

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, March 12, 2013
TIME: 2:00 —4:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|----------------------------|
| 1 | CS/SB 92 Criminal Justice / Negrón (Similar CS/H 119) | Searches and Seizures; Citing this act as the "Freedom from Unwarranted Surveillance Act"; prohibiting a law enforcement agency from using a drone to gather evidence or other information; authorizing an aggrieved party to initiate a civil action in order to prevent or remedy a violation of the act; prohibiting a law enforcement agency from using in any court of law in this state evidence obtained or collected in violation of the act, etc. CJ 01/15/2013 Fav/CS CA 02/06/2013 Favorable JU 03/12/2013 Fav/CS ACJ AP | Fav/CS Yeas 9 Nays 0 |
| 2 | CS/SB 164 Children, Families, and Elder Affairs / Detert (Similar CS/H 215) | Children in Foster Care; Creating the "Quality-Parenting for Children in Foster Care Act"; establishing and providing for the application of a "reasonable and prudent parent" standard; providing for the application of the reasonable and prudent parent standard to independent living transition services; specifying that Department of Children and Families rules must reflect the considerations of the reasonable and prudent parent standard, etc. CF 02/05/2013 Fav/CS JU 03/12/2013 Favorable | Favorable Yeas 9 Nays 0 |
| 3 | CS/SB 436 Regulated Industries / Altman (Similar CS/CS/H 73, Compare CS/H 175, H 1207, H 7025, CS/S 120, S 580, CS/S 696, S 1618, S 1746) | Residential Properties; Exempting certain elevators from specific code update requirements; revising specified supervision and regulation exemptions for homeowners' association swimming pools; providing requirements for a condominium association board relating to the installation of hurricane shutters, impact glass, code-compliant windows or doors, and other types of code-compliant hurricane protection under certain circumstances; revising provisions relating to imposing remedies against a noncompliant or delinquent condominium unit owner or member, etc. RI 02/21/2013 Fav/CS JU 03/12/2013 Fav/CS AP | Fav/CS Yeas 9 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 12, 2013, 2:00 —4:30 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|-------------------------|
| 4 | SB 496 Dean (Similar CS/H 571) | Marshal of the Supreme Court; Requiring the marshal and his or her deputies to comply with specified requirements for law enforcement officers; specifying that the marshal and his or her deputies are law enforcement officers with statewide authority to bear arms and perform official duties and apprehend without warrant under certain conditions, etc. JU 03/12/2013 Fav/CS CJ RC | Fav/CS Yeas 9 Nays 0 |
| 5 | CS/SB 676 Criminal Justice / Evers (Identical H 617) | Juvenile Justice Circuit Advisory Boards and Juvenile Justice County Councils; Redesignating juvenile justice circuit boards as juvenile justice circuit advisory boards; requiring each board to have a county organization representing each county in the circuit; requiring submission of circuit plans by specified dates; revising membership of boards; providing for quorums and for passage of measures or positions, etc. CJ 03/04/2013 Fav/CS JU 03/12/2013 Fav/CS ACJ AP | Fav/CS Yeas 9 Nays 0 |
| 6 | SB 718 Stargel (Similar CS/H 231) | Dissolution of Marriage; Revising factors to be considered for alimony awards; requiring a court to make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and length of time for which it is awarded; revising provisions relating to the protection of awards of alimony; prohibiting an alimony award from being modified providing that if the court orders alimony concurrent with a child support order, the alimony award may not be modified because of the later modification or termination of child support payments, etc. JU 03/12/2013 Fav/CS CF RC | Fav/CS Yeas 8 Nays 1 |

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 12, 2013, 2:00 —4:30 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|----------------------------|
| 7 | SB 1014 Garcia (Identical H 1185) | Public Records/ Participants in Treatment-based Drug Court Programs; Exempting from public records requirements the initial screenings for a treatment-based drug court program, substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports regarding a participant in a treatment-based drug court program; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. JU 03/12/2013 Favorable GO RC | Favorable Yeas 9 Nays 0 |
| 8 | SB 1172 Simmons (Identical CS/H 229) | Land Trusts; Providing requirements relating to vesting of ownership in a trustee; prohibiting the operation of the statute of uses to execute a land trust or to vest the trust property under certain conditions; prohibiting the operation of the doctrine of merger to execute a land trust or to vest the trust property under certain conditions; providing that a trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property; revising and providing scope of the Florida Trust Code, etc. JU 03/12/2013 Fav/CS BI RC | Fav/CS Yeas 9 Nays 0 |
| 9 | CS/SB 120 Regulated Industries / Latvala (Similar CS/H 175, Compare CS/CS/H 73, CS/S 436) | Condominiums; Allowing condominium units to come into existence regardless of requirements or restrictions in a declaration; extending the amount of time that a clerk of the circuit court may hold a sum of money before notifying the registered agent of an association that the sum is still available and the purpose for which it was deposited; changing the requirements relating to the circumstances under which a declaration of condominium or other documents are effective to create a condominium; revising the conditions under which a developer may amend a declaration of condominium governing a phase condominium; providing for an extension of the 7-year period for the completion of a phase, etc. RI 01/24/2013 Fav/CS JU 03/12/2013 Favorable RC | Favorable Yeas 9 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 12, 2013, 2:00 —4:30 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|---|-------------------------|
| 10 | SB 1372 Bradley (Identical H 7035) | Pretrial Detention; Providing additional factors a court may consider when ordering pretrial detention, etc. JU 03/12/2013 Fav/CS CJ ACJ AP | Fav/CS Yeas 9 Nays 0 |

Other Related Meeting Documents

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 Committee on Judiciary

BILL: CS/CS/SB 92

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Negron and others

SUBJECT: Searches and Seizures

DATE: March 13, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Cellon | Cannon | CJ | Fav/CS |
| 2. | Anderson | Yeatman | CA | Favorable |
| 3. | Shankle | Cibula | JU | Fav/CS |
| 4. | | | ACJ | |
| 5. | | | AP | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/CS/SB 92 creates the “Freedom from Unwarranted Surveillance Act,” which prohibits law enforcement agencies from using drones to gather evidence or other information, unless:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization.
- The law enforcement agency first obtains a search warrant authorizing the use of a drone.
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life, such as to facilitate the search for a missing person, to prevent serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

Evidence gathered in violation of the bill is inadmissible in a criminal prosecution in any court of law in this state. Provisions are made for civil actions by an aggrieved party against a law enforcement agency that violates the prohibitions in the bill.

The bill defines the terms “drone” and “law enforcement agencies” for the purposes of the act.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Drones Historically Utilized by Military in Warfare, Hostile Situations

Drones, also called Unmanned Aerial Vehicles and Unmanned Aerial Systems, will be referred to as “drones” in this bill analysis.

Although drones were utilized as far back as the war in Vietnam, the term “drone” recently became part of the vernacular since the use of drones by the U.S. military has become common knowledge among the civilian population.¹ Because drones are unmanned aircraft, they are especially useful in search and destroy missions where military personnel would otherwise be placed in harm’s way.

Drones are highly capable of gathering military intelligence because drones are difficult to detect and can carry sophisticated surveillance equipment. For example, the U.S. Army recently acquired a 1.8 gigapixel camera to use on its drones which can track objects on the ground from 65 miles away while the drone is flying at an altitude of 20,000 feet.² Drones can be equipped with infrared cameras,³ license plate readers,⁴ and “ladar” (laser radar).⁵ It has been reported that in 2011 the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.⁶

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.⁷ They may be controlled manually or through an autopilot which uses a data link to connect the drone’s pilot to the drone.⁸

¹ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

² *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf.

³ These cameras are capable of “seeing” based upon the relative levels of heat in its viewing area. For example, see <http://www.draganfly.com/uav-helicopter/draganflyer-x6/features/flir-camera.php>.

⁴ *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf; *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

⁵ “Ladar” is reported to produce three-dimensional images and has the capability to “see” through trees and foliage. *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf; U.S. Army, UAS Center for Excellence, *Eyes of the Army, US Army Roadmap for Unmanned Aircraft Systems 2010-2035* (2010).

⁶ Clay Dillow, *Popular Science*, September 28, 2011, popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind.

⁷ 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 6, 2007.

⁸ *Id.*

Non-Military Drone Flight in the United States

As far back as 2007, the Federal Aviation Administration (FAA) was aware of approximately 50 companies, universities, and government organizations developing and producing some 155 drone designs in the United States.⁹

Drones have been used in a multitude of tasks by U.S. government agencies. The U.S. Customs and Border Patrol began using them in 2004.¹⁰ In February 2010, the U.S. Customs and Border Patrol began operating a center in Cocoa Beach flying eight drones along Florida's shorelines and the Gulf Coast.¹¹

Other documented non-military tasks include earthquake damage assessment at Japan's Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.¹²

At the University of Florida, over the last 12 years, the Unmanned Aerial Systems Research Group has been developing an 11 pound drone having a 9 foot wingspan, which is called "Nova 2.1." According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.¹³

The drone industry is becoming motivated to move into more civilian markets.¹⁴ Reportedly, Florida is competing to secure a position as a leading development, testing, and manufacturing site for drones.¹⁵

Integrating Drones into the Nation's Airspace System

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Act), which requires the FAA to safely open the nation's airspace to drones by September 2015.¹⁶ Under the timetable set forth by Congress, the FAA authorized government public safety

⁹ *Id.*

¹⁰ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

¹¹ Howard Altman, *Space Florida Probing Drone's Future Potential*, Tampa Bay Online, August 5, 2012, www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/.

¹² James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

¹³ James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>; *UF Team's Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>.

¹⁴ *Drones for Hire*, Air & Space Smithsonian, James Chiles, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

¹⁵ *Florida Vies to be America's Drone Capital*, RT, June 29, 2010, <http://rt.com/usa/news/florida-drone-space-unmanned-091/print/>.

¹⁶ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf.

agencies to operate drones under certain restrictions and made the process for approving authorization requests more efficient.¹⁷

However, the FAA appears to be proceeding with caution in its implementation of the 2012 Federal Act. The FAA has delayed selecting the six test sites for drones mandated by Congress. Further, although it seems to be outside the congressional mandate and beyond the scope of the FAA's airspace-safety responsibilities, the FAA notified Congress that "privacy issues" are a concern as drones are integrated into the airspace.¹⁸

The 2012 Act directed the FAA to "allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less" under certain restrictions. The Act specified that these drones must be flown within the line of sight of the operator, less than 400 feet above the ground, during daylight conditions, inside Class G (uncontrolled) airspace and more than five miles from any airport or other location with aviation activities.¹⁹

Prior to the passage of the Act in 2012, the FAA and the Department of Justice worked on an agreement to streamline the Certificate of Authorization (COA) process for law enforcement agencies. Initially, law enforcement organizations will receive a COA for training and performance evaluation. When the organization shows proficiency in flying its drone, it will receive an operational COA. The agreement between the FAA and the Department of Justice expands the allowable drone weight up to 25 pounds.²⁰

Drone Use by Law Enforcement Agencies in Florida

The FAA issued COAs to Florida law enforcement agencies beginning in 2009. Those early COAs for training and trial purposes were issued to the Miami-Dade Police Department and the Polk County Sheriff's Office.

Reportedly, officials in Polk County, Florida, decided after a year of drone trials that the costs of meeting FAA regulations were too high and halted use of its fixed-wing model drone in 2010.²¹

The Miami-Dade Police Department received its COA for drone operational status in July 2011. It was renewed in December 2012 for a 2-year period. The department has two Honeywell

¹⁷ *FAA Makes Progress with UAS Integration*, Federal Aviation Administration, May 14, 2012, www.faa.gov/news/updates/?newsId=68004; Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012.

¹⁸ A *Bloomberg* report quotes the FAA Acting Chief as having written to members of the Congressional Unmanned Systems Caucus: "However, increasing the use of UAS in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated." Alan Levine, *FAA Going Slow on Drones as Privacy Concerns Studied*, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow->.

¹⁹ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; FAA Fact Sheet, Unmanned Aircraft Systems, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153.

²⁰ FAA Fact Sheet, Unmanned Aircraft Systems, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153.

²¹ Howard Altman, *Space Florida Probing Drone's Future Potential*, Tampa Bay Online, August 5, 2012, www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/.

Corporation T-Hawk Model drones. As of January 8, 2013, the T-Hawk drones had not flown an actual operation.²²

Several Chiefs of Police in Florida have indicated that drones would benefit their agencies by reducing the risk to officers and citizens in high risk situations involving hostages, active shooters or armed, barricaded suspects.²³ One police chief suggested that drones could aid police agencies in their ability to patrol and search for persons in areas like bodies of water or a wooded area.²⁴ According to another police chief, drone technology provides an opportunity to conduct patrols that are normally conducted by traditional aviation at a fraction of the cost.²⁵ A third police chief mentioned that a drone would be useful in serving high-risk search warrants, natural disasters, and other emergencies.²⁶ A fourth suggested that drones could diminish public safety risks that might otherwise occur during a high-speed car-chase because a drone could more safely follow a fleeing vehicle.²⁷

Federal and Other State Legislation

Senator Rand Paul filed a bill in Congress in 2012 which was essentially identical to Senate Bill 92. Neither the Senate bill nor its House companion bill made it out of committee.²⁸ Similar legislation is expected to be filed in California, Illinois, New Jersey, Oregon, Missouri, Michigan, Indiana, and Virginia.²⁹

III. Effect of Proposed Changes:

The short title for the bill is the “Freedom from Unwarranted Surveillance Act.” The bill prohibits law enforcement agencies from using drones to gather evidence or other information, except in certain narrow circumstances. Evidence obtained or collected by a law enforcement agency using a drone, unless it is permitted under one of the bill’s exceptions, is not admissible in a criminal prosecution in any court of law in this state.

The bill provides exceptions to the prohibition of drone use by a law enforcement agency in an information or evidence-gathering capacity. Under the exceptions, a law enforcement agency may use a drone if:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization.

²² Miami-Dade Police Department Fact Sheet, Special Patrol Bureau/Aviation Unit, Micro Air Vehicle “MAV” Program, provided to Senate Committee on Criminal Justice Staff, January 8, 2013.

²³ Memo provided to Senate Committee on Criminal Justice Staff on December 12, 2012, by the Florida Police Chiefs Association.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Preserving Freedom from Unwarranted Surveillance Act of 2012*, S.3287, H.R. 5925.

²⁹ Dave Kolpack, *New ND Lawmaker 1 of Many Drafting Drone Measures*, AP, January 4, 2013. The North Dakota bill appears to have been filed in response to a local case where the Border Patrol offered the use of its drone to verify that three armed men were no longer armed or on the premises where law enforcement was investigating an alleged cattle rustling situation. See *State v. Brossart*, No. 32-2011 CR-00049 (N.E. Cen. D., N.D. 2012).

- The law enforcement agency first obtains a search warrant authorizing the use of a drone.
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life, such as to facilitate the search for a missing person, to prevent serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

The bill defines a drone as a powered aerial vehicle that:

- Is unmanned;
- Is capable of flying autonomously or being piloted remotely;
- Uses aerodynamic forces to provide lift;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

This definition is consistent with the standard definition of drones used by numerous military organizations.³⁰

The bill defines a law enforcement agency as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

In addition to the inadmissibility of evidence the bill allows for an aggrieved party to initiate a civil action to prevent or remedy a violation of the prohibitions in the bill.

The bill takes effect on July 1, 2013.

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 Fourth Amendment to the United States Constitution guarantees the people in this country security in their houses, persons, papers, and possessions from unreasonable searches and seizures by government actors.³¹

³⁰ United States Army Combined Arms Center, Unmanned Aerial Vehicle, <http://usacac.army.mil/cac2/call/thesaurus/toc.asp?id=31004> (last visited Mar. 7, 2012).

Article I, Section 12 of the Constitution of Florida contains the same guarantees as the Fourth Amendment, with an additional provision extending protection to private communications. Article I, Section 12 also states that it “shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the Fourth Amendment to the United States Constitution.”³²

The U.S. Supreme Court has not heard a case that implicates the Fourth Amendment as related to a search by a drone. However, the court has heard several cases involving aerial searches by law enforcement officers in more conventional aircraft. In *Florida v. Riley* and *California v. Ciraolo*, which were cases involving surveillance from altitudes of 400 and 1,000 feet in close proximity to homes, the court found that no search had occurred.³³ Therefore it may be argued that a drone flying or hovering at an uncommon altitude, utilizing uncommon surveillance equipment could implicate the Fourth Amendment.

A court may not need to address the question of the reasonableness of a police search by use of a drone under Fourth Amendment precedence may not be reached at all. The protection provided in the bill could be viewed by courts as a statutorily-created citizen protection that does not implicate the Fourth Amendment.³⁴ Additionally, states are generally free to place even more rigorous restraints upon state governmental intrusion than federal law requires.³⁵

Courts could focus on the fact that the bill *does not subject citizens* to a drone search let alone an unreasonable one, but rather the bill *prohibits or limits* certain *law enforcement conduct*, and that it is within the Legislature’s power to protect citizens from police conduct just as it is within its power to subject citizens to police action. If the court finds that law enforcement violated the drone law, the court should rule the evidence derived as a result of that violation inadmissible.

³¹ U.S. CONST. amend. IV.

³² FLA. CONST. art. I, s. 12 provides:

Searches and seizures.—

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

³³ *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989).

³⁴ The bill provides that evidence obtained is not admissible in a criminal prosecution in any court of law in Florida if that evidence is obtained in violation of the bill’s prohibited drone use by law enforcement, unless the drone use falls within one of the bill’s exceptions.

³⁵ *Traylor v. State*, 596 So. 2d 957, 961 (Fla. 1992).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill does not apply to the use of drones for any purposes other than state and local law enforcement use to gather evidence or other information. It does not restrict the use of drones for commercial or private research and information gathering in any way and, therefore, should have no impact on the scientific, commercial, or educational sectors.

Law enforcement agencies are not permitted to use information or evidence that is gathered through the prohibited use of a drone in a criminal prosecution. Therefore, citizens should not be subject to criminal prosecution in cases that are based upon information or evidence gathered beyond the scope of the bill's exceptions, unless the case can be prosecuted on some independent basis.

C. Government Sector Impact:

State and local law enforcement agencies are prohibited by the bill from using drones to gather evidence or information unless the use of the drone falls under one of the bill's exceptions to the prohibition. The evidence obtained or collected in violation of the prohibition, and outside the exceptions in the bill, is inadmissible as evidence in a criminal prosecution. Therefore, some criminal cases built around such evidence may be weakened or unprovable.

Law enforcement agencies may be subject to civil remedies, such as monetary damages or possibly an injunction preventing further drone activity, if sought by an aggrieved party under the provisions of the bill.

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/CS by Judiciary on March 12, 2013:**

- The bill authorizes a law enforcement agency to use a drone when the law enforcement agency has reasonable suspicion that swift action is necessary to achieve purposes including, but not limited to, facilitating the search for a missing person.

CS by Criminal Justice on January 15, 2013:

- The CS includes local government code enforcement within the definition of law enforcement agency.
- The CS adopts additional exceptions to the drone-use prohibition in the bill. One of the additional exceptions allows law enforcement to use a drone if it is first authorized by a judge in a search warrant. The other exception to the prohibition occurs when a law enforcement agency possesses reasonable suspicion that under particular circumstances, swift action is necessary in order to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

B. Amendments:

None.



587418

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/13/2013 | . | |
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The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment

Delete lines 41 - 45

and insert:

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing child.



733284

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/13/2013 | . | |
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment to Amendment (587418)

Delete lines 9 - 10

and insert:

destruction of evidence, or to achieve purposes including, but not limited to facilitating the search for a missing person.



768226

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: WD | . | |
| 03/13/2013 | . | |
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The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Between lines 45 and 46

insert:

If a law enforcement agency justifies its use of a drone to gather evidence or other information for one or more of the authorized purposes specified in this subsection, the agency shall report the use of the drone to the chief judge of the circuit no later than 5 calendar days after the first use of the drone.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



768226

14 Delete line 7
15 and insert:
16 providing exceptions; requiring the law enforcement
17 agency to report to the chief judge of the circuit
18 under certain circumstances; authorizing an aggrieved
19 party

By the Committee on Criminal Justice; and Senators Negron,
Brandes, and Evers

591-00646-13

201392c1

1 A bill to be entitled
2 An act relating to searches and seizures; creating the
3 "Freedom from Unwarranted Surveillance Act"; defining
4 the terms "drone" and "law enforcement agency";
5 prohibiting a law enforcement agency from using a
6 drone to gather evidence or other information;
7 providing exceptions; authorizing an aggrieved party
8 to initiate a civil action in order to prevent or
9 remedy a violation of the act; prohibiting a law
10 enforcement agency from using in any court of law in
11 this state evidence obtained or collected in violation
12 of the act; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Searches and seizure using a drone.—

17 (1) SHORT TITLE.—This act may be cited as the "Freedom from
18 Unwarranted Surveillance Act."

19 (2) DEFINITIONS.—As used in this act, the term:

20 (a) "Drone" means a powered, aerial vehicle that:

- 21 1. Does not carry a human operator;
- 22 2. Uses aerodynamic forces to provide vehicle lift;
- 23 3. Can fly autonomously or be piloted remotely;
- 24 4. Can be expendable or recoverable; and
- 25 5. Can carry a lethal or nonlethal payload.

26 (b) "Law enforcement agency" means a lawfully established
27 state or local public agency that is responsible for the
28 prevention and detection of crime, local government code
29 enforcement, and the enforcement of penal, traffic, regulatory,

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 game, or controlled substance laws.

31 (3) PROHIBITED USE OF DRONES.—A law enforcement agency may
32 not use a drone to gather evidence or other information.

33 (4) EXCEPTIONS.—This act does not prohibit the use of a
34 drone:

35 (a) To counter a high risk of a terrorist attack by a
36 specific individual or organization if the United States
37 Secretary of Homeland Security determines that credible
38 intelligence indicates that there is such a risk.

39 (b) If the law enforcement agency first obtains a search
40 warrant signed by a judge authorizing the use of a drone.

41 (c) If the law enforcement agency possesses reasonable
42 suspicion that, under particular circumstances, swift action is
43 needed to prevent imminent danger to life or serious damage to
44 property, or to forestall the imminent escape of a suspect or
45 the destruction of evidence.

46 (5) REMEDIES FOR VIOLATION.—An aggrieved party may initiate
47 a civil action against a law enforcement agency to obtain all
48 appropriate relief in order to prevent or remedy a violation of
49 this act.

50 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
51 collected in violation of this act is not admissible as evidence
52 in a criminal prosecution in any court of law in this state.

53 Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12-13
Meeting Date

Topic Drone Search

Bill Number SB92
(if applicable)

Name Jennings DePriest

Amendment Barcode _____
(if applicable)

Job Title Student

Address 675 W Jefferson St

Phone 863 804 5083

Street

Tallahassee FL 32304

City

State

Zip

E-mail jennings.depriest@gmail.com

Speaking: For Against Information

Representing FSU College Libertarians

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13

Meeting Date

Topic Drone Searches

Bill Number 92

(if applicable)

Name Nancy Daniels

Amendment Barcode _____

(if applicable)

Job Title Public Defender, 2nd Judicial Circuit

Address Leon County Courthouse, 301 S. Monroe St.

Phone 850 606-1010

Tallahassee
City

FL
State

32301
Zip

E-mail nancy.daniels @ flpd2.com

Speaking: For Against Information

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13

Meeting Date

Topic Searches & seizures

Bill Number SB92 (if applicable)

Name Ron Bilbao

Amendment Barcode 768226 (if applicable)

Job Title SR. Legislative Associate

Address 4500 Biscayne Blvd, #340

Phone 919-923-7288

City Miami State FL Zip 33137

E-mail rbilbao@aclufl.org

Speaking: [X] For [] Against [] Information

Representing ACLU of Florida

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/2013

Meeting Date

Topic _____

Bill Number 92
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 | 12 | 13

Meeting Date

Topic SB 92 - Drone

Bill Number SB 92
(if applicable)

Name AVIEL SANCHEZ

Amendment Barcode _____
(if applicable)

Job Title POLICE LIEUTENANT

Address 9105 NW 25 ST
Street

Phone 305-468-1207

Doral FL 33172
City State Zip

E-mail AASANCHEZ@MOPD.COM

Speaking: For Against Information

Representing Miami-Dade County Police Department / Aviation Unit

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Committee on Judiciary

BILL: CS/SB 164

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Detert

SUBJECT: Children in Foster Care

DATE: March 11, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Preston | Hendon | CF | Fav/CS |
| 2. | Brown | Cibula | JU | Favorable |
| 3. | _____ | _____ | _____ | _____ |
| 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:

CS/SB 164 amends foster care law to further the goal of normalcy in foster care living situations.

This bill directs a caregiver of a foster child to permit the child to participate in age-appropriate extracurricular, enrichment, and social activities. The bill grants immunity to the caregiver from liability for harm to the child which occurs during the activity if the caregiver acts as a reasonable and prudent parent in permitting the activity.

This bill replaces the current requirement for normalcy plans and quarterly updates with an assessment of normalcy goals and objectives at judicial reviews.

The bill also requires a court to apply the best interests of the child standard in determining whether a child should be returned from the custody of a parent to the other parent who successfully completed treatment after committing acts of abuse or neglect. The court will continue to apply the endangerment standard in determining whether to return a child from the custody of a nonparent to a parent who successfully completes treatment.

This bill substantially amends sections 39.522 and 409.1451, and creates section 39.409, Florida Statutes.

II. Present Situation:

Normalcy for Children

Background

Each year, approximately 30,000 children in foster care age out of the foster care system nationwide, typically at 18 years of age. This number has risen steadily over the past decade.¹ In Florida, the number of children aging out of care has dropped in the last 3 years, with 1,181 youth aging out of care in 2011-2012.² These young adults experienced significant psychological trauma during their formative years. Trauma may have involved neglect and abuse, separation from home, friends, family and most things familiar, and multiple placements in homes and group settings.

The foster care system historically focused on safety and concern about liability, often creates huge barriers to the normalcy of a child's experiences growing-up. Children in care typically miss many rites of passage common to their peers. While their friends are getting their driver's licenses, most children in care are not since they generally have no one to teach them to drive or lack the money for insurance or driver's education, let alone access to a car.³ Getting a first job, participating in sports, camping with friends, and even going to the prom are all examples of activities that are a normal part of growing up for many children, but not foster youth.⁴

These problems compound for children who live their teen years in group homes. These children often also do not benefit from typical experiences to prepare them for adult life. These experiences include seeing an adult pay bills each month, do the laundry, buy groceries, pay taxes, arrange for car insurance, and other tasks required to run a household.⁵ In Florida, 60 percent of children 13-17 years of age in foster care live in group homes.⁶

Florida

The Department of Children and Families (DCF or department) and community-based care lead agencies (CBCs) manage and provide child protection, foster care, and adoption services, and participate in dependency proceedings. Foster care services include a range of independent living services. Section 409.1451(3), F.S., requires the department to adopt procedures in rule to

¹ Fostering Connections Resource Center, *Number of Youth Aging Out of Foster Care Continues to Rise; Increasing 64 Percent Since 1999* (Jan. 31, 2010). This report is available at

http://www.fosteringconnections.org/tools/assets/files/Connections_Agingout.pdf

² Provided as part of a data request from Senate Children, Families and Elder Affairs staff to the Department of Children and Families. Response received Dec. 21, 2012.

³ Martha Shirk & Gary Stangler, *On Their Own*, at vi (1st ed. Basic Books 2004).

⁴ *Id.* at vi and 1.

⁵ First Star and Children's Advocacy Institute of the University of San Diego School of Law, *The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security*, at iii (2011), available at http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf.

⁶ Provided as part of a data request from Senate Children, Families and Elder Affairs staff to the Department of Children and Families. Response received on December 21, 2012.

administer the independent living transition services program. Procedures include balancing the goals of normalcy and safety for children, with caregiver flexibility to enable a child to participate in normal life experience. The current rule addressing the role of licensed out of home caregivers:

- Requires caregivers to afford children every opportunity for social development, recreation, and normalcy of their lives. Children in licensed out of home care may attend overnight or planned outings if the caregiver approves activities as safe and appropriate. The case worker must be notified of the activity.
- Authorizes caregivers to allow foster children to attend activities without adult supervision depending on the child's age, maturity, and ability to make appropriate decisions. However, the caregiver must be prudent and conscientious about circumstances where the child is granted independence, including trips to the movies, mall, athletic events and work.
- Requires the child's services worker to approve overnight trips exceeding one night. These trips must not interrupt visitation.
- Provides that background checks are not required for normal school and community activities, such as dating and outings, school field trips, Cub Scout campouts, and activities with friends, families, and school and church groups.⁷

Former secretaries and the current secretary of the department issued memoranda requiring community-based care lead agencies and their providers to implement policies related to normalcy.⁸ Despite this, however, foster teens continue to express concern about normalcy in the foster care setting.⁹

Standard for Reunification

The overriding principle of ch. 39, F.S., in placement of children in dependency proceedings is the best interest of the child. Within ch. 39, F.S., however, the appropriate standard to use to determine a child's permanency, or permanent placement, appears inconsistent. Section 39.521, F.S., requires the court to determine at every review hearing which parent, if either, shall have custody. It further provides for the court to apply the best interest of the child standard when changing custody from one parent to another.¹⁰ In contrast, s. 39.522, F.S., provides that when deciding whether to reunite a child with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child.¹¹ This standard is commonly known as the endangerment standard, or a finding that reunification would or would not be detrimental to a child.¹² The endangerment standard is a much lower standard than the best interests of the child.

⁷ Rule 65C-13.029(1)(g)7.9., 10, and 11a., F.A.C.

⁸ See Memorandum from Lucy Hadi dated Aug. 31, 2005, Memorandum from George Sheldon dated Sept. 3, 2010, and Memorandum from David Wilkins dated Jan. 20, 2012. On file with the Senate Children, Families, and Elder Affairs Committee and the Judiciary Committee.

⁹ Independent Living Services Advisory Council. *2012 Annual Report*, page 9. This report is available at <http://www.dcf.state.fl.us/programs/indliving/docs/2012%20ILSAC%20Report%20final.pdf>

¹⁰ Section 39.521(3)(b)2., F.S.

¹¹ Section 39.522(2), Florida Statutes.

¹² *R.H. v. Department of Children and Families*, 948 So. 2d 898, 900 (Fla. 5th DCA 2007).

Even within a section of law, both standards may apply. In s. 39.621, F.S., the court must apply the best interest standard during a hearing to determine permanent placement of a child.¹³ A court can only modify a permanency placement if the court finds that the placement is no longer in the best interest of the child. At the hearing in which a parent has not had parenting rights terminated and seeks reunification or increased contact with the child, however, the parent must show that the safety, well-being, and physical, mental, and emotional health of the child is not endangered.¹⁴ Section 39.621(10), F.S., requires the court to base its decision on reunification or increased child contact on the endangerment standard. This same subsection of law, however, provides a list of factors for the court to consider, which has been referred to by at least one court as comprising the best interest standard.¹⁵

Several Florida District Courts of Appeal have upheld s. 39.522(2), F.S., the endangerment standard, as the controlling statute. Specifically, the courts have held that absent endangerment, the plain language of the statute requires the offending parent to be reunified with the child if he or she substantially complies with the case plan.¹⁶

In *S.V.-R v. Dept. of Children and Family Services*, the Third District Court of Appeal invalidated the trial court's use of the best interest standard and replaced it with the endangerment standard. "The 'best interests' and 'endangerment' standards are markedly different. This latter standard applies to a reunification or permanency hearing in which reunification is the primary goal and, as here, the offending parent has substantially complied with his or her case plan."¹⁷ The Second and the Fifth District Courts of Appeal generally seem to apply the endangerment standard to permanency reviews where reunification is the goal.¹⁸ Still, some trial courts apply the best interest standard as the standard, and at least one court of appeal appears to have applied both best interest and the endangerment standard to the same case.¹⁹

There was nothing adduced at the hearing to show that T.A. and D.B.'s safety, well-being, and physical, mental, and emotional health would be endangered by their reunification with the mother. . . . Our review of the record does not disclose

¹³ Section 39.621(1), F.S.

¹⁴ Section 39.621(9), F.S.

¹⁵ *S.V.-R v. Dept. of Children and Family Services*, 77 So. 3d 687, 691 (Fla. 3rd DCA 2011). The list of findings includes the compliance or noncompliance of the parent with the case plan; the circumstances of the dependency and whether they have been resolved; the stability and longevity of the child's placement; the preferences of the child, if the child is of sufficient age to communicate preference; and the recommendation of the current custodian and the guardian ad litem, if one has been appointed. Section 39.621(10), F.S.

¹⁶ An offending parent is a parent who is the perpetrator of the abuse or neglect that resulted in the child being removed from the home. The court considers a non-offending parent to be a parent who has done nothing to contribute to the child's dependency. *D.S. v. Dept. of Children and Families*, 900 So. 2d 628, 630 (Fla. 5th DCA 2005).

¹⁷ *S.V.-R* 77 So. 3d at 691.

¹⁸ *In re G.M.*, 73 So. 3d 320 (Fla. 2d DCA 2011); *K.E. v. Department of Children and Families*, 958 So. 2d 968 (Fla. 5th DCA 2007); *R.H. v. Department of Children and Families*, 948 So. 2d 898 (Fla. 5th DCA 2007); *M.M. v. Department of Children and Families*, 29 So. 3d 1200 (Fla. 5th DCA 2010); *A.L. v. Department of Children and Families*, 53 So. 3d 324 (Fla. 5th DCA 2010).

¹⁹ *D.S.*, 900 So. 2d, at 632 (Fla. 5th DCA 2005).

that there is competent substantial evidence to support a finding that the children's best interests would be served by permanent placement with R.A. and T.B.²⁰

In a later case, the Fifth District Court of Appeal cited case law that applied the endangerment standard but then mentioned the 'best interest' standard, albeit in a more circumspect context:

However, even if the mother could satisfy the standards for modification, the possibility of a future modification is not an excuse for ... failing to allow a parent a reasonable opportunity to complete a case plan in the absence of evidence that such opportunity would be fruitless or ... detrimental to the best interests of the children.²¹

III. Effect of Proposed Changes:

Participation by Foster Children in Extracurricular Activities

The bill amends foster care law to better enable foster children to participate in extracurricular, enrichment and other social activities. The bill also facilitates the ability of the caregiver to approve activities for foster children, without fear of civil liability. The bill specifies a standard, the reasonable and prudent parent standard, which governs whether a caregiver may be held liable for harm to a foster child while engaged in activities approved by the caregiver.

This bill:

- Defines the terms "age-appropriate," "caregiver," and "reasonable and prudent parent standard" which are used in reference to decision-making about extracurricular activities for a foster child.
- Grants a caregiver immunity from liability for harm to a child which occurs during an extracurricular, enrichment, and social activity if the caregiver acts as a reasonable and prudent parent in permitting the activity. The bill clarifies that this provision does not replace or restrict any existing liability protection in law.
- Requires the department to adopt rules specifying additional bases for normalcy in connection with the "reasonable and prudent parent" standard.

Postdisposition Relief

This bill provides and clarifies different standards for a court to use in determining whether to return a child to a parent after the court enters an adjudication of dependency.

- If the child is currently placed with a non-parent, to approve return of the child to the home, the court must apply the endangerment standard.
- If the child is currently placed with a parent, to approve return of the child to the other parent, the court must find that reunification is in the best interest of the child.

²⁰ *Id.* at 632.

²¹ *A.L. v. Department of Children and Families*, 53 So. 3d 324, 328 (Fla. 5th DCA 2010).

