for the 256 reasons stated in s. 101.051 may obtain such assistance. The 257 regular election must occur on the date of the annual meeting. 258 Notwithstanding this sub-subparagraph, an election is not 259 required unless more candidates file notices of intent to run or 260 are nominated than board vacancies exist.

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261 b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly 262 263 elected or appointed director shall certify in writing to the 264 secretary of the association that he or she has read the 265 association's declaration of condominium, articles of 266 incorporation, bylaws, and current written policies; that he or 267 she will work to uphold such documents and policies to the best 268 of his or her ability; and that he or she will faithfully 269 discharge his or her fiduciary responsibility to the 270 association's members. In lieu of this written certification, 271 within 90 days after being elected or appointed to the board, 272 the newly elected or appointed director may submit a certificate 273 of having satisfactorily completed the educational curriculum 274 administered by a division-approved condominium education 275 provider within 1 year before or 90 days after the date of 276 election or appointment. The written certification or 277 educational certificate is valid and does not have to be 278 resubmitted as long as the director serves on the board without 279 interruption. A director of an association of a residential 280 condominium who fails to timely file the written certification 281 or educational certificate is suspended from service on the 282 board until he or she complies with this sub-subparagraph. The 283 board may temporarily fill the vacancy during the period of 284 suspension. The secretary shall cause the association to retain 285 a director's written certification or educational certificate 286 for inspection by the members for 5 years after a director's Page 11 of 16

287 election or the duration of the director's uninterrupted tenure, 288 whichever is longer. Failure to have such written certification 289 or educational certificate on file does not affect the validity 290 of any board action.

c. Any challenge to the election process must be commencedwithin 60 days after the election results are announced.

293 Any approval by unit owners called for by this chapter 5. 294 or the applicable declaration or bylaws, including, but not 295 limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to 296 all requirements of this chapter or the applicable condominium 297 298 documents relating to unit owner decisionmaking, except that 299 unit owners may take action by written agreement, without 300 meetings, on matters for which action by written agreement 301 without meetings is expressly allowed by the applicable bylaws 302 or declaration or any law that provides for such action.

303 6. Unit owners may waive notice of specific meetings if 304 allowed by the applicable bylaws or declaration or any law. If 305 authorized by the bylaws, notice of meetings of the board of 306 administration, unit owner meetings, except unit owner meetings 307 called to recall board members under paragraph (j), and 308 committee meetings may be given by electronic transmission to 309 unit owners who consent to receive notice by electronic 310 transmission.

311 7. Unit owners have the right to participate in meetings 312 of unit owners with reference to all designated agenda items. Page 12 of 16

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313 However, the association may adopt reasonable rules governing 314 the frequency, duration, and manner of unit owner participation.

315 8. A unit owner may tape record or videotape a meeting of 316 the unit owners subject to reasonable rules adopted by the 317 division.

318 9. Unless otherwise provided in the bylaws, any vacancy 319 occurring on the board before the expiration of a term may be 320 filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than 321 a quorum, or by the sole remaining director. In the alternative, 322 a board may hold an election to fill the vacancy, in which case 323 324 the election procedures must conform to sub-subparagraph 4.a. 325 unless the association governs 10 units or fewer and has opted 326 out of the statutory election process, in which case the bylaws 327 of the association control. Unless otherwise provided in the 328 bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being 329 330 filled. Filling vacancies created by recall is governed by 331 paragraph (j) and rules adopted by the division.

332 10. This chapter does not limit the use of general or 333 limited proxies, require the use of general or limited proxies, 334 or require the use of a written ballot or voting machine for any 335 agenda item or election at any meeting of a timeshare 336 condominium association <u>or nonresidential condominium</u> 337 association.

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339 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an 340 association of 10 or fewer residential units may, by affirmative 341 vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which 342 343 may be by a proxy specifically delineating the different voting 344 and election procedures. The different voting and election 345 procedures may provide for elections to be conducted by limited 346 or general proxy.

347 (k) Arbitration.-There shall be a provision for mandatory
348 nonbinding arbitration as provided for in s. 718.1255 <u>for any</u>
349 residential condominium.

350 Certificate of compliance.- A provision that a (1)351 certificate of compliance from a licensed electrical contractor 352 or electrician may be accepted by the association's board as 353 evidence of compliance of the condominium units with the 354 applicable fire and life safety code must be included. 355 Notwithstanding chapter 633 or of any other code, statute, 356 ordinance, administrative rule, or regulation, or any 357 interpretation of the foregoing, an association, condominium, or 358 unit owner is not obligated to retrofit the common elements, 359 association property, or units of a residential condominium with 360 a fire sprinkler system in a building that has been certified 361 for occupancy by the applicable governmental entity if the unit 362 owners have voted to forego such retrofitting by the affirmative 363 vote of a majority of all voting interests in the affected 364 condominium. The local authority having jurisdiction may not Page 14 of 16

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365 require completion of retrofitting with a fire sprinkler system 366 before January 1, 2020 the end of 2019. By December 31, 2016, a 367 residential condominium an association that is not in compliance 368 with the requirements for a fire sprinkler system and has not 369 voted to forego retrofitting of such a system must initiate an 370 application for a building permit for the required installation 371 with the local government having jurisdiction demonstrating that 372 the association will become compliant by December 31, 2019.

373 A vote to forego retrofitting in a residential 1. 374 condominium may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by 375 376 execution of a written consent by the member, and is effective 377 upon recording a certificate attesting to such vote in the 378 public records of the county where the condominium is located. 379 The association shall mail or hand deliver to each unit owner 380 written notice at least 14 days before the membership meeting in 381 which the vote to forego retrofitting of the required fire 382 sprinkler system is to take place. Within 30 days after the 383 association's opt-out vote, notice of the results of the opt-out 384 vote must be mailed or hand delivered to all unit owners. 385 Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and 386 filed among the official records of the association. After 387 388 notice is provided to each owner, a copy must be provided by the 389 current owner to a new owner before closing and by a unit owner 390 to a renter before signing a lease.

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391 2. If there has been a previous vote to forego 392 retrofitting, a vote to require retrofitting may be obtained at 393 a special meeting of the unit owners called by a petition of at 394 least 10 percent of the voting interests. Such a vote may only 395 be called once every 3 years. Notice shall be provided as 396 required for any regularly called meeting of the unit owners, 397 and must state the purpose of the meeting. Electronic 398 transmission may not be used to provide notice of a meeting called in whole or in part for this purpose. 399

400 3. As part of the information collected annually from condominiums, the division shall require condominium 401 402 associations to report the membership vote and recording of a 403 certificate under this subsection and, if retrofitting has been 404 undertaken, the per-unit cost of such work. The division shall 405 annually report to the Division of State Fire Marshal of the 406 Department of Financial Services the number of condominiums that 407 have elected to forego retrofitting.

408 4. Notwithstanding s. 553.509, an association may not be
409 obligated to, and may forego the retrofitting of, any
410 improvements required by s. 553.509(2) upon an affirmative vote
411 of a majority of the voting interests in the affected
412 condominium.

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Section 2. This act shall take effect July 1, 2014.

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