

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1728  
 SPONSOR: Senator Fasano  
 SUBJECT: Condominiums and Cooperatives  
 DATE: February 26, 2004      REVISED: 03/01/04 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	<u>BI</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill allows the unit owners in a residential condominium or cooperative that meets the definition of “housing for older persons” in s. 760.29(4)(b)3., F.S., to forego retrofitting or replacing the handrails and guardrails in common elements or units if approved by a two-thirds vote of all voting interests. It prohibits unit owners in a high-rise building from voting to forego retrofitting in the common areas. It defines the terms “high-rise building” and “common areas.”

The bill prohibits a local authority from requiring the retrofitting of common areas with handrails and guardrails before the end of 2014. Further, it contains notice provisions for cooperatives and condominium associations in buildings that vote affirmatively to forego retrofitting and proscribes the use of proxies in such vote. The bill also has reporting requirements regarding the number of associations voting to forego the retrofitting and the cost per unit for associations that retrofit with handrails and guardrails.

This bill creates section 718.1085 and amends section 719.1055 of the Florida Statutes.

**II. Present Situation:**

**Condominiums**

A condominium is that form of ownership of real property created pursuant to ch. 718, F.S., “which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”<sup>1</sup> A condominium association may be a corporation for profit or a corporation not for profit.<sup>2</sup> The board of

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

<sup>2</sup> Ss. 718.104(4)(i) and 718.111(1)(a), F.S.

administration of a condominium is the board of directors or other representative body which is responsible for the administration of the association.<sup>3</sup>

Condominium unit owner meetings must take place at least once a year.<sup>4</sup> At condominium unit owner meetings, unit owners have the right to vote on matters specified in the association's bylaws, to purchase any land or recreation lease, to elect members of the board of administration, to adopt a budget, to recall board members, and to approve the transfer of a condominium unit and other decisions.<sup>5</sup> Written notice of condominium unit owner meeting, including an agenda, must be provided to a unit owner by mail, hand-delivery, or electronic transmission at least 14 days prior to the meeting.<sup>6</sup> The notice must also be posted conspicuously on the condominium property, if possible. The person who provides notice of a condominium unit owner meeting must execute an affidavit or provide a certificate of mailing stating to be included in association records for purposes of demonstrating that a meeting notice was provided to unit owners in compliance with the law.<sup>7</sup>

When unit owners vote by proxy, limited proxies must be used to waive or reduce reserve accounts for capital expenditures and deferred maintenance; to amend the declaration creating the condominium; to amend the bylaws or articles of incorporation; and to decide almost any other matter, including votes to reduce a condominium's financial reporting requirements.<sup>8</sup> A limited proxy form records how an owner has decided to vote on an issue and does not authorize a proxy holder to decide how the owner's vote will be cast.<sup>9</sup> Section 718.112(2)(d)3., F.S., contains specific provisions governing elections for condominium associations and proxies may not be used to elect board members or fill vacancies unless otherwise provided in ch. 718, F.S.

### **Cooperatives**

A cooperative is a "form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property."<sup>10</sup> The cooperative's association may be a corporation for profit or a corporation not for profit that owns the record interest or a leasehold of the cooperative property and is responsible for its operation.<sup>11</sup> The board of administration (board) is the board of directors or other representative body which is responsible for the administration of a cooperative association.<sup>12</sup>

Shareholder meetings must take place at least once a year.<sup>13</sup> At shareholder meetings, shareholders of a cooperative have the authority to vote on matters specified in the cooperative

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<sup>3</sup> S. 718.103(4), F.S.

<sup>4</sup> S. 718.112(2)(d)1., F.S.

<sup>5</sup> Ss. 718.112(2)(d)4, 718.111(8), and 718.112(2)(d)1., (f), (i), and (j), F.S.

<sup>6</sup> S. 718.112(2)(d)2., F.S.

<sup>7</sup> S. 718.112(2)(d)2., F.S.

<sup>8</sup> Ss. 718.112(2)(b)2. and 718.111(13)(d), F.S.

