

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1211 Community Associations

**SPONSOR(S):** Business & Professions Subcommittee; Civil Justice Subcommittee; Fitzenhagen

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Bond	Bond
2) Business & Professions Subcommittee	12 Y, 0 N, As CS	Anstead	Luczynski
3) Judiciary Committee			

### SUMMARY ANALYSIS

Condominium, cooperative, and homeowners' associations all hold various types of membership meetings throughout the year as determined by the Board of Directors, where votes of the membership may be required. In addition to general membership meetings, the laws governing condominium, cooperative, and homeowners' associations all require an annual meeting of the members at which some or all of the directors of the association may be elected. Current law does not recognize electronic voting.

The bill creates a mechanism for electronic voting of the membership for condominium, cooperative, and homeowners' association, provided that the bylaws of an association allow for electronic voting.

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

The bill has an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

Condominium, cooperative, and homeowners' associations all hold various types of membership meetings throughout the year as determined by the Board of Directors, where votes of the membership may be required. In addition to general membership meetings, the laws governing condominium, cooperative, and homeowners' associations all require an annual meeting of the members at which some or all of the directors of the association may be elected.

A condominium association is required to have an annual meeting at which directors are elected.<sup>1</sup> Votes must be cast by "written ballot or voting machine."<sup>2</sup> Proxies may not be used in the election.<sup>3</sup> Florida Administrative Code governing condominium associations also provides detailed regulations for voting and election procedures, such as requiring that paper ballots be mailed in double envelopes.<sup>4</sup> Similar statutory and administrative requirements apply to cooperative associations.<sup>5</sup>

A homeowners' association is likewise required to hold board of director elections at its annual meeting or as provided in its governing documents.<sup>6</sup> Elections are conducted in accordance with the procedures set forth in the governing documents of the association.<sup>7</sup> Additionally, proxies may be used in the election unless otherwise provided in the governing documents.<sup>8</sup>

#### **Effect of Proposed Change**

This bill provides that an association may elect to conduct votes of the membership by electronic voting according to the following terms:

Each member voting electronically must consent, in writing, to electronic voting.

The association must provide each member with a method to:

- Authenticate the member's identity to the electronic voting system.
- Secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform.
- Communicate with the electronic voting system.
- Review an electronic ballot before its transmission to the electronic voting system.
- Transmit an electronic ballot to the electronic voting system that ensures the secrecy and integrity of each ballot.
- Verify the authenticity of receipts sent from the electronic voting system.
- Confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.
- Vote by mail or to deliver a ballot in person in the event of a disruption of the electronic voting system.

In addition, an electronic voting system must be:

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<sup>1</sup> Section 718.112(2)(d)1., F.S.; see generally Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, p. 40-57 (14th. ed. 2014-2015).

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

<sup>3</sup> *Id.*

<sup>4</sup> Rule 61B-23.0021, F.A.C.

<sup>5</sup> Section 719.106(1)(d), F.S.; Rule 61B-75.005, F.A.C.

<sup>6</sup> Section 720.306(2), F.S.

<sup>7</sup> Section 720.306(9)(a), F.S.

<sup>8</sup> Section 720.306(8), F.S.

- Accessible to members with disabilities.
- Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.
- Able to authenticate the member's identity.
- Able to communicate with each member's electronic voting platform.
- Able to authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit.
- Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot.
- Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member.
- Able to allow the member to confirm that his or her ballot has been received and counted.
- Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

The bill also provides that an association member voting electronically is counted as being in attendance at the meeting for purposes of determining a quorum.

The bylaws of an association must provide for electronic voting in order for this bill to apply. The bylaws may provide for electronic voting of some or all votes of the membership.

#### B. SECTION DIRECTORY:

Section 1 creates s. 718.128, F.S., regarding electronic voting for condominium associations.

Section 2 creates s. 719.129, F.S., regarding electronic voting for cooperative associations.

Section 3 creates s. 720.317, F.S., regarding electronic voting for homeowners' associations.

Section 4 provides an effective date of July 1, 2015.

## 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 appears to require rulemaking by the Department of Business and Professional Regulation, which may require a minimal nonrecurring expenditure in FY 2015-16 payable from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

#### 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 affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill appears to create a need for rulemaking by the Department of Business and Professional Regulation to modify election rules for condominiums and cooperatives. The department appears to have adequate rulemaking authority at ss. 718.501(1)(f) and 719.501(1)(f), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute.

The amendment removed the definition of "electronic transmission," provides that a member voting electronically counts towards a meeting quorum, and provided that it applies to any vote of the membership where allowed by the bylaws of the association.

On March 24, 2015, the Business & Professions Subcommittee adopted one amendment and reported the bill favorably as a committee substitute.

The amendment removed the word "election" and replaced it with "votes of the membership" throughout the bill.

This analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.