

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 748

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	15 Y, 0 N, As CS	Malcolm	Havlicak

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 association's board adopts a resolution to allow for electronic voting.

The bill also authorizes a condominium, cooperative, or homeowners' association to provide electronic notice of certain meetings without amending the association's bylaws.

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. Prior to holding a member or board meeting, notice of the meeting must be provided to the members. If authorized in the association's bylaws, notice of certain meetings may be provided electronically to members who consent to receive notice electronically.¹

A condominium association is required to have an annual meeting at which directors are elected.² Votes must be cast by "written ballot or voting machine."³ Proxies may not be used in the election.⁴ 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.⁵ Similar statutory and administrative requirements apply to cooperative associations.⁶

A homeowners' association is likewise required to hold board of director elections at its annual meeting or as provided in its governing documents.⁷ Elections are conducted in accordance with the procedures set forth in the governing documents of the association.⁸ Additionally, proxies may be used in the election unless otherwise provided in the governing documents.⁹

Effect of Proposed Change

The bill provides that a condominium, cooperative, or homeowners' association may elect to conduct elections and other membership votes through an Internet -based online voting system 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 online voting system.
- Transmit an electronic ballot for board elections 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 device can successfully communicate with the online voting system.

The homeowners' association must also provide each member with an online voting method that is consistent with the election and voting procedures in the association's bylaws.

¹ ss. 718.112(2)(d), 719.106(1)(d), 720.303(2)(c), F.S.

² s. 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).

³ s. 718.112(2)(d)4., F.S.

⁴ *Id.*

⁵ Rule 61B-23.0021, F.A.C.

⁶ s. 719.106(1)(d), F.S.; Rule 61B-75.005, F.A.C.

⁷ s. 720.306(2), F.S.

⁸ s. 720.306(9)(a), F.S.

⁹ s. 720.306(8), F.S.

In addition, the condominium, cooperative, or homeowners' association's online voting system must be able to:

- Authenticate the member's identity.
- Authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
- Transmit a receipt from the online voting system to each member who casts an electronic vote.
- Permanently separate any authentication or identifying information from an electronic ballot for board elections, rendering it impossible to tie a ballot to a specific member.¹⁰
- Allow the member to confirm that his or her ballot has been received and counted.
- Store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

The bill also provides that a member voting electronically is counted as being in attendance at the meeting for purposes of determining a quorum, and a quorum established based on members voting electronically is only limited to the issue specifically identified in the electronic vote.

The board of directors of an association must adopt a resolution in order to authorize online voting. The board resolution must provide that members receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for members to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for members to opt-out of online voting after giving consent. Written notice of a meeting at which a board resolution regarding online voting will be considered must be provided at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

A member's consent to online voting is valid until the member opts-out of online voting according to the procedures established by the board of administration.

The bill also deletes the requirement in ss. 718.112(2)(d), 719.106(1)(d), 720.303(2)(c), F.S., that an association may only provide electronic notice of meetings to members who consent to such notice if the association's bylaws provide for electronic notice.

B. SECTION DIRECTORY:

Section 1 amends s. 718.112, F.S., regarding bylaws.

Section 2 creates s. 718.128, F.S., regarding electronic voting.

Section 3 amends s. 719.106, F.S., regarding bylaws; cooperative ownership.

Section 4 creates s. 719.129, F.S., regarding electronic voting for cooperative associations.

Section 5 amends s. 720.303, F.S., regarding homeowners' association powers and duties; meetings of the board; official records; budgets; financial reporting; association funds; and recalls.

Section 6 creates s. 720.317, F.S., regarding electronic voting.

Section 7 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.

¹⁰ For homeowners' associations, this provision only applies if the association's bylaws provide for secret ballots for the election of directors.

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:

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 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.

On April 2, 2015, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorizes a condominium, cooperative, or homeowners' association to provide electronic notice of meetings without amending the association's bylaws;
- Specifies that the voting method created by the bill is an Internet-based online voting system;
- Clarifies the requirements for an online voting system;
- Authorizes an association's board to provide online voting by passing a board resolution rather than by amending the association's bylaws; and
- Requires the board resolution allowing online voting to also include procedures to opt-in and opt-out of online voting.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.