<sup>9</sup> See Department of Business and Professional Regulation, *General Information About Proxies*, which are instructions for BPR Form 33-033. Revised 11/23/93.

<sup>10</sup> S. 719.103(12), F.S.

<sup>11</sup> S. 719.103(2), F.S.

<sup>12</sup> S. 719.103(3), F.S.

<sup>13</sup> S. 719.106(1)(d), F.S.

documents such as the cooperative's articles of incorporation or bylaws; to impose fees for the use of cooperative property; to purchase land or acquire a recreational lease; to modify a cooperative unit; to amend the cooperative documents; and to vote on other matters.<sup>14</sup> The cooperative association must provide notice of shareholder meetings including an agenda by mail to each unit owner at least 14 days before the meeting.<sup>15</sup> Notice of shareholder meetings must also be posted conspicuously on cooperative property at least 14 days before a shareholder meeting. After notice to the unit owners, the board may designate, by rule, a specific location where notice of all unit owner meetings shall be posted. Alternatively, the association may broadcast the notice provide the broadcast meets certain statutory requirements. Unless the unit owner waives in writing the right to receive notice, the notice of the annual meeting must be mailed, hand delivered, or electronically transmitted to each unit owner. An officer of the association must provide an affidavit or certificate of mailing to be included in the official record of the association for purposes of demonstrating that notice requirements were met.

Unless otherwise provided by the bylaws of a cooperative, the presence of a majority of the voting interests at a membership meeting constitutes a quorum.<sup>16</sup> Decisions shall be made by the owners of a majority of the voting interests represented at a meeting at which a quorum is present unless otherwise specified in the association's bylaws or ch. 719, F.S. Although limited proxies and general proxies may be used to establish the presence of a quorum, owners that are not present may only vote by limited proxy on certain issues if they use a form that substantially conforms to a form adopted by the Division of Florida Land Sales, Mobile Homes and Condominiums (division).<sup>17</sup> Limited proxies are allowed for votes taken to waive or reduce reserves, to waive the financial reporting requirements, or for votes taken to amend the articles of incorporation or bylaws. Proxy voting, either limited or general, may not be used in the election of board members. General proxies may be used where limited proxies are not required and, also, for nonsubstantive changes to items for which a limited proxy is given or required. These provisions regarding voting procedures for cooperatives do not apply to a timeshare cooperatives.<sup>18</sup>

### **Firesafety Requirements**

Section 633.0215, F.S., requires the State Fire Marshal to adopt, by rule, the most current edition of the National Fire Protection Association (NFPA) Standards 1, the Fire Prevention Code, and NFPA 101, the Life Safety Code, as the Florida Fire Prevention Code (code).<sup>19</sup> The State Fire Marshal is authorized to modify these codes as needed to accommodate the specific needs of the state. Section 633.025(1), F.S., states that this code "shall be deemed adopted by each municipality, county, and special district with firesafety responsibilities."

Section 633.025(5), F.S., effective July 1, 2001, requires that new and existing building structures must comply with the current firesafety code. Recognizing the practical limits to retrofitting existing structures, subsection (6) authorizes the local fire safety official to apply the

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<sup>14</sup> Ss. 719.104(5) and (6), 719.1055(1), and 719.304(1), F.S.

<sup>15</sup> S. 719.106(1)(d), F.S.

<sup>16</sup> S. 719.106(1)(b)1., F.S.

<sup>17</sup> S. 719.106(1)(b)2., F.S.

<sup>18</sup> S. 719.106(1)(b)2., F.S.

<sup>19</sup> Ch. 4A-60, Fla. Admin. Code

applicable firesafety code to the extent practical to assure a reasonable degree of safety to life and property, or to fashion a reasonable alternative that affords an equivalent degree of safety.

Section 1.4.1 of the NFPA 101 (2000 Edition) states the code “shall apply to both new construction and existing buildings and existing structures. Section 1.5.2 provides that “alternative systems, methods, or devices approved as equivalent by the authority having jurisdiction shall be recognized as being in compliance with this Code.”

