

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: CS/SB 2084

INTRODUCER: Regulated Industries Committee and Senator Villalobos

SUBJECT: Community Associations

DATE: March 25, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			CA	
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/>	Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/>	Technical amendments were recommended
	<input type="checkbox"/>	Amendments were recommended
	<input type="checkbox"/>	Significant amendments were recommended

I. Summary:

The bill renames the Regulatory Council of Community Association Managers as the Board of Community Association Managers. It provides for the regulation and licensure of all persons and firms who provide community association management services.

The bill amends provisions in ch. 718, F.S., relating to the rights and obligations of condominium associations and condominium unit owners. The bill revises the provision that permits three or more communities to obtain insurance for an amount equal to the PML for 250-year windstorm event, to require that any policy providing such insurance coverage issued after July 1, 2008, must be approved by the Office of Insurance Regulation.

The bill holds the officers, directors, and agents of an association personally liable for monetary damages if they failed or breached their duties to the association and the failure or breach constitutes a criminal violation under s. 617.0834, F.S. It provides sanctions for persons who knowingly or intentionally deface, destroy, or fail to create or maintain accounting records of the association. The bill requires that the official records of the association must be kept for five years and within 45 miles of the condominium property. It also provides that social security

numbers, driver's license numbers, credit card numbers, and other personal identifying information of unit owners, occupants or tenants are not accessible to other unit owners.

The bill provides that associations or their boards of administration cannot waive financial reporting for more than two consecutive years. It also provides requirements for the use of proxy votes. The bill also specifies notice requirements for regular or special assessments. It requires that the developer pay for any audit or review that is done before the turnover of control from a developer-controlled to a unit owner-controlled association.

The bill provides that the association must prepare an annual budget of estimated revenue and expenses, and provides that the budget adopted for the prior fiscal year will remain in effect until the association adopts a new budget for the current fiscal year. The bill provides a notice requirement for all ballots that involve questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than the purposes for which they were intended. It also permits the association, in a catastrophic event, to use reserve funds for non-scheduled purposes to mitigate further damages or to make the condominium accessible for repairs.

The bill revises requirements for the amendment of association bylaws. It permits members of a condominium association to amend the declaration if approved by not less than a majority of the units. Current law requires approval of two-thirds of the units.

The bill requires the board of administration to have the condominium buildings inspected every five years by a state-registered professional engineer or professional architect. The bill requires an inspection of the condominium building at least every five years and before the developer relinquishes control of the association to the unit owners. It specifies the matters that must be addressed in the inspection and in the report.

The bill prohibits association rules that prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium unit. The bill prohibits "Strategic Lawsuits Against Public Participation" or "SLAPP suits" by condominium associations, and requires the courts to award the prevailing party reasonable attorney's fees and costs.

This bill substantially amends the following sections of the Florida Statutes: 468.431, 468.4315, 468.432, 468.433, 468.4337, 468.4338, 468.435, 468.436, 718.110, 718.111, 718.112, 718.113, 718.1255, 718.301, 718.3025, 718.3026, 718.501, and 718.50151. This bill creates section 718.1224, Florida Statutes.

II. Present Situation:

Regulatory Council of Community Association Managers

Part VIII, of ch. 468.4315, F.S., provides for the regulation of community association managers by the Regulatory Council of Community Association Managers within the Department of Business and Professional Regulation.

Section 468.431(1), F.S., defines a community association as:

a residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.

Section 468.431 (2), F.S., defines “community association management” to mean:

any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 50 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

Section 468.431(3), F.S., defines “community association manager” to mean a person who is licensed pursuant to pt. VIII of ch. 468, F.S., to perform community association management services.

Condominium Background

A condominium is a “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.”¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is like a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.⁴ A declaration of condominium

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grand View at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).

⁴ Section 718.104(5), F.S.

may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.⁵

Condominiums are administered by a board of directors referred to as a board of administration⁶

Condominiums are regulated by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of the Department of Business and Professional Regulation (department), in accordance with ch. 718, F.S.

Condominium Associations

Section 718.111(1)(a), F.S., requires that the condominium association must be a Florida corporation for profit or a Florida corporation not for profit, except that any association which was in existence on January 1, 1977, need not be incorporated.

Section 617.0834, F.S.,(1)(a), F.S., relating to not for profit associations and corporations, holds officers or directors are not liable for a breach or failure to perform their duties as an officer or director, unless:

- (a) The officer or director breached or failed to perform his or her duties as an officer or director; and
- (b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:
 - 1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against an officer or director in any criminal proceeding for violation of the criminal law estops that officer or director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the officer or director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;
 - 2. A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
 - 3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Condominium Insurance Coverage

In January 2007, Governor Crist convened a Special Session to address the insurance crisis in Florida. House Bill 1-A, enacted as ch. 2007-1, L.O.F., was the result of this weeklong special session. The legislation, in part, amended s. 718.111(11), F.S., providing for windstorm insurance for condominium associations.

