

**2011 SELECTED LEGISLATIVE PROPOSALS
AFFECTING CONDOMINIUMS, HOA'S AND CO-OP'S
Synopsis and Commentary**

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March 23, 2011

The current session of the Illinois General Assembly has generated a significant number of bills which directly impact condominium, homeowners and cooperative associations. As is always the case, bills must go through committee review, obtain passage by the originating chamber (House or Senate), obtain passage in the second chamber and finally be sent to the Governor for signature or veto. All these steps must be accomplished before the Legislature adjourns (typically, the end of May). This tight schedule often results in hasty action, on-the-fly negotiations and compromises, and the resultant concoction of often good intentions, lack of foresight and poor drafting, that is routinely blessed as “the best that we could do for now” or some other politico talk. And more work for lawyers. Anyway, buckle up for another ride in the legislative bramble bush.

To begin with, these bills may amend the Illinois Condominium Property Act (the “Condo Act”) (which applies to Condominiums and partly HOAs), the Illinois Common Interest Community Association Act (the “CICA Act”) (which applies to HOAs and possibly master associations), or the Illinois Community Association Manager Licensing and Disciplinary Act (the “Manager Licensing Act”) (which affects Condos, HOAs and Co-Ops).

The bill designation (House or Senate) is followed by the bill number and introducing/sponsoring legislator’s last name.

Also, for the current status of a bill, you can go to the Illinois General Assembly’s website (ilga.gov) which is accessible by a link at our website (www.mkimlaw.com) under Resources/Links and is quite simple to navigate.

HOUSE BILL 172 (HB 172) (Thapedi) would amend the Illinois Condominium Property Act so that condo associations created on or after the effective date of this law must require that all members of the board of managers/directors must complete “a management training seminar.” It also amends the Illinois Income Tax Act to allow that board member to receive a tax credit equal to 50% of the cost of such “management training”, with possible carry forward of unused tax credits for 5 years.

COMMENT: If the road to Hell is paved with good intentions, then this bill is a major paving project. If you are desperate to find good volunteer board members, HB 172 would make your search even harder, if not impossible. Why not just give the tax credit for those board members who VOLUNTARILY take the time to educate themselves?

HOUSE BILL 991 (HB 991) (Madigan, replaced by Sente) originally was a shell bill but has been morphed to amend the Homeowners' Solar Rights Act to require the Condos and HOAs' energy policy statement to include composting, rain water collection and wind energy collection systems.

COMMENT: First Sun, then Waste, Wind and Water are added. Only applies to buildings under 30 feet in height,

HOUSE BILL 1265 (HB 1265) (Dunkin) originally would have amended the Manager Licensing Act to eliminate the annual fee imposed on Condos, HOAs and Co-Ops (which have 10 or more units and are incorporated as Illinois not for profit corporations) in the year 2013. With a recent amendment, HB 1265 now would amend the Manager Licensing Act to change the annual fee to a one-time fee, which would not be required after December 31, 2014.

COMMENT: The current annual fee is a revenue source to establish and administer the licensing scheme. Two criticisms of the fee are (1) it is a direct fee imposed on the consumer as opposed to the licensed individual/industry and (2) it appears likely to generate excessive revenue from associations. There are ongoing negotiations to amend the Manager Licensing Act to avoid or compromise this type of "sunset" legislation on the fees.

HOUSE BILL 1382 (HB 1382) (Dunkin) would amend the Condo Act to require that tort claims (that is wrongful, non-contractual acts or omissions) against a developer for construction problems must be made within 4 years from when the unit owner or condo association knew or should have known of the act or omission. However, this requirement is not applicable to claims arising out of fraudulent misrepresentations or concealment.

COMMENT: Curiously, most construction claims by unit owners or associations are often characterized as contractual (and NOT tort) in nature. Also, there is already a special construction statute of limitations law. So what's the point?

HOUSE BILL 1428 (HB 1482) (Nekritz) would create the Condominium Ombudsperson Act, under which the Ombudsperson would offer training and educational materials to unit owners, boards of managers/directors, and condo associations (possibly for a fee); maintain a statewide toll free telephone number to provide information and assistance; maintain a website on which to post a copy of the Condo Act, other statutes and regulations, information on nonjudicial dispute resolution; a description of the Ombudsperson's services, and an analysis of condo-related laws. Within 60 days after being elected, each member of a condo board or master association board must file a certification with the Ombudsperson that he/she has read the condo governing documents, and the Ombudsperson Act (or a prepared summary if available). The Ombudsperson may provide dispute resolution assistance, upon request by "any interested person", to resolve a dispute between a condo unit owner and the association or board. The Ombudsperson must file an annual report of his/her

activity and on or before January 1, 2013, the Ombudsperson shall submit recommendations to the General Assembly as to whether the Ombudsperson should be authorized “to enforce condominium property law”, to oversee association elections, to narrow or expand the scope of board member’s required reading and related certification, and to provide or subsidize the mediation of condo disputes. All condo associations must pay the Ombudsperson an annual fee equal to the number of units multiplied by \$3.00 (the initial fee) which can be annually increased but not exceed \$10.00 (per unit). This Act would take effective on July 1, 2011 and would “sunset” (or expire) on July 1, 2014.

COMMENT: This proposal has been unsuccessfully submitted a number of times in the past. The Ombudsperson could become the Condo Czar, and we all just love our czars.

HOUSE BILL 1608 (HB 1608) (Nekritz/Feigenholtz) is virtually identical to HB 1428 except that the Illinois Attorney General assumes certain rulemaking, advisory and reporting (with recommendations) functions instead of the Department of Financial and Professional Regulation and the Ombudsperson.