Section 7.2.2.4 of the above code addresses the specifications for design and construction of guards and handrails. Paragraph (3) of section 7.2.2.4.6 (Guard Details) of the code requires that:

“Open guards, other than approved, existing open guards, shall have intermediate rails or an ornamental pattern such that a sphere 4 in. (10.1 cm) in diameter shall not pass through any opening up to a height of 34 in. (86 cm).”<sup>20</sup>

#### **Definition of “Housing for Older Persons”**

The Fair Housing Act, ss. 760.20-760.37, F.S., provides a definition for “housing for older persons.” Specifically, s. 760.29(4)(b)3., F.S., defines this term as housing that is intended and operated for occupancy by persons 55 years of age or older. It also requires the housing facility or community to adhere to policies and procedures that demonstrate the intent to provide such housing.<sup>21</sup> Also, the housing facility or community must comply with rules adopted by the U.S. Department of Housing and Urban Development that provide for verification of occupancy.<sup>22</sup>

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 718.1085, F.S., to allow unit owners, an association, or condominium to forego the retrofitting or replacing of handrails and guardrails in the common elements or units of a residential condominium if approved by a two-thirds vote of all voting interests. Also, the bill prohibits the foregoing of retrofitting in common areas with handrails and guardrails in a high-rise building. It defines the terms “high-rise building” and “common areas.” The bill prohibits a local authority from requiring the retrofitting of common areas with handrails and guardrails before the end of 2014.

The bill prohibits the use of proxies, either general or limited, for a vote to forego the retrofitting of handrails and guardrails. Such vote is effective upon the recording of a certificate attesting to the vote in the public records of the county. The association is required to provide written notice, in at least 16-point bold type by certified mail, to each unit owner within 20 days after the vote. The bill also requires that a unit owner provide notice of the vote to forego retrofitting to a new owner prior to closing or to a renter prior to signing the lease.

In addition, the bill requires the association to report the membership vote and recording of the certificate, as well as the per-unit cost of any retrofitting that is undertaken, to the division. The division is required to report the number of associations voting to forego the retrofitting of

<sup>20</sup> This is also consistent with section 1015.3 of the Florida Building Code.

<sup>21</sup> S. 760.29(4)(b)3.b., F.S.

<sup>22</sup> S. 760.29(4)(b)3.c., F.S.

handrails and guardrails annually to the State Fire Marshall's Office of the Department of Financial Services.

**Section 2** amends s. 719.1055, F.S., to allow the unit owners or a cooperative to forego the retrofitting or replacing of handrails and guardrails in the common elements or units of a residential cooperative if approved by a two-thirds vote of all voting interests. The same prohibition on voting to forego retrofitting in the common areas of a high-rise building, definitions, the prohibition on requiring the retrofitting of common areas before the end of 2014, and notice and reporting requirements that are contained in section 1 of this bill for condominiums are made applicable to cooperatives in this section.

**Section 3** provides that this act shall take effect July 1, 2004.

#### **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:

Condominium associations, cooperatives, and unit owners may forego the requirement to retrofit or replace the handrails and guardrails in any common element or unit and avoid the associated costs, provided two-thirds of all the voting interests of an affected building consent to forego retrofitting. The cost of retrofitting varies depending on whether the handrails and guardrails must be replaced or an attachment is added to the existing guardrails in order to comply with the current code.

C. Government Sector Impact:

The division estimates that there are more than 20,000 condominiums and 800 cooperatives in Florida. The division does not maintain records on the number of condominiums and cooperatives that meet the definition of "housing for older persons" or how many of those buildings are less than 75 feet in height.

In order to implement the provisions of this bill, the division will have to promulgate rules and provide a form to collect the information on votes to forego retrofitting and the per-unit cost for any retrofitting that is undertaken. However, the cost associated with any rulemaking required in response to this bill would be minimized by the fact that the department will likely adopt a form and rules similar to those adopted last year for associations voting to forego retrofitting with fire sprinkler systems. After the rulemaking process is complete, the responsibility to collect and report information regarding retrofitting can be accomplished within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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