This clarifies that a child may not be returned to the parent who harmed the child simply on the basis that the risk of present or future harm is removed. Rather, the move must also be in the child's best interest if the child is currently living in the home of a stable, non-abusive parent.

Preparation for Independent Living

The bill replaces current law which requires caregivers to produce quarterly progress reports on age appropriate activities with inclusion of activities into the agency's judicial social study report provided to the court. Including information on normalcy activities in the overall judicial report may streamline and facilitate the sharing of information.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families expects that the bill will have an insignificant fiscal impact on the agency, if any.²²

VI. Technical Deficiencies:

None.

²² Dept. of Children and Families, *Staff Analysis and Economic Impact SB 164* (Jan. 11, 2013).

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 Children, Families, and Elder Affairs on February 5, 2013:

- Replaces a reference to an administrative rule with a statutory reference.
- Clarifies the difference in standard for returning a child to a parent who has been abusive or neglectful in the past and who has completed a case plan when the child has been placed with the other parent and when the child has been placed with someone other than a parent.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Detert

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1 A bill to be entitled
2 An act relating to children in foster care; creating
3 the "Quality-Parenting for Children in Foster Care
4 Act"; creating s. 39.409, F.S.; providing legislative
5 findings and intent; providing definitions;
6 establishing and providing for the application of a
7 "reasonable and prudent parent" standard; directing
8 the Department of Children and Families to adopt
9 rules; amending s. 39.522, F.S.; specifying that the
10 standard for reunification from "endangerment" to "the
11 best interest of the child" in certain circumstances;
12 amending s. 409.1451, F.S.; providing for the
13 application of the reasonable and prudent parent
14 standard to independent living transition services;
15 specifying that department rules must reflect the
16 considerations of the reasonable and prudent parent
17 standard; directing the department to adopt rules;
18 providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. This act may be cited as the "Quality Parenting
23 for Children in Foster Care Act."

24 Section 2. Section 39.409, Florida Statutes, is created to
25 read:

26 39.409 Participation in childhood activities.-

27 (1) FINDINGS AND INTENT.-

28 (a) The Legislature finds that parents make important
29 decisions every day regarding their child's participation in

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30 activities and that caregivers of children in out-of-home care
31 are faced with making the same decisions for a child in their
32 care.

33 (b) The Legislature also finds that when a caregiver makes
34 decisions, he or she must consider applicable laws and rules to
35 safeguard the health and safety of a child in his or her care
36 and that those laws and rules have been interpreted to prohibit
37 children in care from participating in extracurricular
38 activities.

39 (c) The Legislature further finds that participation in
40 extracurricular activities is important to the child's well-
41 being, both emotionally and in terms of developing valuable
42 life-coping skills.

43 (d) It is the intent of the Legislature to recognize the
44 importance of normalizing the lives of children in out-of-home
45 care and to empower caregivers to approve or disapprove a
46 child's participation in activities without prior approval of
47 the department, the caseworker, or the court.

48 (2) DEFINITIONS.-As used in this section, the term:

49 (a) "Age-appropriate" means an activity or item that is
50 generally accepted as suitable for a child of the same
51 chronological age or level of maturity. Age appropriateness is
52 based on the development of cognitive, emotional, physical, and
53 behavioral capacity which is typical for an age or age group.

54 (b) "Caregiver" means a person with whom the child is
55 placed in out-of-home care, or a designated official for a group
56 care facility licensed by the department under s.409.175.

57 (c) "Reasonable and prudent parent standard" means the
58 standard of care used by a caregiver in determining whether to

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59 allow a child in his or her care to participate in
 60 extracurricular, enrichment, and social activities. This
 61 standard is characterized by careful and thoughtful parental
 62 decisionmaking that is intended to maintain a child's health,
 63 safety, and best interest while encouraging the child's
 64 emotional and developmental growth.

65 (3) APPLICATION OF STANDARD OF CARE.—

66 (a) Every child who comes into out-of-home care pursuant to
 67 this chapter is entitled to participate in age-appropriate
 68 extracurricular, enrichment, and social activities.

69 (b) Each caregiver shall use the reasonable and prudent
 70 parent standard in determining whether to give permission for a
 71 child living in out-of-home care to participate in
 72 extracurricular, enrichment, or social activities. When using
 73 the reasonable and prudent parent standard, the caregiver must
 74 consider:

75 1. The child's age, maturity, and developmental level to
 76 maintain the overall health and safety of the child.

77 2. The potential risk factors and the appropriateness of
 78 the extracurricular, enrichment, or social activity.

79 3. The best interest of the child, based on information
 80 known by the caregiver.

81 4. The importance of encouraging the child's emotional and
 82 developmental growth.

83 5. The importance of providing the child with the most
 84 family-like living experience possible.

85 6. The behavioral history of the child and the child's
 86 ability to safely participate in the proposed activity.

87 (c) The department and each community-based care lead

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88 agency is required to verify that private agencies providing
 89 out-of-home care services to dependent children have policies in
 90 place that are consistent with this section and that these
 91 agencies promote and protect the ability of dependent children
 92 to participate in age-appropriate extracurricular, enrichment,
 93 and social activities.

94 (d) A caregiver is not liable for harm caused to a child
 95 who participates in an activity approved by the caregiver,
 96 provided that the caregiver has acted in accordance with the
 97 reasonable and prudent parent standard. This paragraph may not
 98 be interpreted as removing or limiting any existing liability
 99 protection afforded by law.

100 (4) RULEMAKING.—The department shall adopt rules to
 101 administer this section.

102 Section 3. Section 39.522, Florida Statutes, is amended to
 103 read:

104 39.522 Postdisposition relief; postdisposition change of
 105 custody.—The court may change the temporary legal custody or the
 106 conditions of protective supervision at a postdisposition
 107 hearing, without the necessity of another adjudicatory hearing.

108 (1) A child who has been placed in the child's own home
 109 under the protective supervision of an authorized agent of the
 110 department, in the home of a relative, in the home of a legal
 111 custodian, or in some other place may be brought before the
 112 court by the department or by any other interested person, upon
 113 the filing of a petition alleging a need for a change in the
 114 conditions of protective supervision or the placement. If the
 115 parents or other legal custodians deny the need for a change,
 116 the court must ~~shall~~ hear all parties in person or by counsel,

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117 or both. Upon the admission of a need for a change or after such
 118 hearing, the court ~~must shall~~ enter an order changing the
 119 placement, modifying the conditions of protective supervision,
 120 or continuing the conditions of protective supervision as
 121 ordered. The standard for changing custody of the child ~~is shall~~
 122 ~~be~~ the best interest of the child. When applying this standard,
 123 the court ~~must shall~~ consider the continuity of the child's
 124 placement in the same out-of-home residence as a factor when
 125 determining the best interests of the child. If the child is not
 126 placed in foster care, then the new placement for the child must
 127 meet the home study criteria and court approval pursuant to this
 128 chapter.

129 (2) In cases where the issue before the court is whether a
 130 child should be reunited with a parent, and the child is
 131 currently placed with someone other than a parent, the court
 132 ~~must shall~~ determine whether the parent has substantially
 133 complied with the terms of the case plan to the extent that the
 134 safety, well-being, and physical, mental, and emotional health
 135 of the child is not endangered by the return of the child to the
 136 home.

137 (3) In cases in which the issue before the court is whether
 138 a child who has been placed in the custody of a parent from whom
 139 the child was not removed should be reunited with the other
 140 parent upon a finding of substantial compliance with the terms
 141 of the case plan, the applicable standard is not endangerment,
 142 but the best interest of the child.

143 Section 4. Paragraph (a) of subsection (3) and subsection
 144 (10) of section 409.1451, Florida Statutes, are amended to read:
 145 409.1451 Independent living transition services.-

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146 (3) PREPARATION FOR INDEPENDENT LIVING.-

147 (a) It is the intent of the Legislature ~~that for~~ the
 148 Department of Children and ~~Families Family Services~~ to assist
 149 older children in foster care and young adults who exit foster
 150 care at age 18 in making the transition to independent living
 151 and self-sufficiency as adults. The department shall provide
 152 such children and young adults with opportunities to participate
 153 in life skills activities in their foster families and
 154 communities which are reasonable and appropriate for their
 155 respective ages or for any special needs they may have and shall
 156 provide them with services to build life skills and increase
 157 their ability to live independently and become self-sufficient.
 158 To support the provision of opportunities for participation in
 159 age-appropriate life skills activities, the department shall:

160 1. Develop a list of age-appropriate activities and
 161 responsibilities to be offered to all children involved in
 162 independent living transition services and their foster parents.

163 2. Provide training for staff and foster parents to address
 164 the issues of older children in foster care in transitioning to
 165 adulthood, which includes ~~shall include~~ information on high
 166 school completion, grant applications, vocational school
 167 opportunities, supporting education and employment
 168 opportunities, and opportunities to participate in appropriate
 169 daily activities.

170 3. Establish ~~Develop procedures to maximize~~ the authority
 171 of foster parents, family foster homes, residential child-caring
 172 agencies, or other authorized caregivers to approve
 173 participation in age-appropriate activities of children in their
 174 care in accordance with the reasonable and prudent parent

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175 ~~standard established in s. 39.409. The age-appropriate~~
 176 ~~activities and the authority of the foster parent, family foster~~
 177 ~~home, residential child-caring agency, or caregiver shall be~~
 178 ~~developed into a written plan that the foster parent, family~~
 179 ~~foster home, residential child-caring agency, or caregiver, the~~
 180 ~~child, and the case manager all develop together, sign, and~~
 181 ~~follow. This plan must include specific goals and objectives and~~
 182 ~~be reviewed and updated no less than quarterly. Foster parents,~~
 183 ~~family foster homes, residential child-caring agencies, or other~~
 184 ~~authorized caregivers who use the reasonable and prudent parent~~
 185 ~~standard in their decisionmaking are who have developed a~~
 186 ~~written plan as described in this subparagraph shall not be held~~
 187 ~~responsible under administrative rules or laws pertaining to~~
 188 ~~state licensure and ~~or~~ have their licensure status may not be in~~
 189 ~~any manner jeopardized as a result of the actions of a child~~
 190 ~~engaged in the approved age-appropriate activities specified in~~
 191 ~~the written plan. Goals and objectives for participation in~~
 192 ~~extracurricular, enrichment, and social activities, as well as~~
 193 ~~specific information on the child's progress toward meeting~~
 194 ~~those objectives, must be incorporated into the agency's written~~
 195 ~~judicial social study report and must be reviewed by the court~~
 196 ~~at each hearing conducted pursuant to s. 39.701.~~

197 4. Provide opportunities for older children in foster care
 198 to interact with mentors.

199 5. Develop and implement procedures for older children to
 200 directly access and manage the personal allowance they receive
 201 from the department in order to learn responsibility and
 202 participate in age-appropriate life skills activities to the
 203 extent feasible.

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204 6. Make a good faith effort to fully explain, before ~~prior~~
 205 ~~to~~ execution of any signature, if required, any document,
 206 report, form, or other record, whether written or electronic,
 207 presented to a child or young adult pursuant to this chapter and
 208 allow for the recipient to ask any appropriate questions
 209 necessary to fully understand the document. It ~~is~~ shall be the
 210 responsibility of the person presenting the document to the
 211 child or young adult to comply with this subparagraph.

212 (10) RULEMAKING.—The department shall adopt rules to ~~by~~
 213 ~~rule procedures to~~ administer this section. The rules must
 214 ~~provide, including balancing the goals of normalcy and safety~~
 215 ~~for the youth and providing the caregivers with as much~~
 216 ~~flexibility as possible to enable~~ children in their care ~~the~~
 217 ~~youth~~ to participate in normal life experiences and must reflect
 218 the considerations cited in s. 39.409(3)(b) in connection with
 219 the reasonable and prudent parent standard established in that
 220 section. The department shall engage in appropriate planning to
 221 prevent, to the extent possible, a reduction in awards after
 222 issuance. The department shall adopt rules to govern the
 223 payments and conditions related to payments for services to
 224 youth or young adults provided under this section.

225 Section 5. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13

Meeting Date

Topic Dependent Children Bill Number SB164
(if applicable)

Name Summer Pfeiffer Amendment Barcode _____
(if applicable)

Job Title Vice President / Children's Home Society

Address 1801 Miccosukee Commons Dr. Phone (850) 339-5463

~~Street~~
Tallahassee, FL 32317
City State Zip

E-mail Summer.pfeiffer@chsa.org

Speaking: For Against Information

Representing Children's Home Society

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12-13

Meeting Date

Topic Children in Foster Care - Living Normal Lives

Bill Number 164
(if applicable)

Name Christina Spudeas

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 1801 N. University Drive, Suite 3B

Phone 954-796-0860

Street

Coral Springs FL 33071

E-mail Christina.Spudeas@floridaschildrens

City

State

Zip

Speaking: For Against Information

Representing Florida's Children First and Florida Youth SHINE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12-13

Meeting Date

Topic Children in Foster Care - Living Normal Lives

Bill Number 164

(if applicable)

Name Casey Minor

Amendment Barcode _____

(if applicable)

Job Title _____

Address _____

Phone 850 321 3864

Street

Tallahassee FL 32303

City

State

Zip

E-mail CaseyMinor16@yahoo

Speaking: For Against Information

Representing Florida Youth SHINE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12-13

Meeting Date

Topic Children in Foster Care - Living Normal Lives

Bill Number 164
(if applicable)

Name John Fair

Amendment Barcode _____
(if applicable)

Job Title COO of Made By Us

Address 2389 Sandpiper st
Street
Tallahassee FL 32303
City State Zip

Phone (850) 590-1808

E-mail fairx642@mymail.tcc.fl.edu.

Speaking: For Against Information

Representing Florida Youth SHINE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12-13

Meeting Date

Topic Children in Foster Care - Living Normal Lives

Bill Number 164

(if applicable)

Name Becky Pengelley

Amendment Barcode _____

(if applicable)

Job Title Program Coordinator

Address 444 Appleyard Dr

Phone 850-201-9767

Street
Tallahassee FL 32304
City *State* *Zip*

E-mail pengellb@tc.fl.edu

Speaking: For Against Information

Representing ~~Florida Youth SHINE~~ Fostering Achievement Fellowship

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 12 / 2013

Meeting Date

Topic _____

Bill Number 164
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Committee on Judiciary

BILL: CS/CS/SB 436

INTRODUCER: Judiciary Committee; Regulated Industries Committee; and Senator Altman

SUBJECT: Residential Properties

DATE: March 13, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | Munroe | Cibula | JU | Fav/CS |
| 3. | | | AP | |
| 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:

CS/CS/SB 436 revises several provisions relating to the governance of condominium, cooperative, and homeowners' associations.

The bill prohibits the enforcement of the Phase II Firefighter's Service requirement for existing elevators until the elevator is replaced or the elevator requires major modification. This requirement permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.

The bill provides an exemption from supervision by the Florida Department of Health for swimming pools in homeowners' association having no more than 32 parcels.

Regarding condominium, cooperative, and homeowners' associations, the bill:

- Gives association members the right to use their smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, and without charge to the member;

- Requires that any challenge to the election process be commenced within 60 days after the election results are announced;
- Prohibits election recalls when there are less than 60 days before the next election; and
- Provides that the suspension of an owner's rights does not apply to limited common elements that are intended to be used only by that owner, common elements needed to access the unit or home, utility services to the unit or home, parking spaces, or elevators, and that suspended interests are not needed for establishing a quorum, conducting an election, or obtaining member approval.

Regarding condominiums, the bill:

- Decreases the number of votes required for the purchase of a lease;
- Defines the unit owner's responsibility for the cost of reconstruction of condominium property;
- Clarifies that broadcast notice by closed-circuit television may be made in lieu of a notice posted physically on the condominium property;
- Clarifies that the board must maintain a copy of a board member's post election certification for at least 5 years or the duration of the board member's tenure, whichever is longer;
- Revises the hurricane protection provisions to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection and clarifies the conditions for a unit owner to receive credit for the prior installation of hurricane protection;
- Extends to 10 years from 7 years the period for completion of all phases of a phase condominium;
- Provides for the creation of a secondary condominium within a primary condominium; and
- Permits officers or full-time employees of the condominium ombudsman's office to engage in another profession or any other business that is not directly or indirectly related, or conflicts with, his or her work in the ombudsman's office.
- Revises the number of units from 75 to 50 that a condominium association must operate to be exempt from the preparation of a financial statement.

Regarding cooperative associations, the bill provides that meetings of the board held for the purpose of discussing personnel matters are not subject to the open meetings requirement. It also expands the types of official records that are not accessible to members of the association, including records containing specified personal identifying information. The bill also requires newly elected or appointed members of the cooperative board to provide a post-election certification that they have read the governing documents of the association, or alternatively, to submit a certification showing the satisfactory completion of the educational curriculum within 1 year before the election or 90 days after the election or appointment.

Regarding homeowners' associations, the bill includes the personnel records of the management company among the records that are not accessible to the association's members. It also deletes the condition that the parcel owner must submit a written request to speak prior to the meeting in order to exercise his or her right to speak at a meeting.

Regarding cooperative and homeowners' associations, the bill provides a process for amending association documents without the approval of all mortgagees.

Regarding condominium and homeowners' associations, the bill also increases the total annual revenue amounts used to determine the type of financial report that association is required to prepare.

This bill substantially amends the following sections of the Florida Statutes: 399.02, 514.0115, 718.111, 718.112, 718.113, 718.115, 718.303, 718.403, 718.5011, 719.104, 719.1055, 719.106, 719.303, 719.501, 720.303, 720.305, and 720.306. This bill creates section 718.406, Florida Statutes.

II. Present Situation:

Swimming Pool Regulation

Chapter 514, F.S., provides for the regulation and supervision of public swimming pools by the Florida Department of Health (DOH). Section 514.0115, provides several exceptions. Section 514.0115(1)(a), F.S., excepts pools that serve no more than 32 condominium or cooperative units which are not operated as a public lodging establishment from DOH supervision, but the pools are still subject to water quality supervision. Section 514.0115(1)(b), F.S., exempts pools that serve condominium or cooperative associations of more than 32 units and whose recorded documents prohibit the rental or sublease of the units for periods of less than 60 days if the condominium or cooperative owner or association has file applications with the DOH, obtained construction plans approval and receive an initial operating permit. The Department of Health must inspect the swimming pools at these places annually, at the fee set forth in s. 514.033(3), F.S.,¹ or upon request by a unit owner, to determine compliance with DOH rules relating to water quality and lifesaving equipment, but may not require compliance with rules relating to swimming pool lifeguard standards.

Elevator Regulation

Chapter 399, F.S., the "Elevator Safety Act,"² establishes minimum standards for elevator safety. The Bureau of Elevator Safety (bureau) of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the agency charged with enforcing the provisions of ch. 399, F.S. The department has rulemaking authority to enforce the provisions of ch. 399, F.S.³ The Elevator Safety and Technical Advisory Council (advisory council) within the department provides technical assistance to the division.⁴ It makes recommendations regarding the rules for the operation, maintenance, servicing, construction, alteration, installation, and inspection of vertical conveyances.⁵

¹ Section 514.033(3), F.S., provides that the annual fee for a pool inspection under s. 514.0115(2)(b), F.S., is \$50.

² See s. 399.001, F.S.

³ See s. 399.10, F.S.

⁴ See s. 399.1061, F.S. The Elevator Safety and Technical Advisory Council consists of eight members appointed by the secretary of the department who meet the following criteria: one representative from a major elevator manufacturing company or its authorized representative; one representative from an elevator servicing company; one representative from a building design profession; one representative of the general public; one representative of a local government in this state; one representative of a building owner or manager; one representative of labor involved in the installation, maintenance, and repair of elevators; and one representative who is a certified elevator inspector from a private inspection service.

⁵ The term "vertical conveyance" is not defined in ch. 399, F.S.

The term “elevator” includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts.⁶ As of August 1, 2012, there were 51,552 licensed elevators in the state.⁷

Section 399.02(1), F.S., requires the elevator safety code to be the same as or similar to the code established by the American Society of Mechanical Engineers (ASME).⁸ The codes established by ASME provide the minimum model standards for the installation, operation, and maintenance of elevators. The codes established by ASME are meant to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 and Standard ASME A18 serve as the basis for the Florida Elevator Safety Act and Florida’s elevator safety code.⁹

The elevator safety code establishes minimum requirements that provide a reasonable degree of safety for the general public and the safe operation of conveyances. For example:

- ASME A17.1 (2004), provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to ensure the minimum safety requirements for *new and existing elevators*.
- ASME A17.2 (2004), provides a guide for the inspection of elevators, escalators, and moving walks.
- ASME A17.3 (1996) is a code for existing elevators to ensure rider safety. The code provision specifically states that it is intended to guide *retroactive requirements for existing elevators*.
- The ASME/ANSI A18.1 “Safety Standard for Platform Lifts and Stairway Chairlifts” provides minimum guidelines for the design, manufacture, and installation of platform lifts and stairway chairlifts.¹⁰

The Elevator Safety Code requires any alteration, relocation or reclassification of an existing elevator to be in compliance with the edition of the Florida Building Code which is in effect at the time of receipt of the construction permit application to alter, relocate, or change classification.¹¹ Specifically, ASME A17.3 requires owners of existing elevators to retrofit elevators to comply with revisions or updates to the code.¹²

For existing elevators in condominiums or multi-family dwellings, including those that are a part of a licensed continuing care facility licensed under ch. 651, F.S., or a retirement community with apartments, s. 399.02(9), F.S., prohibits the enforcement of the Phase II Firefighters’ Service requirements, as amended into ASME A17.1 and A17.3. The Phase II Firefighter’s

⁶ See s. 399.01(6), F.S.

⁷ See *Annual Report, Fiscal Year 2011-2012*, Division of Hotels and Restaurants, Department of Business and Professional Regulation, p. 24. A copy is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2011_12.pdf
(Last visited Feb. 14, 2013).

⁸ The ASME standards specified in s. 399.02(1), F.S., are ASME A17.1, A17.3, and A18.1.

⁹ Section 399.02(1), F.S.

¹⁰ The Bureau of Elevator Safety in the Department of Business and Professional Regulation has adopted and incorporated by reference ASME A17.1, ASME A17.3, and ASME 18.1 in rule 61C-5.001, F.A.C.

¹¹ See ASME A17.3.

¹² See *City of Miami Beach v. Dept. Business and Professional Regulation*, Case No. 03-5188RU, Final Order (Fla. DOAH 2009).

Service requirements permit the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.¹³ The Phase II Firefighters' Service requirements cannot be enforced until July 1, 2015, or until the elevator is replaced or requires major modification before July 1, 2015. Section 399.02(9), F.S., does not restrict the elevator owner's ability to apply for a variance from the Phase II Firefighters' Service or the division's ability to issue variances. Section 399.02(9), F.S., requires the division to adopt rules to administer the exemption.

According to the department, the Division of Hotels and Restaurants is in the rulemaking process to define the term "major modification."

Condominiums

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."¹⁴ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.¹⁵ A declaration is like a constitution in that it:

strictly 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.¹⁶

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."¹⁷ A declaration of condominium may be amended as provided in the declaration.¹⁸ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.¹⁹ Condominiums are administered by a board of directors referred to as a "board of administration."²⁰

Section 718.103(8), F.S., defines the term "common elements" to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term "condominium parcel" to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

¹³ Rule 3.11.3, A.S.M.E. A17.3 (1996 edition). On October 1, 2005, ASME A17.3 (1996) was first adopted in the 2004 Florida Building Code as the code for the inspection and maintenance of existing elevators. On April 2, 2008, the Bureau of Elevator Safety in the Department of Business and Professional Regulation adopted the ASME elevator standards that were incorporated by reference in chapter 30, Florida Building Code. See Florida Building Code (2010), chapter 30, Elevators and Conveying Systems at http://www2.iccsafe.org/states/florida_codes/ (last visited Feb. 13, 2012).

¹⁴ Section 718.103(11), F.S.

¹⁵ Section 718.104(2), F.S.

¹⁶ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹⁷ Section 718.104(5), F.S.

¹⁸ See s. 718.110(1)(a), F.S.

¹⁹ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

²⁰ Section 718.103(4), F.S.

Section 718.103(19), F.S., defines the term “limited common elements” to mean those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

that 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.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.²¹

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) in accordance with ch. 718, F.S., and ch. 719, F.S.

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with chapter 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.²² The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division’s jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.²³

As part of the division’s authority to investigate complaints, s. 718.501(1), F.S., for condominium and s. 719.501(1)(c), F.S., for cooperatives, authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Chapters 718, 719, and 720, F.S.

Although condominiums and cooperatives are regulated by the division, homeowners’ associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners’ associations, provide for

²¹ See ss. 719.106(1)(g) and 719.107, F.S.

²² Section 718.501(1), F.S., and s. 719.501(1), F.S., respectively.

²³ Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,²⁴ recordkeeping requirements, including which records are accessible to the members of the association,²⁵ and financial reporting.²⁶ Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.” Section 718.110(11), F.S., determines when the joinder of mortgagees is necessary if the declaration of condominiums is amended.

Post-Election Certification of Condominium Board Members

Section 718.112(2)(d)4.b., F.S., outlines a post-election certification requirement for newly elected board members. Within 90 days after being elected or appointed, a new board member must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the association’s articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association’s members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.²⁷ The curriculum must be administered by a condominium education provider approved by the division.²⁸ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.²⁹ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for 5 years after a director’s election or appointment.³⁰ The validity of any action by the condominium board is not affected by the association’s failure to have the certification on file.³¹

²⁴ See s. 718.112(2), F.S., for condominiums, s. 719.106(2), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners’ associations.

²⁵ See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners’ associations.

²⁶ See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners’ associations.

²⁷ Section 718.112(2)(d)4.b., F.S. The department’s Internet site provides a listing of approved educational providers. See Division of Florida Condominiums, Timeshares, and Mobile Homes, *Approved Education Providers*, available at <http://www.myfloridalicenses.com/dbpr/lsc/condominiums/ApprovedEducationProviders.html>.

(Last visited Feb. 14, 2013).

²⁸ Section 718.112(2)(d)3.b., F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Condominium, Cooperative, and Homeowners' Associations-Voting Interests

For condominium associations, s. 718.103(30), F.S., defines the term “voting interests” to mean:

the voting rights distributed to the association members pursuant to s. 718.104(4)(j). 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.

For cooperative associations, s. 719.103(28), F.S., defines the term “voting interests” to mean, “the voting rights distributed to the association members as provided for in the articles of incorporation.” For homeowners’ associations, the term “voting interests” is defined in s. 720.301(13), F.S., as “the voting rights distributed to the members of the homeowners’ association, pursuant to the governing documents.”

Condominium Insurance

Condominium associations must carry adequate property insurance.³² Chapter 718, F.S., does not require unit owners to carry insurance. However, a unit owner’s insurance coverage must meet the minimum coverage specified in s. 718.111(11)(g), F.S., including that the unit owners is responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry property insurance, and such reconstruction work undertaken by the association is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, F.S. The unit owner is responsible for all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit.³³ The unit owner is also responsible for the cost of reconstruction of any portions of the condominium property for which it is required to carry insurance.³⁴ The unit owner is also responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if the damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees.³⁵

Condominium, Cooperative, and Homeowners' Associations-Recall of Board Members

Section 718.112(2)(j), F.S., outlines the procedure for the recall of board members. Any member of the board may be recalled and removed from office, with or without cause, by a majority of all of the voting interests. If a recall is approved by a majority of all voting interests at a meeting or

³² Section 718.111(11)(a), F.S.

³³ Section 718.111(11)(f)3., F.S.

³⁴ Section 718.111(11)(g)2., F.S.

³⁵ Section 718.111(11)(j), F.S.

by an agreement in writing, the board must notice and hold a board meeting within 5 business days in order to either certify the recall or not. If the board fails to duly notice and hold a board meeting within 5 business days, the recall will be deemed effective. Recall disputes are subject to arbitration by the division under s. 718.1255, F.S., which relates to the arbitration and mediation of disputes between condominium associations and members.

A recall petition may be filed at any time, even when another election is scheduled.

Comparable provisions for the recall of the board members of cooperative associations are provided in s. 719.106(1)(f), F.S., and board members of homeowners' associations in s. 720.303(10), F.S.

Condominiums-Purchase of Leases

Condominium associations may purchase land or a recreation lease with the vote set forth in the declaration, or if no such provision exists in the declaration, by the same vote required to amend the declaration.³⁶ A two-thirds vote of the units is required to amend a declaration, unless the declaration specifies a different vote requirement.³⁷

Condominium associations may acquire leaseholds, memberships, and other possessory or use interests in lands or recreational facilities, if such lands and facilities are intended to provide enjoyment, recreation or other use or benefit to the unit owners. The acquisition of a leasehold after 12 months following the filing of the declaration must be agreed upon as set forth in the declaration, or if no such provision exists in the declaration, by the approval of a majority of the total voting interests of the condominium.³⁸

Condominiums-Hurricane Protection

Section 718.113(5), F.S., specifies the condominiums' powers and duties in regards to the installation and maintenance of hurricane protection. A condominium association must adopt hurricane shutter specifications for each building within each condominium operated by the association. The board may, subject to approval by a majority of the voting interests, install hurricane shutters, impact glass, code-compliant windows, or other types of hurricane protection that comply with or exceed the applicable building code.³⁹ The association is responsible for the maintenance, repair, and replacement of hurricane protection for the property if the association is responsible for the maintenance of such property under the declaration of condominium.⁴⁰ The association may operate the hurricane shutters without the permission of the unit owners only if such operation is necessary to protect the association and condominium property.

Section 718.115(1)(e), F.S., provides that the installation, replacement, operation, repair, and maintenance of hurricane shutters and other hurricane protections are a common expense, unless otherwise specified in the declaration of condominium. Unit owners who previously installed

³⁶ Section 718.111(8), F.S.

³⁷ Section 718.110(1)(a), F.S.

³⁸ Section 718.114, F.S.

³⁹ Section 718.113(5)(a), F.S.

⁴⁰ Section 718.113(5)(b), F.S.

their own hurricane protection are entitled to a credit equal to the pro rata portion of the assessed installation cost assigned to each unit and for the pro rate share of expenses for hurricane protection installed on common elements and association property.

Condominium – Sanctioning Unit Owners

Section 718.303(3), F.S., provides for the assessment of fines for failure to comply with any provision of the declaration, the association's bylaws, or reasonable rules of the association by a unit owner, or a unit owner's tenant, guest, or invitee. A fine may not exceed \$100 per violation, but may be levied on each day of a continuing violation. A fine does not become a lien on the property. Before a fine may be imposed, notice and an opportunity for a hearing must be provided.⁴¹ A fine against a unit owner may not in the aggregate exceed \$1,000.⁴²

Section 718.303(3)(a), F.S., provides that the association may suspend, for a reasonable period of time, the use rights of a unit owner, or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

If a unit owner is more than 90 days delinquent in paying a monetary obligation due to the association, s. 718.303(4), F.S., authorizes condominium associations to suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid in full. The association may not suspend the right to use limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

Section 718.303(5), F.S., authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. A suspension ends upon full payment of all obligation currently due or overdue to the association. The voting interest or consent right of a suspended unit owner may not be counted toward the total number of voting interests for any purpose, including, but are not limited to, the number of voting interests necessary to constitute a quorum, conduct an election, or approve an action.⁴³ Section 718.303, F.S., also provides that the notice and hearing requirement for fines in s. 718.303(3), F.S., do not apply to suspensions under this subsection.⁴⁴

The suspension provisions in s. 718.303, F.S., are substantially similar to the suspension provisions for cooperatives in s. 719.303, F.S., and for homeowners' associations in s. 720.305, F.S.

Phase Condominiums

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the

⁴¹ Section 718.303(3)(b), F.S.

⁴² Section 718.303(3), F.S.

⁴³ Section 718.303(5), F.S.

⁴⁴ *Id.*

declaration which has been approved by all the unit owners and unit mortgagees. The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.⁴⁵

Condominium Ombudsman

Section 718.5011, F.S., provides for the appointment of a condominium ombudsman by the Governor. The ombudsman acts as a liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties.⁴⁶ The ombudsman develops policies and procedures to assist parties in the understanding of their rights and responsibilities set forth in ch. 718, F.S., and the condominium documents governing their respective association.⁴⁷ The ombudsman also monitors and reviews procedures and disputes concerning condominium elections or meetings, and may recommend to the division whether to pursue enforcement action where there is reasonable cause to believe that election misconduct has occurred.⁴⁸ The ombudsman may also make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.⁴⁹ The ombudsman may also assist in the resolution of disputes.⁵⁰

Section 718.5011(2), F.S., prohibits any officer or full-time employee of the ombudsman's office from actively engaging in any other business or profession.

Cooperatives – Sanctioning Unit Owners

Section 719.303(3), F.S., permits cooperative associations to levy reasonable fines against unit owners for failure to comply with the cooperative documents or rules of the association. Fines may not exceed \$100 per violation and may not become a lien against the unit. The fine may be levied on the basis of each day of a continuing violation. A fine may not exceed \$1,000 in the aggregate.

Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.⁵¹

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory

⁴⁵ Section 718.403(1), F.S.

⁴⁶ Section 718.5012(4), F.S.

⁴⁷ *Id.*

⁴⁸ Section 718.5012(5), F.S.

⁴⁹ Section 718.5012(6), F.S.

⁵⁰ Section 718.5012(9), F.S.

⁵¹ *See* s. 720.302(1), F.S.

condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”⁵² Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.⁵³

Homeowners’ associations are administered by a board of directors whose members are elected.⁵⁴ The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.⁵⁵ The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.⁵⁶

Financial Reporting for Condominium and Homeowners’ Associations

Section 720.303(7), F.S., sets forth the financial reporting responsibilities of homeowners’ associations. Homeowners’ associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association’s total annual revenues. Section 720.303(7)(a), F.S., provides, in part, that if the association has a total annual revenue of \$100,000 or more, but less than \$200,000, the association must prepare compiled financial statements. If the association has a total annual revenue of at least \$200,000 and not less than \$400,000, the association must prepare reviewed financial statements. If the total annual revenue is \$400,000 or more, the association must prepare audited financial statements. If the total annual revenue is less than \$100,000, then a report of cash receipts must be prepared.⁵⁷ An association having less than 50 parcels, regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.⁵⁸ The amounts of total annual revenue and the type of financial statement requires are identical to the financial reporting requirements for condominium associations in s. 718.111(13), F.S.

III. Effect of Proposed Changes:

Elevators

The bill amends s. 399.02(9), F.S., to extend the enforcement exemption by deleting the July 1, 2015, end date for the Phase II Firefighters’ Service exemption. The bill maintains the requirement that elevators must comply with Phase II Firefighters’ Service when they are replaced or the elevator requires major modification.

⁵² Section 720.301(9), F.S.

⁵³ Section 720.302(5), F.S.

⁵⁴ See ss. 720.303 and 720.307, F.S.

⁵⁵ See ss. 720.301 and 720.303, F.S.

⁵⁶ Section 720.303(1), F.S.

⁵⁷ Section 720.303(7)(b)1., F.S.

⁵⁸ Section 720.303(7)(b)2., F.S.

Swimming Pools

The bill amends s. 514.0115(2), F.S., to include swimming pools in homeowners' association in the exemption from supervision by the DOH. Homeowners' associations having no more than 32 parcels will be exempt from all DOH supervision with the exception of water quality supervision. Homeowners' associations having more than 32 parcels will remain subject to annual inspections.