⁵ Section 718.110(1)(a), F.S.

⁶ Section 718.103(4), F.S.

Section 718.111(11), F.S., requires the Office of Insurance Regulation (OIR) of the Department Financial Services to prepare for publication 18 months from the effective date of the act a report evaluating premium increases or decreases for associations, unit owner premium increases or decreases, recommended changes to better define common areas, or any other information the OIR deems appropriate.

Section 718.111(11)(d), F.S., requires that the association obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. It provides that insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time.

Section 718.111(11)(a)1., F.S., permits three or more communities operating as residential condominiums (ch. 718, F.S.), cooperatives (ch. 719, F.S.), homeowners' associations (ch. 720, F.S.), or timeshare entities (ch. 721, F.S.) to obtain and maintain windstorm insurance coverage if it is sufficient to cover an amount equal to the probable maximum loss (PML) for such communities for a 250-year windstorm event. The PML must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. It also deems such insurance coverage adequate windstorm insurance for the purposes of s. 718.111(11)(a), F.S.

Official Records

Section 718.111(12), F.S., specifies the official records of the association to include copies of the governing documents of the association, its insurance policies, and accounting records. The association is required to keep accounting records for the association for each condominium which the association operates. The association's accounting records are required to be maintained for a period of not less than seven years.

Section 718.111(12)(b), F.S., requires that the association's official records must be maintained in this state and must be made available to the unit owner within five days after receipt of written request by the board or its designee.

Section 718.111(12)(c), F.S., requires that the association official records must be open to inspection by any member of the association at all reasonable times. It also provides that failure of an association to provide the records within 10 working days after receipt of a written request shall create a rebuttable presumption that the association willfully failed to comply with this paragraph. Section 718.111(12)(c), F.S., provides, in pertinent part, the following sanctions for an association if it denies a member access to its official records:

[A] unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th working day after receipt of the written request. The failure to permit inspection of the association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records for inspection.

The following records are expressly exempted from inspection by a member or unit owner:

- Any record protected by attorney-client or work-product privilege;
- Information obtained by the association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law;
- Disciplinary, health, insurance, and personnel records of the association's employees; or
- Medical records of unit owners or other community residents.⁷

Financial Reporting

Section 718.111(13), F.S., sets forth the financial reporting responsibilities of the association. A condominium association has 90 days to prepare and complete a financial report for the preceding fiscal year either after the end of the fiscal year or annually as provided by bylaws. The types of financial statements or information that must be provided are based on the total annual revenues of the association. Section 718.111(13), F.S., provides, in part, that if the association has a total annual revenue of \$100,000 or more, but less than \$200,000, then the association must prepare compiled financial statements.⁸ If the association has a total annual revenue of at least \$200,000 and not less than \$400,000 then the association must prepare reviewed financial statements.⁹ If the total annual revenue is \$400,000 or more, then the association must prepare audited financial statements.¹⁰ If the total annual revenue is less than \$100,000, then a report of cash receipts must be prepared. An association with less than 50 units regardless of annual revenue must prepare a report of cash receipt and expenditures instead of financial statements.¹¹ Meetings and approval of budgets must occur prior to the end of the fiscal year.¹²

Voting Requirements

The voting requirements for condominium associations are set forth in s. 718.112(2)(b), F.S. Section 718.112(2)(b)2., F.S., prohibits unit owners from voting by general proxy, but unit owners may vote by limited proxies that substantially conform to the limited proxy form adopted by the division.¹³ Limited proxies and general proxies may be used to establish a quorum. Section 718.112(2)(b)2., F.S., also specifies the following votes which may be made through a limited proxy:

- To waive or reduce reserves;
- To waive the financial reporting requirements of s. 718.111(13), F.S.;

⁷ Section 720.303(1),(2),(3),(4), F.S.

⁸ According to information provided by Florida Institute of Certified Public Accountants (FICPA), a compilation of financial statements does not provide an expression of assurance regarding the financial statements and whether modifications to the financial statements are necessary.

⁹ According to information provided by FICPA, a review of financial statements provides the accountant with a reasonable basis for expressing a limited assurance that there are no material modifications that should be made to the statements for them to be in conformity with Generally Accepted Accounting Principals (GAAP).

¹⁰ According to information provided by FICPA, an audit of financial statements permits the accountant to provide a reasonable basis for expressing an opinion regarding all material respects of the financial statements.

¹¹ Section 718.111(13)(b)(2), F.S.

¹² Section 718.111(13)(d)3., F.S.

