

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 6, 1998 Revised: \_\_\_\_\_

Subject: Condominium Act/Cooperative Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Rodriguez</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

### I. Summary:

This bill provides specific statutory authority for rulemaking to the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation for existing rules relating to condominiums. The rules were identified as lacking adequate statutory authority, pursuant to the procedures outlined in 1996 amendments to the Florida Administrative Procedures Act.

This bill substantially amends or creates the following sections of the Florida Statutes: 718.104, 718.112, 718.117, 718.301, 718.403, 718.502, 718.503, and 718.621.

### II. Present Situation:

In 1996, the Legislature adopted a comprehensive rewrite of the Administrative Procedures Act (APA). The revised APA imposed a stricter rulemaking standard by requiring more specific agency rulemaking authority in statutes to accomplish the stated purpose of enabling statutes. Pursuant to subsection 120.536(2), Florida Statutes, by October 1, 1997, all agencies were required to notify the Joint Administrative Procedures Committee of all existing rules, or portions thereof, adopted before October 1, 1996, and identified as exceeding the agency's statutory rulemaking authority under the stricter APA rulemaking standards. If the agency does not secure specific legislative authority during the 1998 regular session, the agency must initiate rulemaking by January 1, 1999, to repeal the identified rules. Effective July 1, 1999, the JAPC or any substantially affected person has standing to petition the agency to repeal identified rules that have not yet been repealed by the agency.

The Department of Business and Professional Regulation identified numerous rules within the Division of Florida Land Sales, Condominiums and Mobile Homes as lacking necessary

rulemaking authority pursuant to the new rulemaking standards. Some rules identified by the department are not included in the bill and will need to be repealed by next year.

Rules, or portions of rules, identified by the division and addressed by this bill include:

- Subsections (3) and (4) of Rule 61B-17.001, Florida Administrative Code (imposes filing procedures and requirements on the developer prior to closing);
- Rule 61B-17.003, F.A.C. (imposes filing requirements relating to phase condominium);
- 61B-17.005, F.A.C. (sets forth procedures for examining developers' documents);
- Subsection (6) of Rule 61B-17.006, F.A.C. (sets forth a time frame for amendments to developers' documents);
- Subsection (3) of Rule 61B-18.001, F.A.C. (provides restrictions on a developer closing on a sales or lease contract and requires specified record keeping);
- Subsections (2) and (4) of Rule 61B-18.001, F.A.C. (imposes requirements for board meetings);
- Subsections (7) and (10) of Rule 61B-23.002, F.A.C. (requires that a condominium association notify the division prior to taking action in the termination or merger of an association and requires that certain association rules be in writing);
- Rule 61B-23.003, F.A.C. (relates to the transition of an association from developer control to unit owner control);
- Subsections (2), (6) and (7) of Rule 61B-24.002, F.A.C. (provides specific requirements by developers in notifying tenants of an intended condominium conversion);
- Rule 61B-24.003, F.A.C. (relates to rental agreement extensions associated with condominium conversions);
- Rule 61B-24.004, F.A.C. (requires disclosure of the building conditions of a proposed converted condominiums to prospective buyers);
- Rule 61B-24.005, F.A.C. (specifies an existing tenant's right to purchase his or her unit in a condominium conversion project); and,
- Rule 61B-24.007, F.A.C. (specifies post-purchase protection methods and requires their disclosure to prospective buyers).

### III. Effect of Proposed Changes:

Section 718.501, F.S., provides the duties of the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation and authorizes the division to adopt rules necessary to implement, enforce and interpret chapter 718. This bill provides additional specific grants of rulemaking authority allowing the department to fully implement and enforce certain provisions of chapter 718.

**Section 1.** Subsection (7) of Rule 61B-23.002, F.A.C., provides that the board of directors of condominium association must notify the division prior to taking any action to terminate or merge the condominium or the association. It also provides that after recording a termination notice, the association shall provide the division with a copy of the recorded notice within 30 days. Section 1 of the bill incorporates the provisions of this rule into s. 718.104, F.S., regarding procedures for the creation of a condominium association. This provision, together with section 3 of the bill, is sufficient to authorize subsection (7) of Rule 61B-23.002, F.A.C., without otherwise expanding the division's current rulemaking authority.