Condominium – Purchase of Leases

The bill amends s. 718.111(8), F.S., to provide that the vote required for the purchase of a lease is the same as required for the acquisition of a leasehold under s. 718.114, F.S., which is a majority of the total voting interests or as authorized by the declaration. The bill deletes the provision that requires the vote to be the same as the vote required to amend the declaration, which is a vote of not less than two-thirds of the units.⁵⁹

Condominium Insurance

The bill amends ss. 718.111(11)(g), F.S., to provide that the unit owner is responsible for the cost of reconstruction for portions of the condominium property for which it is the unit owner's responsibility under s. 718.111(11)(j), F.S. This relates to the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if the damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees. The bill also clarifies that the costs owed by the unit owner may be collected in the same manner as an assessment under s. 718.116, F.S. Current law only provides that the cost is chargeable to the unit owner and enforceable as an assessment.

Condominium – Official Records

The bill amends s. 718.111(12)(c), F.S., to provide an association member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member.

The bill provides a comparable provision in s. 719.104(2)(b), F.S., for cooperative associations, and s. 720.303(5), F.S., for homeowners' associations.

Condominium – Financial Reporting

The bill amends s. 718.111(13), F.S., to revise the annual total revenue amounts to determine the type of financial report that the association is required to prepare.

An association having total annual revenues of \$150,000 or more, but less than \$300,000 must prepare compiled financial statements. Current law provides for total revenues of \$100,000 or more, but less than \$200,000.

⁵⁹ Section 718.110(1)(a), F.S.

An association having total annual revenues of at least \$300,000, but less than \$500,000 must prepare reviewed financial statements. Current law provides for total revenues of \$200,000 or more, but less than \$400,000.

An association having total revenues of \$500,000 or more must prepare audited financial statements. Current law provides for total revenues of \$400,000 or more.

An association that operates fewer than 50 units, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures instead of a financial statement. Current law requires an association that operates fewer than 75 units to prepare a report of cash receipts and expenditures instead of a financial statement, regardless of the association's annual revenues.

The bill provides a comparable provision in s. 720.303(7), F.S., for homeowners' associations.

Condominium – Meetings of Unit Owners

The bill amends s. 718.112(2)(d)2., F.S., to include the articles of incorporation, in addition to the condominium association's bylaws, as the governing document that may provide for 2-year terms for association board members. It also deletes the additional requirement that the majority of the voting interests must approve the staggered terms by a majority of the total voting interests.

The bill also amends s. 718.112(2)(d)2., F.S., to provide that a person who is delinquent in the payment of a monetary obligation to the association is not eligible to be a candidate for board membership and may not be listed on the ballot. The bill replaces the term "fee, fine, or special or regular assessment" with the term "monetary obligation."

The bill amends s. 718.112(2)(d)3., F.S., to clarify that a meeting notice that is broadcast on a closed-circuit television system may be made in lieu of a notice posted physically on the condominium property. A meeting notice that is broadcast and not physically posted must be broadcast at least four times every hour of each day that the notice is required.

Condominiums-Elections

The bill amends s. 718.112(2)(d)4., F.S., to exempt associations that govern timeshare condominiums from the prohibition against the use of proxies to elect members of the board.

The bill amends s. 718.112(2)(d)4.b., F.S., relating to the post-election certification of condominium board members, to clarify that the board must maintain a copy of the written certification for inspection by members for 5 years or the duration of the board member's tenure, whichever is longer. The bill provides a comparable requirement for cooperative associations in s. 719.106(1)(d)1.b., F.S., and homeowners' associations in s. 720.306(9)(d), F.S.

The bill creates s. 718.112(2)(d)4.c., F.S., to require that any challenge to the election process be commenced within 60 days after the election results are announced. The bill provides a comparable amendment to s. 719.106(1)(d)1.b., F.S., relating to challenges to the election's process for cooperative associations.

The bill creates s. 718.112(2)(j)5., F.S., which relates to the recall of board members, to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file the required recall petition, the unit owner representative⁶⁰ may file a petition pursuant to s. 718.1255, F.S., challenging the board's failure to act. The bill requires that the petition be filed within 60 days after the expiration of the applicable 5-full-business-day period.⁶¹ The division's review of a petition will be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates s. 718.112(2)(j)7. and 8., F.S., to revise the procedure for recall elections. Section 718.112(2)(j)7., F.S., provides that a board member who has been recalled may file a petition pursuant to s. 718.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified⁶² and the association and the unit owner representative must be named as the respondents.

Section 718.112(2)(j)8., F.S., provides that the division may not accept a recall petition for filing if there are 60 or less days until the next scheduled reelection of the board member sought to be recalled or if 60 or less days have elapsed since the election of the board member sought to be recalled.

The amendment to s. 718.112(2)(j), F.S., is comparable to bill's board member recall limitations provided in s. 719.106(1)(f), F.S., for cooperatives and in s. 720.303(10)(g), F.S., for homeowners' associations.

Condominiums - Hurricane Protection

The bill amends s. 718.113(5), F.S., to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection in reference to hurricane protection.

The bill amends s. 718.115(1)(e), F.S., relating to the common expenses for hurricane protection, to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection.

The bill also amends s. 718.115(1)(e), F.S., to clarify that a unit owner will receive credit when the shutters are installed. It provides that unit owners, who previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code, are entitled to receive a credit when that hurricane protection is installed. It provides that unit owners who have installed other types of code-compliant hurricane protection that comply with the current applicable building code are entitled to receive a credit when the same type of other code-compliant hurricane protection is installed.

⁶⁰ Rule 61B-23.0027(3)(b)1., F.A.C., requires that a unit owner representative must be elected or appointed by the presiding officer at a recall meeting of the board "to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall."

⁶¹ The board has 5 business days to certify the recall or file a petition challenging the recall. If the board fails to act within the 5 days, the recall is deemed effective.

⁶² *Id.*

The bill deletes the reference to laminated glass architecturally designed to function as hurricane protection.

Condominiums-Sanctioning Owners and Occupants

The bill amends s. 718.303(3), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators.

The bill provides similar provisions for the suspension of rights in ss. 719.303(3), F.S., for cooperative associations and s. 720.305(2)(a), F.S., for homeowners' associations.

Phase Condominiums

The bill amends s. 718.403(1), F.S., to permit condominiums to extend the 7-year period for completion of all phases of a phase condominium. The extension must be by an amendment to the declaration approved by the unit owners. An amendment to extend the 7-year period may be submitted for approval only during the last 3 years of the initial 7-year period. The amendment must describe the time period in which all phases will be completed, but such period may not exceed 10 years from the date of the recording of the original declaration of condominium submitting the initial phase to condominium ownership. An amendment to extend the 7-year period is not subject to the limitations in s. 718.110(4), F.S.⁶³

Secondary Condominiums

The bill creates s. 718.406, F.S., to provide for the creation of condominiums within a condominium parcel. This provision addresses the relationship between the primary condominium and the secondary condominium units. According to The Florida Bar Real Property, Probate, and Trust Law Section, an example of a primary and secondary condominium is a high-rise building that is divided into two units. The first few floors would compose one unit in the primary condominium and would be dedicated to commercial space. The upper floors of the building would constitute another unit in the primary condominium and would be dedicated to residential space. A secondary condominium would be created within each of the primary condominium units, e.g., a secondary condominium association consisting of commercial units in the lower floors and residential units in the upper floors. Also according to The Florida Bar, the bill will provide a framework, including common terminology, for this type of condominium association.

Section 718.406(2), F.S., provides that the secondary condominium association is responsible for operating the secondary association. It also provides that the secondary association must

⁶³ In pertinent part, s. 718.110(4), F.S., prohibits amendments that materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which unit owners share the common expenses, own the common surplus, and which provides that the acquisition of property by the association and material alterations or substantial additions to such property or the common elements do not constitute a material alteration or modification of the appurtenances to the units. In current law, s. 718.110(4), F.S., also provides that a declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

designate who would cast the vote of the subdivided parcel in the primary association. If the secondary association does not designate a person, the president of the secondary association or his or her designee is authorized to cast that vote.

Section 718.406(3), F.S., provides that unless the declaration of the primary condominium provides for the creation of secondary condominium on a condominium parcel, a secondary condominium may not be created unless the record owners of a majority of the condominium parcels execute an amendment to the primary declaration.

Section 718.406(4), F.S., provides that if the consent of the primary condominium association is required to create a secondary condominium, only the approval of a majority of the board of directors of the primary condominium association is required unless the primary condominium declaration provides otherwise. It provides that only the lienholders of the subdivided parcel upon which the secondary condominium will be created, the owner of that parcel, and the board of the primary condominium shall have the right to approve the creation of the secondary condominium and the contents of the secondary condominium declaration. It also provides that the recording of the secondary condominium declaration is only effective if it evidences the approval of the lienholders of the subdivided parcel, the owner of that parcel, and the board of the primary condominium.

Section 718.406(5), F.S., provides that a unit owner in a secondary condominium is governed by both the declaration of condominium for the primary condominium and the declaration of the second condominium.

Section 718.406(6), F.S., provides that the primary condominium may be responsible for the insurance of both the primary and secondary condominium if the primary condominium declaration permits. Section 718.406(7), F.S., provides that the board of directors of the primary condominium association may adopt hurricane shutter specifications for both the primary and secondary condominium.

Section 718.406(8), F.S., provides that an owner or mortgagee of a unit in a secondary condominium must register with the primary condominium to receive notice of a foreclosure action against the secondary condominium. If registered, the primary condominium association must give at least 30 days notice to the secondary condominium owner or mortgagee before instituting a foreclosure action against a subdivided parcel for nonpayment of amounts due the association. The bill provides for the payment by the registered owner of the unit of their proportional share of the amount of delinquent assessments attributable to the unit. Upon payment of delinquent assessments, the primary association must promptly modify or release the record of lien on the primary condominium so that the lien no longer encumbers the secondary condominium unit. Alternatively, the registered owner may pay all delinquent assessments and seek reimbursement of the amounts paid from the secondary association. The foreclosure is not effective without written notice.

Section 718.406(9), F.S., provides that the primary declaration controls any conflict between the primary and secondary condominium declarations. Section 718.406(10), F.S., provides that common expenses due to the primary condominium from the secondary condominium are a common expense of the secondary condominium.

Condominium Ombudsman

The bill amends s. 718.5011(2), F.S., to permit officers or full-time employees of the ombudsman's office to engage in another profession or any other business that is not directly or indirectly related to, or does not conflict with, his or her work in the ombudsman's office.

Cooperative-Official Records

The bill amends s. 719.104(2)(b), F.S., to provide a member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member. The bill provides a comparable provision in s. 718.111(12)(c), F.S., for condominium associations, and s. 720.303(5), F.S., for homeowners' associations.

The bill amends s. 719.104(2)(c), F.S., relating to the official records of the cooperative association to add the following information to the list of items that are not accessible to members of the association:

- Records protected by the lawyer-client privilege as provided in s. 90.502, F.S., and work product privilege.
- Personnel records of association employees, such as disciplinary, payroll, health, and insurance records. However, the unit owners would have access to written employment agreements with an association employee or budgetary or financial records that indicate the compensation paid to an association employee.
- Social security numbers, driver license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner which are not provided to fulfill the association's notice requirements, and other identifying personal information except for the person's name, unit designation, mailing address, and property address.
- Electronic security measures used to safeguard data, including passwords.
- Software and operating systems used by the association which allow manipulation of data.

Amendment of Cooperative Documents

The bill creates s. 719.1055(7), F.S., to provide the legislative findings that the procurement of consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and a substantial burden on cooperative unit owners and associations. The bill provides that there is a compelling state interest in enabling cooperative association members to approve amendments. This provision will facilitate attempts by cooperative shareholders to amend their documents without the approval of all mortgagees when a change to the association documents does not adversely affect the mortgagee's rights or interests.

The bill limits the enforceability of any mortgage or any provision in declarations, articles of incorporation, or bylaws of a condominium association recorded on or after July 1, 2013, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any

other portion of the cooperative property for those mortgages. Any such provisions or amendments recorded prior to July 1, 2013, will remain enforceable. As to provisions or amendments created after July 1, 2013, the bill provides that provisions requiring consent or joinder are enforceable only as to provisions that adversely affect the priority of the mortgagee's lien or the mortgagee's right to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder. The association may rely upon the public records to identify the holders of mortgages or outstanding mortgages. It may also rely on the address in the original recorded mortgage document unless there is a different address in the in a recorded assignment or modification of the mortgage.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment.

For any amendments that require mortgage consent after July 1, 2013, the consent must be evidenced by an affidavit of the association recorded in the public records of the county in which the declaration is recorded.

An amendment may be voidable by any mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to a 5 year statute of limitations from the date of discovery or the date of recordation. This provision applies to all mortgages, regardless of the date of recordation of the mortgage.

There is a comparable provision for the amendment of condominium documents in s. 718.110(11), F.S. The bill provides a similar provision for homeowners' associations in s. 720.306(1)(d), F.S.

Cooperatives-Meetings

The bill amends s. 719.106(1)(c), F.S., to provide that the requirement of open meetings of the board or committee does not apply to meetings held for the purpose of discussing personnel matters.

Cooperatives-Elections

The bill amends s. 719.106(1)(d)1., F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced. This provision is similar to the bill's amendment to s. 718.112(2)(d)4.c., F.S., relating to challenges to the election's process for condominium associations and s. 720.306(9)(a), F.S., for homeowners' associations.

The bill creates s. 719.106(1)(d)1.b., F.S., provide a post-election certification requirement for newly elected board members of cooperative associations. This requirement is substantively identical to the post-election certification requirement for newly elected members of a

condominium association board that is provided in s. 718.112(2)(d)4.b., F.S., as amended in this bill.

Cooperatives-Recall Elections

The bill creates s. 719.106(1)(f)5., F.S., which relates to the recall of board members, to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file the required recall petition, the unit owner representative may file a petition pursuant to s. 719.1255, F.S., challenging the board's failure to act. The bill requires that the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The division's review of a petition will be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates s. 719.106(1)(f)7. and 8., F.S., to revise the procedure for recall disputes. Section 719.106(1)(f)7., F.S., is amended to provide that a board member who has been recalled may file a petition pursuant to s. 719.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified and the association and the unit owner representative must be named as the respondents.

Section 719.106(1)(f)8., F.S., provides that the division may not accept a recall petition for filing when there are 60 or less days until the next scheduled reelection of the board member sought to be recalled or when 60 or less days have elapsed since the election of the board member sought to be recalled.

These provisions are similar to the bill's board member recall limitations provided in s. 718.112(2)(j), F.S., for condominiums, and in s. 720.303(10)(g), F.S., for homeowners' associations.

Cooperative-Sanctioning Owners and Occupants

The bill amends s. 719.303(3), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators. The bill provides similar provisions for the suspension of rights in s. 718.303(3), F.S., for condominium associations and s. 720.305(2)(a), F.S., for homeowners' associations.

Cooperatives – Training and Education

The bill amends s. 719.501, F.S., to authorize the division, in its discretion, to provide training and educational programs, including web-based electronic media, and live training and seminars, in various locations throughout the state. The bill authorizes the division to review and approve education and training programs for board members and unit owners offered by providers. The bill requires the division to maintain a current list of approved programs and providers and make that list available to board members and unit owners in a reasonable and cost-effective manner.

Homeowners' Associations-Official Records

The bill amends s. 720.303(5), F.S., to provide an association member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member. The bill provides a comparable provision in s. 718.111(12)(c), F.S., for condominium associations and in s. 719.104(2)(b), F.S., for cooperative associations.

The bill amends s. 720.303(5)(c)3., F.S., to include the personnel records of the management company among the records that are not accessible to the association's members. Current law only references the personnel records of the association.

Homeowners' Associations – Financial Reporting

The bill amends s. 720.303(7), F.S., to revise the annual total revenue amounts to determine the type of financial report that the association is required to prepare.

An association having total annual revenues of \$150,000 or more, but less than \$300,000 must prepare compiled financial statements. Current law provides for total revenues of \$100,000 or more, but less than \$200,000.

An association having total annual revenues of at least \$300,000, but less than \$500,000 must prepare reviewed financial statements. Current law provides for total revenues of \$200,000 or more, but less than \$400,000.

An association with total revenues of \$500,000 or more must prepare audited financial statements. Current law provides for total revenues of \$400,000 or more.

An association with total annual revenue of less than \$150,000 must prepare a report of cash receipts and expenditures. This threshold under current law is \$100,000.

The bill provides a comparable provision in s. 718.111(13). F.S., for condominium associations.

Homeowners' Associations-Recall Elections

The bill creates s. 720.303(10)(g), F.S., to provide that, if the board fails to notice and hold the required meeting to certify the recall of board members or fails to file the required recall petition, the unit owner representative may file a petition pursuant to s. 718.1255, F.S., to challenge the board's failure to act. The bill requires that the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The division's review of a petition will be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates ss. 720.303(10)(k) and (l), F.S., to revise the procedure for recall disputes. Section 720.303(10)(k), F.S., is amended to provide that a board member who has been recalled may file a petition pursuant to ss. 718.112(2)(j) and 718.1255, F.S., to challenge the validity of a

recall. The petition must be filed within 60 days after the recall is deemed certified and the association and the unit owner representative must be named as the respondents.

Section 720.303(10)(l), F.S., provides that the division may not accept for filing a recall petition if there are 60 or less days until the next scheduled reelection of the board member sought to be recalled or if 60 or less days have elapsed since the election of the board member sought to be recalled.

These provision are similar to the bill's board member recall limitations provided in s. 718.112(2)(j), F.S., for condominiums, and in s. 719.106(1)(f), F.S., for cooperative associations.

Homeowners' Associations-Sanctioning Owners and Occupants

The bill amends s. 720.305(2)(a), F.S., to provide that unit owner suspension of rights does not apply to common areas used to provide access or utility services to the parcel. The bill provides similar provisions for the suspension of rights in ss. 718.303(3), F.S., for condominium associations and ss. 719.303(3), F.S., for cooperative associations.

Amendment of Homeowner Association Documents

The bill creates s. 720.306(1)(d), F.S., to provide the legislative findings that the procurement of consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and a substantial burden on homeowners' and associations. The bill provides that there is a compelling state interest in enabling homeowners' association members to approve amendments. This provision will facilitate attempts by homeowners to amend their documents without the approval of all mortgagees when a change to the association documents does not adversely affect the mortgagee's rights or interests.

The bill limits the enforceability of any mortgage or any provision or amendment to declarations, articles of incorporation, or bylaws of a homeowners' association recorded on or after July 1, 2013, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the association property for those mortgages. Any such provisions or amendments recorded prior to July 2013, will remain enforceable. As to provisions or amendments created after July 1, 2013, the bill provides that provisions requiring consent or joinder are enforceable only as to provisions that adversely affect the priority of the mortgagee's lien or the mortgagee's right to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder. The association may rely upon the public records to identify the holders or outstanding mortgages. It may also rely on the address in the original recorded mortgage document unless there is a different address in a recorded assignment or modification of the mortgage.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment.

For any amendments that require mortgage consent after July 1, 2013, the consent must be evidenced by an affidavit of the association recorded in the public records of the county in which the declaration is recorded.

An amendment may be voidable by any mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to a 5 year statute of limitations from the date of discovery or the date of recordation. This provision applies to all mortgages, regardless of the date of recordation of the mortgage.

There are comparable provisions for the amendment of condominium documents in s. 718.110(11), F.S. The bill provides a similar provision for cooperative associations in s. 720.306(1)(d), F.S.

Homeowners' Associations-Right to Speak

The bill amends s. 720.306(6), F.S., relating to the right of homeowners' association members and parcel owners to attend and speak at meetings, to delete the condition that the parcel owner must submit a written request to speak prior to the meeting.

Homeowners' Associations-Elections Process Challenges

The bill amends s. 720.306(9)(a), F.S., to require that any challenge to the election process be commenced within 60 days after the election results are announced.

This provision is similar to the bill's amendment to s. 718.112(2)(d)4.c., F.S., relating to challenges to the election's process for condominium associations and s. 719.106(1)(d)1.b., F.S., for cooperative associations.

Effective Date

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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/CS by Judiciary on March 12, 2013:**

The bill:

- Amends ss. 718.111(13) and 720.303(7), F.S., to reduce the total annual revenue amounts used to determine the type of financial report that an condominium association or homeowners' association is required to prepare.
- Amends s. 718.111(13), F.S., to reduce the number of units that a condominium association must operate to be exempt from requirements to prepare a financial statement.

- **CS by Regulated Industries on February 21, 2013:**

The committee substitute (CS):

- Amends s. 514.0115(2), F.S., to include swimming pools in homeowners' association in the exemption from supervision by the Florida Department of Health.
- Amends s. 718.111(8), F.S., to revise the vote required for the purchase of a lease by a condominium association.

- Amends ss. 718.111(11)(g), F.S., to provide that the unit owner is responsible for the cost of reconstruction for portions of the condominium property for which it is the unit owner's responsibility under s. 718.111(11)(j), F.S.
- Amends ss. 718.111(12)(c), 719.104(2)(b), and 720.303(5), F.S., to provide community association members the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member.
- Amends s. 718.111(13), F.S., to revise the total annual revenue amounts used to determine the type of financial report that the association is required to prepare.
- Amends s. 718.112(2)(d)2., F.S., to provide that a person who is delinquent in the payment of a monetary obligation to the association is not eligible to be a candidate for board membership and may not be listed on the ballot. The CS replaces the term "fee, fine, or special or regular assessment" with the term "monetary obligation" in this provision.
- Does not amend ss. 718.303(5), 719.303(5) and 720.305(4), F.S., to delete the provisions that permit an association member's voting rights that have been suspended due to nonpayment of monetary obligations to not be included in the number of voting interests needed to establish a quorum, conduct an election, or to obtain member approval is reduced by the number of suspended voting or consent rights.
- Creates s. 719.106(1)(d)1.b., F.S., to provide a post-election certification requirement for newly elected board members of cooperative associations.
- Amends s. 720.303(7), F.S., to revise the total annual revenue amounts used to determine the type of financial report that the association is required to prepare.

B. Amendments:

None.



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LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/13/2013 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment

Delete lines 389 - 403

and insert:

1. An association with total annual revenues of \$150,000 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 ~~\$400,000~~ or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less



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14 than \$150,000 ~~\$100,000~~ shall prepare a report of cash receipts
15 and expenditures.

16 2. An association that operates fewer than 50 ~~75~~ units,
17 regardless of the association's annual revenues, shall prepare a
18 report of cash receipts and expenditures in lieu of financial
19 statements required by paragraph (a).

20 Delete lines 1720 - 1730

21 and insert:

22 1. An association with total annual revenues of \$150,000
23 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
24 compiled financial statements.

25 2. An association with total annual revenues of at least
26 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall
27 prepare reviewed financial statements.

28 3. An association with total annual revenues of \$500,000
29 ~~\$400,000~~ or more shall prepare audited financial statements.

30 (b)1. An association with total annual revenues of less
31 than \$150,000 ~~\$100,000~~ shall prepare a report of cash receipts
32 and expenditures.

By the Committee on Regulated Industries; and Senator Altman

580-01744-13

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1 A bill to be entitled
 2 An act relating to residential properties; amending s.
 3 399.02, F.S.; exempting certain elevators from
 4 specific code update requirements; amending s.
 5 514.0115, F.S.; revising specified supervision and
 6 regulation exemptions for homeowners' association
 7 swimming pools; amending s. 718.111, F.S.; revising
 8 requirements for an association's approval of land
 9 purchases and recreational leases; revising
 10 reconstruction costs for which unit owners are
 11 responsible and authorizing the costs to be collected
 12 in a specified manner; requiring an association to
 13 repair or replace as a common expense certain
 14 condominium property damaged by an insurable event;
 15 requiring an association to allow a member or the
 16 member's representative to use certain portable
 17 devices to make electronic copies of association
 18 records; prohibiting the association from charging the
 19 member or representative for using the portable
 20 device; revising requirements for the preparation of
 21 an association's annual financial statement; amending
 22 s. 718.112, F.S.; revising terms of members of an
 23 association's board of administrators and revising
 24 eligibility criteria for candidates; revising
 25 condominium unit owner meeting notice requirements;
 26 providing for nonapplicability to associations
 27 governing timeshare condominiums of certain provisions
 28 relating to elections of board members; revising
 29 recordkeeping requirements of a condominium

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 association board; requiring commencement of
 31 challenges to an election within a specified period;
 32 providing requirements for challenging the failure of
 33 a board to duly notice and hold the required board
 34 meeting or to file the required petition for a recall;
 35 providing requirements for recalled board members to
 36 challenge the recall; prohibiting the Division of
 37 Florida Condominiums, Timeshares, and Mobile Homes of
 38 the Department of Business and Professional Regulation
 39 from accepting recall petitions for filing under
 40 certain circumstances; amending s. 718.113, F.S.;
 41 providing requirements for a condominium association
 42 board relating to the installation of hurricane
 43 shutters, impact glass, code-compliant windows or
 44 doors, and other types of code-compliant hurricane
 45 protection under certain circumstances; amending s.
 46 718.115, F.S.; conforming provisions to changes made
 47 by the act; amending s. 718.303, F.S.; revising
 48 provisions relating to imposing remedies against a
 49 noncompliant or delinquent condominium unit owner or
 50 member; amending s. 718.403, F.S.; providing
 51 requirements for the completion of phase condominiums;
 52 creating s. 718.406, F.S.; providing definitions;
 53 providing requirements for condominiums created within
 54 condominium parcels; providing for the establishment
 55 of primary condominium and secondary condominium
 56 units; providing requirements for association
 57 declarations; authorizing a primary condominium
 58 association to provide insurance and adopt hurricane

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59 shutter or hurricane protection specifications under
 60 certain conditions; providing requirements relating to
 61 assessments; providing for resolution of conflicts
 62 between primary condominium declarations and secondary
 63 condominium declarations; providing requirements
 64 relating to common expenses due the primary
 65 condominium association; amending s. 718.5011, F.S.;
 66 revising the restriction on officers and full-time
 67 employees of the ombudsman from engaging in other
 68 businesses or professions; amending s. 719.104, F.S.;
 69 requiring an association to allow a member or the
 70 member's representative to use certain portable
 71 devices to make electronic copies of association
 72 records; prohibiting the association from charging the
 73 member or representative for using the portable
 74 device; specifying additional records that are not
 75 accessible to unit owners; amending s. 719.1055, F.S.;
 76 revising provisions relating to the amendment of
 77 cooperative documents; providing legislative findings
 78 and a finding of compelling state interest; providing
 79 criteria for consent or joinder to an amendment;
 80 requiring notice regarding proposed amendments to
 81 mortgagees; providing criteria for notification;
 82 providing for voiding certain amendments; amending s.
 83 719.106, F.S.; revising applicability of certain board
 84 of administration meeting requirements; requiring
 85 commencement of challenges to an election within a
 86 specified period; specifying certification or
 87 educational requirements for a newly elected or

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88 appointed cooperative board director; providing
 89 requirements for challenging the failure of a board to
 90 duly notice and hold the required board meeting or to
 91 file the required petition for a recall; providing
 92 requirements for recalled board members to challenge
 93 the recall; prohibiting the division from accepting
 94 recall petitions for filing under certain
 95 circumstances; providing education requirements for
 96 board members; amending s. 719.303, F.S.; revising
 97 provisions relating to imposing remedies against a
 98 noncompliant or delinquent cooperative unit owner or
 99 member; amending s. 719.501, F.S.; authorizing the
 100 division to provide training and educational programs
 101 for cooperative association board members and unit
 102 owners; amending s. 720.303, F.S.; requiring an
 103 association to allow a member or the member's
 104 representative to use certain portable devices to make
 105 electronic copies of association records; prohibiting
 106 the association from charging the member or
 107 representative for using the portable device; revising
 108 requirements for the preparation of an association's
 109 annual financial statement; revising the types of
 110 records that are not accessible to homeowners'
 111 association members and parcel owners; providing
 112 requirements for challenging the failure of a board to
 113 duly notice and hold the required board meeting or to
 114 file the required petition for a recall; providing
 115 requirements for recalled board members to challenge
 116 the recall; prohibiting the division from accepting

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117 recall petitions for filing under certain
 118 circumstances; amending s. 720.305, F.S.; revising
 119 provisions relating to imposing remedies against a
 120 noncompliant or delinquent homeowners' association
 121 member and parcel owner; amending s. 720.306, F.S.;

122 revising provisions relating to the amendment of
 123 homeowners' association declarations; providing
 124 legislative findings and a finding of compelling state
 125 interest; providing criteria for consent or joinder to
 126 an amendment; requiring notice to mortgagees regarding
 127 proposed amendments; providing criteria for
 128 notification; providing for voiding certain
 129 amendments; revising provisions relating to right to
 130 speak at a homeowners' association meeting; requiring
 131 commencement of challenges to an election within a
 132 specified period; providing an effective date.

134 Be It Enacted by the Legislature of the State of Florida:

135
 136 Section 1. Subsection (9) of section 399.02, Florida
 137 Statutes, is amended to read:

138 399.02 General requirements.-

139 (9) Updates to the Safety Code for Existing Elevators and
 140 Escalators, ASME A17.1 and A17.3, which require Phase II
 141 Firefighters' Service on elevators may not be enforced ~~until~~
 142 ~~July 1, 2015, or~~ until the elevator is replaced or requires
 143 major modification, ~~whichever occurs first~~, on elevators in
 144 condominiums or multifamily residential buildings, including
 145 those that are part of a continuing care facility licensed under

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146 chapter 651, or similar retirement community with apartments,
 147 having a certificate of occupancy by the local building
 148 authority that was issued before July 1, 2008. This exception
 149 does not prevent an elevator owner from requesting a variance
 150 from the applicable codes ~~before or after July 1, 2015~~. This
 151 subsection does not prohibit the division from granting
 152 variances pursuant to s. 120.542 and subsection (8). The
 153 division shall adopt rules to administer this subsection.

154 Section 2. Subsection (2) of section 514.0115, Florida
 155 Statutes, is amended to read:

156 514.0115 Exemptions from supervision or regulation;
 157 variances.-

158 (2) (a) Pools serving no more than 32 condominium units, or
 159 cooperative units, or parcels in a homeowners' association as
 160 defined in s. 720.301, which are not operated as a transient
 161 public lodging establishment, are ~~shall be~~ exempt from
 162 supervision under this chapter, except for water quality.

163 (b) Pools serving more than 32 condominium units, or
 164 cooperative units, or parcels in a homeowners' association as
 165 defined in s. 720.301, associations of more than 32 units and
 166 whose recorded documents prohibit the rental or sublease of the
 167 units or parcels for periods of less than 60 days are exempt
 168 from supervision under this chapter, except that the
 169 condominium, ~~or cooperative, or parcel~~ owner or association must
 170 file applications with the department and obtain construction
 171 plans approval and receive an initial operating permit. The
 172 department shall inspect the swimming pools at such places
 173 annually, at the fee set forth in s. 514.033(3), or upon request
 174 by a unit owner, to determine compliance with department rules

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175 relating to water quality and lifesaving equipment. The
 176 department may not require compliance with rules relating to
 177 swimming pool lifeguard standards.

178 Section 3. Subsection (8), paragraphs (g) and (j) of
 179 subsection (11), paragraph (c) of subsection (12), and
 180 paragraphs (a) and (b) of subsection (13) of section 718.111,
 181 Florida Statutes, are amended to read:

182 718.111 The association.—

183 (8) PURCHASE OF LEASES.—The association has the power to
 184 purchase any land or recreation lease, subject to the same
 185 manner of approval as in s. 718.114 for the acquisition of
 186 leaseholds upon the approval of such voting interest as is
 187 required by the declaration. If the declaration makes no
 188 provision for acquisition of the land or recreation lease, the
 189 vote required shall be that required to amend the declaration to
 190 permit the acquisition.

191 (11) INSURANCE.—In order to protect the safety, health, and
 192 welfare of the people of the State of Florida and to ensure
 193 consistency in the provision of insurance coverage to
 194 condominiums and their unit owners, this subsection applies to
 195 every residential condominium in the state, regardless of the
 196 date of its declaration of condominium. It is the intent of the
 197 Legislature to encourage lower or stable insurance premiums for
 198 associations described in this subsection.

199 (g) A condominium unit owner's policy must conform to the
 200 requirements of s. 627.714.

201 1. All reconstruction work after a property loss must be
 202 undertaken by the association except as otherwise authorized in
 203 this section. A unit owner may undertake reconstruction work on

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204 portions of the unit with the prior written consent of the board
 205 of administration. However, such work may be conditioned upon
 206 the approval of the repair methods, the qualifications of the
 207 proposed contractor, or the contract that is used for that
 208 purpose. A unit owner must obtain all required governmental
 209 permits and approvals before commencing reconstruction.

210 2. Unit owners are responsible for the cost of
 211 reconstruction of any portions of the condominium property for
 212 which the unit owner is required to carry property insurance, or
 213 for which the unit owner is responsible under paragraph (j), and
 214 the cost of any such reconstruction work undertaken by the
 215 association is chargeable to the unit owner and enforceable as
 216 an assessment and may be collected in the manner provided for
 217 the collection of assessments pursuant to s. 718.116.

218 3. A multicondominium association may elect, by a majority
 219 vote of the collective members of the condominiums operated by
 220 the association, to operate the condominiums as a single
 221 condominium for purposes of insurance matters, including, but
 222 not limited to, the purchase of the property insurance required
 223 by this section and the apportionment of deductibles and damages
 224 in excess of coverage. The election to aggregate the treatment
 225 of insurance premiums, deductibles, and excess damages
 226 constitutes an amendment to the declaration of all condominiums
 227 operated by the association, and the costs of insurance must be
 228 stated in the association budget. The amendments must be
 229 recorded as required by s. 718.110.

230 (j) Any portion of the condominium property that must be
 231 insured by the association against property loss pursuant to
 232 paragraph (f) which is damaged by an insurable event shall be

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233 reconstructed, repaired, or replaced as necessary by the
 234 association as a common expense. All property insurance
 235 deductibles, uninsured losses, and other damages in excess of
 236 property insurance coverage under the property insurance
 237 policies maintained by the association are a common expense of
 238 the condominium, except that:

239 1. A unit owner is responsible for the costs of repair or
 240 replacement of any portion of the condominium property not paid
 241 by insurance proceeds if such damage is caused by intentional
 242 conduct, negligence, or failure to comply with the terms of the
 243 declaration or the rules of the association by a unit owner, the
 244 members of his or her family, unit occupants, tenants, guests,
 245 or invitees, without compromise of the subrogation rights of the
 246 insurer.

247 2. The provisions of subparagraph 1. regarding the
 248 financial responsibility of a unit owner for the costs of
 249 repairing or replacing other portions of the condominium
 250 property also apply to the costs of repair or replacement of
 251 personal property of other unit owners or the association, as
 252 well as other property, whether real or personal, which the unit
 253 owners are required to insure.

254 3. To the extent the cost of repair or reconstruction for
 255 which the unit owner is responsible under this paragraph is
 256 reimbursed to the association by insurance proceeds, and the
 257 association has collected the cost of such repair or
 258 reconstruction from the unit owner, the association shall
 259 reimburse the unit owner without the waiver of any rights of
 260 subrogation.

261 4. The association is not obligated to pay for

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262 reconstruction or repairs of property losses as a common expense
 263 if the property losses were known or should have been known to a
 264 unit owner and were not reported to the association until after
 265 the insurance claim of the association for that property was
 266 settled or resolved with finality, or denied because it was
 267 untimely filed.