¹³ The division's limited proxy form is BPR Form 33-033. A copy of the form is available at the division's Internet website located at: http://www.myflorida.com/dbpr/lsc/documents/33-033_sample_limited_proxy.pdf (Last visited March 21, 2008).

- To amend the declaration pursuant to s. 718.110, F.S.;
- To amend the articles of incorporation or bylaws pursuant to this section; and votes for any other matter for which this chapter requires or permits a vote of the unit owners.

Section 718.112(2)(b)2., F.S., also provides that no proxy, limited or general, can be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given.

Board Meetings and Notice Requirements for Meetings

Section 718.112(2)(c), F.S., sets forth notice requirements for meetings of the board of administration. The notice must be conspicuously posted on the condominium property at least 48 continuous hours preceding the meeting except in an emergency. Any item that is not noticed may be taken up in a meeting on an emergency basis by a majority plus one member of the board. However, the action must be ratified at the next meeting. Section 718.112(2)(c), F.S., also requires notice of meetings where regular assessments against unit owners are to be considered must contain a statement that assessments will be considered at the meeting and the nature of the assessments.

Section 718.112(2)(d), F.S., requires an annual unit owner meeting.

Elections

Section 718.112(2)(d)3., F.S., sets forth the requirements for elections to the board. Board members must be elected by written ballot or a voting machine. Proxies cannot be used to elect the board. Not less than 60 days before a scheduled election, the association must mail, deliver or electronically transmit, either by a separate association meeting or in another association mailing, including regularly published newsletters, a first notice of the date of election to the unit owners. Anyone who wishes to be a candidate for the board must give written notice to the association not less than 40 days before a scheduled election. The association must mail a ballot and a list of all candidates along with the written notice and agenda to all unit owners entitled to vote. If a candidate requests, the association must include an information sheet by the candidate in the mailing. The information sheet cannot be larger than 8 1/2 inches by 11 inches and must be given to the association no less than 35 days before the election. The association is not liable for the contents of the information sheet.

Elections must be decided by a plurality of the ballots cast. There is not a quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order for the election to be valid. A unit owner cannot let anyone else vote his ballot, and if a ballot is cast improperly then it is deemed invalid and a unit owner may be fined by the association for voting improperly as well.

Section 718.112(2)(d)8., F.S., provides that, if a vacancy occurs before the expiration of a term, it may be filled by the affirmative vote of the majority of the remaining directors, even if there is less than a quorum, or by the sole remaining director. Alternatively, a board may hold an election to fill the vacancy. If this is the option chosen, then it must conform to the election

process outlined already for electing board members, unless the association has provided for an alternative voting procedure.

An association may, by an affirmative vote of a majority of the total voting interests,¹⁴ provide for an alternative voting and election procedure contained in the association bylaws. The vote may be a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by a limited or general proxy.

Annual Budget

Section 718.112(2)(f)1., F.S., requires that the association's proposed annual budget of common expenses must be detailed and show the amounts budgeted by accounts and expense classifications, including, but not limited to, those expenses listed in s. 718.504(21), F.S.¹⁵ Section 718.112(2)(f)2., F.S., requires that the budget include reserve accounts for capital expenditures and deferred maintenance in addition to annual operating expenses. Section 718.112(2)(f)3., F.S., requires that reserve accounts and any interest accruing from them must remain in the reserve account or accounts and only be used for authorized reserve expenditures, unless their use for other purposes is approved in advance by a majority vote.

Section 718.112(2)(f)4., F.S., requires, before the turnover of control of an association by a developer to unit owners other than the developer, the developer-controlled association must not vote to use reserves for purposes other than what they were intended without the approval of a majority of all non-developer voting interests. The only voting interests that can vote on questions regarding waiving or reducing the funding of reserves or using existing reserve funds for the purposes other than purposes for which the reserves were intended are the voting interests of the units subject to the assessment to fund the reserves in question.

Display of Religious Decorations

The First Amendment of the United States Constitution grants the freedoms of speech, religion, press, assembly, and petition. The First Amendment applies to the states through the Fourteenth Amendment, which prohibits states from depriving any person of life, liberty, or property without due process. Chapter 718, F.S., does not specifically provide for the display of religious decorations.

However, s. 718.113(4), F.S., permits unit owners to display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day,

¹⁴ Section 718.103(10), F.S., defines voting interests to mean "the voting rights distributed to the association members pursuant to s. 718.104(4)(j), F.S. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium."

¹⁵ The expenses specified in s. 718.504(21), F.S., include: expenses for the association and condominium; administration of the association; management fees; maintenance; rent for recreational and other commonly used facilities; taxes upon association property; taxes upon leased areas; insurance; security provisions; operating capital; reserves; fees payable to the division; and expenses for a unit owner.