COMMENT: Perhaps we will have a czarina behind the czar.

HOUSE BILL 2229 (HB 2229) (Cross) is a shell bill.

COMMENT: Watch out for possible last minute “fill-ins”.

HOUSE BILL 2230 (HB 2230) (Cross) is a shell bill.

COMMENT: Watch out for possible last minute “fill-ins”.

HOUSE BILL 3057 (HB 3057) (Nekritz) would amend the Condo Act to require the purchaser (other than the mortgage lender) of a condo or common interest community unit at a judicial sale OR a purchaser of such a unit from the mortgage lender to also pay assessments for the period beginning 6 months after the institution of a collection action and ending when the purchaser takes possession of the unit or takes title.

COMMENT: Greatly expands the potential recovery of delinquent assessments related to foreclosed units. Should be strongly supported by associations.

HOUSE BILL 3077 (HB 3077) (Dunkin) amends Section 18.5 of the Condo Act to provide for the recovery of up to 6 months of delinquent assessments for a foreclosed common interest community or master association unit, but states that this provision would not be the basis for a statutory assessment lien for such associations.

COMMENT: HB 3077 overlooks Section 18.5(g-1) which was added last year to the Condo Act to achieve essentially the same result. Adding this new section would be an unnecessary complication.

HOUSE BILL 3337 (HB 3337) (Nekritz) would amend the Condo Act to eliminate the restrictions imposed on Association issued proxies for election of the board of directors (namely, that the unit owner must be allowed to designate the proxy of their choice and to express a preference for candidates or to write in a candidate); makes a confusing change to the direct ballot rules (which also eliminates the 120 day lead time requirement); and creates a potential conflict as to whether proxies can or cannot be used in a direct ballot situation (the answer is apparently “No”).

COMMENT: The net effect appears to be that proxies cannot be used for board elections but may be used to vote on other non-election matters. Clearer drafting is needed.

SENATE BILL 1116 (SB 111) (Cullerton) is a shell bill.

COMMENT: Watch out for possible last minute “fill-ins”.

SENATE BILL 1593 (SB 1593) (Althoff) would amend the Condo Act to exempt condominium associations that either (1) have 10 units or less or (2) an annual budget of \$100,000 or less, UNLESS that a majority of the association unit owners and board of directors affirmatively vote to be covered by the Act. SB 1593 would also provide that a condo association with 10 units or less or an annual budget of \$50,000 or less shall be exempt from Section 12(a)(3) (fidelity bonding and directors and officers insurance), Section 18(a)(9) (open Board meetings) and (10) (Board to meet 4 times a year) and Section 18(b)(1) (quorum), (3) (annual meeting to be held), (5) (special Board meetings) and (6) (special membership meetings) of the Condo Act, although the Board must provide notices of meetings and allow unit owner participation in those meetings; HOWEVER, this portion of SB 1593 was deleted by an amendment adopted in committee.

COMMENT: It is probably appropriate that small condo associations not be subject to the full detail and weight of the Condo Act but this proposal (apparently “borrowed” from Section 1-75 of the CICA Act) is not well thought out. To begin with, SB 1593 would exempt a small association from the Condo Act provisions as to how to establish a condominium!

SENATE BILL 1651 (SB 1651) (Wilhelmi) would amend the CICA Act to mandate its application to all HOAs and master associations; to eliminate the requirement that at least 1/3 of the board members’ terms are to expire annually; to require at large board elections; to exempt master association boards from the director removal provision; to require only a 20% quorum for membership meetings; to clarify the inclusion of reserve funds in the determination of fidelity insurance requirements; and to eliminate one of the exemption provisions for certain small associations.

COMMENT: SB 1651 is a reaction to substantial criticism of the CICA Act and provides some partial relief but not fully addresses the inclusion of master associations along with other HOAs. Negotiations continue.

SENATE BILL 1693 (SB 1639) (Wilhelmi) is a shell bill.

COMMENT: Watch out for possible last minute “fill-ins”.

SENATE BILL 1698 (SB 1698) (Millner) is a shell bill.

COMMENT: Watch out for possible last minute “fill-ins”.

SENATE BILL 1972 (SB 1972) (Althoff) would amend Section 18.5 of the Condo Act to apparently add the ability of the HOA or master association to collect attorney’s fees and collection costs as well as up to 6 months of prior delinquent assessments in foreclosure situations.

COMMENT: Good proposal; should be supported.

SENATE BILL 1984 (SB 1984) (Althoff) would amend the CICA Act to allow associations with 3500 or more units to establish in their bylaws an election procedure utilizing an acclamation process when the number of candidates is equal to or less than the number of positions to be filled at an election. SB 1984 would also reorganize (but not change the substance of) the provisions as to voting methods. SB 1984 would eliminate the resale disclosure requirement as to whether any alterations to a unit or assigned common area are believed to be in compliance with the association’s declaration. Lastly, for associations with more than 1000 units and whose declaration/ bylaws allow for election without a meeting, SB 1984 would create an exception to the requirement for an annual meeting and election of directors; however, the requirements of the CICA Act as to allowing voting by proxy and submission of a ballot (apart from the annual election meeting) would still apply.

COMMENT: SB 1984 is apparently focused on a very limited group of associations (constituents?). Nothing particularly bad or good since it is so narrowly focused special interest legislation.

SENATE BILL 1994 (SB 1994) (Althoff) is a shell bill.

COMMENT: Watch out for possible last minute “fill-ins”.