268 (12) OFFICIAL RECORDS.—

269 (c) The official records of the association are open to
 270 inspection by any association member or the authorized
 271 representative of such member at all reasonable times. The right
 272 to inspect the records includes the right to make or obtain
 273 copies, at the reasonable expense, if any, of the member. The
 274 association may adopt reasonable rules regarding the frequency,
 275 time, location, notice, and manner of record inspections and
 276 copying. The failure of an association to provide the records
 277 within 10 working days after receipt of a written request
 278 creates a rebuttable presumption that the association willfully
 279 failed to comply with this paragraph. A unit owner who is denied
 280 access to official records is entitled to the actual damages or
 281 minimum damages for the association's willful failure to comply.
 282 Minimum damages are \$50 per calendar day for up to 10 days,
 283 beginning on the 11th working day after receipt of the written
 284 request. The failure to permit inspection entitles any person
 285 prevailing in an enforcement action to recover reasonable
 286 attorney ~~attorney's~~ fees from the person in control of the
 287 records who, directly or indirectly, knowingly denied access to
 288 the records. Any person who knowingly or intentionally defaces
 289 or destroys accounting records that are required by this chapter
 290 to be maintained during the period for which such records are

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291 required to be maintained, or who knowingly or intentionally
 292 fails to create or maintain accounting records that are required
 293 to be created or maintained, with the intent of causing harm to
 294 the association or one or more of its members, is personally
 295 subject to a civil penalty pursuant to s. 718.501(1)(d). The
 296 association shall maintain an adequate number of copies of the
 297 declaration, articles of incorporation, bylaws, and rules, and
 298 all amendments to each of the foregoing, as well as the question
 299 and answer sheet as described in s. 718.504 and year-end
 300 financial information required under this section, on the
 301 condominium property to ensure their availability to unit owners
 302 and prospective purchasers, and may charge its actual costs for
 303 preparing and furnishing these documents to those requesting the
 304 documents. An association shall allow a member or his or her
 305 authorized representative to use a portable device, including a
 306 smartphone, tablet, portable scanner, or any other technology
 307 capable of scanning or taking photographs, to make an electronic
 308 copy of the official records in lieu of the association's
 309 providing the member or his or her authorized representative
 310 with a copy of such records. The association may not charge a
 311 member or his or her authorized representative for the use of a
 312 portable device. Notwithstanding this paragraph, the following
 313 records are not accessible to unit owners:

314 1. Any record protected by the lawyer-client privilege as
 315 described in s. 90.502 and any record protected by the work-
 316 product privilege, including a record prepared by an association
 317 attorney or prepared at the attorney's express direction, which
 318 reflects a mental impression, conclusion, litigation strategy,
 319 or legal theory of the attorney or the association, and which

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320 was prepared exclusively for civil or criminal litigation or for
 321 adversarial administrative proceedings, or which was prepared in
 322 anticipation of such litigation or proceedings until the
 323 conclusion of the litigation or proceedings.

324 2. Information obtained by an association in connection
 325 with the approval of the lease, sale, or other transfer of a
 326 unit.

327 3. Personnel records of association or management company
 328 employees, including, but not limited to, disciplinary, payroll,
 329 health, and insurance records. For purposes of this
 330 subparagraph, the term "personnel records" does not include
 331 written employment agreements with an association employee or
 332 management company, or budgetary or financial records that
 333 indicate the compensation paid to an association employee.

334 4. Medical records of unit owners.

335 5. Social security numbers, driver ~~driver's~~ license
 336 numbers, credit card numbers, e-mail addresses, telephone
 337 numbers, facsimile numbers, emergency contact information,
 338 addresses of a unit owner other than as provided to fulfill the
 339 association's notice requirements, and other personal
 340 identifying information of any person, excluding the person's
 341 name, unit designation, mailing address, property address, and
 342 any address, e-mail address, or facsimile number provided to the
 343 association to fulfill the association's notice requirements.
 344 However, an owner may consent in writing to the disclosure of
 345 protected information described in this subparagraph. The
 346 association is not liable for the inadvertent disclosure of
 347 information that is protected under this subparagraph if the
 348 information is included in an official record of the association

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349 and is voluntarily provided by an owner and not requested by the
350 association.

351 6. Electronic security measures that are used by the
352 association to safeguard data, including passwords.

353 7. The software and operating system used by the
354 association which allow the manipulation of data, even if the
355 owner owns a copy of the same software used by the association.
356 The data is part of the official records of the association.

357 (13) FINANCIAL REPORTING.—Within 90 days after the end of
358 the fiscal year, or annually on a date provided in the bylaws,
359 the association shall prepare and complete, or contract for the
360 preparation and completion of, a financial report for the
361 preceding fiscal year. Within 21 days after the final financial
362 report is completed by the association or received from the
363 third party, but not later than 120 days after the end of the
364 fiscal year or other date as provided in the bylaws, the
365 association shall mail to each unit owner at the address last
366 furnished to the association by the unit owner, or hand deliver
367 to each unit owner, a copy of the financial report or a notice
368 that a copy of the financial report will be mailed or hand
369 delivered to the unit owner, without charge, upon receipt of a
370 written request from the unit owner. The division shall adopt
371 rules setting forth uniform accounting principles and standards
372 to be used by all associations and addressing the financial
373 reporting requirements for multicondominium associations. The
374 rules must include, but not be limited to, standards for
375 presenting a summary of association reserves, including a good
376 faith estimate disclosing the annual amount of reserve funds
377 that would be necessary for the association to fully fund

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378 reserves for each reserve item based on the straight-line
379 accounting method. This disclosure is not applicable to reserves
380 funded via the pooling method. In adopting such rules, the
381 division shall consider the number of members and annual
382 revenues of an association. Financial reports shall be prepared
383 as follows:

384 (a) An association that meets the criteria of this
385 paragraph shall prepare a complete set of financial statements
386 in accordance with generally accepted accounting principles. The
387 financial statements must be based upon the association's total
388 annual revenues, as follows:

389 1. An association with total annual revenues of \$200,000
390 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
391 compiled financial statements.

392 2. An association with total annual revenues of at least
393 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall
394 prepare reviewed financial statements.

395 3. An association with total annual revenues of \$500,000
396 ~~\$400,000~~ or more shall prepare audited financial statements.

397 (b)1. An association with total annual revenues of less
398 than \$200,000 ~~\$100,000~~ shall prepare a report of cash receipts
399 and expenditures.

400 2. An association that operates fewer than 75 units,
401 regardless of the association's annual revenues, shall prepare a
402 report of cash receipts and expenditures in lieu of financial
403 statements required by paragraph (a).

404 3. A report of cash receipts and disbursements must
405 disclose the amount of receipts by accounts and receipt
406 classifications and the amount of expenses by accounts and

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 407 expense classifications, including, but not limited to, the
 408 following, as applicable: costs for security, professional and
 409 management fees and expenses, taxes, costs for recreation
 410 facilities, expenses for refuse collection and utility services,
 411 expenses for lawn care, costs for building maintenance and
 412 repair, insurance costs, administration and salary expenses, and
 413 reserves accumulated and expended for capital expenditures,
 414 deferred maintenance, and any other category for which the
 415 association maintains reserves.

416 Section 4. Paragraphs (d) and (j) of subsection (2) of
 417 section 718.112, Florida Statutes, are amended to read:

418 718.112 Bylaws.—

419 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 420 following and, if they do not do so, shall be deemed to include
 421 the following:

422 (d) *Unit owner meetings*.—

423 1. An annual meeting of the unit owners shall be held at
 424 the location provided in the association bylaws and, if the
 425 bylaws are silent as to the location, the meeting shall be held
 426 within 45 miles of the condominium property. However, such
 427 distance requirement does not apply to an association governing
 428 a timeshare condominium.

429 2. Unless the bylaws provide otherwise, a vacancy on the
 430 board caused by the expiration of a director's term shall be
 431 filled by electing a new board member, and the election must be
 432 by secret ballot. An election is not required if the number of
 433 vacancies equals or exceeds the number of candidates. For
 434 purposes of this paragraph, the term "candidate" means an
 435 eligible person who has timely submitted the written notice, as

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 436 described in sub-subparagraph 4.a., of his or her intention to
 437 become a candidate. Except in a timeshare condominium, or if the
 438 staggered term of a board member does not expire until a later
 439 annual meeting, or if all members' terms would otherwise expire
 440 but there are no candidates, the terms of all board members
 441 expire at the annual meeting, and such members may stand for
 442 reelection unless prohibited by the bylaws. If the bylaws or
 443 articles of incorporation permit ~~staggered~~ terms of no more than
 444 2 years ~~and upon approval of a majority of the total voting~~
 445 ~~interests~~, the association board members may serve 2-year
 446 ~~staggered~~ terms. If the number of board members whose terms
 447 expire at the annual meeting equals or exceeds the number of
 448 candidates, the candidates become members of the board effective
 449 upon the adjournment of the annual meeting. Unless the bylaws
 450 provide otherwise, any remaining vacancies shall be filled by
 451 the affirmative vote of the majority of the directors making up
 452 the newly constituted board even if the directors constitute
 453 less than a quorum or there is only one director. In a
 454 condominium association of more than 10 units or in a
 455 condominium association that does not include timeshare units or
 456 timeshare interests, coowners of a unit may not serve as members
 457 of the board of directors at the same time unless they own more
 458 than one unit or unless there are not enough eligible candidates
 459 to fill the vacancies on the board at the time of the vacancy.
 460 Any unit owner desiring to be a candidate for board membership
 461 must comply with sub-subparagraph 4.a. and must be eligible to
 462 be a candidate to serve on the board of directors at the time of
 463 the deadline for submitting a notice of intent to run in order
 464 to have his or her name listed as a proper candidate on the

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465 ballot or to serve on the board. A person who has been suspended
 466 or removed by the division under this chapter, or who is
 467 delinquent in the payment of any monetary obligation due to the
 468 association fee, fine, or special or regular assessment as
 469 provided in paragraph (n), is not eligible to be a candidate for
 470 board membership and may not be listed on the ballot. A person
 471 who has been convicted of any felony in this state or in a
 472 United States District or Territorial Court, or who has been
 473 convicted of any offense in another jurisdiction which would be
 474 considered a felony if committed in this state, is not eligible
 475 for board membership unless such felon's civil rights have been
 476 restored for at least 5 years as of the date such person seeks
 477 election to the board. The validity of an action by the board is
 478 not affected if it is later determined that a board member is
 479 ineligible for board membership due to having been convicted of
 480 a felony.

481 3. The bylaws must provide the method of calling meetings
 482 of unit owners, including annual meetings. Written notice must
 483 include an agenda, must be mailed, hand delivered, or
 484 electronically transmitted to each unit owner at least 14 days
 485 before the annual meeting, and must be posted in a conspicuous
 486 place on the condominium property at least 14 continuous days
 487 before the annual meeting. Upon notice to the unit owners, the
 488 board shall, by duly adopted rule, designate a specific location
 489 on the condominium property or association property where all
 490 notices of unit owner meetings shall be posted. This requirement
 491 does not apply if there is no condominium property or
 492 association property for posting notices. In lieu of, or in
 493 addition to, the physical posting of meeting notices, the

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494 association may, by reasonable rule, adopt a procedure for
 495 conspicuously posting and repeatedly broadcasting the notice and
 496 the agenda on a closed-circuit cable television system serving
 497 the condominium association. However, if broadcast notice is
 498 used in lieu of a notice posted physically on the condominium
 499 property, the notice and agenda must be broadcast at least four
 500 times every broadcast hour of each day that a posted notice is
 501 otherwise required under this section. If broadcast notice is
 502 provided, the notice and agenda must be broadcast in a manner
 503 and for a sufficient continuous length of time so as to allow an
 504 average reader to observe the notice and read and comprehend the
 505 entire content of the notice and the agenda. Unless a unit owner
 506 waives in writing the right to receive notice of the annual
 507 meeting, such notice must be hand delivered, mailed, or
 508 electronically transmitted to each unit owner. Notice for
 509 meetings and notice for all other purposes must be mailed to
 510 each unit owner at the address last furnished to the association
 511 by the unit owner, or hand delivered to each unit owner.
 512 However, if a unit is owned by more than one person, the
 513 association must provide notice to the address that the
 514 developer identifies for that purpose and thereafter as one or
 515 more of the owners of the unit advise the association in
 516 writing, or if no address is given or the owners of the unit do
 517 not agree, to the address provided on the deed of record. An
 518 officer of the association, or the manager or other person
 519 providing notice of the association meeting, must provide an
 520 affidavit or United States Postal Service certificate of
 521 mailing, to be included in the official records of the
 522 association affirming that the notice was mailed or hand

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523 delivered in accordance with this provision.

524 4. The members of the board shall be elected by written
525 ballot or voting machine. Proxies may not be used in electing
526 the board in general elections or elections to fill vacancies
527 caused by recall, resignation, or otherwise, unless otherwise
528 provided in this chapter. This subparagraph does not apply to an
529 association governing a timeshare condominium.

530 a. At least 60 days before a scheduled election, the
531 association shall mail, deliver, or electronically transmit, by
532 separate association mailing or included in another association
533 mailing, delivery, or transmission, including regularly
534 published newsletters, to each unit owner entitled to a vote, a
535 first notice of the date of the election. Any unit owner or
536 other eligible person desiring to be a candidate for the board
537 must give written notice of his or her intent to be a candidate
538 to the association at least 40 days before a scheduled election.
539 Together with the written notice and agenda as set forth in
540 subparagraph 3., the association shall mail, deliver, or
541 electronically transmit a second notice of the election to all
542 unit owners entitled to vote, together with a ballot that lists
543 all candidates. Upon request of a candidate, an information
544 sheet, no larger than 8 1/2 inches by 11 inches, which must be
545 furnished by the candidate at least 35 days before the election,
546 must be included with the mailing, delivery, or transmission of
547 the ballot, with the costs of mailing, delivery, or electronic
548 transmission and copying to be borne by the association. The
549 association is not liable for the contents of the information
550 sheets prepared by the candidates. In order to reduce costs, the
551 association may print or duplicate the information sheets on

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552 both sides of the paper. The division shall by rule establish
553 voting procedures consistent with this sub-subparagraph,
554 including rules establishing procedures for giving notice by
555 electronic transmission and rules providing for the secrecy of
556 ballots. Elections shall be decided by a plurality of ballots
557 cast. There is no quorum requirement; however, at least 20
558 percent of the eligible voters must cast a ballot in order to
559 have a valid election. A unit owner may not permit any other
560 person to vote his or her ballot, and any ballots improperly
561 cast are invalid. A unit owner who violates this provision may
562 be fined by the association in accordance with s. 718.303. A
563 unit owner who needs assistance in casting the ballot for the
564 reasons stated in s. 101.051 may obtain such assistance. The
565 regular election must occur on the date of the annual meeting.
566 Notwithstanding this sub-subparagraph, an election is not
567 required unless more candidates file notices of intent to run or
568 are nominated than board vacancies exist.

569 b. Within 90 days after being elected or appointed to the
570 board, each newly elected or appointed director shall certify in
571 writing to the secretary of the association that he or she has
572 read the association's declaration of condominium, articles of
573 incorporation, bylaws, and current written policies; that he or
574 she will work to uphold such documents and policies to the best
575 of his or her ability; and that he or she will faithfully
576 discharge his or her fiduciary responsibility to the
577 association's members. In lieu of this written certification,
578 within 90 days after being elected or appointed to the board,
579 the newly elected or appointed director may submit a certificate
580 of having satisfactorily completed the educational curriculum

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581 administered by a division-approved condominium education
 582 provider within 1 year before or 90 days after the date of
 583 election or appointment. The written certification or
 584 educational certificate is valid and does not have to be
 585 resubmitted as long as the director serves on the board without
 586 interruption. A director who fails to timely file the written
 587 certification or educational certificate is suspended from
 588 service on the board until he or she complies with this sub-
 589 subparagraph. The board may temporarily fill the vacancy during
 590 the period of suspension. The secretary shall cause the
 591 association to retain a director's written certification or
 592 educational certificate for inspection by the members for 5
 593 years after a director's election or the duration of the
 594 director's uninterrupted tenure, whichever is longer. Failure to
 595 have such written certification or educational certificate on
 596 file does not affect the validity of any board action.

597 c. Any challenge to the election process must be commenced
 598 within 60 days after the election results are announced.

599 5. Any approval by unit owners called for by this chapter
 600 or the applicable declaration or bylaws, including, but not
 601 limited to, the approval requirement in s. 718.111(8), must be
 602 made at a duly noticed meeting of unit owners and is subject to
 603 all requirements of this chapter or the applicable condominium
 604 documents relating to unit owner decisionmaking, except that
 605 unit owners may take action by written agreement, without
 606 meetings, on matters for which action by written agreement
 607 without meetings is expressly allowed by the applicable bylaws
 608 or declaration or any law that provides for such action.

609 6. Unit owners may waive notice of specific meetings if

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610 allowed by the applicable bylaws or declaration or any law. If
 611 authorized by the bylaws, notice of meetings of the board of
 612 administration, unit owner meetings, except unit owner meetings
 613 called to recall board members under paragraph (j), and
 614 committee meetings may be given by electronic transmission to
 615 unit owners who consent to receive notice by electronic
 616 transmission.

617 7. Unit owners have the right to participate in meetings of
 618 unit owners with reference to all designated agenda items.
 619 However, the association may adopt reasonable rules governing
 620 the frequency, duration, and manner of unit owner participation.

621 8. A unit owner may tape record or videotape a meeting of
 622 the unit owners subject to reasonable rules adopted by the
 623 division.

624 9. Unless otherwise provided in the bylaws, any vacancy
 625 occurring on the board before the expiration of a term may be
 626 filled by the affirmative vote of the majority of the remaining
 627 directors, even if the remaining directors constitute less than
 628 a quorum, or by the sole remaining director. In the alternative,
 629 a board may hold an election to fill the vacancy, in which case
 630 the election procedures must conform to sub-subparagraph 4.a.
 631 unless the association governs 10 units or fewer and has opted
 632 out of the statutory election process, in which case the bylaws
 633 of the association control. Unless otherwise provided in the
 634 bylaws, a board member appointed or elected under this section
 635 shall fill the vacancy for the unexpired term of the seat being
 636 filled. Filling vacancies created by recall is governed by
 637 paragraph (j) and rules adopted by the division.

638 10. This chapter does not limit the use of general or

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639 limited proxies, require the use of general or limited proxies,
 640 or require the use of a written ballot or voting machine for any
 641 agenda item or election at any meeting of a timeshare
 642 condominium association.

643
 644 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 645 association of 10 or fewer units may, by affirmative vote of a
 646 majority of the total voting interests, provide for different
 647 voting and election procedures in its bylaws, which may be by a
 648 proxy specifically delineating the different voting and election
 649 procedures. The different voting and election procedures may
 650 provide for elections to be conducted by limited or general
 651 proxy.

652 (j) *Recall of board members.*—Subject to ~~the provisions of~~
 653 s. 718.301, any member of the board of administration may be
 654 recalled and removed from office with or without cause by the
 655 vote or agreement in writing by a majority of all the voting
 656 interests. A special meeting of the unit owners to recall a
 657 member or members of the board of administration may be called
 658 by 10 percent of the voting interests giving notice of the
 659 meeting as required for a meeting of unit owners, and the notice
 660 shall state the purpose of the meeting. Electronic transmission
 661 may not be used as a method of giving notice of a meeting called
 662 in whole or in part for this purpose.

663 1. If the recall is approved by a majority of all voting
 664 interests by a vote at a meeting, the recall will be effective
 665 as provided in this paragraph herein. The board shall duly
 666 notice and hold a board meeting within 5 full business days
 667 after ~~of~~ the adjournment of the unit owner meeting to recall one

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668 or more board members. At the meeting, the board shall either
 669 certify the recall, in which case such member or members shall
 670 be recalled effective immediately and shall turn over to the
 671 board within 5 full business days any and all records and
 672 property of the association in their possession, or shall
 673 proceed as set forth in subparagraph 3.

674 2. If the proposed recall is by an agreement in writing by
 675 a majority of all voting interests, the agreement in writing or
 676 a copy thereof shall be served on the association by certified
 677 mail or by personal service in the manner authorized by chapter
 678 48 and the Florida Rules of Civil Procedure. The board of
 679 administration shall duly notice and hold a meeting of the board
 680 within 5 full business days after receipt of the agreement in
 681 writing. At the meeting, the board shall either certify the
 682 written agreement to recall a member or members of the board, in
 683 which case such member or members shall be recalled effective
 684 immediately and shall turn over to the board within 5 full
 685 business days any and all records and property of the
 686 association in their possession, or proceed as described in
 687 subparagraph 3.

688 3. If the board determines not to certify the written
 689 agreement to recall a member or members of the board, or does
 690 not certify the recall by a vote at a meeting, the board shall,
 691 within 5 full business days after the meeting, file with the
 692 division a petition for arbitration pursuant to the procedures
 693 in s. 718.1255. For the purposes of this section, the unit
 694 owners who voted at the meeting or who executed the agreement in
 695 writing shall constitute one party under the petition for
 696 arbitration. If the arbitrator certifies the recall as to any

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697 member or members of the board, the recall will be effective
 698 upon mailing of the final order of arbitration to the
 699 association. If the association fails to comply with the order
 700 of the arbitrator, the division may take action pursuant to s.
 701 718.501. Any member or members so recalled shall deliver to the
 702 board any and all records of the association in their possession
 703 within 5 full business days after ~~of~~ the effective date of the
 704 recall.

705 4. If the board fails to duly notice and hold a board
 706 meeting within 5 full business days after ~~of~~ service of an
 707 agreement in writing or within 5 full business days after ~~of~~ the
 708 adjournment of the unit owner recall meeting, the recall shall
 709 be deemed effective and the board members so recalled shall
 710 immediately turn over to the board any and all records and
 711 property of the association.

712 5. If the board fails to duly notice and hold the required
 713 meeting or fails to file the required petition, the unit owner
 714 representative may file a petition pursuant to s. 718.1255
 715 challenging the board's failure to act. The petition must be
 716 filed within 60 days after the expiration of the applicable 5-
 717 full-business-day period. The review of a petition under this
 718 subparagraph is limited to the sufficiency of service on the
 719 board and the facial validity of the written agreement or
 720 ballots filed.

721 ~~6.5-~~ If a vacancy occurs on the board as a result of a
 722 recall or removal and less than a majority of the board members
 723 are removed, the vacancy may be filled by the affirmative vote
 724 of a majority of the remaining directors, notwithstanding any
 725 provision to the contrary contained in this subsection. If

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726 vacancies occur on the board as a result of a recall and a
 727 majority or more of the board members are removed, the vacancies
 728 shall be filled in accordance with procedural rules to be
 729 adopted by the division, which rules need not be consistent with
 730 this subsection. The rules must provide procedures governing the
 731 conduct of the recall election as well as the operation of the
 732 association during the period after a recall but before ~~prior to~~
 733 the recall election.

734 7. A board member who has been recalled may file a petition
 735 pursuant to s. 718.1255 challenging the validity of the recall.
 736 The petition must be filed within 60 days after the recall is
 737 deemed certified. The association and the unit owner
 738 representative shall be named as the respondents.

739 8. The division may not accept for filing a recall
 740 petition, whether filed pursuant to subparagraph 1.,
 741 subparagraph 2., subparagraph 5., or subparagraph 7. and
 742 regardless of whether the recall was certified, when there are
 743 60 or fewer days until the scheduled reelection of the board
 744 member sought to be recalled or when 60 or fewer days have
 745 elapsed since the election of the board member sought to be
 746 recalled.

747 Section 5. Subsection (5) of section 718.113, Florida
 748 Statutes, is amended to read:

749 718.113 Maintenance; limitation upon improvement; display
 750 of flag; hurricane shutters and protection; display of religious
 751 decorations.-

752 (5) Each board of administration shall adopt hurricane
 753 shutter specifications for each building within each condominium
 754 operated by the association which shall include color, style,

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755 and other factors deemed relevant by the board. All
756 specifications adopted by the board must comply with the
757 applicable building code.

758 (a) The board may, subject to ~~the provisions of s.~~
759 718.3026, and the approval of a majority of voting interests of
760 the condominium, install hurricane shutters, impact glass, ~~or~~
761 ~~other~~ code-compliant windows or doors, or other types of code-
762 compliant hurricane protection that comply ~~complies~~ with or
763 exceed ~~exceeds~~ the applicable building code. However, a vote of
764 the owners is not required if the maintenance, repair, and
765 replacement of hurricane shutters, impact glass, ~~or other~~ code-
766 compliant windows or doors, or other types of code-compliant
767 hurricane protection are the responsibility of the association
768 pursuant to the declaration of condominium. If hurricane
769 protection or laminated glass or window film architecturally
770 designed to function as hurricane protection that which complies
771 with or exceeds the current applicable building code has been
772 previously installed, the board may not install hurricane
773 shutters, ~~hurricane protection, or~~ impact glass, ~~or other~~ code-
774 compliant windows or doors, or other types of code-compliant
775 hurricane protection except upon approval by a majority vote of
776 the voting interests.

777 (b) The association is responsible for the maintenance,
778 repair, and replacement of the hurricane shutters, impact glass,
779 code-compliant windows or doors, or other types of code-
780 compliant hurricane protection authorized by this subsection if
781 such property ~~hurricane shutters or other hurricane protection~~
782 is the responsibility of the association pursuant to the
783 declaration of condominium. If the hurricane shutters, impact

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784 glass, code-compliant windows or doors, or other types of code-
785 compliant hurricane protection ~~authorized by this subsection~~ are
786 the responsibility of the unit owners pursuant to the
787 declaration of condominium, the maintenance, repair, and
788 replacement of such items are the responsibility of the unit
789 owner.

790 (c) The board may operate shutters, impact glass, code-
791 compliant windows or doors, or other types of code-compliant
792 hurricane protection installed pursuant to this subsection
793 without permission of the unit owners only if such operation is
794 necessary to preserve and protect the condominium property and
795 association property. The installation, replacement, operation,
796 repair, and maintenance of such shutters, impact glass, code-
797 compliant windows or doors, or other types of code-compliant
798 hurricane protection in accordance with the procedures set forth
799 in this paragraph are not a material alteration to the common
800 elements or association property within the meaning of this
801 section.

802 (d) Notwithstanding any other provision in the condominium
803 documents, if approval is required by the documents, a board may
804 not refuse to approve the installation or replacement of
805 hurricane shutters, impact glass, code-compliant windows or
806 doors, or other types of code-compliant hurricane protection by
807 a unit owner conforming to the specifications adopted by the
808 board.

809 Section 6. Paragraph (e) of subsection (1) of section
810 718.115, Florida Statutes, is amended to read:

811 718.115 Common expenses and common surplus.-

812 (1)

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813 (e) The expense of installation, replacement, operation,
 814 repair, and maintenance of hurricane shutters, impact glass,
 815 code-compliant windows or doors, or other types of code-
 816 compliant hurricane protection by the board pursuant to s.
 817 718.113(5) constitutes ~~shall constitute~~ a common expense ~~as~~
 818 ~~defined herein~~ and shall be collected as provided in this
 819 section if the association is responsible for the maintenance,
 820 repair, and replacement of the hurricane shutters, impact glass,
 821 code-compliant windows or doors, or other types of code-
 822 compliant hurricane protection pursuant to the declaration of
 823 condominium. However, if the maintenance, repair, and
 824 replacement of the hurricane shutters, impact glass, code-
 825 compliant windows or doors, or other types of code-compliant
 826 hurricane protection are ~~is~~ the responsibility of the unit
 827 owners pursuant to the declaration of condominium, the cost of
 828 the installation of the hurricane shutters, impact glass, code-
 829 compliant windows or doors, or other types of code-compliant
 830 hurricane protection is ~~shall~~ not be a common expense ~~and,~~ ~~but~~
 831 shall be charged individually to the unit owners based on the
 832 cost of installation of the hurricane shutters, impact glass,
 833 code-compliant windows or doors, or other types of code-
 834 compliant hurricane protection appurtenant to the unit.
 835 Notwithstanding ~~the provisions of~~ s. 718.116(9), and regardless
 836 of whether or not the declaration requires the association or
 837 unit owners to maintain, repair, or replace hurricane shutters,
 838 impact glass, code-compliant windows or doors, or other types of
 839 code-compliant hurricane protection, a unit owner who has
 840 previously installed hurricane shutters in accordance with s.
 841 718.113(5) that comply with the current applicable building code

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842 shall receive a credit when the shutters are installed; a unit
 843 owner who has previously installed impact glass or code-
 844 compliant windows or doors that comply with the current
 845 applicable building code shall receive a credit when the impact
 846 glass or code-compliant windows or doors are installed; and a
 847 unit owner who has installed, other types of code-compliant
 848 hurricane protection that comply with the current applicable
 849 building code shall receive a credit when the same type of other
 850 code-compliant hurricane protection is installed, and the ~~or~~
 851 laminated glass architecturally designed to function as
 852 hurricane protection, which hurricane shutters or other
 853 hurricane protection or laminated glass comply with the current
 854 applicable building code, shall receive a credit shall be equal
 855 to the pro rata portion of the assessed installation cost
 856 assigned to each unit. However, such unit owner remains ~~shall~~
 857 ~~remain~~ responsible for the pro rata share of expenses for
 858 hurricane shutters, impact glass, code-compliant windows or
 859 doors, or other types of code-compliant hurricane protection
 860 installed on common elements and association property by the
 861 board pursuant to s. 718.113(5), ~~and~~ remains ~~shall remain~~
 862 responsible for a pro rata share of the expense of the
 863 replacement, operation, repair, and maintenance of such
 864 shutters, impact glass, code-compliant windows or doors, or
 865 other types of code-compliant hurricane protection.
 866 Section 7. Paragraph (a) of subsection (3) of section
 867 718.303, Florida Statutes, is amended to read:
 868 718.303 Obligations of owners and occupants; remedies.-
 869 (3) The association may levy reasonable fines for the
 870 failure of the owner of the unit or its occupant, licensee, or

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871 invitee to comply with any provision of the declaration, the
 872 association bylaws, or reasonable rules of the association. A
 873 fine may not become a lien against a unit. A fine may be levied
 874 on the basis of each day of a continuing violation, with a
 875 single notice and opportunity for hearing. However, the fine may
 876 not exceed \$100 per violation, or \$1,000 in the aggregate.

877 (a) An association may suspend, for a reasonable period of
 878 time, the right of a unit owner, or a unit owner's tenant,
 879 guest, or invitee, to use the common elements, common
 880 facilities, or any other association property for failure to
 881 comply with any provision of the declaration, the association
 882 bylaws, or reasonable rules of the association. This paragraph
 883 does not apply to limited common elements intended to be used
 884 only by that unit, common elements needed to access the unit,
 885 utility services provided to the unit, parking spaces, or
 886 elevators.

887 Section 8. Subsection (1) of section 718.403, Florida
 888 Statutes, is amended to read:

889 718.403 Phase condominiums.—

890 (1) Notwithstanding ~~the provisions of~~ s. 718.110, a
 891 developer may develop a condominium in phases, if the original
 892 declaration of condominium submitting the initial phase to
 893 condominium ownership or an amendment to the declaration which
 894 has been approved by all of the unit owners and unit mortgagees
 895 provides for and describes in detail all anticipated phases; the
 896 impact, if any, which the completion of subsequent phases would
 897 have upon the initial phase; and the time period ~~(which may not~~
 898 ~~exceed 7 years from the date of recording the declaration of~~
 899 ~~condominium)~~ within which all phases must be added to the

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900 condominium and comply with the requirements of this section and
 901 at the end of which the right to add additional phases expires.

902 (a) All phases must be added to the condominium within 7
 903 years after the date of recording the original declaration of
 904 condominium submitting the initial phase to condominium
 905 ownership unless an amendment extending the 7-year period is
 906 approved by the unit owners.

907 (b) An amendment to extend the 7-year period requires the
 908 approval of the owners necessary to amend the declaration of
 909 condominium consistent with s. 718.110(1) (a). An extension of
 910 the 7-year period may be submitted for approval only during the
 911 last 3 years of the 7-year period.

912 (c) An amendment must describe the period within which all
 913 phases must be added to the condominium and such period may not
 914 exceed 10 years after the date of recording the original
 915 declaration of condominium submitting the initial phase to
 916 condominium ownership.

917 (d) Notwithstanding s. 718.110, an amendment extending the
 918 7-year period is not an amendment subject to s. 718.110(4).

919 Section 9. Section 718.406, Florida Statutes, is created to
 920 read:

921 718.406 Condominiums created within condominium parcels.—

922 (1) Unless otherwise expressed in the declaration of
 923 condominium, if a condominium is created within a condominium
 924 parcel, the term:

925 (a) "Primary condominium" means any condominium that is not
 926 a secondary condominium and contains one or more subdivided
 927 parcels.

928 (b) "Primary condominium association" means any entity that

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929 operates a primary condominium.

930 (c) "Primary condominium declaration" means the instrument
 931 or instruments by which a primary condominium is created, as
 932 they are from time to time amended.

933 (d) "Secondary condominium" means one or more condominium
 934 parcels that have been submitted to condominium ownership
 935 pursuant to a secondary condominium declaration.

936 (e) "Secondary condominium association" means any entity
 937 responsible for the operation of a secondary condominium.

938 (f) "Secondary condominium declaration" means the
 939 instrument or instruments by which a secondary condominium is
 940 created, as they are from time to time amended.

941 (g) "Secondary unit" means a unit that is part of a
 942 secondary condominium.

943 (h) "Subdivided parcel" means a condominium parcel in a
 944 primary condominium that has been submitted to condominium
 945 ownership pursuant to a secondary condominium declaration.

946 (2) Unless otherwise provided in the primary condominium
 947 declaration, if a condominium parcel is a subdivided parcel, the
 948 secondary condominium association responsible for operating the
 949 secondary condominium upon the subdivided parcel shall act on
 950 behalf of all of the unit owners of secondary units in the
 951 secondary condominium and shall exercise all rights of the
 952 secondary unit owners in the primary condominium association,
 953 other than the right of possession of the secondary unit. The
 954 secondary condominium association shall designate a
 955 representative who shall cast the vote of the subdivided parcel
 956 in the primary condominium association and, if no person is
 957 designated by the secondary condominium association to cast such

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958 vote, the vote shall be cast by the president of the secondary
 959 condominium association or the designee of the president.

960 (3) Unless otherwise provided in the primary condominium
 961 declaration as originally recorded, no secondary condominium may
 962 be created upon any condominium parcel in the primary
 963 condominium, and no amendment to the primary condominium
 964 declaration may permit secondary condominiums to be created upon
 965 parcels in the primary condominium, unless the record owners of
 966 a majority of the condominium parcels join in the execution of
 967 the amendment.

968 (4) If the primary condominium declaration permits the
 969 creation of a secondary condominium and a condominium parcel in
 970 the primary condominium is being submitted for condominium
 971 ownership to create a secondary condominium upon the primary
 972 condominium parcel, the approval of the board of administration
 973 of the primary condominium association is required in order to
 974 create the secondary condominium on the primary condominium
 975 parcel. Unless otherwise provided in the primary condominium
 976 declaration, the owners of condominium parcels in the primary
 977 condominium that will not be part of the proposed secondary
 978 condominium and the holders of liens upon such primary
 979 condominium parcels shall not have approval rights regarding the
 980 creation of the secondary condominium or the contents of the
 981 secondary condominium declaration being submitted. Only the
 982 board of administration of the primary condominium association,
 983 the owner of the subdivided parcel, and the holders of liens
 984 upon the subdivided parcel shall have approval rights regarding
 985 the creation of the secondary condominium and the contents of
 986 the secondary condominium declaration. In order for the

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987 recording of the secondary condominium declaration to be
 988 effective to create the secondary condominium, the board of
 989 administration of the primary condominium association, the owner
 990 of the subdivided parcel, and all holders of liens on the
 991 subdivided parcel must execute the secondary condominium
 992 declaration for the purpose of evidencing their approval.