Independence Day, and Veterans Day. It also permits the display, in a respectful way, of portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. Unit owners have the right to display these flags regardless of any declaration rules or requirements dealing with flags or decorations.

III. Effect of Proposed Changes:

Regulatory Council of Community Association Managers

The bill amends ss. 468.431 and 468.4315, F.S., to rename the Regulatory Council of Community Association Managers (council) as the Board of Community Association Managers (board).

The bill amends the definition of “community association management” in s. 468.431(3), F.S., to delete the provision that limits the term to community management of an association or associations that contain more than 50 units or have an annual budget in excess of \$100,000.

The bill amends s. 468.431, F.S., to define the term “community association management firm” to mean a corporation, limited liability company, partnership, trust, association, sole proprietorship, or other similar organization engaging in the business of community association management for the purpose of providing any of the services of community association management. It also defines the term “division” to mean the Division of Florida Land Sales, Condominiums, and Mobile Homes.

The bill amends s. 468.431(1)(a), F.S., to provide that the two board members that have never been connected with the business of association management, are not prohibited from serving because they have been a resident or board member of a community association.

The bill requires the board to establish an education program relating to professional community association managers.¹⁶

The bill provides that board members will serve without compensation, except for per diem and travel expenses. The bill specifies the responsibilities of the board.

Licensure of Community Association Management Firms

The bill amends s. 468.432, F.S., to provide for the following regulation of community association management firms (firms):

- Effective January 1, 2009, firms must be licensed by the department.
- Firms must apply with the department for licensure and must be actively registered and authorized to do business in the state before licensure.
- Applicants for licensure must designate who will respond to all inquiries from, and investigation by, the department or division.

¹⁶ Section 468.433(2)(b), F.S., provides the prelicensure education requirements for community association managers.

- Licensed firms must notify the department within 30 days of any change of information contained in the licensure application.
- Licenses expire on September 30 of odd-numbered years and must be renewed every two years by application and payment of the renewal fee.¹⁷

Section 468.432(2)(f), F.S., provides that “if the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other similar organization is canceled automatically during that time.” The meaning and intent of this provision is unclear. It is not clear whether the term “one individual active community association manager member” refers to an employee or other member of “a community association management firm.” Automatic cancellation is the equivalent of a license revocation without notice, including the exercise of the procedural rights under ch. 120, F.S. (See Other Constitutional Issues, *infra*.)

Section 468.432(2)(f), F.S., provides that firms, by licensure, agree that they will employ only licensed persons in the direct supervision of community association management firms. The bill deletes the provision in the current s. 468.432(2), F.S., that permits business entities to engage in community association management if they employ a licensed natural person to directly provide those services.

The bill amends s. 468.433(2), F.S., relating to licensure qualifications, to provide that the department may refuse a licensure application if the applicant is found to have provided management services requiring licensure without a license.

Community Association Management Disciplinary Proceedings

The bill amends s. 468.436, F.S., to require the department to investigate complaints for violations of part VIII of ch. 468, F.S., and the rules of the board. It requires, within 30 days of receipt, that the department acknowledge the receipt of the complaint and notify the complainant whether the complaint is within its jurisdiction. The department must complete the investigation within 90 days of their receipt of the original complaint or of timely requested additional information. Beyond the 90 days, the department may continue the investigation and may bring an administrative action if reasonable cause exists to believe that a violation has occurred. If the investigation is not completed within the prescribed time frames, the department must provide the complainant, in writing, a monthly notice of the status of the investigation. The notice must inform the complainant of any hearing rights he or she may have under ss. 120.569 and 120.57, F.S.¹⁸

The bill also amends s. 468.436, F.S., to prohibit contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

¹⁷ The council’s authority to set fees is provided in s. 468.435, F.S.

¹⁸ Sections 120.569 and 120.57, F.S., provide hearing rights to persons whose substantial interests are affected by a state agency’s action.

Amendments to the Declaration of Condominium

The bill amends s. 718.110(1)(a), F.S., to provide that members of an association may amend the declaration if approved by not less than a majority of the units. Current law requires approval of two-thirds of the units. It also permits the declaration to provide for approval by a majority of the voting interests, or less than the majority of the voting interests.¹⁹ The bill also amends s. 718.110(1)(a), F.S., to delete the provision that prohibits declarations recorded after April 1992 from requiring that amendments be approved by more than four-fifths of the voting interests.

Condominium Associations

The bill amends s. 718.111(1)(a), F.S., to require the officers, directors, and agents of an association to discharge their duties in good faith. It holds these persons personally liable for monetary damages if they failed or breached their duty to perform and the failure or breach constitutes a criminal violation under s. 617.0834, F.S. The bill restates the currently applicable provision in s. 617.0834, F.S., that provides the personal liability for money damages of the officers and directors of a not for profit corporation or association.