**Section 2.** Currently, s. 718.112, F.S., authorizes the division to adopt rules related to the tape recording or videotaping of meetings, voting procedures, and procedures for filling vacancies created by a recall election. The division has no other specific rulemaking authority to establish rules relating to the conduct of meetings of condominium unit owners. Therefore, subsections (2) and (4) of Rule 61B-23.001, F.A.C., and subsection (10) of Rule 61B-23.002, F.A.C. were identified as lacking specific statutory authority.

Section 2 of the bill incorporates the provisions of those rules into s. 718.112, F.S. The bill allows a board member of a condominium association to join by written concurrence in any action taken at a meeting. It allows a board member to attend a board or committee meeting by telephone conference but requires that a telephone speaker be used so that the member can be heard by any unit owners present at the meeting. This section also requires that the association adopt written rules regulating the frequency, duration and manner of unit owner statements at association meetings. This provision is sufficient to authorize Rule 61B-23.001 and subsection (10) of 61B-23.002, F.A.C., without otherwise expanding the division's current rulemaking authority.

**Section 3.** Section 3 of the bill incorporates the provisions of subsection (7) of Rule 61B-23.002, F.A.C., rule into s. 718.117, F.S., regarding procedures for termination of condominium associations (just as section 1 of the bill incorporates the rule provisions into s. 718.104, F.S., regarding procedures for creating condominium associations). These provisions are sufficient to authorize subsection (7) of Rule 61B-23.002, F.A.C., without otherwise expanding the division's current rulemaking authority.

**Section 4.** Section 718.301, F.S., provides the procedures for which there is a transfer of control of a condominium association from the developer to the unit owners. Rule 61B-23.003, F.A.C., was adopted to clarify and specify certain duties and responsibilities with regard to these procedures. The rule establishes that the developer shall pay the costs for the preparation or

duplication of certain documents including accountant's fees incurred in preparing financial statements. It requires that association funds be used exclusively for this purpose and specifically prohibits the use of these funds for certain other activities. The rule provides that within 10 days after the election of a unit owner to the board of administration, the developer is to submit, in writing, the unit owner's name and mailing address to the division. It requires the developer or developer's agent to maintain a receipt of the transfer for a period of 7 years. It provides the method for computing the percentage of units conveyed to purchasers for purposes of determining when control of the association can be transferred to the unit owners. In determining the computation the terms "bulk transfer" and "assignment of developer rights" are used and defined in this rule. Finally, the rule limits a developer's ability to vote on certain issues and requires that the unit owners elect a majority of the association's board members within 7 years after a recordation of declaration. While the division has broad rulemaking authority, it does not have specific authority to implement any of these provisions of s. 718.301, F.S.

Section 4 of the bill authorizes the division to adopt rules tailored to administer the provisions of s. 718.301, F.S. This provision is sufficient to authorize Rule 61B-23.003, F.A.C., without otherwise expanding the division's current rulemaking authority.

**Section 5.** Rule 61B-17.001 provides that the developer, upon recording the declaration of condominium or amendments adding phases to a condominium, shall file with the division such recording information on a specific form, within 30 days. Section 5 of the bill incorporates the provisions of this rule into s. 718.403, F.S., regarding phase condominiums. This provision is sufficient to authorize subsection Rule 61B-17.001, F.A.C., without otherwise expanding the division's current rulemaking authority.

**Section 6.** Section 718.502, F.S., provides that a purchaser may void a contract for sale or a contract for a lease of more than 5 years if certain documents are not filed with the division. Rule 17.001, F.A.C., provides even further restrictions on a developer, by requiring that a developer can not close on any contract for sale or contract for a lease period of more than 5 years if the developer has not been notified by the division that all documents submitted by the developer are in compliance with the chapter 718, F.S. Additionally, rules 61B-17.003, 17.005, and 17.006, F.S., provide time frames by which the developer must file certain documents to the division. These same rules also require the division to provide certain notices and responses within an established time frame to the developer. These rules also define the terms "commencement" and "complete accounting" to further clarify the time frames imposed on developers in filing such documents. The division lacks the authority to impose these time frames or to require that a developer may not close on a contract unless all these filings have been made and the division has proved notice of such filings to the developer.

Section 6 of the bill amends to s. 718.502, F.S., to reflect the division's current practices and protects a prospective purchaser from a developer that has not received the approval for its documents from the division. It provides that a developer may not close on any contract for sale or on any contract for a lease of more than 5 years until the developer receives notification from the division that it is in compliance with the requirements of chapter 718, F.S. It also provides

specific authority that the division may adopt rules regarding filing, review, and examination requirements and relevant timetables to ensure compliance with notice and disclosure requirements in s. 718.502, F.S. This provision is sufficient to authorize subsection Rules 61B-17.001, 61B-17.003, 61B-17.005, and 61B-17.006, F.A.C., without otherwise expanding the division's current rulemaking authority.