993 (5) An owner of a secondary unit is subject to both the
 994 primary condominium declaration and the secondary condominium
 995 declaration.

996 (6) The primary condominium association may provide
 997 insurance required by s. 718.111(11) for common elements and
 998 other improvements within the secondary condominium if the
 999 primary condominium declaration permits the primary condominium
 1000 association to provide such insurance for the benefit of the
 1001 condominium property included in the subdivided parcel, in lieu
 1002 of such insurance being provided by the secondary condominium
 1003 association.

1004 (7) Unless otherwise provided in the primary condominium
 1005 declaration, the board of administration of the primary
 1006 condominium association may adopt hurricane shutter or hurricane
 1007 protection specifications for each building within which
 1008 subdivided parcels are located and govern any subdivided parcels
 1009 in the primary condominium.

1010 (8) Any unit owner of, or holder of a first mortgage on, a
 1011 secondary unit may register such unit owner's or mortgagee's
 1012 interest in the secondary unit with the primary condominium
 1013 association by delivering written notice to the primary
 1014 condominium association. Once registered, the primary
 1015 condominium association must provide written notice to such

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1016 secondary unit owner and his, her, or its first mortgagee at
 1017 least 30 days before instituting any foreclosure action against
 1018 the subdivided parcel in which the secondary unit owner and his,
 1019 her, or its first mortgagee hold an interest for failure of the
 1020 subdivided parcel owner to pay any assessments or other amounts
 1021 due to the primary condominium association. A foreclosure action
 1022 against a subdivided parcel is not effective without an
 1023 affidavit indicating that written notice of the foreclosure was
 1024 timely sent to the names and addresses of secondary unit owners
 1025 and first mortgagees registered with the primary condominium
 1026 association pursuant to this subsection. The registered
 1027 secondary unit owner or mortgagee has a right to pay the
 1028 proportionate amount of the delinquent assessment attributable
 1029 to the secondary unit in which the registered unit owner or
 1030 mortgagee holds an interest. Upon such payment, the primary
 1031 condominium association is obligated to promptly modify or
 1032 partially release the record of lien on the primary condominium
 1033 association so that the lien no longer encumbers such secondary
 1034 unit. Alternatively, a registered secondary unit owner or
 1035 mortgagee may pay the amount of all delinquent assessments
 1036 attributed to the subdivided parcel and seek reimbursement for
 1037 all such amounts paid and all costs incurred from the secondary
 1038 condominium association, including, without limitation, the
 1039 costs of collection other than the share allocable to the
 1040 secondary unit on behalf of which such payment was made.

1041 (9) In the event of a conflict between the primary
 1042 condominium declaration and the secondary condominium
 1043 declaration, the primary condominium declaration controls.

1044 (10) All common expenses due to the primary condominium

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1045 association with respect to a subdivided parcel are a common
 1046 expense of the secondary condominium association and shall be
 1047 collected by the secondary condominium association from its
 1048 members and paid to the primary condominium association.

1049 Section 10. Subsection (2) of section 718.5011, Florida
 1050 Statutes, is amended to read:

1051 718.5011 Ombudsman; appointment; administration.—

1052 (2) The Governor shall appoint the ombudsman. The ombudsman
 1053 must be an attorney admitted to practice before the Florida
 1054 Supreme Court and shall serve at the pleasure of the Governor. A
 1055 vacancy in the office shall be filled in the same manner as the
 1056 original appointment. An officer or full-time employee of the
 1057 ombudsman's office may not actively engage in any other business
 1058 or profession that directly or indirectly relates to or
 1059 conflicts with his or her work in the ombudsman's office; serve
 1060 as the representative of any political party, executive
 1061 committee, or other governing body of a political party; serve
 1062 as an executive, officer, or employee of a political party;
 1063 receive remuneration for activities on behalf of any candidate
 1064 for public office; or engage in soliciting votes or other
 1065 activities on behalf of a candidate for public office. The
 1066 ombudsman or any employee of his or her office may not become a
 1067 candidate for election to public office unless he or she first
 1068 resigns from his or her office or employment.

1069 Section 11. Paragraphs (b) and (c) of subsection (2) of
 1070 section 719.104, Florida Statutes, are amended to read:

1071 719.104 Cooperatives; access to units; records; financial
 1072 reports; assessments; purchase of leases.—

1073 (2) OFFICIAL RECORDS.—

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1074 (b) The official records of the association shall be
 1075 maintained within the state. The records of the association
 1076 shall be made available to a unit owner within 5 working days
 1077 after receipt of written request by the board or its designee.
 1078 This paragraph may be complied with by having a copy of the
 1079 official records available for inspection or copying on the
 1080 cooperative property. An association shall allow a member or his
 1081 or her authorized representative to use a portable device,
 1082 including a smartphone, tablet, portable scanner, or any other
 1083 technology capable of scanning or taking photographs, to make an
 1084 electronic copy of the official records in lieu of the
 1085 association's providing the member or his or her authorized
 1086 representative with a copy of such records. The association may
 1087 not charge a member or his or her authorized representative for
 1088 the use of a portable device.

1089 (c) The official records of the association shall be open
 1090 to inspection by any association member or the authorized
 1091 representative of such member at all reasonable times. Failure
 1092 to permit inspection of the association records as provided in
 1093 this subsection ~~herein~~ entitles any person prevailing in an
 1094 enforcement action to recover reasonable ~~attorney~~ attorney's
 1095 fees from the person in control of the records who, directly or
 1096 indirectly, knowingly denies access to the records for
 1097 inspection. The right to inspect the records includes the right
 1098 to make or obtain copies, at the reasonable expense, if any, of
 1099 the association member. The association may adopt reasonable
 1100 rules regarding the frequency, time, location, notice, and
 1101 manner of record inspections and copying. The failure of an
 1102 association to provide the records within 10 working days after

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1103 receipt of a written request creates a rebuttable presumption
 1104 that the association willfully failed to comply with this
 1105 paragraph. A unit owner who is denied access to official records
 1106 is entitled to the actual damages or minimum damages for the
 1107 association's willful failure to comply with this paragraph. The
 1108 minimum damages shall be \$50 per calendar day up to 10 days, the
 1109 calculation to begin on the 11th day after receipt of the
 1110 written request. The association shall maintain an adequate
 1111 number of copies of the declaration, articles of incorporation,
 1112 bylaws, and rules, and all amendments to each of the foregoing,
 1113 as well as the question and answer sheet provided for in s.
 1114 719.504, on the cooperative property to ensure their
 1115 availability to unit owners and prospective purchasers, and may
 1116 charge its actual costs for preparing and furnishing these
 1117 documents to those requesting the same. Notwithstanding ~~the~~
 1118 ~~provisions of~~ this paragraph, the following records shall not be
 1119 accessible to unit owners:

1120 1. Any record protected by the lawyer-client privilege as
 1121 provided in s. 90.502; protected by the work-product privilege,
 1122 including any record ~~A record that was~~ prepared by an
 1123 association attorney or prepared at the attorney's express
 1124 direction; ~~reflecting that reflects~~ a mental impression,
 1125 conclusion, litigation strategy, or legal theory of the attorney
 1126 or the association; or ~~that was~~ prepared exclusively for civil
 1127 or criminal litigation or for adversarial administrative
 1128 proceedings or in anticipation of imminent civil or criminal
 1129 litigation or imminent adversarial administrative proceedings,
 1130 until the conclusion of the litigation or adversarial
 1131 administrative proceedings.

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1132 2. Information obtained by an association in connection
 1133 with the approval of the lease, sale, or other transfer of a
 1134 unit.
 1135 3. Medical records of unit owners.
 1136 4. Personnel records of association employees, including,
 1137 but not limited to, disciplinary, payroll, health, and insurance
 1138 records. For purposes of this subparagraph, the term "personnel
 1139 records" does not include written employment agreements with an
 1140 association employee or budgetary or financial records that
 1141 indicate the compensation paid to an association employee.
 1142 5. Social security numbers, driver license numbers, credit
 1143 card numbers, e-mail addresses, telephone numbers, emergency
 1144 contact information, any addresses of a unit owner other than
 1145 addresses provided to fulfill the association's notice
 1146 requirements, and other personal identifying information of any
 1147 person, excluding the person's name, unit designation, mailing
 1148 address, and property address.
 1149 6. Any electronic security measures that are used by the
 1150 association to safeguard data, including passwords.
 1151 7. The software and operating system used by the
 1152 association which allows manipulation of data, even if the owner
 1153 owns a copy of the same software used by the association. The
 1154 data is part of the official records of the association.
 1155 Section 12. Subsection (7) is added to section 719.1055,
 1156 Florida Statutes, to read:
 1157 719.1055 Amendment of cooperative documents; alteration and
 1158 acquisition of property.—
 1159 (7) The Legislature finds that the procurement of mortgagee
 1160 consent to amendments that do not affect the rights or interests

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1161 of mortgagees is an unreasonable and substantial logistical and
 1162 financial burden on the unit owners and that there is a
 1163 compelling state interest in enabling the members of an
 1164 association to approve amendments to the association's
 1165 cooperative documents through legal means. Accordingly, and
 1166 notwithstanding any provision of this subsection to the
 1167 contrary:

1168 (a) As to any mortgage recorded on or after July 1, 2013,
 1169 any provision in the association's cooperative documents that
 1170 requires the consent or joinder of some or all mortgagees of
 1171 units or any other portion of the association's common areas to
 1172 amend the association's cooperative documents or for any other
 1173 matter is enforceable only as to amendments to the association's
 1174 cooperative documents that adversely affect the priority of the
 1175 mortgagee's lien or the mortgagee's rights to foreclose its lien
 1176 or that otherwise materially affect the rights and interests of
 1177 the mortgagees.

1178 (b) As to mortgages recorded before July 1, 2013, any
 1179 existing provisions in the association's cooperative documents
 1180 requiring mortgagee consent are enforceable.

1181 (c) In securing consent or joinder, the association is
 1182 entitled to rely upon the public records to identify the holders
 1183 of outstanding mortgages. The association may use the address
 1184 provided in the original recorded mortgage document, unless
 1185 there is a different address for the holder of the mortgage in a
 1186 recorded assignment or modification of the mortgage, which
 1187 recorded assignment or modification must reference the official
 1188 records book and page on which the original mortgage was
 1189 recorded. Once the association has identified the recorded

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1190 mortgages of record, the association shall, in writing, request
 1191 of each unit owner whose unit is encumbered by a mortgage of
 1192 record any information that the owner has in his or her
 1193 possession regarding the name and address of the person to whom
 1194 mortgage payments are currently being made. Notice shall be sent
 1195 to such person if the address provided in the original recorded
 1196 mortgage document is different from the name and address of the
 1197 mortgagee or assignee of the mortgage as shown by the public
 1198 record. The association is deemed to have complied with this
 1199 requirement by making the written request of the unit owners
 1200 required under this paragraph. Any notices required to be sent
 1201 to the mortgagees under this paragraph shall be sent to all
 1202 available addresses provided to the association.

1203 (d) Any notice to the mortgagees required under paragraph
 1204 (c) may be sent by a method that establishes proof of delivery,
 1205 and any mortgagee who fails to respond within 60 days after the
 1206 date of mailing is deemed to have consented to the amendment.

1207 (e) For those amendments requiring mortgagee consent on or
 1208 after July 1, 2013, in the event mortgagee consent is provided
 1209 other than by properly recorded joinder, such consent shall be
 1210 evidenced by affidavit of the association recorded in the public
 1211 records of the county in which the declaration is recorded.

1212 (f) Any amendment adopted without the required consent of a
 1213 mortgagee is voidable only by a mortgagee who was entitled to
 1214 notice and an opportunity to consent. An action to void an
 1215 amendment is subject to the statute of limitations beginning 5
 1216 years after the date of discovery as to the amendments described
 1217 in paragraph (a) and 5 years after the date of recordation of
 1218 the certificate of amendment for all other amendments. This

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1219 paragraph applies to all mortgages, regardless of the date of
 1220 recordation of the mortgage.

1221 Section 13. Paragraphs (c), (d), and (f) of subsection (1)
 1222 of section 719.106, Florida Statutes, are amended to read:

1223 719.106 Bylaws; cooperative ownership.—

1224 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
 1225 documents shall provide for the following, and if they do not,
 1226 they shall be deemed to include the following:

1227 (c) *Board of administration meetings.*—Meetings of the board
 1228 of administration at which a quorum of the members is present
 1229 shall be open to all unit owners. Any unit owner may tape record
 1230 or videotape meetings of the board of administration. The right
 1231 to attend such meetings includes the right to speak at such
 1232 meetings with reference to all designated agenda items. The
 1233 division shall adopt reasonable rules governing the tape
 1234 recording and videotaping of the meeting. The association may
 1235 adopt reasonable written rules governing the frequency,
 1236 duration, and manner of unit owner statements. Adequate notice
 1237 of all meetings shall be posted in a conspicuous place upon the
 1238 cooperative property at least 48 continuous hours preceding the
 1239 meeting, except in an emergency. Any item not included on the
 1240 notice may be taken up on an emergency basis by at least a
 1241 majority plus one of the members of the board. Such emergency
 1242 action shall be noticed and ratified at the next regular meeting
 1243 of the board. However, written notice of any meeting at which
 1244 nonemergency special assessments, or at which amendment to rules
 1245 regarding unit use, will be considered shall be mailed,
 1246 delivered, or electronically transmitted to the unit owners and
 1247 posted conspicuously on the cooperative property not less than

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1248 14 days ~~before~~ prior to the meeting. Evidence of compliance with
 1249 this 14-day notice shall be made by an affidavit executed by the
 1250 person providing the notice and filed among the official records
 1251 of the association. Upon notice to the unit owners, the board
 1252 shall by duly adopted rule designate a specific location on the
 1253 cooperative property upon which all notices of board meetings
 1254 shall be posted. In lieu of or in addition to the physical
 1255 posting of notice of any meeting of the board of administration
 1256 on the cooperative property, the association may, by reasonable
 1257 rule, adopt a procedure for conspicuously posting and repeatedly
 1258 broadcasting the notice and the agenda on a closed-circuit cable
 1259 television system serving the cooperative association. However,
 1260 if broadcast notice is used in lieu of a notice posted
 1261 physically on the cooperative property, the notice and agenda
 1262 must be broadcast at least four times every broadcast hour of
 1263 each day that a posted notice is otherwise required under this
 1264 section. When broadcast notice is provided, the notice and
 1265 agenda must be broadcast in a manner and for a sufficient
 1266 continuous length of time so as to allow an average reader to
 1267 observe the notice and read and comprehend the entire content of
 1268 the notice and the agenda. Notice of any meeting in which
 1269 regular assessments against unit owners are to be considered for
 1270 any reason shall specifically contain a statement that
 1271 assessments will be considered and the nature of any such
 1272 assessments. Meetings of a committee to take final action on
 1273 behalf of the board or to make recommendations to the board
 1274 regarding the association budget are subject to the provisions
 1275 of this paragraph. Meetings of a committee that does not take
 1276 final action on behalf of the board or make recommendations to

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1277 the board regarding the association budget are subject to the
 1278 provisions of this section, unless those meetings are exempted
 1279 from this section by the bylaws of the association.
 1280 Notwithstanding any other law to the contrary, the requirement
 1281 that board meetings and committee meetings be open to the unit
 1282 owners ~~does not apply is inapplicable~~ to board or committee
 1283 meetings held for the purpose of discussing personnel matters or
 1284 meetings between the board or a committee and the association's
 1285 attorney, with respect to proposed or pending litigation, if
 1286 ~~when~~ the meeting is held for the purpose of seeking or rendering
 1287 legal advice.

1288 (d) *Shareholder meetings.*—There shall be an annual meeting
 1289 of the shareholders. All members of the board of administration
 1290 shall be elected at the annual meeting unless the bylaws provide
 1291 for staggered election terms or for their election at another
 1292 meeting. Any unit owner desiring to be a candidate for board
 1293 membership must comply with subparagraph 1. The bylaws must
 1294 provide the method for calling meetings, including annual
 1295 meetings. Written notice, which must incorporate an
 1296 identification of agenda items, shall be given to each unit
 1297 owner at least 14 days before the annual meeting and posted in a
 1298 conspicuous place on the cooperative property at least 14
 1299 continuous days preceding the annual meeting. Upon notice to the
 1300 unit owners, the board must by duly adopted rule designate a
 1301 specific location on the cooperative property upon which all
 1302 notice of unit owner meetings are posted. In lieu of or in
 1303 addition to the physical posting of the meeting notice, the
 1304 association may, by reasonable rule, adopt a procedure for
 1305 conspicuously posting and repeatedly broadcasting the notice and

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1306 the agenda on a closed-circuit cable television system serving
 1307 the cooperative association. However, if broadcast notice is
 1308 used in lieu of a posted notice, the notice and agenda must be
 1309 broadcast at least four times every broadcast hour of each day
 1310 that a posted notice is otherwise required under this section.
 1311 If broadcast notice is provided, the notice and agenda must be
 1312 broadcast in a manner and for a sufficient continuous length of
 1313 time to allow an average reader to observe the notice and read
 1314 and comprehend the entire content of the notice and the agenda.
 1315 Unless a unit owner waives in writing the right to receive
 1316 notice of the annual meeting, the notice of the annual meeting
 1317 must be sent by mail, hand delivered, or electronically
 1318 transmitted to each unit owner. An officer of the association
 1319 must provide an affidavit or United States Postal Service
 1320 certificate of mailing, to be included in the official records
 1321 of the association, affirming that notices of the association
 1322 meeting were mailed, hand delivered, or electronically
 1323 transmitted, in accordance with this provision, to each unit
 1324 owner at the address last furnished to the association.

1325 1. The board of administration shall be elected by written
 1326 ballot or voting machine. A proxy may not be used in electing
 1327 the board of administration in general elections or elections to
 1328 fill vacancies caused by recall, resignation, or otherwise
 1329 unless otherwise provided in this chapter.

1330 a. At least 60 days before a scheduled election, the
 1331 association shall mail, deliver, or transmit, whether by
 1332 separate association mailing, delivery, or electronic
 1333 transmission or included in another association mailing,
 1334 delivery, or electronic transmission, including regularly

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1335 published newsletters, to each unit owner entitled to vote, a
 1336 first notice of the date of the election. Any unit owner or
 1337 other eligible person desiring to be a candidate for the board
 1338 of administration must give written notice to the association at
 1339 least 40 days before a scheduled election. Together with the
 1340 written notice and agenda as set forth in this section, the
 1341 association shall mail, deliver, or electronically transmit a
 1342 second notice of election to all unit owners entitled to vote,
 1343 together with a ballot ~~that which~~ lists all candidates. Upon
 1344 request of a candidate, the association shall include an
 1345 information sheet, no larger than 8 1/2 inches by 11 inches,
 1346 which must be furnished by the candidate at least 35 days before
 1347 the election, to be included with the mailing, delivery, or
 1348 electronic transmission of the ballot, with the costs of
 1349 mailing, delivery, or transmission and copying to be borne by
 1350 the association. The association is not liable for the contents
 1351 of the information sheets provided by the candidates. In order
 1352 to reduce costs, the association may print or duplicate the
 1353 information sheets on both sides of the paper. The division
 1354 shall by rule establish voting procedures consistent with this
 1355 subparagraph, including rules establishing procedures for giving
 1356 notice by electronic transmission and rules providing for the
 1357 secrecy of ballots. Elections shall be decided by a plurality of
 1358 those ballots cast. There is no quorum requirement. However, at
 1359 least 20 percent of the eligible voters must cast a ballot in
 1360 order to have a valid election. A unit owner may not permit any
 1361 other person to vote his or her ballot, and any such ballots
 1362 improperly cast are invalid. A unit owner who needs assistance
 1363 in casting the ballot for the reasons stated in s. 101.051 may

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1364 obtain assistance in casting the ballot. Any unit owner
 1365 violating this provision may be fined by the association in
 1366 accordance with s. 719.303. The regular election must occur on
 1367 the date of the annual meeting. This subparagraph does not apply
 1368 to timeshare cooperatives. Notwithstanding this subparagraph, an
 1369 election and balloting are not required unless more candidates
 1370 file a notice of intent to run or are nominated than vacancies
 1371 exist on the board. Any challenge to the election process must
 1372 be commenced within 60 days after the election results are
 1373 announced.
 1374 b. Within 90 days after being elected or appointed to the
 1375 board, each new director shall certify in writing to the
 1376 secretary of the association that he or she has read the
 1377 association's bylaws, articles of incorporation, proprietary
 1378 lease, and current written policies; that he or she will work to
 1379 uphold such documents and policies to the best of his or her
 1380 ability; and that he or she will faithfully discharge his or her
 1381 fiduciary responsibility to the association's members. Within 90
 1382 days after being elected or appointed to the board, in lieu of
 1383 this written certification, the newly elected or appointed
 1384 director may submit a certificate of having satisfactorily
 1385 completed the educational curriculum administered by an
 1386 education provider as approved by the division pursuant to the
 1387 requirements established in chapter 718 within 1 year before or
 1388 90 days after the date of election or appointment. The
 1389 educational certificate is valid and does not have to be
 1390 resubmitted as long as the director serves on the board without
 1391 interruption. A director who fails to timely file the written
 1392 certification or educational certificate is suspended from

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1393 service on the board until he or she complies with this sub-
 1394 subparagraph. The board may temporarily fill the vacancy during
 1395 the period of suspension. The secretary of the association shall
 1396 cause the association to retain a director's written
 1397 certification or educational certificate for inspection by the
 1398 members for 5 years after a director's election or the duration
 1399 of the director's uninterrupted tenure, whichever is longer.
 1400 Failure to have such written certification or educational
 1401 certificate on file does not affect the validity of any board
 1402 action.

1403 2. Any approval by unit owners called for by this chapter,
 1404 or the applicable cooperative documents, must be made at a duly
 1405 noticed meeting of unit owners and is subject to this chapter or
 1406 the applicable cooperative documents relating to unit owner
 1407 decisionmaking, except that unit owners may take action by
 1408 written agreement, without meetings, on matters for which action
 1409 by written agreement without meetings is expressly allowed by
 1410 the applicable cooperative documents or law which provides for
 1411 the unit owner action.

1412 3. Unit owners may waive notice of specific meetings if
 1413 allowed by the applicable cooperative documents or law. If
 1414 authorized by the bylaws, notice of meetings of the board of
 1415 administration, shareholder meetings, except shareholder
 1416 meetings called to recall board members under paragraph (f), and
 1417 committee meetings may be given by electronic transmission to
 1418 unit owners who consent to receive notice by electronic
 1419 transmission.

1420 4. Unit owners have the right to participate in meetings of
 1421 unit owners with reference to all designated agenda items.

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1422 However, the association may adopt reasonable rules governing
 1423 the frequency, duration, and manner of unit owner participation.

1424 5. Any unit owner may tape record or videotape meetings of
 1425 the unit owners subject to reasonable rules adopted by the
 1426 division.

1427 6. Unless otherwise provided in the bylaws, a vacancy
 1428 occurring on the board before the expiration of a term may be
 1429 filled by the affirmative vote of the majority of the remaining
 1430 directors, even if the remaining directors constitute less than
 1431 a quorum, or by the sole remaining director. In the alternative,
 1432 a board may hold an election to fill the vacancy, in which case
 1433 the election procedures must conform to the requirements of
 1434 subparagraph 1. unless the association has opted out of the
 1435 statutory election process, in which case the bylaws of the
 1436 association control. Unless otherwise provided in the bylaws, a
 1437 board member appointed or elected under this subparagraph shall
 1438 fill the vacancy for the unexpired term of the seat being
 1439 filled. Filling vacancies created by recall is governed by
 1440 paragraph (f) and rules adopted by the division.

1441
 1442 Notwithstanding subparagraphs (b)2. and (d)1., an association
 1443 may, by the affirmative vote of a majority of the total voting
 1444 interests, provide for a different voting and election procedure
 1445 in its bylaws, which vote may be by a proxy specifically
 1446 delineating the different voting and election procedures. The
 1447 different voting and election procedures may provide for
 1448 elections to be conducted by limited or general proxy.

1449 (f) ~~Recall of board members.~~ Subject to ~~the provisions of~~
 1450 s. 719.301, any member of the board of administration may be

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1451 recalled and removed from office with or without cause by the
 1452 vote or agreement in writing by a majority of all the voting
 1453 interests. A special meeting of the voting interests to recall
 1454 any member of the board of administration may be called by 10
 1455 percent of the unit owners giving notice of the meeting as
 1456 required for a meeting of unit owners, and the notice shall
 1457 state the purpose of the meeting. Electronic transmission may
 1458 not be used as a method of giving notice of a meeting called in
 1459 whole or in part for this purpose.

1460 1. If the recall is approved by a majority of all voting
 1461 interests by a vote at a meeting, the recall shall be effective
 1462 as provided in this paragraph herein. The board shall duly
 1463 notice and hold a board meeting within 5 full business days
 1464 after ~~of~~ the adjournment of the unit owner meeting to recall one
 1465 or more board members. At the meeting, the board shall either
 1466 certify the recall, in which case such member or members shall
 1467 be recalled effective immediately and shall turn over to the
 1468 board within 5 full business days any and all records and
 1469 property of the association in their possession, or shall
 1470 proceed as set forth in subparagraph 3.

1471 2. If the proposed recall is by an agreement in writing by
 1472 a majority of all voting interests, the agreement in writing or
 1473 a copy thereof shall be served on the association by certified
 1474 mail or by personal service in the manner authorized by chapter
 1475 48 and the Florida Rules of Civil Procedure. The board of
 1476 administration shall duly notice and hold a meeting of the board
 1477 within 5 full business days after receipt of the agreement in
 1478 writing. At the meeting, the board shall either certify the
 1479 written agreement to recall members of the board, in which case

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1480 such members shall be recalled effective immediately and shall
 1481 turn over to the board, within 5 full business days, any and all
 1482 records and property of the association in their possession, or
 1483 proceed as described in subparagraph 3.

1484 3. If the board determines not to certify the written
 1485 agreement to recall members of the board, or does not certify
 1486 the recall by a vote at a meeting, the board shall, within 5
 1487 full business days after the board meeting, file with the
 1488 division a petition for binding arbitration pursuant to the
 1489 procedures of s. 719.1255. For purposes of this paragraph, the
 1490 unit owners who voted at the meeting or who executed the
 1491 agreement in writing shall constitute one party under the
 1492 petition for arbitration. If the arbitrator certifies the recall
 1493 as to any member of the board, the recall shall be effective
 1494 upon mailing of the final order of arbitration to the
 1495 association. If the association fails to comply with the order
 1496 of the arbitrator, the division may take action pursuant to s.
 1497 719.501. Any member so recalled shall deliver to the board any
 1498 and all records and property of the association in the member's
 1499 possession within 5 full business days after ~~of~~ the effective
 1500 date of the recall.

1501 4. If the board fails to duly notice and hold a board
 1502 meeting within 5 full business days after ~~of~~ service of an
 1503 agreement in writing or within 5 full business days after ~~of~~ the
 1504 adjournment of the unit owner recall meeting, the recall shall
 1505 be deemed effective and the board members so recalled shall
 1506 immediately turn over to the board any and all records and
 1507 property of the association.

1508 5. If the board fails to duly notice and hold the required

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1509 meeting or fails to file the required petition, the unit owner
 1510 representative may file a petition pursuant to s. 719.1255
 1511 challenging the board's failure to act. The petition must be
 1512 filed within 60 days after the expiration of the applicable 5-
 1513 full-business-day period. The review of a petition under this
 1514 subparagraph is limited to the sufficiency of service on the
 1515 board and the facial validity of the written agreement or
 1516 ballots filed.

1517 ~~6.5-~~ If a vacancy occurs on the board as a result of a
 1518 recall and less than a majority of the board members are
 1519 removed, the vacancy may be filled by the affirmative vote of a
 1520 majority of the remaining directors, notwithstanding any
 1521 provision to the contrary contained in this chapter. If
 1522 vacancies occur on the board as a result of a recall and a
 1523 majority or more of the board members are removed, the vacancies
 1524 shall be filled in accordance with procedural rules to be
 1525 adopted by the division, which rules need not be consistent with
 1526 this chapter. The rules must provide procedures governing the
 1527 conduct of the recall election as well as the operation of the
 1528 association during the period after a recall but before ~~prior to~~
 1529 the recall election.

1530 7. A board member who has been recalled may file a petition
 1531 pursuant to s. 719.1255 challenging the validity of the recall.
 1532 The petition must be filed within 60 days after the recall is
 1533 deemed certified. The association and the unit owner
 1534 representative shall be named as the respondents.

1535 8. The division may not accept for filing a recall
 1536 petition, whether filed pursuant to subparagraph 1.,
 1537 subparagraph 2., subparagraph 5., or subparagraph 7. and

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1538 regardless of whether the recall was certified, when there are
 1539 60 or fewer days until the scheduled reelection of the board
 1540 member sought to be recalled or when 60 or fewer days have not
 1541 elapsed since the election of the board member sought to be
 1542 recalled.

1543 Section 14. Paragraph (a) of subsection (3) of section
 1544 719.303, Florida Statutes, is amended to read:

1545 719.303 Obligations of owners.—

1546 (3) The association may levy reasonable fines for failure
 1547 of the unit owner or the unit's occupant, licensee, or invitee
 1548 to comply with any provision of the cooperative documents or
 1549 reasonable rules of the association. A fine may not become a
 1550 lien against a unit. A fine may be levied on the basis of each
 1551 day of a continuing violation, with a single notice and
 1552 opportunity for hearing. However, the fine may not exceed \$100
 1553 per violation, or \$1,000 in the aggregate.

1554 (a) An association may suspend, for a reasonable period of
 1555 time, the right of a unit owner, or a unit owner's tenant,
 1556 guest, or invitee, to use the common elements, common
 1557 facilities, or any other association property for failure to
 1558 comply with any provision of the cooperative documents or
 1559 reasonable rules of the association. This paragraph does not
 1560 apply to limited common elements intended to be used only by
 1561 that unit, common elements needed to access the unit, utility
 1562 services provided to the unit, parking spaces, or elevators.

1563 Section 15. Paragraph (k) of subsection (1) of section
 1564 719.501, Florida Statutes, is amended to read:

1565 719.501 Powers and duties of Division of Florida
 1566 Condominiums, Timeshares, and Mobile Homes.—

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1567 (1) The Division of Florida Condominiums, Timeshares, and
 1568 Mobile Homes of the Department of Business and Professional
 1569 Regulation, referred to as the "division" in this part, in
 1570 addition to other powers and duties prescribed by chapter 718,
 1571 has the power to enforce and ensure compliance with this chapter
 1572 and adopted rules relating to the development, construction,
 1573 sale, lease, ownership, operation, and management of residential
 1574 cooperative units. In performing its duties, the division shall
 1575 have the following powers and duties:

1576 (k) The division shall provide training and educational
 1577 programs for cooperative association board members and unit
 1578 owners. The training may, in the division's discretion, include
 1579 web-based electronic media, and live training and seminars in
 1580 various locations throughout the state. The division may review
 1581 and approve education and training programs for board members
 1582 and unit owners offered by providers and shall maintain a
 1583 current list of approved programs and providers and make such
 1584 list available to board members and unit owners in a reasonable
 1585 and cost-effective manner.

1586 Section 16. Subsection (5), paragraphs (a) and (b) of
 1587 subsection (7), and subsection (10) of section 720.303, Florida
 1588 Statutes, are amended to read:

1589 720.303 Association powers and duties; meetings of board;
 1590 official records; budgets; financial reporting; association
 1591 funds; recalls.—

1592 (5) INSPECTION AND COPYING OF RECORDS.—The official records
 1593 shall be maintained within the state and must be open to
 1594 inspection and available for photocopying by members or their
 1595 authorized agents at reasonable times and places within 10

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1596 business days after receipt of a written request for access.
 1597 This subsection may be complied with by having a copy of the
 1598 official records available for inspection or copying in the
 1599 community. If the association has a photocopy machine available
 1600 where the records are maintained, it must provide parcel owners
 1601 with copies on request during the inspection if the entire
 1602 request is limited to no more than 25 pages. An association
 1603 shall allow a member or his or her authorized representative to
 1604 use a portable device, including a smartphone, tablet, portable
 1605 scanner, or any other technology capable of scanning or taking
 1606 photographs, to make an electronic copy of the official records
 1607 in lieu of the association's providing the member or his or her
 1608 authorized representative with a copy of such records. The
 1609 association may not charge a member or his or her authorized
 1610 representative for the use of a portable device.

1611 (a) The failure of an association to provide access to the
 1612 records within 10 business days after receipt of a written
 1613 request submitted by certified mail, return receipt requested,
 1614 creates a rebuttable presumption that the association willfully
 1615 failed to comply with this subsection.

1616 (b) A member who is denied access to official records is
 1617 entitled to the actual damages or minimum damages for the
 1618 association's willful failure to comply with this subsection.
 1619 The minimum damages are to be \$50 per calendar day up to 10
 1620 days, the calculation to begin on the 11th business day after
 1621 receipt of the written request.

1622 (c) The association may adopt reasonable written rules
 1623 governing the frequency, time, location, notice, records to be
 1624 inspected, and manner of inspections, but may not require a

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1625 parcel owner to demonstrate any proper purpose for the
 1626 inspection, state any reason for the inspection, or limit a
 1627 parcel owner's right to inspect records to less than one 8-hour
 1628 business day per month. The association may impose fees to cover
 1629 the costs of providing copies of the official records,
 1630 including, without limitation, the costs of copying. The
 1631 association may charge up to 50 cents per page for copies made
 1632 on the association's photocopier. If the association does not
 1633 have a photocopy machine available where the records are kept,
 1634 or if the records requested to be copied exceed 25 pages in
 1635 length, the association may have copies made by an outside
 1636 vendor or association management company personnel and may
 1637 charge the actual cost of copying, including any reasonable
 1638 costs involving personnel fees and charges at an hourly rate for
 1639 vendor or employee time to cover administrative costs to the
 1640 vendor or association. The association shall maintain an
 1641 adequate number of copies of the recorded governing documents,
 1642 to ensure their availability to members and prospective members.
 1643 Notwithstanding this paragraph, the following records are not
 1644 accessible to members or parcel owners:

1645 1. Any record protected by the lawyer-client privilege as
 1646 described in s. 90.502 and any record protected by the work-
 1647 product privilege, including, but not limited to, a record
 1648 prepared by an association attorney or prepared at the
 1649 attorney's express direction which reflects a mental impression,
 1650 conclusion, litigation strategy, or legal theory of the attorney
 1651 or the association and which was prepared exclusively for civil
 1652 or criminal litigation or for adversarial administrative
 1653 proceedings or which was prepared in anticipation of such

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1654 litigation or proceedings until the conclusion of the litigation
 1655 or proceedings.

1656 2. Information obtained by an association in connection
 1657 with the approval of the lease, sale, or other transfer of a
 1658 parcel.

1659 3. Personnel records of association or management company
 1660 ~~the association's~~ employees, including, but not limited to,
 1661 disciplinary, payroll, health, and insurance records. For
 1662 purposes of this subparagraph, the term "personnel records" does
 1663 not include written employment agreements with an association or
 1664 management company employee or budgetary or financial records
 1665 that indicate the compensation paid to an association or
 1666 management company employee.