Condominium Insurance

The bill amends s. 718.111(11), F.S., to delete the legislative intent provision and the requirement that the OIR report and prepare for publication 18 months from the effective date of s. 718.111(11), F.S., an evaluation of the premium increases and decreases for condominium associations and unit owners, including the OIR's recommendations.

The bill amends s. 718.111(11)(a)1., F.S., which permits three or more communities to obtain insurance for an amount equal to the PML for 250-year windstorm event, to require that any policy providing such insurance coverage issued after July 1, 2008, must be approved by the OIR before it can be deemed adequate.

The bill creates s. 718.111(11)(e), F.S., to require that the association pay the deductible for coverage of an element that is the responsibility of the association to repair or replace. It requires that the deductible must be paid by the unit owner if the element is his or her responsibility to repair or replace. The bill also provides that a unit owner policy may not incur another deductible if the deductible has already been exercised on the association policy for the same occurrence.

Official Records

The bill amends ss. 718.111(12)(a)11. and (c), F.S., to provide that any person who knowingly or intentionally defaces, destroys, or fails to create or maintain accounting records is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., which authorizes the division to impose a civil penalty for each day of a continuing violation, but not to exceed \$5,000.

¹⁹ Section 718.103(10), F.S., defines voting interests to mean “the voting rights distributed to the association members pursuant to s. 718.104(4)(j), F.S. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.”

The bill amends s. 718.111(12)(b), F.S., to require that the official records of the association must be kept within the state for five years. It also provides that the records must be available to a unit owner at a location within 45 miles of the condominium property.

The bill amends s. 718.111(12)(c)4., F.S., to provide that social security numbers, driver's license numbers, credit card numbers, and other personal identifying information of unit owners, occupants or tenants in the possession of the association are not accessible to unit owners.

The bill creates s. 718.111(12)(a)16., F.S., to include a copy of inspection report provided in s. 718.301(4)(p), F.S., which is created by section 15 of this bill, among the official reports that the association is required to keep. It also permits the association to make the records available to the unit owner electronically via the Internet or to be viewed in an electronic format on a computer screen and printed upon request.

Financial Reporting

The bill amends s. 718.111(13), F.S., which requires that the division adopt rules to set forth uniform accounting principals and standards to be used by the associations and for the financial reporting requirements for multicondominiums, to specify what must be included in those rules. The bill requires that the rules include, but not be limited to, a summary of the reserves, including whether the reserves are being funded at a level sufficient to prevent the need for a special assessment to do the deferred maintenance or replacement as required. If not sufficient, the summary must state the amount of assessment that will be necessary to bring the reserves up to the level that would prevent a special assessment.

The bill amends s. 718.111(13)(c), F.S., to provide that an association or board of administration may not waive financial reporting for more than two consecutive years. The bill also provides that the person preparing the financial reports may rely on the inspection report as provided for in s. 718.301(4)(p), F.S., for verification. The statement must also confirm that the financial operations of the association meet fiscal and fiduciary standards of ch. 718, F.S.

The bill amends s. 718.111(13), F.S., to require that the developer pay for any audit or review prepared under this section that is done before the turnover of control from the developer to a unit owner-controlled association.

Voting Requirements

The bill amends s. 718.112(2)(b)2., F.S., to prohibit votes that are allocated to units owned by the association from being cast by proxy, ballot, or otherwise for any purpose. However, the bill permits proxies to be used to establish a quorum.

Board Meetings and Notice Requirements for Meetings

The bill amends s. 718.112(2)(c), F.S., to require that the board address as an item of business at its next regular board meeting or at a special meeting any matter in which 20 percent of the voting interests have petitioned the board to address. The board must address the petitioned item of business not later than 60 days after the receipt of the petition.

The bill amends s. 718.112(2)(c), F.S., to provide that the notice for a meeting in which regular or special assessments are to be considered, must specifically state that assessments will be considered and the nature, estimate cost, and a description of the assessments. Current law only requires that the notice specifically state the nature of the assessment.

The bill amends s. 718.112(2)(d), F.S., to provide that the annual meeting of the unit owners must be held at the location provided in the association bylaws. If the location of the annual board meeting of unit owners is not provided in the association bylaws, then the meeting must be held in the state within 30 miles of the condominium property.

Elections

The bill amends s. 718.112(2)(d)1., F.S., to provide that the terms of all members of the board expire at the annual meeting. If no person has demonstrated an intention to run for the position, the board member whose term has expired shall be automatically reappointed and need not stand for reelection. The bill deletes the current provision that permits the bylaws of the association to provide for the terms of the board members. It also prohibits co-owners of a unit from serving as members of the board of directors at the same time.