**Section 7.** Section 718.503, F.S., provides requirements for developer disclosure prior to the sale of a condominium. Specifically, it allows a buyer to terminate a contract by written notice within 15 days after receiving all of the documents in this section. The division adopted rule 61B-18.001, F.A.C., prohibiting a developer from closing for 15 days following the signed execution of the contract for sale unless the buyer is informed of the 15 day period to terminate and agrees to close prior to the expiration of the 15 days. The rule also requires the developer to maintain proof of the buyer's agreement to close for a period of 5 years. The division lacks authority to require the developer to maintain the agreement for a specified number of years and has no authority to prohibit a developer from closing.

Section 7 of the bill provides that a developer may not close on a contract for a sale of a condominium for 15 days after the execution of the contract and delivery of the documents to the buyer unless the buyer has been informed of the 15 day period to terminate and has agreed to close prior to the expiration of the 15 days. The developer is required to keep proof of the buyer's agreement to close before the expiration period for 5 years after the closing date. This provision is sufficient to authorize Rule 61B-18.001, F.A.C., without otherwise expanding the division's current rulemaking authority.

**Section 8.** Part VI of Chapter 621, F.S., is related to the conversion of existing improvements into condominiums. The division has broad rulemaking authority granted in s. 718.501, F.S., but only has specific authority respect to the publication of any economic information that will assist tenants in making a decision and which the division makes available to the developer. In enforcing and implementing the provisions of this chapter the division adopted a series of rules that were intended to clarify and carry out the provisions in part VI of chapter 621, F.S.

Rule 61B-24.002, F.A.C., requires a developer to provide notice to a tenant of an intended conversion and prescribes the specific manner by which such notices must be mailed. Rule 61B-24.003, F.A.C., provides the classes of tenants that are entitled to a rental agreement extension and the maximum duration of a rental agreement extension. It provides time frames within which a tenant must decide to extend his or her rental agreement. It also requires the developer to continue to charge the same rent during the period of the rental agreement extensions.

Section 718.616, F.S., sets forth generally the information that must be disclosed and the components for disclosure. Rule 61B-24.004, F.A.C., contains more detailed provisions regarding those disclosures. The rule specifies how certain components will be measured, the basis for replacement cost information and states other disclosures requirements that must be included in the building condition statement.

Section 718.612, F.S., provides that a tenant shall have the right of first refusal to purchase the unit in which the tenant resides. The statute provides specific time frames for when the developer must make an offer and when the tenant must respond. Rule 61B-24.005, F.A.C., allows a developer to offer the unit to the tenant at more than one price, provided that the prices are offered during the period of right of first refusal. Also, the rule provides that the developer may not require a close on a purchase prior to the termination of the existing rental agreement or a rental agreement extension.

Section 718.618, F.S., requires that a developer of a condominium conversion either establish reserve accounts for capital expenditures and deferred maintenance, offer warranties, or post a surety bond. The section details the types of reserve accounts that must be established, the kinds of warranties that must be offered, and the procedures for establishing a surety bond. Rule 61B-24.007, F.A.C., specifies what is included in the term “roof,” and provides the basis for measuring the age of any component or structure for which a reserve account is to be established. The rule specifies the term of an implied warranty, if the developer issues such in lieu of a reserve account. Finally, the rule requires complete disclosure by the developer to the purchaser of the method of post-purchase protection.

Section 8 of the bill authorizes the division to adopt rules to administer and ensure compliance of the developers’ obligations with respect to condominium conversions. The rulemaking authority is limited to those issues of condominium conversions regarding the filing and noticing of intended conversions, rental agreement extensions, the period of right of first refusal, and the issuance and disclosure of post purchase protections issued or established by the developer. This provision is sufficient to authorize Rules 61B-24.002, 61B-24.003, 61B-24.004, 61B-24.005, and 61B-24.007, F.A.C., without otherwise expanding the division’s current rulemaking authority.

**Section 9.** This section provides that the act shall take effect upon becoming law.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that passage of this legislation validates existing rules so that they will not have to be repealed pursuant to s. 120.536, F.S., the department will not incur the costs generally associated with the rulemaking process.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.