1667 4. Medical records of parcel owners or community residents.

1668 5. Social security numbers, driver ~~driver's~~ license
 1669 numbers, credit card numbers, electronic mailing addresses,
 1670 telephone numbers, facsimile numbers, emergency contact
 1671 information, any addresses for a parcel owner other than as
 1672 provided for association notice requirements, and other personal
 1673 identifying information of any person, excluding the person's
 1674 name, parcel designation, mailing address, and property address.
 1675 However, an owner may consent in writing to the disclosure of
 1676 protected information described in this subparagraph. The
 1677 association is not liable for the disclosure of information that
 1678 is protected under this subparagraph if the information is
 1679 included in an official record of the association and is
 1680 voluntarily provided by an owner and not requested by the
 1681 association.

1682 6. Any electronic security measure that is used by the

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1683 association to safeguard data, including passwords.

1684 7. The software and operating system used by the
1685 association which allows the manipulation of data, even if the
1686 owner owns a copy of the same software used by the association.
1687 The data is part of the official records of the association.

1688 (d) The association or its authorized agent is not required
1689 to provide a prospective purchaser or lienholder with
1690 information about the residential subdivision or the association
1691 other than information or documents required by this chapter to
1692 be made available or disclosed. The association or its
1693 authorized agent may charge a reasonable fee to the prospective
1694 purchaser or lienholder or the current parcel owner or member
1695 for providing good faith responses to requests for information
1696 by or on behalf of a prospective purchaser or lienholder, other
1697 than that required by law, if the fee does not exceed \$150 plus
1698 the reasonable cost of photocopying and any attorney ~~attorney's~~
1699 fees incurred by the association in connection with the
1700 response.

1701 (7) FINANCIAL REPORTING.—Within 90 days after the end of
1702 the fiscal year, or annually on the date provided in the bylaws,
1703 the association shall prepare and complete, or contract with a
1704 third party for the preparation and completion of, a financial
1705 report for the preceding fiscal year. Within 21 days after the
1706 final financial report is completed by the association or
1707 received from the third party, but not later than 120 days after
1708 the end of the fiscal year or other date as provided in the
1709 bylaws, the association shall, within the time limits set forth
1710 in subsection (5), provide each member with a copy of the annual
1711 financial report or a written notice that a copy of the

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1712 financial report is available upon request at no charge to the
1713 member. Financial reports shall be prepared as follows:

1714 (a) An association that meets the criteria of this
1715 paragraph shall prepare or cause to be prepared a complete set
1716 of financial statements in accordance with generally accepted
1717 accounting principles as adopted by the Board of Accountancy.
1718 The financial statements shall be based upon the association's
1719 total annual revenues, as follows:

1720 1. An association with total annual revenues of \$200,000
1721 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
1722 compiled financial statements.

1723 2. An association with total annual revenues of at least
1724 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall
1725 prepare reviewed financial statements.

1726 3. An association with total annual revenues of \$500,000
1727 ~~\$400,000~~ or more shall prepare audited financial statements.

1728 (b)1. An association with total annual revenues of less
1729 than \$200,000 ~~\$100,000~~ shall prepare a report of cash receipts
1730 and expenditures.

1731 2. An association in a community of fewer than 50 parcels,
1732 regardless of the association's annual revenues, may prepare a
1733 report of cash receipts and expenditures in lieu of financial
1734 statements required by paragraph (a) unless the governing
1735 documents provide otherwise.

1736 3. A report of cash receipts and disbursement must disclose
1737 the amount of receipts by accounts and receipt classifications
1738 and the amount of expenses by accounts and expense
1739 classifications, including, but not limited to, the following,
1740 as applicable: costs for security, professional, and management

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1741 fees and expenses; taxes; costs for recreation facilities;
 1742 expenses for refuse collection and utility services; expenses
 1743 for lawn care; costs for building maintenance and repair;
 1744 insurance costs; administration and salary expenses; and
 1745 reserves if maintained by the association.

(10) RECALL OF DIRECTORS.—

1747 (a)1. Regardless of any provision to the contrary contained
 1748 in the governing documents, subject to the provisions of s.
 1749 720.307 regarding transition of association control, any member
 1750 of the board of directors may be recalled and removed from
 1751 office with or without cause by a majority of the total voting
 1752 interests.

1753 2. When the governing documents, including the declaration,
 1754 articles of incorporation, or bylaws, provide that only a
 1755 specific class of members is entitled to elect a board director
 1756 or directors, only that class of members may vote to recall
 1757 those board directors so elected.

1758 (b)1. Board directors may be recalled by an agreement in
 1759 writing or by written ballot without a membership meeting. The
 1760 agreement in writing or the written ballots, or a copy thereof,
 1761 shall be served on the association by certified mail or by
 1762 personal service in the manner authorized by chapter 48 and the
 1763 Florida Rules of Civil Procedure.

1764 2. The board shall duly notice and hold a meeting of the
 1765 board within 5 full business days after receipt of the agreement
 1766 in writing or written ballots. At the meeting, the board shall
 1767 either certify the written ballots or written agreement to
 1768 recall a director or directors of the board, in which case such
 1769 director or directors shall be recalled effective immediately

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1770 and shall turn over to the board within 5 full business days any
 1771 and all records and property of the association in their
 1772 possession, or proceed as described in paragraph (d).

1773 3. When it is determined by the department pursuant to
 1774 binding arbitration proceedings that an initial recall effort
 1775 was defective, written recall agreements or written ballots used
 1776 in the first recall effort and not found to be defective may be
 1777 reused in one subsequent recall effort. However, in no event is
 1778 a written agreement or written ballot valid for more than 120
 1779 days after it has been signed by the member.

1780 4. Any rescission or revocation of a member's written
 1781 recall ballot or agreement must be in writing and, in order to
 1782 be effective, must be delivered to the association before the
 1783 association is served with the written recall agreements or
 1784 ballots.

1785 5. The agreement in writing or ballot shall list at least
 1786 as many possible replacement directors as there are directors
 1787 subject to the recall, when at least a majority of the board is
 1788 sought to be recalled; the person executing the recall
 1789 instrument may vote for as many replacement candidates as there
 1790 are directors subject to the recall.

1791 (c)1. If the declaration, articles of incorporation, or
 1792 bylaws specifically provide, the members may also recall and
 1793 remove a board director or directors by a vote taken at a
 1794 meeting. If so provided in the governing documents, a special
 1795 meeting of the members to recall a director or directors of the
 1796 board of administration may be called by 10 percent of the
 1797 voting interests giving notice of the meeting as required for a
 1798 meeting of members, and the notice shall state the purpose of

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1799 the meeting. Electronic transmission may not be used as a method
1800 of giving notice of a meeting called in whole or in part for
1801 this purpose.

1802 2. The board shall duly notice and hold a board meeting
1803 within 5 full business days after the adjournment of the member
1804 meeting to recall one or more directors. At the meeting, the
1805 board shall certify the recall, in which case such member or
1806 members shall be recalled effective immediately and shall turn
1807 over to the board within 5 full business days any and all
1808 records and property of the association in their possession, or
1809 shall proceed as set forth in paragraph ~~subparagraph~~ (d).

1810 (d) If the board determines not to certify the written
1811 agreement or written ballots to recall a director or directors
1812 of the board or does not certify the recall by a vote at a
1813 meeting, the board shall, within 5 full business days after the
1814 meeting, file with the department a petition for binding
1815 arbitration pursuant to the applicable procedures in ss.
1816 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For
1817 the purposes of this section, the members who voted at the
1818 meeting or who executed the agreement in writing shall
1819 constitute one party under the petition for arbitration. If the
1820 arbitrator certifies the recall as to any director or directors
1821 of the board, the recall will be effective upon mailing of the
1822 final order of arbitration to the association. The director or
1823 directors so recalled shall deliver to the board any and all
1824 records of the association in their possession within 5 full
1825 business days after the effective date of the recall.

1826 (e) If a vacancy occurs on the board as a result of a
1827 recall and less than a majority of the board directors are

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2013436c1

1828 removed, the vacancy may be filled by the affirmative vote of a
1829 majority of the remaining directors, notwithstanding any
1830 provision to the contrary contained in this subsection or in the
1831 association documents. If vacancies occur on the board as a
1832 result of a recall and a majority or more of the board directors
1833 are removed, the vacancies shall be filled by members voting in
1834 favor of the recall; if removal is at a meeting, any vacancies
1835 shall be filled by the members at the meeting. If the recall
1836 occurred by agreement in writing or by written ballot, members
1837 may vote for replacement directors in the same instrument in
1838 accordance with procedural rules adopted by the division, which
1839 rules need not be consistent with this subsection.

1840 (f) If the board fails to duly notice and hold a board
1841 meeting within 5 full business days after service of an
1842 agreement in writing or within 5 full business days after the
1843 adjournment of the member recall meeting, the recall shall be
1844 deemed effective and the board directors so recalled shall
1845 immediately turn over to the board all records and property of
1846 the association.

1847 (g) If the board fails to duly notice and hold the required
1848 meeting or fails to file the required petition, the unit owner
1849 representative may file a petition pursuant to s. 718.1255
1850 challenging the board's failure to act. The petition must be
1851 filed within 60 days after the expiration of the applicable 5-
1852 full-business-day period. The review of a petition under this
1853 paragraph is limited to the sufficiency of service on the board
1854 and the facial validity of the written agreement or ballots
1855 filed.

1856 (h) ~~(g)~~ If a director who is removed fails to relinquish his

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1857 or her office or turn over records as required under this
 1858 section, the circuit court in the county where the association
 1859 maintains its principal office may, upon the petition of the
 1860 association, summarily order the director to relinquish his or
 1861 her office and turn over all association records upon
 1862 application of the association.

1863 ~~(i)~~ ~~(h)~~ The minutes of the board meeting at which the board
 1864 decides whether to certify the recall are an official
 1865 association record. The minutes must record the date and time of
 1866 the meeting, the decision of the board, and the vote count taken
 1867 on each board member subject to the recall. In addition, when
 1868 the board decides not to certify the recall, as to each vote
 1869 rejected, the minutes must identify the parcel number and the
 1870 specific reason for each such rejection.

1871 ~~(j)~~ ~~(i)~~ When the recall of more than one board director is
 1872 sought, the written agreement, ballot, or vote at a meeting
 1873 shall provide for a separate vote for each board director sought
 1874 to be recalled.

1875 (k) A board member who has been recalled may file a
 1876 petition pursuant to ss. 718.112(2)(j) and 718.1255 and the
 1877 rules adopted challenging the validity of the recall. The
 1878 petition must be filed within 60 days after the recall is deemed
 1879 certified. The association and the unit owner representative
 1880 shall be named as respondents.

1881 (l) The division may not accept for filing a recall
 1882 petition, whether filed pursuant to paragraph (b), paragraph
 1883 (c), paragraph (g), or paragraph (k) and regardless of whether
 1884 the recall was certified, when there are 60 or fewer days until
 1885 the scheduled reelection of the board member sought to be

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1886 recalled or when 60 or fewer days have not elapsed since the
 1887 election of the board member sought to be recalled.

1888 Section 17. Subsection (2) of section 720.305, Florida
 1889 Statutes, is amended to read:

1890 720.305 Obligations of members; remedies at law or in
 1891 equity; levy of fines and suspension of use rights.—

1892 (2) The association may levy reasonable fines of up to \$100
 1893 per violation against any member or any member's tenant, guest,
 1894 or invitee for the failure of the owner of the parcel or its
 1895 occupant, licensee, or invitee to comply with any provision of
 1896 the declaration, the association bylaws, or reasonable rules of
 1897 the association. A fine may be levied for each day of a
 1898 continuing violation, with a single notice and opportunity for
 1899 hearing, except that the fine may not exceed \$1,000 in the
 1900 aggregate unless otherwise provided in the governing documents.
 1901 A fine of less than \$1,000 may not become a lien against a
 1902 parcel. In any action to recover a fine, the prevailing party is
 1903 entitled to reasonable attorney ~~attorney's~~ fees and costs from
 1904 the nonprevailing party as determined by the court.

1905 (a) An association may suspend, for a reasonable period of
 1906 time, the right of a member, or a member's tenant, guest, or
 1907 invitee, to use common areas and facilities for the failure of
 1908 the owner of the parcel or its occupant, licensee, or invitee to
 1909 comply with any provision of the declaration, the association
 1910 bylaws, or reasonable rules of the association. This paragraph
 1911 does not apply to that portion of common areas used to provide
 1912 access or utility services to the parcel. A suspension may not
 1913 impair the right of an owner or tenant of a parcel to have
 1914 vehicular and pedestrian ingress to and egress from the parcel,

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2013436c1

1915 including, but not limited to, the right to park.

1916 (b) A fine or suspension may not be imposed without at
 1917 least 14 days' notice to the person sought to be fined or
 1918 suspended and an opportunity for a hearing before a committee of
 1919 at least three members appointed by the board who are not
 1920 officers, directors, or employees of the association, or the
 1921 spouse, parent, child, brother, or sister of an officer,
 1922 director, or employee. If the committee, by majority vote, does
 1923 not approve a proposed fine or suspension, it may not be
 1924 imposed. If the association imposes a fine or suspension, the
 1925 association must provide written notice of such fine or
 1926 suspension by mail or hand delivery to the parcel owner and, if
 1927 applicable, to any tenant, licensee, or invitee of the parcel
 1928 owner.

1929 Section 18. Paragraph (d) is added to subsection (1) of
 1930 section 720.306, Florida Statutes, and subsection (6) and
 1931 paragraph (a) of subsection (9) of that section are amended, to
 1932 read:

1933 720.306 Meetings of members; voting and election
 1934 procedures; amendments.—

1935 (1) QUORUM; AMENDMENTS.—

1936 (d) The Legislature finds that the procurement of mortgagee
 1937 consent to amendments that do not affect the rights or interests
 1938 of mortgagees is an unreasonable and substantial logistical and
 1939 financial burden on the parcel owners and that there is a
 1940 compelling state interest in enabling the members of an
 1941 association to approve amendments to the association's governing
 1942 documents through legal means. Accordingly, and notwithstanding
 1943 any provision of this paragraph to the contrary:

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1944 1. As to any mortgage recorded on or after July 1, 2013,
 1945 any provision in the association's governing documents that
 1946 requires the consent or joinder of some or all mortgagees of
 1947 parcels or any other portion of the association's common areas
 1948 to amend the association's governing documents or for any other
 1949 matter is enforceable only as to amendments to the association's
 1950 governing documents that adversely affect the priority of the
 1951 mortgagee's lien or the mortgagee's rights to foreclose its lien
 1952 or that otherwise materially affect the rights and interests of
 1953 the mortgagees.

1954 2. As to mortgages recorded before July 1, 2013, any
 1955 existing provisions in the association's governing documents
 1956 requiring mortgagee consent are enforceable.

1957 3. In securing consent or joinder, the association is
 1958 entitled to rely upon the public records to identify the holders
 1959 of outstanding mortgages. The association may use the address
 1960 provided in the original recorded mortgage document, unless
 1961 there is a different address for the holder of the mortgage in a
 1962 recorded assignment or modification of the mortgage, which
 1963 recorded assignment or modification must reference the official
 1964 records book and page on which the original mortgage was
 1965 recorded. Once the association has identified the recorded
 1966 mortgages of record, the association shall, in writing, request
 1967 of each parcel owner whose parcel is encumbered by a mortgage of
 1968 record any information that the owner has in his or her
 1969 possession regarding the name and address of the person to whom
 1970 mortgage payments are currently being made. Notice shall be sent
 1971 to such person if the address provided in the original recorded
 1972 mortgage document is different from the name and address of the

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1973 mortgagee or assignee of the mortgage as shown by the public
 1974 record. The association is deemed to have complied with this
 1975 requirement by making the written request of the parcel owners
 1976 required under this subparagraph. Any notices required to be
 1977 sent to the mortgagees under this subparagraph shall be sent to
 1978 all available addresses provided to the association.

1979 4. Any notice to the mortgagees required under subparagraph
 1980 3. may be sent by a method that establishes proof of delivery,
 1981 and any mortgagee who fails to respond within 60 days after the
 1982 date of mailing is deemed to have consented to the amendment.

1983 5. For those amendments requiring mortgagee consent on or
 1984 after July 1, 2013, in the event mortgagee consent is provided
 1985 other than by properly recorded joinder, such consent shall be
 1986 evidenced by affidavit of the association recorded in the public
 1987 records of the county in which the declaration is recorded.

1988 6. Any amendment adopted without the required consent of a
 1989 mortgagee is voidable only by a mortgagee who was entitled to
 1990 notice and an opportunity to consent. An action to void an
 1991 amendment is subject to the statute of limitations beginning 5
 1992 years after the date of discovery as to the amendments described
 1993 in subparagraph 1. and 5 years after the date of recordation of
 1994 the certificate of amendment for all other amendments. This
 1995 subparagraph applies to all mortgages, regardless of the date of
 1996 recordation of the mortgage.

1997 (6) RIGHT TO SPEAK.—Members and parcel owners have the
 1998 right to attend all membership meetings and to speak at any
 1999 meeting with reference to all items opened for discussion or
 2000 included on the agenda. Notwithstanding any provision to the
 2001 contrary in the governing documents or any rules adopted by the

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2002 board or by the membership, a member and a parcel owner have the
 2003 right to speak for at least 3 minutes on any item, ~~provided that~~
 2004 ~~the member or parcel owner submits a written request to speak~~
 2005 ~~prior to the meeting.~~ The association may adopt written
 2006 reasonable rules governing the frequency, duration, and other
 2007 manner of member and parcel owner statements, which rules must
 2008 be consistent with this subsection.

2009 (9) ~~(a)~~ ELECTIONS AND BOARD VACANCIES.—

2010 (a) Elections of directors must be conducted in accordance
 2011 with the procedures set forth in the governing documents of the
 2012 association. All members of the association are eligible to
 2013 serve on the board of directors, and a member may nominate
 2014 himself or herself as a candidate for the board at a meeting
 2015 where the election is to be held or, if the election process
 2016 allows voting by absentee ballot, in advance of the balloting.
 2017 Except as otherwise provided in the governing documents, boards
 2018 of directors must be elected by a plurality of the votes cast by
 2019 eligible voters. Any challenge to the election process must be
 2020 commenced within 60 days after the election results are
 2021 announced.

2022 Section 19. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13

Meeting Date

Topic _____

Bill Number 436
(if applicable)

Name Diana Ferguson

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 119 S Monroe St Ste 202

Phone 850-681-6788

Street

Tallahassee FL 32308

City

State

Zip

E-mail dferguson@rughlaw.com

Speaking: For Against Information

Representing Community Advocacy Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12-13

Meeting Date

Topic Homeowner Association Elections

Bill Number 436
(if applicable)

Name Richard Pinsky

Amendment Barcode _____
(if applicable)

Job Title _____

Address 106 E College
Street
Tallahassee FL 32301
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing Cyber Citizens

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12
Meeting Date

Topic _____

Bill Number SB 436
(if applicable)

Name Pete Dunbar

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe
Street

Phone 222-3533

Tallahassee
City State Zip

E-mail pete@penningtonlaw.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/2013
Meeting Date

Topic Residential Properties

Bill Number SB 436
(if applicable)

Name Melanie Bostick

Amendment Barcode _____
(if applicable)

Job Title Vice President

Address 113 E. College Ave, Ste. 300

Phone (850) 841-1726

Tallahassee FL 32327
City State Zip

E-mail melanie@libertypartnersfl.com

Speaking: For Against Information

Representing Florida Institute of CPAs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

Florida Supreme Court. The marshal's primary role, as laid out in s. 25.271, F.S., is to provide safety and security for the justices, employees, and facilities of the Supreme Court and be conservators of the peace in any building in which the Supreme Court is sitting.¹ In the course of carrying out those duties, a marshal, or his or her assistant, may apprehend any person disturbing the peace and deliver that person to the appropriate law enforcement officer.² The Office of the Marshal is concerned that s. 25.271(2), F.S., restricts him or her from keeping the peace and providing security for justices and other court personnel at off-site locations when the justices are not sitting as the Supreme Court.³ Section 25.271, F.S., also requires that the marshal keep the grounds of the Supreme Court Building clean and free of trespassers.⁴

A marshal, and his or her assistants, is required to attend and complete a minimum standards training program by the Criminal Justice Standards Training Commission (CJSTC), which is housed within the Florida Department of Law Enforcement (FDLE).⁵ From 1983 until 2002, marshals and their assistants received training from the United States Marshals service which was approved by the CJSTC.⁶ However, in 2002, the FDLE advised that they lacked statutory authority to approve training programs not developed by the FDLE. This left only the basic recruit training offered by the FDLE.⁷ The current practice of the Court is for the marshal to fill any vacancies among his or her assistants with certified law enforcement officers.⁸

III. Effect of Proposed Changes:

This bill requires that the marshal of the Supreme Court and his or her assistants be law enforcement officers as defined under s. 943.10(1), F.S. The specific provisions of the bill:

- Redesignates the marshal's assistants as deputies in s. 25.251, F.S.
- Amend s. 25.251, F.S., to give a marshal and his or her deputies' statewide authority to bear arms and make arrests in connection with their official duties for the Supreme Court.
- Requires the marshal and his or her deputies to comply with s. 943.13, F.S., relating to the qualifications of law enforcement officers and removes the requirement that they complete a minimum standards training program by the Criminal Justice Standards Training Commission. This conforms to the current practice of the Supreme Court to fill any vacancies in the marshal's office with certified law enforcement officers.
- Amends s. 25.271, F.S. to remove subsection (2). This has the effect of consolidating provisions governing security and arrest authority of the marshal and his or her deputies along with the authority to create the office of the marshal s. 25.251, F.S. Section 25.271, F.S., now solely addresses the marshal's duty to maintain the Supreme Court Building and grounds.

¹ Section 25.271, F.S.

² *Id.*

³ Office of the State Courts Administrator, *Revised Proposed Legislative Issue, Supreme Court Marshal Requirements and Authority*, January 16, 2013 (on file with Senate Committee on Judiciary).

⁴ Section 25.271(1), F.S.

⁵ Section 25.251, F.S.

⁶ Office of the State Courts Administrator, *supra* note 4.

⁷ *Id.*

⁸ *Id.*

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 Judiciary on March 12, 2013:

The CS provides that the marshal and his or her deputies are law enforcement officers as defined under s. 943.10(1), F.S., and are authorized to make arrests in connection with their official duties for the Supreme Court.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



342526

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/13/2013 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 29 - 36
and insert:

(3) The marshal and his or her deputies shall be law enforcement officers as defined in s. 943.10(1), under the direction and control of the Supreme Court with full powers to bear arms and make arrests in accordance with the laws of this state. In performance of their official duties for the Supreme Court, they may apprehend without warrant a person disturbing the peace and deliver that person to the appropriate law enforcement officer of the municipality or county in which further proceedings may be held according to law. The powers



342526

14 granted in this section may be exercised only in furtherance of
15 and in connection with performance of official duties for the
16 Supreme Court.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete lines 7 - 9

21 and insert:

22
23 deputies are law enforcement officers with full powers
24 to bear arms and make arrests under certain
25 conditions; limiting the use of those powers to
26 performance of official duties for the Supreme Court;

By Senator Dean

5-00797-13

2013496__

A bill to be entitled

An act relating to the marshal of the Supreme Court; amending s. 25.251, F.S.; revising terminology; requiring the marshal and his or her deputies to comply with specified requirements for law enforcement officers; specifying that the marshal and his or her deputies are law enforcement officers with statewide authority to bear arms and perform official duties and apprehend without warrant under certain conditions; amending s. 25.271, F.S.; deleting provisions relating to the marshal and his or her deputies being conservators of the peace; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 25.251, Florida Statutes, is amended to read:

25.251 Marshal of Supreme Court; appointment; qualification; authority training.-

(1) The Supreme Court shall appoint a marshal who shall hold office during the pleasure of the court.

(2) The marshal and his or her deputies must comply with s. 943.13 relating to requirements for law enforcement officers in this state ~~assistants shall attend and successfully complete a minimum standards training program approved by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement.~~

(3) The marshal and his or her deputies shall be law

Page 1 of 2

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5-00797-13

2013496__

enforcement officers of the state with statewide authority to bear arms and perform official duties for the Supreme Court and, in connection with those duties, may apprehend without warrant a person disturbing the peace and deliver that person to the appropriate law enforcement officer of the municipality or county in which further proceedings may be held according to law.

Section 2. Section 25.271, Florida Statutes, is amended to read:

25.271 Custody of Supreme Court Building and grounds.-

~~(1)~~ The ~~said~~ marshal shall, under the direction of the Supreme Court, be custodian of the Supreme Court Building and grounds and shall keep the same clean, sanitary, and free of trespassers and marauders and shall maintain the same in good state of repair and cause the grounds to be beautified and preserved against depredations and trespasses.

~~(2) The marshal and his or her assistants shall be conservators of the peace in the Supreme Court Building, or in any building in which the Supreme Court is sitting, and shall apprehend without warrant any person disturbing the peace and deliver that person to the appropriate law enforcement officer of the municipality or county in which further proceedings may be held according to law.~~

Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/12/13

Meeting Date

Topic Marshal of Supreme Court

Bill Number SB 496
(if applicable)

Name Silvester Dawson

Amendment Barcode _____
(if applicable)

Job Title Marshal of the Supreme Court

Address 500 South Duval St

Phone (850) 488-8845

Tallahassee, FL 32399
Street City State Zip

E-mail dawson@flcourts.org

Speaking: For Against Information

Representing Supreme Court Office of the Marshal

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/12/13

Meeting Date

Topic Supreme Court Marshal

Bill Number SB 496

(if applicable)

Name Eric Maclure

Amendment Barcode

(if applicable)

Job Title Director of Intergov. Relations, State Courts Admin Office

Address 500 South Duval St.

Phone 850-922-5692

Street

Tallahassee, FL 32399

City

State

Zip

E-mail macluree@courts.org

Speaking: For Against Information

Representing State Courts System

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/2013

Meeting Date

Topic _____

Bill Number 496
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Committee on Judiciary

BILL: CS/CS/SB 676

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Evers

SUBJECT: Juvenile Justice Circuit Advisory Boards and Juvenile Justice County Councils

DATE: March 13, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Dugger | Cannon | CJ | Fav/CS |
| 2. | Brown | Cibula | JU | Fav/CS |
| 3. | | | ACJ | |
| 4. | | | AP | |
| 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:

CS/CS/SB 676 redesignates juvenile justice circuit boards as juvenile justice circuit advisory boards (boards). The boards will exist in each of the 20 judicial circuits.

The bill eliminates statutory authority for juvenile justice county councils. However, except in single-county circuits, a county organization will represent each of the counties in the circuit and report to the board on the juvenile justice needs of the county.

The bill establishes duties and responsibilities of the board, including developing a comprehensive plan for the circuit; facilitating interagency cooperation and information sharing; recommending grants to support the comprehensive plan; making recommendations to the Department of Juvenile Justice (DJJ) on prevention and early intervention grant programs; and providing an annual report to the DJJ on board activities.

The bill removes the cap on the number of board members authorized, which is currently 18, and instead requires a minimum of 16 members. The bill specifies the composition of board members and quorum requirements and requires a majority vote to approve measures or positions of the

board. Provisions of the bill detail how appointments will be made to the initial juvenile justice circuit advisory boards and the method in which future vacancies will be filled.

The DJJ is responsible for:

- Approving the appointment of certain members to a board.
- Developing format and content requirements for the bylaws of a board and approving the bylaws of each board.
- Developing format and content requirements for comprehensive plans prepared by boards.

This bill substantially amends section 985.664 and makes conforming changes to sections 790.22, 938.17, 948.51, 985.48, and 985.676 of the Florida Statutes.

II. Present Situation:

Section 985.664(1), F.S., authorizes the creation of 20 juvenile justice circuit boards, one in each judicial circuit, as well as 67 juvenile justice county councils, one in each county.¹ The purpose of these boards and councils is to provide advice to and work collaboratively with the Department of Juvenile Justice (DJJ) in developing and implementing juvenile justice programs and to improve programs and recommend necessary policy changes. The county councils are tasked with working with the circuit boards in the developing a comprehensive plan for the circuit. The circuit boards must submit an annual report to the DJJ, describing the activities of both the board and the county councils.² Other duties include facilitating interagency cooperation and information sharing, as well as applying for and receiving public or private juvenile justice grants.³

The size of the circuit boards is prescribed as follows: no more than 18 members, unless it is necessary to increase the number of members by three to adequately reflect the diversity of the community.⁴ Members designated by statute include the state attorney, the public defender, and the chief circuit judge.⁵ The other 15 members, appointed by the county councils, may include representatives of:

- School districts;
- County commissions;
- Governing bodies of local municipalities;
- The Department of Children and Family Services (DCF);
- Local law enforcement agencies, including the sheriff;
- The judicial system;
- The business community;

¹ According to the DJJ, there are currently 20 circuit boards and 44 county councils that are active across the state. Department of Juvenile Justice, *2013 Legislative Session Bill Analysis for SB 676*, on file with the Senate Criminal Justice Committee and the Judiciary Committee.

² Section 985.664(1) through (6), F.S.

³ Section 985.664(2) through (4), F.S.

⁴ Section 985.664(7) and (8), F.S.

⁵ Section 985.664(7), F.S.

- Other interested officials, including public or private providers, students, parents, and advocates;
- The faith community;
- Victim-service programs; and
- The Department of Corrections (DOC).⁶

Each circuit board and county council must also develop bylaws, including the process for appointments to the board or council, election or appointment of officers, filling of vacancies, duration of member terms, provisions for voting, meeting attendance requirements, and organization and duties of the executive committee. Each council and board must have an executive committee comprised of no more than 10 members.⁷

III. Effect of Proposed Changes:

CS/CS/SB 676 renames juvenile justice circuit boards as juvenile justice circuit advisory boards (boards). Boards will be organized in each of the 20 judicial circuits.

The bill eliminates statutory authority for juvenile justice county councils. However, except in single-county circuits, a county organization will represent each of the counties in the circuit and report to the board on the juvenile justice needs of the county. Single-county circuits are Miami-Dade (11th), Hillsborough (13th), Palm Beach (15th), Monroe (16th), and Broward County (17th) circuits.⁸

Board Duties and Responsibilities

The bill establishes duties and responsibilities of a board, including:

- Developing a comprehensive plan for the circuit;
- Facilitating interagency cooperation and information sharing;
- Recommending grants to support the comprehensive plan;
- Making recommendations to the Department of Juvenile Justice (DJJ) on prevention and early intervention grant programs; and
- Providing an annual report to the DJJ on activities of the board by August 1 of each year.

Department of Juvenile Justice (DJJ) Duties and Responsibilities

The DJJ is responsible for:

- Approving the appointment of certain members to a board and appointing the chair of the board.
- Developing format and content requirements for the bylaws of the board.
- Approving bylaws of a board.

⁶ Section 985.664(10), F.S.

⁷ Section 985.664(11), F.S.

⁸ Information on single-county circuits is provided through an email dated March 7, 2013, from Lisa Hurley, Florida Association of Counties.

- Developing format and content requirements for comprehensive plans prepared by boards.

Composition, Terms of Service, Initial Appointments, and Voting Requirements of the Board

Composition of the Board

The bill removes the cap on the number of board members authorized, which is currently 18, and instead requires a minimum of 16 members.

Advisory board members requiring DJJ approval include:

- A representative from the Department of Children and Families;
- A representative from workforce organization in each county;
- A representative of the business community;
- A representative of the faith community;
- A representative from a mental health or victim-service program;
- A youth under 21 years of age having juvenile justice experience;
- A parent or family member of a youth involved in the juvenile justice system; and
- Up to five additional members representing community leaders or a youth-serving coalition.

The workforce representative, the youth involved in the system, and a parent of the youth member are not currently specified in s. 985.664, F.S. The bill also deletes a Department of Corrections representative as a member of a board.

Advisory board members not requiring DJJ approval are as follows:

- State attorney or his or her designee;
- Public defender or his or her designee;
- Chief circuit judge or his or her designee;
- The sheriff from each county or his or her designee;
- A police chief from each county or his or her designee;
- A county commissioner from each county or his or her designee; and
- A school superintendent or his or her designee from each district in the circuit.

Under the bill, all prescribed members become members by virtue of the offices they hold. Currently, only the state attorney, public defender, and chief circuit judge are members by virtue of the offices they hold.

Term of Service of the Board

The bill caps terms of service of a board member at two consecutive 2-year terms, except for certain board members. These members are the state attorney, public defender, chief judge, sheriff, police chief, county commissioner, and the school superintendent. Former members are eligible to serve if they have not served on the board for 2 years.

Appointments to the Board

The bill provides for the DJJ secretary, in consultation with the juvenile justice county councils, to appoint the first chair of each board. The chair will then appoint remaining members within 45 days after appointment, subject to approval by the DJJ. Thereafter, the DJJ secretary will consult with a board regarding future appointments of the chair.

Voting Provisions of the Board

A quorum of a board includes at least half of the voting members of the board. The bill requires the presence of a quorum for the board to take a vote. To pass, measures and positions voted on by the board more than 50 percent approval by members voting.

This bill takes effect October 1, 2013.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator does not expect any fiscal impact through additional court or judicial resources. Any impact on the counties is indeterminate at this time.

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/CS by Judiciary on March 12, 2013:

The committee substitute:

- Clarifies that the DJJ secretary appoints the initial chair of each juvenile justice circuit advisory board in consultation with the juvenile justice county councils. Subsequent appointments of a chair will be made by the DJJ secretary in consultation with the board.
- Requires the presence of a quorum to take a vote on measures or positions.

CS by Criminal Justice on March 4, 2013:

Makes technical and conforming changes to several other sections of law that were affected by the underlying bill.

- B. **Amendments:**

None.



312954

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/13/2013 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete lines 157 - 173
and insert:

(5) (a) To form the initial juvenile justice circuit advisory board, the secretary of the department, in consultation with the juvenile justice county councils in existence on October 1, 2013, shall appoint the chair of the board, who must meet the board membership requirements in subsection (4). Within 45 days after being appointed, the chair shall appoint the remaining members to the juvenile justice advisory board and submit the appointments to the department for approval.

(b) Thereafter, when a vacancy of the chair occurs, the



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14 secretary of the department, in consultation with the juvenile
15 justice circuit advisory board, shall appoint a new chair, who
16 must meet the board membership requirements in subsection (4).
17 The chair shall appoint members to vacant seats within 45 days
18 of the vacancy and submit the appointments to the department for
19 approval.

20 (6) A member may not serve more than two consecutive 2-year
21 terms, except those members listed in paragraphs (4) (a), (b),
22 (c), (e), (f), (g), and (h). A former member who has not served
23 on the juvenile justice circuit advisory board for 2 years is
24 eligible to serve on the juvenile justice circuit advisory board
25 again.

26 (7) At least half of the voting members of the juvenile
27 justice circuit advisory board constitutes a quorum. A quorum
28 must be present for the board to vote on a measure or position.

29 (8) In order for a juvenile justice circuit advisory board
30 measure or position to pass, it must receive more than 50
31 percent of the vote.