The bill amends s. 718.112(2)(d)1., F.S., to permit convicted felons, who have had their civil rights restored for a period of not less than five years, to be eligible for board membership. The bill amends s. 718.112(2)(d)3., F.S., to require that, before a scheduled election, the association must provide the unit owners with a “certification form provided by the division that attests that *he or she* has read and understands, to the best of *his or her* ability, the governing documents of the association and the provisions of this chapter and any applicable rules.” This does not specify whether the certification form must be signed. It is not clear whether the person referenced certification form is the candidate for the board or the unit owner, but the bill requires that a signed certification form must be included in the information sheet that is provided with the ballot.

The bill deletes the provision that allows an association to opt out of the statutory election process if the board decides to hold an election to fill a board vacancy that was vacated before the expiration of a term. This bill also removes the provision that allowed an association to provide a different voting and election procedure from its bylaws by an affirmative vote of a majority of the total voting interests.

Annual Budget

The bill amends s. 718.112(2)(f)1., F.S., to require that the proposed budget must include estimated revenues and expenses, must be detailed, and it must show the amounts budgeted by accounts and any required expense classifications. Current law only references an annual budget of common expenses.

The bill amends s. 718.112(2)(f)4., F.S., to provide that all ballots that involve questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than the purposes for which they were intended must contain the following statement:

WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING
ALTERNATE USES OF EXISTING RESERVES MAY RESULT IN UNIT
OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL
ASSESSMENTS REGARDING THOSE RESERVE ITEMS.

This statement must be in capitalized, bold letters and in a font size larger than any other used on the face of the ballot.

The bill creates s. 718.112(2)(f)5., F.S., to provide that after turnover control from the developer, the association may, in a catastrophic event, use reserve funds for nonscheduled purposes to mitigate further damages or to make the condominium accessible for repairs. This is an exception to the limitation in s. 718.112(2)(f)3., F.S., that reserve account must be used for their authorized purposes unless another purpose is approved in advance by a majority vote at a duly called meeting of the association. The bill does not define the term “in case of a catastrophic event.” It is not clear whether the term includes, or is limited to, a declared state of emergency under s. 252.36, F.S.²⁰

Amendment of Bylaws

The bill amends s. 718.112(h)1., F.S., to permit associations to amend their bylaws by a majority of the voting interests present in person or by proxy at a duly called meeting. Current law requires that two-thirds of the voting interests approve the amendment. The bill permits associations to have bylaws that provide for approval by a majority of the voting interests, or less than a majority of the voting interests.

The bill amends s. 718.112(j), F.S., relating to the recall of board members, to permit the bylaws of the association to provide a cause for removal of a member from the board for cause.

The bill also amends s. 718.112(j)5., F.S., which provides for the filling of vacancies that result from a recall, to include vacancies from a removal.

The bill creates s. 718.112(n), F.S., to provide that a director more than 90 days delinquent in the payment of any fee or assessment is deemed to have abandoned the office.

The bill also amends s. 718.112(o), F.S., to provide that a director charged with a felony theft or embezzlement offense involving the association's funds or property shall be suspended from office pending the resolution of the charge. The bill requires that the board must appoint an interim board member at the next board meeting. The interim board members shall serve in place of the suspended member until such charges are resolved or the suspended member resigns.

²⁰ Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

Maintenance

Maintenance of the common elements is the responsibility of the association.²¹ The bill amends s. 718.113(5), F.S., to require that condominiums install hurricane shutters or hurricane protection that complies with or exceeds the applicable building code. Current law only requires the installation of hurricane shutters. The bill clarifies that the hurricane shutter and protection provisions in s. 718.113(5), F.S., do not create an obligation on behalf of the board or association to close or cause to be closed any shutters when such protection may be required. It also provides that restriction may not be placed on the closing of hurricane shutters unless the board and association assume the responsibility of closing the hurricane shutters when appropriate.

The bill creates s. 718.113(6), F.S., to require condominium associations to inspect the condominium buildings at least every five years. If the condominium is not available for inspection on July 1, 2008, the board shall have the condominium buildings inspected to provide an update to the turnover inspection report under seal of a licensed architect or engineer authorized to practice in this state attesting to required maintenance, useful life, and replacement costs of the elements provided in s. 718.301(4)(p), F.S., which is created by this bill.

Display of Religious Decorations

The bill creates s. 718.113(7), F.S., to provide that the board of administration may not adopt any rule or regulation which impairs the rights guaranteed by the First Amendment to the United States Constitution or s. 3, Art. I of the Florida Constitution, which includes but is not limited to, the free exercise of religion. The bill provides that no rules or regulations may conflict with the provision of ch. 718, F.S., or the condominium instruments. The bill also provides that no rule or regulation may prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium unit.

Prohibition against SLAPP Suits

The bill creates s. 718.1224, F.S., to prohibit “strategic lawsuits against public participation” or “SLAPP suits” as they are commonly known. The bill makes the legislative finding that such lawsuits are against the public interest. The bill describes a SLAPP lawsuit as one that occurs when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association.

The bill provides that unit owners have a right to expeditious resolution of such an action, including the right to petition for a motion to dismiss or for a summary judgment. The bill further provides that the court may award the unit owner actual damages for a violation of this prohibition, and may also award treble damages. However, the court must state a basis for an award of treble damages. The court would also be required to award the prevailing party reasonable attorney's fees and costs. The bill also bars condominium associations from expending association funds in prosecuting a SLAPP suit against a unit owner.

²¹ Section 718.113(1), F.S.

This provision is similar to the prohibition against SLAPP suits by homeowners' associations in s. 720.304(4), F.S.

Alternative Dispute Resolution

The bill amends s. 718.1255(3)(b), F.S., relating to the Legislative finding for the alternative dispute resolution provisions in this section, to delete the finding that the courts are being overcrowded with condominium and other disputes.

Transfer of Association Control

The bill creates s. 718.301(4)(p), F.S., to require the developer, at the time the developer relinquishes control of the association to the unit owners, to include in the official records a report, under seal of a Florida licensed architect or engineer, that attests to required maintenance, useful life, and replacement costs of the following elements comprising a turnover inspection report:

1. Roof.
2. Structure.
3. Fireproofing and fire-protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.
12. Painting.
13. Irrigation systems.

The bill creates s. 718.3025(1)(f), F.S., to require that any maintenance or management contract between the association and the contracting party must disclose any financial or ownership interest a board member or any party providing maintenance or management services has with the contracting party. Failure to disclose makes the contract invalid and unenforceable.

Contracts for Products and Services

The bill amends s. 718.3026, F.S., to delete the provision that permits associations with less than 100 units to opt out of the requirements in this section for contracts for products and services. It also deletes the competitive bid requirements in s. 718.3026(2)(2., F.S., for contracts executed before January 1, 1992, contracts provided under a local government franchise agreement, and that permits for less stringent competitive bidding requirements in the association's bylaws.

Powers of the Division of Florida Land Sales, Condominiums, and Mobile Homes

The bill amends s. 718.501(1)(a), F.S., to reference the division's "authority, responsibility, and duties" instead of its "powers and duties."

The bill amends s. 718.501(1)(d)2., F.S., to provide that agents shall include community association managers or other licensed professionals acting as agents of the association.

The bill amends s. 718.501(1)(d)3., F.S., to provide that, if a developer fails to promptly pay any restitution owed to the division, plus any accrued interest at the highest rate permitted by law, the division shall bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of any other condominium filing by the same developer until payment is made.

The bill amends s. 718.501(1)(d)4., F.S., to authorize the division to order the removal of any board member who violates any provision of ch. 718, F.S., department rule adopted under ch. 718, F.S., or final order of the division. It may also prohibit the board member from serving on the board of a community association for a period of time.

The bill creates s. 718.501(1)(d)5., F.S., to require the division to issue a subpoena for production of the requested records upon a finding of failure to provide access to official records after two written requests by certified mail by unit owners.

The bill amends s. 718.501(1)(j), F.S., to require the division to maintain a current list of programs and program providers that provide training programs for condominium association board members and unit owners. The list must be made available to board members and unit owners.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends s. 468.432(2)(f), F.S., to provide that “if the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other similar organization is canceled automatically during that time.” This provision may violate the due process requirements of the Florida Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States because an agency cannot end the duration or validity of a license

without affording the licensee his or her hearing rights under ss. 120.569 and 120.57, F.S.²²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 25, 2008:

The committee substitute (CS) ss. 468.431 and 468.4315, F.S., to rename the Regulatory Council of Community Association Managers (council) as the Board of Community Association Managers (board).

The CS also amends ss. 468.431(3), 468.431, 468.432, 468.433, and 468.436, F.S., relating to the regulation of community association management .

The CS amends s. 718.110(1)(a), F.S., relating to the amendments to the declaration of the condominium.

The CS amends s. 718.111(1)(a), F.S., regarding the duties and personal liability for money damages of the directors, and agents of the association.

The CS amends s. 718.111(11), F.S., regarding condominium insurance requirements.

²² See *Silver Show, Inc. v. Division of Alcoholic Beverages and Tobacco*, 706 So.2d 386 (Fla. 4th DCA 1998).

The CS amends s. 718.111(12)(a)11. and (c), F.S., to reference “any person” instead of “any officer, director, or manager.” It also deletes the reference to appropriate criminal sanctions.

The bill creates s. 718.111(12)(a)16., F.S., to include a copy of inspection report provided in s. 718.301(4)(p), F.S.