By the Committee on Criminal Justice; and Senator Evers

591-01874-13

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A bill to be entitled

An act relating to juvenile justice circuit advisory boards and juvenile justice county councils; amending s. 985.664, F.S.; redesignating juvenile justice circuit boards as juvenile justice circuit advisory boards; requiring each board to have a county organization representing each county in the circuit; providing an exception for single-county circuits; deleting provisions providing for juvenile justice county councils; revising provisions relating to duties and responsibilities of boards; requiring submission of circuit plans by specified dates; revising membership of boards; providing for appointment and terms of members; providing for quorums and for passage of measures or positions; revising provisions relating to bylaws; amending ss. 790.22, 938.17, 948.51, 985.48, and 985.676, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 985.664, Florida Statutes, is amended to read:

985.664 Juvenile justice circuit advisory boards ~~and juvenile justice county councils.~~

(1) There is authorized a juvenile justice circuit advisory board to be established in each of the 20 judicial circuits ~~and a juvenile justice county council to be established in each of~~

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~~the 67 counties. Except in single-county circuits, each juvenile justice circuit advisory board shall have a county organization representing each of the counties in the circuit. The county organization shall report directly to the juvenile justice circuit advisory board on the juvenile justice needs of the county.~~ The purpose of each juvenile justice circuit advisory board ~~and each juvenile justice county council~~ is to provide advice and direction to the department in the development and implementation of juvenile justice programs and to work collaboratively with the department in seeking program improvements and policy changes to address the emerging and changing needs of Florida's youth who are at risk of delinquency.

(2) The duties and responsibilities of a juvenile justice circuit advisory board include, but are not limited to:

(a) Developing ~~Each juvenile justice county council shall develop a juvenile justice prevention and early intervention plan for the county and shall collaborate with the circuit board and other county councils assigned to that circuit in the development of a comprehensive plan for the circuit. The initial circuit plan shall be submitted to the department no later than December 31, 2014, and no later than June 30 every 3 years thereafter. The department shall prescribe a format and content requirements for the submission of the comprehensive plan.~~

~~(b)(3) Participating in the facilitation of juvenile justice circuit boards and county councils shall also participate in facilitating interagency cooperation and information sharing.~~

(c)(4) Providing recommendations ~~Juvenile justice circuit~~

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59 ~~boards and county councils may apply for and receive public or~~
 60 private grants to be administered by one of the community
 61 partners that support one or more components of the
 62 comprehensive county or circuit plan.

63 ~~(d)(5) Providing recommendations to Juvenile justice~~
 64 ~~circuit boards and county councils shall advise and assist the~~
 65 department in the evaluation ~~and award~~ of prevention and early
 66 intervention grant programs, including the Community Juvenile
 67 Justice Partnership Grant program established in s. 985.676 and
 68 proceeds from the Invest in Children license plate annual use
 69 fees.

70 ~~(e)(6) Providing Each juvenile justice circuit board shall~~
 71 ~~provide~~ an annual report to the department describing the
 72 board's activities of the circuit board and each of the county
 73 councils contained within its circuit. The department shall may
 74 prescribe a format and content requirements for submission of
 75 annual reports. The annual report must be submitted to the
 76 department no later than August 1 of each year.

77 ~~(3)(7) Each Membership of the juvenile justice circuit~~
 78 advisory board shall have a minimum of 16 ~~may not exceed 18~~
 79 ~~members, except as provided in subsections (8) and (9). The~~
 80 ~~membership of each Members must include the state attorney, the~~
 81 ~~public defender, and the chief judge of the circuit, or their~~
 82 ~~respective designees. The remaining 15 members of the board must~~
 83 ~~be appointed by the county councils within that circuit. The~~
 84 ~~board must include at least one representative from each county~~
 85 ~~council within the circuit. In appointing members to the circuit~~
 86 ~~board, the county councils must reflect:~~

87 (a) The circuit's geography and population distribution.

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88 ~~(b) Juvenile justice partners, including, but not limited~~
 89 ~~to, representatives of law enforcement, the school system, and~~
 90 ~~the Department of Children and Family Services.~~

91 ~~(b)(e) Diversity in the judicial circuit.~~

92 ~~(8) At any time after the adoption of initial bylaws~~
 93 ~~pursuant to subsection (12), a juvenile justice circuit board~~
 94 ~~may revise the bylaws to increase the number of members by not~~
 95 ~~more than three in order to adequately reflect the diversity of~~
 96 ~~the population and community organizations or agencies in the~~
 97 ~~circuit.~~

98 ~~(9) If county councils are not formed within a circuit, the~~
 99 ~~circuit board may establish its membership in accordance with~~
 100 ~~subsection (10). For juvenile justice circuit boards organized~~
 101 ~~pursuant to this subsection, the state attorney, public~~
 102 ~~defender, and chief circuit judge, or their respective~~
 103 ~~designees, shall be members of the circuit board.~~

104 ~~(4)(10) Each member of the juvenile justice circuit~~
 105 advisory board must be approved by the secretary of the
 106 department, except those members listed in paragraphs (a), (b),
 107 (c), (e), (f), (g), and (h). Membership of The juvenile justice
 108 ~~county councils, or juvenile justice circuit advisory boards~~
 109 ~~established under subsection (1) must (9), may include as~~
 110 ~~members representatives from the following entities:~~

111 (a) The state attorney or his or her designee
 112 ~~Representatives from the school district, which may include~~
 113 ~~elected school board officials, the school superintendent,~~
 114 ~~school or district administrators, teachers, and counselors.~~

115 (b) The public defender or his or her designee
 116 ~~Representatives of the board of county commissioners.~~

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- 117 (c) The chief judge or his or her designee ~~Representatives~~
 118 ~~of the governing bodies of local municipalities within the~~
 119 ~~county.~~
- 120 (d) A representative of the corresponding circuit or
 121 regional entity of the Department of Children and Families
 122 ~~Family Services.~~
- 123 ~~(e) Representatives of local law enforcement agencies,~~
 124 ~~including~~ The sheriff or the sheriff's designee from each county
 125 in the circuit.
- 126 (f) A police chief or his or her designee from each county
 127 in the circuit ~~Representatives of the judicial system.~~
- 128 (g) A county commissioner or his or her designee from each
 129 county in the circuit.
- 130 (h) The superintendent of each school district in the
 131 circuit or his or her designee.
- 132 (i) A representative from the workforce organization of
 133 each county in the circuit.
- 134 ~~(j)(g)~~ A representative ~~Representatives~~ of the business
 135 community.
- 136 (k) A youth representative who has had an experience with
 137 the juvenile justice system and is not older than 21 years of
 138 age.
- 139 ~~(h) Representatives of other interested officials, groups,~~
 140 ~~or entities, including, but not limited to, a children's~~
 141 ~~services council, public or private providers of juvenile~~
 142 ~~justice programs and services, students, parents, and advocates.~~
 143 ~~Private providers of juvenile justice programs may not exceed~~
 144 ~~one third of the voting membership.~~
- 145 ~~(l)(i)~~ A representative ~~representatives~~ of the faith

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- 146 community.
- 147 ~~(m)(j)~~ A health services representative who specializes in
 148 mental health care, ~~Representatives of~~ victim-service programs,
 149 ~~or~~ ~~and~~ victims of crimes.
- 150 ~~(k) Representatives of the Department of Corrections.~~
- 151 (n) A parent or family member of a youth who has been
 152 involved with the juvenile justice system.
- 153 (o) Up to five representatives from any of the following
 154 who are not otherwise represented in this subsection:
- 155 1. Community leaders.
- 156 2. Youth-serving coalitions.
- 157 (5) The secretary of the department, in consultation with
 158 the board, shall appoint the chair of the board, who must meet
 159 the board membership requirements in subsection (4). Within 45
 160 days after being appointed, the chair shall appoint the
 161 remaining members to the board and submit the appointments to
 162 the department for approval.
- 163 (6) A member may not serve more than two consecutive 2-year
 164 terms, except those members listed in paragraphs (4) (a), (b),
 165 (c), (e), (f), (g), and (h). A former member who has not served
 166 on the juvenile justice circuit advisory board for 2 years is
 167 eligible to serve on the juvenile justice circuit advisory board
 168 again.
- 169 (7) At least half of the voting members of the juvenile
 170 justice circuit advisory board constitutes a quorum.
- 171 (8) In order for a juvenile justice circuit advisory board
 172 measure or position to pass, it must receive more than 50
 173 percent of the vote.
- 174 ~~(9)(11)~~ Each juvenile justice county council, ~~or~~ juvenile

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175 justice circuit advisory board ~~established under subsection (9),~~
 176 must provide for the establishment of an executive committee of
 177 not more than 10 members. The duties and authority of the
 178 executive committee must be addressed in the bylaws.

179 ~~(10)(12)~~ Each juvenile justice circuit advisory board ~~and~~
 180 ~~county council~~ shall have develop bylaws ~~that provide for~~
 181 ~~officers and committees as the board or council deems necessary~~
 182 ~~and shall specify the qualifications, method of selection, and~~
 183 ~~term for each office created. The department shall prescribe a~~
 184 format and content requirements for the bylaws. All bylaws must
 185 be approved by the department. The bylaws shall address at least
 186 the following issues: ~~process for appointments to the board or~~
 187 ~~council;~~ election or appointment of officers; filling of vacant
 188 positions; ~~duration of member terms; provisions for voting;~~
 189 meeting attendance requirements; and the establishment and
 190 duties of an executive committee, ~~if required under subsection~~
 191 ~~(11).~~

192 ~~(11)(13)~~ Members of juvenile justice circuit advisory
 193 boards ~~and county councils~~ are subject to ~~the provisions of~~ part
 194 III of chapter 112.

195 Section 2. Paragraph (c) of subsection (4) of section
 196 790.22, Florida Statutes, is amended to read:

197 790.22 Use of BB guns, air or gas-operated guns, or
 198 electric weapons or devices by minor under 16; limitation;
 199 possession of firearms by minor under 18 prohibited; penalties.-

200 (4)

201 (c) The juvenile justice circuit advisory boards ~~or~~
 202 ~~juvenile justice county councils~~ or the Department of Juvenile
 203 Justice shall establish appropriate community service programs

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204 to be available to the alternative sanctions coordinators of the
 205 circuit courts in implementing this subsection. The boards ~~or~~
 206 ~~councils~~ or department shall propose the implementation of a
 207 community service program in each circuit, and may submit a
 208 circuit plan, to be implemented upon approval of the circuit
 209 alternative sanctions coordinator.

210 Section 3. Subsection (4) of section 938.17, Florida
 211 Statutes, is amended to read:

212 938.17 County delinquency prevention; juvenile assessment
 213 centers and school board suspension programs.-

214 (4) A sheriff's office that receives proceeds pursuant to
 215 s. 939.185 shall account for all funds annually by August 1 in a
 216 written report to the juvenile justice circuit advisory board
 217 ~~county council~~ if funds are used for assessment centers, and to
 218 the district school board if funds are used for suspension
 219 programs.

220 Section 4. Subsection (2) of section 948.51, Florida
 221 Statutes, is amended to read:

222 948.51 Community corrections assistance to counties or
 223 county consortiums.-

224 (2) ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.-A
 225 county, or a consortium of two or more counties, may contract
 226 with the Department of Corrections for community corrections
 227 funds as provided in this section. In order to enter into a
 228 community corrections partnership contract, a county or county
 229 consortium must have a public safety coordinating council
 230 established under s. 951.26 and must designate a county officer
 231 or agency to be responsible for administering community
 232 corrections funds received from the state. The public safety

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233 coordinating council shall prepare, develop, and implement a
 234 comprehensive public safety plan for the county, or the
 235 geographic area represented by the county consortium, and shall
 236 submit an annual report to the Department of Corrections
 237 concerning the status of the program. In preparing the
 238 comprehensive public safety plan, the public safety coordinating
 239 council shall cooperate with the juvenile justice circuit
 240 advisory board ~~and the juvenile justice county council,~~
 241 established under s. 985.664, in order to include programs and
 242 services for juveniles in the plan. To be eligible for community
 243 corrections funds under the contract, the initial public safety
 244 plan must be approved by the governing board of the county, or
 245 the governing board of each county within the consortium, and
 246 the Secretary of Corrections based on the requirements of this
 247 section. If one or more other counties develop a unified public
 248 safety plan, the public safety coordinating council shall submit
 249 a single application to the department for funding. Continued
 250 contract funding shall be pursuant to subsection (5). The plan
 251 for a county or county consortium must cover at least a 5-year
 252 period and must include:

253 (a) A description of programs offered for the job placement
 254 and treatment of offenders in the community.

255 (b) A specification of community-based intermediate
 256 sentencing options to be offered and the types and number of
 257 offenders to be included in each program.

258 (c) Specific goals and objectives for reducing the
 259 projected percentage of commitments to the state prison system
 260 of persons with low total sentencing scores pursuant to the
 261 Criminal Punishment Code.

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262 (d) Specific evidence of the population status of all
 263 programs which are part of the plan, which evidence establishes
 264 that such programs do not include offenders who otherwise would
 265 have been on a less intensive form of community supervision.

266 (e) The assessment of population status by the public
 267 safety coordinating council of all correctional facilities owned
 268 or contracted for by the county or by each county within the
 269 consortium.

270 (f) The assessment of bed space that is available for
 271 substance abuse intervention and treatment programs and the
 272 assessment of offenders in need of treatment who are committed
 273 to each correctional facility owned or contracted for by the
 274 county or by each county within the consortium.

275 (g) A description of program costs and sources of funds for
 276 each community corrections program, including community
 277 corrections funds, loans, state assistance, and other financial
 278 assistance.

279 Section 5. Subsection (13) of section 985.48, Florida
 280 Statutes, is amended to read:

281 985.48 Juvenile sexual offender commitment programs; sexual
 282 abuse intervention networks.—

283 (13) Subject to specific appropriation, availability of
 284 funds, or receipt of appropriate grant funds, the Office of the
 285 Attorney General, the Department of Children and Families ~~Family~~
 286 ~~Services, or~~ the Department of Juvenile Justice, ~~or local~~
 287 ~~juvenile justice councils~~ shall award grants to sexual abuse
 288 intervention networks that apply for such grants. The grants may
 289 be used for training, treatment, conditional release,
 290 evaluation, public awareness, and other specified community

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291 needs that are identified by the network. A grant shall be
 292 awarded based on the applicant's level of local funding, level
 293 of collaboration, number of juvenile sexual offenders to be
 294 served, number of victims to be served, and level of unmet
 295 needs.

296 Section 6. Paragraph (a) of subsection (1) and paragraphs
 297 (b) and (e) of subsection (2) of section 985.676, Florida
 298 Statutes, are amended to read:

299 985.676 Community juvenile justice partnership grants.—

300 (1) GRANTS; CRITERIA.—

301 (a) In order to encourage the development of a ~~county and~~
 302 circuit juvenile justice plan plans and the development and
 303 implementation of ~~county and~~ circuit interagency agreements
 304 under s. 985.664, the community juvenile justice partnership
 305 grant program is established and shall be administered by the
 306 department.

307 (2) GRANT APPLICATION PROCEDURES.—

308 (b) The department shall consider ~~the following in awarding~~
 309 ~~such grants:~~

310 ~~1. The recommendations of the juvenile justice county~~
 311 ~~council as to the priority that should be given to proposals~~
 312 ~~submitted by entities within a county.~~

313 ~~2.~~ the recommendations of the juvenile justice circuit
 314 advisory board as to the priority that should be given to
 315 proposals submitted by entities within a circuit in awarding
 316 such grants.

317 (e) Each entity that is awarded a grant as provided for in
 318 this section shall submit an annual evaluation report to the
 319 department, the circuit juvenile justice manager, and the

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320 juvenile justice circuit advisory board, ~~and the juvenile~~
 321 ~~justice county council~~, by a date subsequent to the end of the
 322 contract period established by the department, documenting the
 323 extent to which the program objectives have been met, the effect
 324 of the program on the juvenile arrest rate, and any other
 325 information required by the department. The department shall
 326 coordinate and incorporate all such annual evaluation reports
 327 with s. 985.632. Each entity is also subject to a financial
 328 audit and a performance audit.

329 Section 7. This act shall take effect October 1, 2013.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13

Meeting Date

Topic SB 676

Bill Number SB 676
(if applicable)

Name KRISTOPHER BROWNING

Amendment Barcode _____
(if applicable)

Job Title Legislative Coordinator

Address 204 South Monroe Street Suite 201
Street

Phone (850) 907-3436

Tallahassee FL 32301
City State Zip

E-mail Kristophe@barneybishop.com

Speaking: For Against Information

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/2013
Meeting Date

Topic Boards & Council

Bill Number B 676
(if applicable)

Name Ana Sanchez

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Dr.

Address 2737 Centarview Dr
Street

Phone 850-410-1097

Tallahassee FL 32399
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/2013

Meeting Date

Topic _____

Bill Number 676
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Committee on Judiciary

BILL: CS/SB 718

INTRODUCER: Judiciary Committee, Senator Stargel, and Others

SUBJECT: Dissolution of Marriage

DATE: March 13, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Brown | Cibula | JU | Fav/CS |
| 2. | _____ | _____ | CF | _____ |
| 3. | _____ | _____ | RC | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 718 amends the law on alimony awarded in dissolution of marriage cases.

The bill revises the factors a court must consider in awarding alimony:

- The court must consider the same factors in awarding temporary alimony, alimony sought without a concurrent filing of a dissolution of marriage, and alimony required upon entry of a final order.
- The bill deletes as a factor the standard of living enjoyed during a marriage, and replaces it with the net income and standard of living of each party in light of the alimony award.
- The bill also creates a rebuttable presumption that both parties will have a reduced standard of living after a dissolution of marriage.
- Nonmarital assets may be considered.
- The bill requires the court to impute income to an unemployed obligee based on the obligee's prior income and duration of unemployment.

In securing an alimony award, the bill limits to declining life insurance, the type of life insurance that a court may order an obligor to purchase. The death benefit of declining term life insurance declines over time.

The bill amends presumptions relating to alimony based on length of a marriage:

- The bill increases the number of years of marriage required for a marriage to qualify as a short-term, mid-term, or long-term marriage.
- The bill creates a rebuttable presumption against alimony for short-term marriages, and in favor of alimony for long-term marriages.
- The bill specifies percentage caps on an obligor's income that may be awarded as alimony, which are based on length of the marriage, and specifies exceptions to the caps.

The bill amends the forms of alimony:

- Permanent, periodic alimony is eliminated.
- Forms of alimony are prioritized in order of bridge-the-gap, followed by rehabilitative alimony, and lastly, durational alimony.
- The court may not award alimony for a period of time longer than 50 percent of the length of the marriage, unless clear and convincing evidence of circumstances justify a longer award.
- The bill limits the circumstances under which a court may award combinations of alimony forms.

The bill changes the way in which alimony is modified based on a substantial change in circumstances:

- The retirement of the obligor is a substantial change in circumstances.
- Alimony automatically terminates upon an obligor's normal retirement age.
- A court must reduce or terminate an alimony award based on a supportive relationship between the obligee and another person.
- An obligee who is in a supportive relationship and who challenges a modification petition must prove by clear and convincing evidence that the obligee's need for alimony is not reduced by the relationship.
- The modification of an alimony award is presumed to apply retroactively to the date of filing of a petition for modification.

The bill restricts the court's ability to reserve jurisdiction for a separate adjudication of issues after entry of a final judgment in a dissolution of marriage case.

The bill applies to awards of alimony and agreements for alimony in effect before the effective date of the bill. As such, the bill itself effectively is a substantial change in circumstance warranting the modification or termination of an alimony award. The bill provides a schedule for obligors to file modification actions based on length of marriage and type of alimony award.

The bill provides a presumption in favor of equal time-sharing for parents of minor children. The presumption will not apply if a parent has a history of violence or otherwise poses a danger to a

child; a parent is incarcerated; the distance between residences makes equal time-sharing impracticable; or a parent does not request at least 50 percent time-sharing. The court may depart from equal time sharing under extenuating circumstances if it provides written findings justifying its decision. This provision applies prospectively.

This bill substantially amends the following sections of the Florida Statutes: 61.071, 61.08, 61.09, 61.13, 61.14, and 61.19.

II. Present Situation:

Alimony as Other Than Alimony Awarded through a Final Court Order

Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The right to temporary alimony ends when the divorce becomes final, which is after the appeal process has run.¹ Florida law stipulates that a party may request alimony pendente lite through petition or motion, and if well-founded, the court must order a reasonable amount.²

Alimony Requested Without a Filing of Dissolution

The court may consider a request for alimony or child support from a party without a filing for a dissolution of marriage in place, based on the ability of the other party to contribute.³

Bases for Alimony

Chapter 61, F.S., addresses dissolution of marriage proceedings. Alimony is based on financial need and the ability to pay.⁴ After making an initial determination to award alimony, the court must consider:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.⁵

¹ 24A AM. JR. 2D *Divorce and Separation* §615.

² Section 61.071, F.S.

³ Section 61.09, F.S.

⁴ Section 61.08(2), F.S.

⁵ Section 61.08(2)(a) through (j), F.S.

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.⁶

Presumptions that Favor or Disfavor Alimony Based on Length of Marriage

In determining the duration or form of an alimony award, the court applies presumptions based on the duration of the marriage. The length of marriage runs from the date of marriage until the date of the filing for dissolution of marriage.⁷

Florida law provides that:

- A short-term marriage is a marriage of less than 7 years.
- A moderate-term marriage is a marriage of more than 7 but less than 17 years.
- A long-term marriage is a marriage of 17 years or more.⁸

As shown in the table below, the statutes appear to create a presumption in favor of permanent periodic alimony following a long-term marriage.⁹ A similar presumption appears to exist in favor of durational alimony following a moderate-term marriage or following a long-term marriage if permanent alimony is not appropriate. Durational alimony generally may not exceed the length of the marriage.¹⁰

The law appears to disfavor permanent alimony following a moderate-term marriage by requiring clear and convincing evidence for an award of permanent alimony. Permanent alimony for a short-term marriage is reserved for only exceptional circumstances.

Forms of Alimony

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.¹¹

Types of Alimony

| | Bridge-the-gap | Rehabilitative | Durational | Permanent |
|----------------|--|---|--|--|
| Purpose | Allows a party to transition from being married to being single upon showing legitimate short-term need. | Assists a party in becoming self-sufficient through skills training, education, or work experience. | Provides a party with economic assistance for a set period of time after a marriage of short or moderate duration, or a marriage of long duration if no need exists for a permanent award. | Provides for the needs and necessities of life as established during the marriage for a party who lacks the financial ability to maintain needs. |

⁶ Section 61.08(3), F.S.

⁷ *Id.*

⁸ Section 61.08(4), F.S.

⁹ Section 61.08(8), F.S.

¹⁰ Section 61.08(7), F.S.

¹¹ Section 61.08(1), F.S.

| | | | | |
|-------------------------------|--|--|---|---|
| Length of Time | Up to 2 years. | Temporary. | Set period of time but not to exceed length of marriage. | Permanent. |
| Modifiable/Termination | Not modifiable in amount or duration. Can terminate upon death or remarriage of recipient. | Modifiable upon a showing of a substantial change in circumstances, including cohabitation. Can be terminated upon noncompliance or completion of the rehabilitative plan. | Modifiable or terminated based on a substantial change in circumstances, including cohabitation. Length of award may not change unless exceptional circumstances are shown. Terminates upon death or remarriage of recipient. | Modifiable upon a substantial change in circumstances, including cohabitation. Terminates upon death or remarriage of recipient. |
| How Established | | Requires inclusion of a specific and defined rehabilitative plan. | | Awardable if appropriate for a marriage of long duration, upon a showing of clear and convincing evidence for a marriage of moderate duration, and with written findings of exceptional circumstances for a marriage of short duration. |

Modification and Termination of Alimony

Four bases exist for a court to reconsider an alimony award, including whether to terminate alimony:

- A substantial change in circumstances of either party;
- Cohabitation by the obligee;
- Remarriage by the obligee; or
- Death of either party.¹²

Substantial Change of Circumstance

A motion for modification may be made by either party for the court to consider a substantial change in circumstances.¹³ If the court modifies support on this basis, the court is authorized to modify support retroactively to the date of the filing of the action.¹⁴

¹² Section 61.08(5) through (8), F.S.

¹³ Section 61.14(1)(a), F.S. Courts have found a substantial change in circumstance where: an obligor’s health deteriorated due to two heart attacks, he was unable to continue gainful employment, and received social security disability income as his full income (*Scott v. Scott*, 2012 WL 5621672, 1 (Fla. 5th DCA 2012)). An obligor demonstrated a showing of a substantial change in circumstance through a detrimental impact on his business in manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court also noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)). The court found a substantial change in circumstance where financial affidavits showed that obligee’s income jumped from \$1,710 to \$4,867 a month, making her income higher than the obligor’s income of \$3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

Cohabitation

To modify alimony on an assertion of cohabitation between the alimony obligee and a third party, the court must find:

- The existence of a supportive relationship between the recipient and a third party; and
- That the recipient lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.¹⁵

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.¹⁶

Premarital Agreements

Premarital agreements must be in writing and signed by both parties.¹⁷ Parties may contract on all aspects of spousal support, including addressing how alimony is established, modified, waived, or eliminated.¹⁸ Florida law does not require consideration for a court to uphold and enforce a premarital agreement.¹⁹ The agreement takes effect upon the event of marriage.²⁰ Agreements can be overturned on the same bases that other sorts of contracts are rendered unenforceable, including that a party did not enter the agreement voluntarily; a party effected the agreement under fraud, duress, coercion, or overreaching; or the agreement was unconscionable.²¹

Parenting and Time-sharing

The public policy of the state is for each minor child to have frequent and continuing contact with both parents.²² The court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.²³

¹⁴ *Id.*

¹⁵ Section 61.14(b), F.S.

¹⁶ Section 61.14(1)(b)1., F.S.

¹⁷ Section 61.079(3), F.S.

¹⁸ Section 61.079(4)(a)4., F.S.

¹⁹ *Id.*

²⁰ Section 61.079(5), F.S.

²¹ Section 61.079(7)(a), F.S.

²² Section 61.13(2)(c)1., F.S.

²³ Section 61.13 (2)(c)2., F.S.

III. Effect of Proposed Changes:

This bill amends Florida law on alimony awards in dissolution of marriage cases.

Alimony Pendente Lite

Current law does not specify guidelines for the court to consider in awarding temporary alimony. This bill requires the court to calculate temporary alimony using the same statutory factors required for other alimony awards.

Alimony Requested Without a Filing of Dissolution

This bill requires the court to calculate alimony requested without a filing of dissolution of marriage using the same statutory factors required for other alimony awards.

Bases for Alimony

The bill establishes that a party seeking alimony has the burden of proving a need for alimony and that the other party has the ability to pay alimony. If the need and ability to pay are established, the court must consider the revised statutory factors in determining the type and amount of alimony.

This bill removes the standard of living established during the marriage as a factor for the court to consider in awarding alimony. The bill adds a new factor, which is the net income and standard of living of each party in light of the alimony award. Moreover, the bill creates a rebuttable presumption that both parties will have a reduced standard of living after dissolution of marriage, which a party may overcome by a preponderance of the evidence.

The bill appears to allow the court to consider nonmarital assets as a factor if the assets were relied upon by the parties during the marriage.

Imputing Income

The bill requires a court to impute income to the obligee in dissolution cases for marriages other than long-term marriages. However, a court may not impute social security retirement benefits as income to an obligor of alimony.

A court must impute income to the obligee in varying percentages of the obligee's income before becoming unemployed, based on the length of time that an obligee is unemployed. An obligee can dispute imputed income by a showing of a preponderance of evidence that the obligee does not have the ability to earn the imputed income through reasonable means. The bill does not address situations in which an obligee is underemployed.

Presumptions that Favor or Disfavor Alimony Based on Length of Marriage

The bill increases the amount of time for a marriage to qualify as a short-term, moderate-term, or long-term marriage.

The bill increases the length of time for each category of marriage by 3 years as follows:

- The duration of a short-term marriage is increased to 10 years.
- The duration of a moderate-term marriage is increased to more than 10 years but less than 20 years.
- The duration of a long-term marriage is increased to 20 years or more.²⁴

The increased length of time within each category has the effect of increasing the threshold number of years of marriage required for an obligee to be eligible to qualify for alimony.

Short-term Marriage

The bill creates a rebuttable presumption against any award of alimony for a short-term marriage. The party seeking alimony may overcome the presumption by a showing of clear and convincing evidence. Any monthly award is capped at 20 percent of the obligor's net income.

Mid-term Marriage

The bill stipulates that no presumption applies for a mid-term marriage, unless overcome by the party seeking alimony by a preponderance of the evidence. Any monthly award is capped at 30 percent of the obligor's net income.

Long-term Marriage

The bill applies a rebuttable presumption in favor of alimony for a long-term marriage, unless the party opposing alimony establishes by clear and convincing evidence that no needs exists. Any monthly award is capped at 33 percent of the obligor's net income.

The court may enter an order exceeding the monthly caps on income if the court provides a written finding of a need for additional alimony. The court may not award alimony to a party with a monthly net income equal to or greater than the other party.

Forms of Alimony

This bill eliminates permanent periodic alimony. Instead, the court prioritizes bridge-the-gap alimony, followed by rehabilitative alimony, and lastly, durational alimony. In rare instances, the court may award a party alimony for longer than 50 percent of the length of the marriage. However, the party must establish by clear and convincing evidence that circumstances justify the need for a longer period of alimony. The bill authorizes the court to award a combination of forms of alimony, but only to provide greater economic assistance towards rehabilitation.

This bill aligns life insurance requirements with duration of an alimony award. Specifically, the bill requires the court to order a decreasing term life insurance policy when life insurance is ordered as security for alimony. The death benefit of a decreasing term life insurance policy

²⁴ Section 61.08(4), F.S.

decreases over time. Requirements for life insurance in orders are modifiable if a court modifies an alimony award.

Modification and Termination of Alimony

This bill imposes a burden of proof, clear and convincing evidence, on the party seeking an increase in alimony based on an increased ability to pay. An increase is only considered permanent in nature when the obligor maintains it consistently for 2 years.

The bill creates a rebuttable presumption that a modification or termination of an alimony award is retroactive to the date of the petition filing. If the court finds that the obligee unnecessarily or unreasonably litigated modification, the court may award the obligor reasonable attorney fees and costs.

The bill provides that alimony automatically terminates upon:

- The date in which the durational limit is reached; or
- The obligee's normal retirement age for social security benefits.²⁵

Supportive Relationship

The bill authorizes an obligee in a supportive relationship to show by clear and convincing evidence that his or her long-term need has not reduced.

Retirement

Currently, the event of retirement alone does not change the continuation of alimony, unless the obligor can demonstrate a concurrent substantial change in circumstance. In addition to providing for automatic termination, the bill defines as a substantial change in circumstance:

- That an obligor has reached reasonable retirement age; has retired; and has no intent to return to work; or
- Has reached the normal retirement age for social security benefits.

Therefore, under the second basis, the bill does not appear to require the obligor to actually retire to qualify as a substantial change in circumstance.

When an obligor retires before normal retirement age, the court must consider whether the retirement age was reasonable, based on the obligor's age, health, work, and normal retirement age for that type of work.

Normal retirement age is not defined.

²⁵ The bill allows an obligor to file a petition for termination or modification of alimony effective upon the earlier of the retirement age or the date the obligor reaches the normal retirement age for social security benefits.

Parenting and Equal Time-sharing

This bill creates a presumption that equal time-sharing with a minor child is in the best interests of the child unless:

- A parent has a history of domestic violence, through a criminal conviction or a protective injunction, or is otherwise dangerous to a child;
- A parent is incarcerated;
- Distance between parental residences makes equal time-sharing impracticable; or
- A parent does not request at least 50 percent time-sharing.

A court may depart from an order of equal time-sharing if extenuating circumstances warrant departure. However, a court must make written findings justifying its decision.

The presumption in favor of equal-time sharing applies prospectively.

Adjudication of Issues Separate from Dissolution of Marriage

This bill limits the court's ability to reserve jurisdiction for a separate adjudication of issues after entry of a final judgment in a dissolution of marriage case.

Effective Date and Retroactive Application of Bill

The bill takes effect July 1, 2013. The provisions of the bill apply retroactively to all initial awards of, and agreements for, alimony entered before July 1, 2013, and to modifications of awards or modifiable agreements made before July 1, 2013.

An agreement may also be modified if it is modifiable and if it is 25 percent or more in duration or amount than an alimony award calculated under the provisions of the bill.

Obligors may file a modification action subject to a schedule provided in the bill based on the length of the marriage and type of alimony awarded.

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:

Unlawful Impairment of Contract

The bill applies retroactively to premarital agreements and marital settlement agreements incorporated into a judgment or other post nuptial agreements executed before the effective date of the bill. However, the power of the legislature to provide for the retroactive application of laws is restricted by Article I, s. 10, of the Florida Constitution which provides, in part: “No ... ex post facto law or law impairing the obligation of contracts shall be passed.” As such, the bill may violate Article I, s. 10 of the Florida Constitution.

Premarital Agreements

It is well-settled that premarital agreements are contracts.²⁶

Formerly, premarital agreements providing for a division of property and alimony ... were considered as being made in contemplation of divorce and therefore void as against public policy. In recent years, many courts have abandoned the view that premarital agreements are void as against public policy; this change has resulted from a recognition of the increasing number of divorces and from the growing belief that the public policy favoring enduring marriages may be fostered rather than frustrated by allowing the parties to determine by contract their expectations as to property division and support in the event of the dissolution of the marriage.²⁷

Florida law refers to premarital agreements as contracts, expressly provides that agreements do not require consideration, and provides the same bases for unenforceability of premarital agreements as other forms of contract.²⁸

Postnuptial Agreements

Courts treat postnuptial agreements as contracts.²⁹

Marital Settlement Agreements (MSA)

Likewise, courts consider as contracts marital settlement agreements incorporated into final judgments in dissolution of marriage cases. Courts interpret challenges to MSAs on the same basis as other forms of contract.³⁰ “A marital settlement

²⁶ 7 Am. Jur. *Proof of Facts*, 3d 581 (Originally published in 1990).

²⁷ *Id.*

²⁸ Section 61.079(5) and (7), F.S.

²⁹ Where MSA terms are clear and unambiguous, the court must glean party intent from the four corners of the document. (*Macleod v. Macleod*, 82 So. 3d 147, 149 (Fla. 4th DCA 2012).

³⁰ The First District Court of Appeal applied contract law in determining whether to admit parol evidence, or evidence outside the contract (MSA), on the basis that the contract language contains a latent ambiguity (*Toussaint v. Toussaint*, 2013 WL 264190, 2-3 (Fla. 1st DCA 2013)). A latent ambiguity, requiring extrinsic evidence, existed where an MSA failed to address financing of college education and the contract otherwise provided for equal payments for education costs (*Riera v.*

agreement entered into by the parties and ratified by a final judgment is a contract, subject to the laws of contract.”³¹

Separation of Powers

Article II, section 3 of the Florida Constitution provides: “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

The retroactive application of this bill may be challenged on the basis that the bill would have the impact of undoing final judgments entered into by the judicial branch.³²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Alimony obligors may benefit from the provisions of this bill. Alimony recipients may be adversely affected by the changes in the bill.

C. Government Sector Impact:

To the extent that the retroactive application of this bill creates an opening for modification or termination of alimony, judicial workload may increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

Riera, 86 So. 3d 1163, 1166—67 (Fla. 3d DCA 2012)). The court found no breach of contract from the plain language of the MSA. (*McCord v. McCord*, 94 So. 3d 719 (Fla. 2nd DCA 2012)).

³¹ *Ferguson v. Ferguson*, 54 So. 3d 553, 556 (Fla. 3d DCA 2011).