The CS amends s. 718.111(12)(b), F.S., to require that the official records be kept within 45 miles of the association property instead of within the county in which the condominium property is located. It also permits the association to make the records available to the unit owners electronically via the Internet or to be viewed in an electronic format on a computer screen and printed upon request.

The CS amends s. 718.111(12)(c)4., F.S., to clarify that the exemption applies to the information “in possession of the association.”

The CS amends s. 718.111(13), F.S., to specify what must be included in the division’s rules that set forth the uniform accounting principals and standards to be used by the associations and for the financial reporting requirements for multicondominiums. It also provides for the verification of the financial report, and to require a confirmation that the financial operations of the association meet fiscal and fiduciary standards of ch. 718, F.S.

The CS amends s. 718.111(13), F.S., to require that the developer pay for any audit or review that is done before the turnover of control from the developer to a unit owner-controlled association.

The CS amends s. 718.112(2)(b)2., F.S., to permit proxies to be used to establish a quorum.

The CS amends s. 718.112(2)(c), F.S., to require that board address as an item of business at its next regular board meeting or at a special meeting any matter in which 20 percent of the voting interests have petitioned the board to address. The board must address the petitioned item of business not later than 60 days after the receipt of the petition. The CS deletes the provision that any item not included on the notice may be taken up on an emergency basis by a majority vote plus one of the members of the board or by a petition of 20 percent of the unit owners.

The CS amends s. 718.112(2)(c), F.S., to reference “estimated cost” and “description of the assessments” instead of “cost” and “breakdown of assessments.”

The CS amends s. 718.112(2)(d)1., F.S., to provide for the expiration and reappointment of terms for members of the board. It also prohibits co-owners of a unit from serving as members of the board of directors at the same time. It also provides that convicted felons, who have had their civil rights restored for a period of not less than five years, are eligible for board membership.

The CS amends s. 718.112(2)(d)3., F.S., to provide for a certification form and to require that a signed certification form must be included in the information sheet that is provided with the ballot. It does not reference representatives of the candidate or the association. It does not provide that an officer of the association or the manager or other person who provides the first and second notices, must provide an affidavit or United States Postal Service certificate of mailing and include it in the official records of the association. It does not require that all ballot envelopes be placed in a locked or sealed ballot drop box immediately upon receipt and that the box must not be opened in advance of the election meeting. It does not provide that prohibited the unit owner to allow another person to vote his or her ballot, except for a person who is acting under a specific power of attorney for a unit owner.

The CS does not amend s. 718.112(2)(f)1., F.S., to provide that required the budget adopted for prior fiscal year to remain in effect until the association adopts a new budget for the current fiscal year. It provides that the proposed annual budget must include estimated revenues and expenses.

The CS does not amend s. 718.112(2)(f)5., F.S., of the bill to provide that a vote to provide no reserves or a percentage of reserves must be made at the annual unit owner meeting, and required that the division adopt the form for the ballot for no reserves and a percentage of reserves. It provides a reserve waiver warning. It provides for use of reserves in catastrophic event.

The CS amends s. 718.112(2)(f), F.S., to reference “damages” instead of “damage to units or common elements.”

The CS amends s. 718.112(h)1., F.S., to provide for approval of amendments to association bylaws.

The CS amends s. 718.112(j), F.S., relating to the recall of board members, to permit the bylaws of the association to provide a cause for removal of a member from the board.

The CS amends s. 718.112(j)5., F.S., to include vacancies from a removal.

The CS amends s. 718.112(n), F.S., to provide that a director more than 90 days delinquent in the payment of any fee or assessment is deemed to have abandoned the office.

The CS amends s. 718.112(o), F.S., to provide for the suspension from office of a director charged with a felony theft or embezzlement offense involving the association's funds or property and for the appointment of an interim board member.

The CS amends s. 718.113(5), F.S., to provide for the installation of hurricane shutters or protection that complies with the applicable building code.

The CS creates s. 718.113(5), F.S., to provide for the inspection of condominium buildings at least every five years and before the turnover of control from the developer.

The CS does not require a long-term maintenance plan, and specify the matters that must be included in the inspection report.

The CS amends s. 718.1255(3)(b), F.S., to delete the Legislative finding that the courts are being overcrowded with condominium and other disputes.

The CS creates s. 718.301(4)(p), F.S., to provide for an inspection report from the developer before the developer relinquishes control of the association to the unit owners.

The CS amends s. 718.3026, F.S., to delete the provision that permits associations with less than 100 units to opt out of the requirements in this section for contracts for products and services. It also deletes the competitive bid requirements in s. 718.3026, F.S., for contracts executed before January 1, 1992, contracts provided under a local government franchise agreement, and that permits for less stringent competitive bidding requirements in the association's bylaws.

The CS amends s. 718.501, F.S.

B. Amendments:

None.