³² *Bush v. Schiavo*, 885 So. 2d 321, 332, 337 (Fla. 2004). “It is without question an invasion of the authority of the judicial branch for the Legislature to pass a law that allows the executive branch to interfere with the final judicial determination in a case. The continuing vitality of our system of separation of powers precludes the other two branches from nullifying the judicial branch’s final orders.”

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 Judiciary on March 12, 2013:

The committee substitute:

- Deletes a sentence which appeared to prohibit the award of alimony in any action other than a proceeding for dissolution of marriage.
- Provides that alimony automatically terminates on the obligor's, rather than the obligee's normal retirement age.
- Expands the circumstances that justify an alimony award having a duration of longer than 50 percent of the length of the marriage. Under the underlying bill, a party must prove the existence of exceptional circumstances. Under the committee substitute, a party need only prove the existence of circumstances.
- Provides a presumption, to apply prospectively, in favor of equal time-sharing for parents of minor children unless a parent has a history of violence or is otherwise dangerous to a child; a parent is incarcerated; the distance between residences makes equal time-sharing impracticable; or a parent does not request at least 50 percent time-sharing. The court may provide written findings for a departure from equal time-sharing in the presence of extenuating circumstances.
- Clarifies that the retroactive application of the bill does not apply to marital settlement agreements that are expressly nonmodifiable.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

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| Senate | . | House |
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The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete line 127

and insert:

2. The obligor's normal retirement age for social security



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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete lines 256 - 259
and insert:

by clear and convincing evidence the circumstances justifying
the need for a longer award of alimony, which circumstances must
be set out in writing by the court ~~the length of the marriage.~~



209714

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| Senate | . | House |
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| 03/13/2013 | . | |
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The Committee on Judiciary (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 410 and 411

insert:

Section 3. Paragraph (c) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and



209714

14 Enforcement Act, except that modification of a parenting plan
15 and time-sharing schedule requires a showing of a substantial,
16 material, and unanticipated change of circumstances.

17 1. It is the public policy of this state that each minor
18 child has frequent and continuing contact with both parents
19 after the parents separate or the marriage of the parties is
20 dissolved and to encourage parents to share the rights and
21 responsibilities, and joys, of childrearing. There is no
22 presumption for or against the father or mother of the child or
23 for or against any specific time-sharing schedule when creating
24 or modifying the parenting plan of the child. Equal time-sharing
25 with a minor child by both parents is presumed to be in the best
26 interests of the child unless the court finds that a parent is
27 unfit, that the distance between parental residences makes equal
28 time-sharing impracticable, or that a parent does not request at
29 least 50 percent time-sharing.

30 2. The court shall order that the parental responsibility
31 for a minor child be shared by both parents unless the court
32 finds that shared parental responsibility would be detrimental
33 to the child. Evidence that a parent has been convicted of a
34 misdemeanor of the first degree or higher involving domestic
35 violence, as defined in s. 741.28 and chapter 775, or meets the
36 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
37 detriment to the child. If the presumption is not rebutted after
38 the convicted parent is advised by the court that the
39 presumption exists, shared parental responsibility, including
40 time-sharing with the child, and decisions made regarding the
41 child, may not be granted to the convicted parent. However, the
42 convicted parent is not relieved of any obligation to provide



209714

43 financial support. If the court determines that shared parental
44 responsibility would be detrimental to the child, it may order
45 sole parental responsibility and make such arrangements for
46 time-sharing as specified in the parenting plan as will best
47 protect the child or abused spouse from further harm. Whether or
48 not there is a conviction of any offense of domestic violence or
49 child abuse or the existence of an injunction for protection
50 against domestic violence, the court shall consider evidence of
51 domestic violence or child abuse as evidence of detriment to the
52 child.

53 a. In ordering shared parental responsibility, the court
54 may consider the expressed desires of the parents and may grant
55 to one party the ultimate responsibility over specific aspects
56 of the child's welfare or may divide those responsibilities
57 between the parties based on the best interests of the child.
58 Areas of responsibility may include education, health care, and
59 any other responsibilities that the court finds unique to a
60 particular family.

61 b. The court shall order sole parental responsibility for a
62 minor child to one parent, with or without time-sharing with the
63 other parent if it is in the best interests of the minor child.

64 3. Access to records and information pertaining to a minor
65 child, including, but not limited to, medical, dental, and
66 school records, may not be denied to either parent. Full rights
67 under this subparagraph apply to either parent unless a court
68 order specifically revokes these rights, including any
69 restrictions on these rights as provided in a domestic violence
70 injunction. A parent having rights under this subparagraph has
71 the same rights upon request as to form, substance, and manner



209714

72 of access as are available to the other parent of a child,
73 including, without limitation, the right to in-person
74 communication with medical, dental, and education providers.

75 Section 4. The amendments by this act to s. 61.13, Florida
76 Statutes, which create a presumption in favor of equal time-
77 sharing apply prospectively to initial final custody orders made
78 on or after July 1, 2013. The amendments do not constitute a
79 substantial change in circumstances which warrant the
80 modification of a final custody order entered before July 1,
81 2013.

82
83 ===== T I T L E A M E N D M E N T =====

84 And the title is amended as follows:

85 Delete line 28

86 and insert:

87 alimony; amending 61.13, F.S.; establishing a
88 presumption that it is in the best interests of the
89 child for the court to order equal time-sharing for
90 each minor child; providing exceptions; amending s.
91 61.14, F.S.; providing for prospective application of
92 the presumption in favor of equal time-sharing;
93 authorizing a party



316752

LEGISLATIVE ACTION

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| Comm: RCS | . | |
| 03/13/2013 | . | |
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The Committee on Judiciary (Lee) recommended the following:

1 **Senate Substitute for Amendment (209714) (with title**
2 **amendment)**

3
4 Between lines 410 and 411
5 insert:

6 Section 3. Paragraph (c) of subsection (2) of section
7 61.13, Florida Statutes, is amended to read:

8 61.13 Support of children; parenting and time-sharing;
9 powers of court.—

10 (2)

11 (c) The court shall determine all matters relating to
12 parenting and time-sharing of each minor child of the parties in
13 accordance with the best interests of the child and in



316752

14 accordance with the Uniform Child Custody Jurisdiction and
15 Enforcement Act, except that modification of a parenting plan
16 and time-sharing schedule requires a showing of a substantial,
17 material, and unanticipated change of circumstances.

18 1. It is the public policy of this state that each minor
19 child has frequent and continuing contact with both parents
20 after the parents separate or the marriage of the parties is
21 dissolved and to encourage parents to share the rights and
22 responsibilities, and joys, of childrearing. There is no
23 presumption for or against the father or mother of the child or
24 for or against any specific time-sharing schedule when creating
25 or modifying the parenting plan of the child. Equal time-sharing
26 with a minor child by both parents is presumed to be in the best
27 interests of the child unless the court finds that:

28 a. The safety, well-being, and physical, mental, and
29 emotional health of the child would be endangered by equal time-
30 sharing, that visitation would be presumed detrimental
31 consistent with s. 39.0139(3), or that supervised visitation is
32 appropriate, if any is appropriate;

33 b. Clear and convincing evidence of extenuating
34 circumstances justify a departure from equal time-sharing and
35 the court makes written findings justifying the departure from
36 equal time-sharing;

37 c. A parent is incarcerated;

38 d. The distance between parental residences makes equal
39 time-sharing impracticable;

40 e. A parent does not request at least 50 percent time-
41 sharing;

42 f. A parent has been convicted of a misdemeanor of the



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43 first degree or higher involving domestic violence; or

44 g. A parent is subject to an injunction for protection
45 against domestic violence.

46 2. The court shall order that the parental responsibility
47 for a minor child be shared by both parents unless the court
48 finds that shared parental responsibility would be detrimental
49 to the child. Evidence that a parent has been convicted of a
50 misdemeanor of the first degree or higher involving domestic
51 violence, as defined in s. 741.28 and chapter 775, or meets the
52 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
53 detriment to the child. If the presumption is not rebutted after
54 the convicted parent is advised by the court that the
55 presumption exists, shared parental responsibility, including
56 time-sharing with the child, and decisions made regarding the
57 child, may not be granted to the convicted parent. However, the
58 convicted parent is not relieved of any obligation to provide
59 financial support. If the court determines that shared parental
60 responsibility would be detrimental to the child, it may order
61 sole parental responsibility and make such arrangements for
62 time-sharing as specified in the parenting plan as will best
63 protect the child or abused spouse from further harm. Whether or
64 not there is a conviction of any offense of domestic violence or
65 child abuse or the existence of an injunction for protection
66 against domestic violence, the court shall consider evidence of
67 domestic violence or child abuse as evidence of detriment to the
68 child.

69 a. In ordering shared parental responsibility, the court
70 may consider the expressed desires of the parents and may grant
71 to one party the ultimate responsibility over specific aspects



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72 of the child's welfare or may divide those responsibilities
73 between the parties based on the best interests of the child.
74 Areas of responsibility may include education, health care, and
75 any other responsibilities that the court finds unique to a
76 particular family.

77 b. The court shall order sole parental responsibility for a
78 minor child to one parent, with or without time-sharing with the
79 other parent if it is in the best interests of the minor child.

80 3. Access to records and information pertaining to a minor
81 child, including, but not limited to, medical, dental, and
82 school records, may not be denied to either parent. Full rights
83 under this subparagraph apply to either parent unless a court
84 order specifically revokes these rights, including any
85 restrictions on these rights as provided in a domestic violence
86 injunction. A parent having rights under this subparagraph has
87 the same rights upon request as to form, substance, and manner
88 of access as are available to the other parent of a child,
89 including, without limitation, the right to in-person
90 communication with medical, dental, and education providers.

91 Section 4. The amendment by this act to s. 61.13, Florida
92 Statutes, which creates a presumption in favor of equal time-
93 sharing applies prospectively to initial final custody orders
94 made on or after July 1, 2013. The amendments do not constitute
95 a substantial change in circumstances which warrant the
96 modification of a final custody order entered before July 1,
97 2013.

98
99 ===== T I T L E A M E N D M E N T =====

100 And the title is amended as follows:



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101 Delete line 28
102 and insert:
103 alimony; amending 61.13, F.S.; establishing a
104 presumption that it is in the best interests of the
105 child for the court to order equal time-sharing for
106 each minor child; providing exceptions; amending s.
107 61.14, F.S.; providing for prospective application of
108 the presumption in favor of equal time-sharing;
109 authorizing a party



300786

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/13/2013 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete lines 109 - 110
and insert:
periodic payments, ~~or~~ payments in lump sum, or both.



569134

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/13/2013 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete lines 637 - 638

and insert:

Such amendments also serve as a basis to modify an agreement for alimony, unless the agreement is expressly nonmodifiable, if the agreement is 25 percent or more in duration

By Senator Stargel

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1 A bill to be entitled
 2 An act relating to dissolution of marriage; amending
 3 s. 61.071, F.S.; requiring that alimony pendente lite
 4 be calculated in accordance with s. 61.08, F.S.;
 5 amending s. 61.08, F.S.; defining terms; revising
 6 factors to be considered for alimony awards; requiring
 7 a court to make written findings regarding the basis
 8 for awarding a combination of forms of alimony,
 9 including the type of alimony and length of time for
 10 which it is awarded; revising factors to be considered
 11 when deciding whether to award alimony; providing that
 12 an award of alimony granted automatically terminates
 13 without further action under certain circumstances;
 14 providing that the party seeking alimony has the
 15 burden of proof of demonstrating a need for alimony
 16 and that the other party has the ability to pay
 17 alimony; requiring the court to consider specified
 18 relevant factors when determining the proper type and
 19 amount of alimony; revising provisions relating to the
 20 protection of awards of alimony; revising provisions
 21 for an award of durational alimony; specifying
 22 criteria related to the rebuttable presumption to
 23 award or not to award alimony; deleting a provision
 24 authorizing permanent alimony; requiring written
 25 findings regarding the incomes and standard of living
 26 of the parties after dissolution of marriage; amending
 27 s. 61.09, F.S.; providing for the calculation of
 28 alimony; amending s. 61.14, F.S.; authorizing a party
 29 to apply for an order to terminate the amount of

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30 support, maintenance, or alimony; requiring that an
 31 alimony order be modified upward upon a showing by
 32 clear and convincing evidence of an increased ability
 33 to pay alimony by the other party; prohibiting an
 34 increase in an obligor's income from being considered
 35 permanent in nature until it has been maintained for a
 36 specified period without interruption; providing an
 37 exemption from the reduction or termination of an
 38 alimony award in certain circumstances; providing that
 39 there is a rebuttable presumption that any
 40 modification or termination of an alimony award is
 41 retroactive to the date of the filing of the petition;
 42 providing for an award of attorney fees and costs if
 43 it is determined that an obligee unnecessarily or
 44 unreasonably litigates a petition for modification or
 45 termination of an alimony award; revising provisions
 46 relating to the effect of a supportive relationship on
 47 an award of alimony; providing that income and assets
 48 of the obligor's spouse or the person with whom the
 49 obligor resides may not be considered in the
 50 redetermination in a modification action; prohibiting
 51 an alimony award from being modified providing that if
 52 the court orders alimony concurrent with a child
 53 support order, the alimony award may not be modified
 54 because of the later modification or termination of
 55 child support payments; providing that the attaining
 56 of retirement age is a substantial change in
 57 circumstances; requiring the court to consider certain
 58 factors in determining whether the obligor's

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59 retirement is reasonable; requiring a court to
 60 terminate or reduce an alimony award based on certain
 61 factors; amending s. 61.19, F.S.; authorizing separate
 62 adjudication of issues in a dissolution of marriage
 63 case in certain circumstances; providing for
 64 retroactive application of the act to alimony awards
 65 entered before July 1, 2013; providing allowable dates
 66 for the modification of such awards; providing an
 67 effective date.

68
 69 Be It Enacted by the Legislature of the State of Florida:

70
 71 Section 1. Section 61.071, Florida Statutes, is amended to
 72 read:

73 61.071 Alimony pendente lite; suit money.—In every
 74 proceeding for dissolution of the marriage, a party may claim
 75 alimony and suit money in the petition or by motion, and if the
 76 petition is well founded, the court shall allow alimony
 77 calculated in accordance with s. 61.08 and a reasonable sum of
 78 suit money therefor. If a party in any proceeding for
 79 dissolution of marriage claims alimony or suit money in his or
 80 her answer or by motion, and the answer or motion is well
 81 founded, the court shall allow alimony calculated in accordance
 82 with s. 61.08 and a reasonable sum of suit money therefor.

83 Section 2. Section 61.08, Florida Statutes, is amended to
 84 read:

85 61.08 Alimony.—

86 (1) For purposes of this section, the term:

87 (a) "Alimony" means a court-ordered payment of support by

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88 an obligor to an obligee after the dissolution of a marriage.

89 (b) "Long-term marriage" means a marriage having a duration
 90 of 20 years or more, as measured from the date of the marriage
 91 to the date of filing the petition for dissolution.

92 (c) "Mid-term marriage" means a marriage having a duration
 93 of more than 10 years but less than 20 years, as measured from
 94 the date of the marriage to the date of filing the petition for
 95 dissolution.

96 (d) "Net income" means net income as determined in
 97 accordance with s. 61.30.

98 (e) "Short-term marriage" means a marriage having a
 99 duration equal to or less than 10 years, as measured from the
 100 date of the marriage to the date of filing the petition for
 101 dissolution.

102 (2) (a) ~~(1)~~ In a proceeding for dissolution of marriage, the
 103 court may grant alimony to either party in the form of, which
 104 alimony may be bridge-the-gap, rehabilitative, or durational
 105 alimony, or a permanent in nature or any combination of these
 106 forms of alimony, but shall prioritize an award of bridge-the-
 107 gap alimony, followed by rehabilitative alimony, over any other
 108 form of alimony. In an any award of alimony, the court may order
 109 periodic payments, or payments in lump sum, or both. Alimony may
 110 not be awarded in any other action.

111 (b) The court shall make written findings regarding the
 112 basis for awarding a combination of forms of alimony, including
 113 the type of alimony and length of time for which it is awarded.
 114 The court may award only a combination of forms of alimony to
 115 provide greater economic assistance in order to allow the
 116 recipient to achieve rehabilitation.

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117 (c) The court may consider the adultery of either party
 118 ~~spouse~~ and the circumstances thereof in determining the amount
 119 of alimony, if any, to be awarded.

120 (d) In all dissolution actions, the court shall include
 121 written findings of fact relative to the factors enumerated in
 122 subsection (3)-(2) supporting an award or denial of alimony.

123 (e) An award of alimony granted under this section
 124 automatically terminates without further action of either party
 125 or the court upon the earlier of:

- 126 1. The durational limits specified in this section; or
- 127 2. The obligee's normal retirement age for social security
 128 retirement benefits.

129 If the obligee proves by clear and convincing evidence that the
 130 need for alimony continues to exist and the court determines
 131 that the obligor continues to have the ability to pay, the court
 132 shall issue written findings justifying an extension of alimony
 133 consistent with the provisions of this section.

134 (f) The clerk of the court shall, upon request, indicate in
 135 writing that an alimony obligation has terminated in accordance
 136 with paragraph (e), unless there is a pending motion before the
 137 court disputing the fulfillment of the alimony obligation.

138 (3)-(2) The party seeking alimony has the burden of proof of
 139 demonstrating a need for alimony in accordance with subsection
 140 (8) and that the other party has the ability to pay alimony. In
 141 determining whether to award alimony ~~or maintenance~~, the court
 142 shall ~~first~~ make, in writing, a specific factual determination
 143 as to whether the other ~~either party has an actual need for~~
 144 ~~alimony or maintenance and whether either party has the ability~~

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146 to pay alimony ~~or maintenance~~. If the court finds that the a
 147 party seeking alimony has met its burden of proof in
 148 demonstrating a need for alimony ~~or maintenance~~ and that the
 149 other party has the ability to pay alimony ~~or maintenance~~, then
 150 in determining the proper type and amount of alimony ~~or~~
 151 ~~maintenance~~ under subsections (5)-(9) ~~(5)-(8)~~, the court shall
 152 consider all relevant factors, including, ~~but not limited to:~~

153 ~~(a) The standard of living established during the marriage.~~

154 (a) ~~(b)~~ The duration of the marriage.

155 (b) ~~(c)~~ The age and the physical and emotional condition of
 156 each party.

157 (c) ~~(d)~~ The financial resources of each party, including the
 158 portion of nonmarital assets that were relied upon by the
 159 parties during the marriage and the marital assets and
 160 liabilities distributed to each.

161 (d) ~~(e)~~ The earning capacities, educational levels,
 162 vocational skills, and employability of the parties and, when
 163 applicable, the time necessary for either party to acquire
 164 sufficient education or training to enable such party to find
 165 appropriate employment.

166 (e) ~~(f)~~ The contribution of each party to the marriage,
 167 including, but not limited to, services rendered in homemaking,
 168 child care, education, and career building of the other party.

169 (f) ~~(g)~~ The responsibilities each party will have with
 170 regard to any minor children that the parties ~~they~~ have in
 171 common.

172 (g) ~~(h)~~ The tax treatment and consequences to both parties
 173 of an any alimony award, which must be consistent with
 174 applicable state and federal tax laws and may include ~~including~~

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175 the designation of all or a portion of the payment as a
176 nontaxable, nondeductible payment.

177 (h)(i) All sources of income available to either party,
178 including income available to either party through investments
179 of any asset held by that party which was acquired during the
180 marriage or acquired outside the marriage and relied upon during
181 the marriage.

182 (i) The net income and standard of living available to each
183 party after the application of the alimony award. There is a
184 rebuttable presumption that both parties will have a lower
185 standard of living after the dissolution of marriage than the
186 standard of living they enjoyed during the marriage. This
187 presumption may be overcome by a preponderance of the evidence.

188 (j) Any other factor necessary to do equity and justice
189 between the parties, if that factor is specifically identified
190 in the award with findings of fact justifying the application of
191 the factor.

192 (4)(3) To the extent necessary to protect an award of
193 alimony, the court may order any party who is ordered to pay
194 alimony to purchase or maintain a decreasing term life insurance
195 policy or a bond, or to otherwise secure such alimony award with
196 any other assets that which may be suitable for that purpose, in
197 an amount adequate to secure the alimony award. Any such
198 security may be awarded only upon a showing of special
199 circumstances. If the court finds special circumstances and
200 awards such security, the court must make specific evidentiary
201 findings regarding the availability, cost, and financial impact
202 on the obligated party. Any security may be modifiable in the
203 event that the underlying alimony award is modified and shall be

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204 reduced in an amount commensurate with any reduction in the
205 alimony award.

206 ~~(4) For purposes of determining alimony, there is a~~
207 ~~rebuttable presumption that a short-term marriage is a marriage~~
208 ~~having a duration of less than 7 years, a moderate-term marriage~~
209 ~~is a marriage having a duration of greater than 7 years but less~~
210 ~~than 17 years, and long-term marriage is a marriage having a~~
211 ~~duration of 17 years or greater. The length of a marriage is the~~
212 ~~period of time from the date of marriage until the date of~~
213 ~~filing of an action for dissolution of marriage.~~

214 (5) Bridge-the-gap alimony may be awarded to assist a party
215 by providing support to allow the party to make a transition
216 from being married to being single. Bridge-the-gap alimony is
217 designed to assist a party with legitimate identifiable short-
218 term needs, and the length of an award may not exceed 2 years.
219 An award of bridge-the-gap alimony terminates upon the death of
220 either party or upon the remarriage of the party receiving
221 alimony. An award of bridge-the-gap alimony is shall not be
222 modifiable in amount or duration.

223 (6) (a) Rehabilitative alimony may be awarded to assist a
224 party in establishing the capacity for self-support through
225 either:

- 226 1. The redevelopment of previous skills or credentials; or
- 227 2. The acquisition of education, training, or work
- 228 experience necessary to develop appropriate employment skills or
- 229 credentials.

230 (b) In order to award rehabilitative alimony, there must be
231 a specific and defined rehabilitative plan which shall be
232 included as a part of any order awarding rehabilitative alimony.

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233 (c) An award of rehabilitative alimony may be modified or
 234 terminated only during the rehabilitative period in accordance
 235 with s. 61.14 based upon a substantial change in circumstances,
 236 upon noncompliance with the rehabilitative plan, or upon
 237 completion of the rehabilitative plan.

238 (7) Durational alimony may be awarded ~~when permanent~~
 239 ~~periodic alimony is inappropriate. The purpose of durational~~
 240 ~~alimony is~~ to provide a party with economic assistance for a set
 241 period of time following a short-term, mid-term, or long-term
 242 ~~marriage of short or moderate duration or following a marriage~~
 243 ~~of long duration if there is no ongoing need for support on a~~
 244 ~~permanent basis. When awarding durational alimony, the court~~
 245 ~~must make written findings that an award of another form of~~
 246 ~~alimony or a combination of the other forms of alimony is not~~
 247 ~~appropriate.~~ An award of durational alimony terminates upon the
 248 death of either party or upon the remarriage of the party
 249 receiving alimony. The amount of an award of durational alimony
 250 shall may be modified or terminated based upon a substantial
 251 change in circumstances or upon the existence of a supportive
 252 relationship in accordance with s. 61.14. ~~However,~~ The length of
 253 an award of durational alimony may not ~~be modified except under~~
 254 ~~exceptional circumstances and may not~~ exceed 50 percent of the
 255 length of the marriage, unless the party seeking alimony proves
 256 by clear and convincing evidence that exceptional circumstances
 257 justify the need for a longer award of alimony, which
 258 exceptional circumstances must be set out in writing by the
 259 court the length of the marriage.

260 (8)(a) There is a rebuttable presumption against awarding
 261 alimony for a short-term marriage. A party seeking alimony may

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262 overcome this presumption by demonstrating by clear and
 263 convincing evidence a need for alimony. If the court finds that
 264 the party has met its burden in demonstrating a need for alimony
 265 and that the other party has the ability to pay alimony, the
 266 court shall determine a monthly award of alimony that may not
 267 exceed 20 percent of the obligor's monthly net income.

268 (b) There is no presumption in favor of either party to an
 269 award of alimony for a mid-term marriage. A party seeking such
 270 alimony must prove by a preponderance of the evidence a need for
 271 alimony. If the court finds that the party has met its burden in
 272 demonstrating a need for alimony and that the other party has
 273 the ability to pay alimony, the court shall determine a monthly
 274 alimony obligation that may not exceed 30 percent of the
 275 obligor's monthly net income.

276 (c) There is a rebuttable presumption in favor of awarding
 277 alimony for a long-term marriage. A party against whom alimony
 278 is sought may overcome this presumption by demonstrating by
 279 clear and convincing evidence that there is no need for alimony.
 280 If the court finds that the party against whom alimony is sought
 281 fails to meet its burden to demonstrate that there is no need
 282 for alimony and that the party has the ability to pay alimony,
 283 the court shall determine a monthly alimony obligation that may
 284 not exceed 33 percent of the obligor's monthly net income.

285 (9) The court may order alimony exceeding the monthly net
 286 income limits established in subsection (8) if the court
 287 determines, in accordance with the factors in subsection (3),
 288 that there is a need for additional alimony, which determination
 289 must be set out in writing. Permanent alimony may be awarded to
 290 provide for the needs and necessities of life as they were

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291 ~~established during the marriage of the parties for a party who~~
 292 ~~lacks the financial ability to meet his or her needs and~~
 293 ~~necessities of life following a dissolution of marriage.~~
 294 ~~Permanent alimony may be awarded following a marriage of long~~
 295 ~~duration if such an award is appropriate upon consideration of~~
 296 ~~the factors set forth in subsection (2), following a marriage of~~
 297 ~~moderate duration if such an award is appropriate based upon~~
 298 ~~clear and convincing evidence after consideration of the factors~~
 299 ~~set forth in subsection (2), or following a marriage of short~~
 300 ~~duration if there are written findings of exceptional~~
 301 ~~circumstances. In awarding permanent alimony, the court shall~~
 302 ~~include a finding that no other form of alimony is fair and~~
 303 ~~reasonable under the circumstances of the parties. An award of~~
 304 ~~permanent alimony terminates upon the death of either party or~~
 305 ~~upon the remarriage of the party receiving alimony. An award may~~
 306 ~~be modified or terminated based upon a substantial change in~~
 307 ~~circumstances or upon the existence of a supportive relationship~~
 308 ~~in accordance with s. 61.14.~~

309 (10) A party against whom alimony is sought who has met the
 310 requirements for retirement in accordance with s. 61.14(12)
 311 before the filing of the petition for dissolution is not
 312 required to pay alimony unless the party seeking alimony proves
 313 by clear and convincing evidence the other party has the ability
 314 to pay alimony, in addition to all other requirements of this
 315 section.

316 (11)(9) Notwithstanding any other law, alimony may not be
 317 awarded to a party who has a monthly net income that is equal to
 318 or more than the other party. Except in the case of a long-term
 319 marriage, in awarding alimony, the court shall impute income to

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320 the obligor and obligee as follows:

321 (a) In the case of the obligor, social security retirement
 322 benefits may not be imputed to the obligor, as demonstrated by a
 323 social security retirement benefits entitlement letter.

324 (b) In the case of the obligee, if the obligee:

325 1. Is unemployed at the time the petition is filed and has
 326 been unemployed for less than 1 year before the time of the
 327 filing of the petition, the obligee's monthly net income shall
 328 be imputed at 90 percent of the obligee's prior monthly net
 329 income.

330 2. Is unemployed at the time the petition is filed and has
 331 been unemployed for at least 1 year but less than 2 years before
 332 the time of the filing of the petition, the obligee's monthly
 333 net income shall be imputed at 80 percent of the obligee's prior
 334 monthly net income.

335 3. Is unemployed at the time the petition is filed and has
 336 been unemployed for at least 2 years but less than 3 years
 337 before the time of the filing of the petition, the obligee's
 338 monthly net income shall be imputed at 70 percent of the
 339 obligee's prior monthly net income.

340 4. Is unemployed at the time the petition is filed and has
 341 been unemployed for at least 3 years but less than 4 years
 342 before the time of the filing of the petition, the obligee's
 343 monthly net income shall be imputed at 60 percent of the
 344 obligee's prior monthly net income.

345 5. Is unemployed at the time the petition is filed and has
 346 been unemployed for at least 4 years but less than 5 years
 347 before the time of the filing of the petition, the obligee's
 348 monthly net income shall be imputed at 50 percent of the

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349 obligee's prior monthly net income.

350 6. Is unemployed at the time the petition is filed and has
 351 been unemployed for at least 5 years before the time of the
 352 filing of the petition, the obligee's monthly net income shall
 353 be imputed at 40 percent of the obligee's prior monthly net
 354 income, or the monthly net income of a minimum wage earner at
 355 the time of the filing of the petition, whichever is greater.

356 7. Proves by a preponderance of the evidence that he or she
 357 does not have the ability to earn the imputed income through
 358 reasonable means, the court shall reduce the imputation of
 359 income specified in this paragraph. The award of alimony may not
 360 leave the payor with significantly less net income than the net
 361 income of the recipient unless there are written findings of
 362 exceptional circumstances.

363 (12) (a) (10) (a) With respect to any order requiring the
 364 payment of alimony entered on or after January 1, 1985, unless
 365 the provisions of paragraph (c) or paragraph (d) applies apply,
 366 the court shall direct in the order that the payments of alimony
 367 be made through the appropriate depository as provided in s.
 368 61.181.

369 (b) With respect to any order requiring the payment of
 370 alimony entered before January 1, 1985, upon the subsequent
 371 appearance, on or after that date, of one or both parties before
 372 the court having jurisdiction for the purpose of modifying or
 373 enforcing the order or in any other proceeding related to the
 374 order, or upon the application of either party, unless the
 375 ~~provisions of~~ paragraph (c) or paragraph (d) applies apply, the
 376 court shall modify the terms of the order as necessary to direct
 377 that payments of alimony be made through the appropriate

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378 depository as provided in s. 61.181.

379 (c) If there is no minor child, alimony payments need not
 380 be directed through the depository.

381 (d)1. If there is a minor child of the parties and both
 382 parties so request, the court may order that alimony payments
 383 need not be directed through the depository. In this case, the
 384 order of support must ~~shall~~ provide, or be deemed to provide,
 385 that either party may subsequently apply to the depository to
 386 require that payments be made through the depository. The court
 387 shall provide a copy of the order to the depository.

388 2. If ~~the provisions of~~ subparagraph 1. applies apply,
 389 either party may subsequently file with the depository an
 390 affidavit alleging default or arrearages in payment and stating
 391 that the party wishes to initiate participation in the
 392 depository program. The party shall provide copies of the
 393 affidavit to the court and the other party or parties. Fifteen
 394 days after receipt of the affidavit, the depository shall notify
 395 all parties that future payments shall be directed to the
 396 depository.

397 3. In IV-D cases, the IV-D agency has ~~shall have~~ the same
 398 rights as the obligee in requesting that payments be made
 399 through the depository.

400 Section 3. Section 61.09, Florida Statutes, is amended to
 401 read:

402 61.09 Alimony and child support unconnected with
 403 dissolution.—If a person having the ability to contribute to the
 404 maintenance of his or her spouse and support of his or her minor
 405 child fails to do so, the spouse who is not receiving support
 406 may apply to the court for alimony and for support for the child

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407 without seeking dissolution of marriage, and the court shall
 408 enter an order as it deems just and proper. Alimony awarded
 409 under this section shall be calculated in accordance with s.
 410 61.08.

411 Section 4. Subsection (1) of section 61.14, Florida
 412 Statutes, is amended, paragraph (c) is added to subsection (11)
 413 of that section, and subsection (12) is added to that section,
 414 to read:

415 61.14 Enforcement and modification of support, maintenance,
 416 or alimony agreements or orders.—

417 (1) (a) When the parties enter into an agreement for
 418 payments for, or instead of, support, maintenance, or alimony,
 419 whether in connection with a proceeding for dissolution or
 420 separate maintenance or with any voluntary property settlement,
 421 or when a party is required by court order to make any payments,
 422 and the circumstances or the financial ability of either party
 423 changes or the child who is a beneficiary of an agreement or
 424 court order as described herein reaches majority after the
 425 execution of the agreement or the rendition of the order, either
 426 party may apply to the circuit court of the circuit in which the
 427 parties, or either of them, resided at the date of the execution
 428 of the agreement or reside at the date of the application, or in
 429 which the agreement was executed or in which the order was
 430 rendered, for an order terminating, decreasing, or increasing
 431 the amount of support, maintenance, or alimony, and the court
 432 has jurisdiction to make orders as equity requires, with due
 433 regard to the changed circumstances or the financial ability of
 434 the parties or the child, decreasing, increasing, or confirming
 435 the amount of separate support, maintenance, or alimony provided

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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436 for in the agreement or order. A finding that medical insurance
 437 is reasonably available or the child support guidelines schedule
 438 in s. 61.30 may constitute changed circumstances. Except as
 439 otherwise provided in s. 61.30(11)(c), the court may modify an
 440 order of support, maintenance, or alimony by terminating,
 441 increasing, or decreasing the support, maintenance, or alimony
 442 retroactively to the date of the filing of the action or
 443 supplemental action for modification as equity requires, giving
 444 due regard to the changed circumstances or the financial ability
 445 of the parties or the child.

446 (b) 1. An alimony order shall be modified upward upon a
 447 showing by clear and convincing evidence of an increased ability
 448 to pay alimony. Clear and convincing evidence must include, but
 449 need not limited to, federal tax returns. An increase in an
 450 obligor's income may not be considered permanent in nature
 451 unless the increase has been maintained without interruption for
 452 at least 2 years, taking into account the obligor's ability to
 453 sustain his or her income.

454 2.1. Notwithstanding subparagraph 1., the court shall may
 455 reduce or terminate an award of alimony upon specific written
 456 findings by the court that since the granting of a divorce and
 457 the award of alimony, a supportive relationship has existed
 458 between the obligee and another a person, except upon a showing
 459 by clear and convincing evidence by the obligee that his or her
 460 long-term need for alimony, taking into account the totality of
 461 the circumstances, has not been reduced by the supportive
 462 relationship with whom the obligee resides. On the issue of
 463 whether alimony should be reduced or terminated under this
 464 paragraph, the burden is on the obligor to prove by a

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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465 preponderance of the evidence that a supportive relationship
466 exists.

467 ~~3.2~~ In determining whether an existing award of alimony
468 should be reduced or terminated because of an alleged supportive
469 relationship between an obligee and a person who is not related
470 by consanguinity or affinity and with whom the obligee resides,
471 the court shall elicit the nature and extent of the relationship
472 in question. The court shall give consideration, without
473 limitation, to circumstances, including, but not limited to, the
474 following, in determining the relationship of an obligee to
475 another person:

476 a. The extent to which the obligee and the other person
477 have held themselves out as a married couple by engaging in
478 conduct such as using the same last name, using a common mailing
479 address, referring to each other in terms such as "my husband"
480 or "my wife," or otherwise conducting themselves in a manner
481 that evidences a permanent supportive relationship.

482 b. The period of time that the obligee has resided with the
483 other person in a permanent place of abode.

484 c. The extent to which the obligee and the other person
485 have pooled their assets or income or otherwise exhibited
486 financial interdependence.

487 d. The extent to which the obligee or the other person has
488 supported the other, in whole or in part.

489 e. The extent to which the obligee or the other person has
490 performed valuable services for the other.

491 f. The extent to which the obligee or the other person has
492 performed valuable services for the other's company or employer.

493 g. Whether the obligee and the other person have worked

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494 together to create or enhance anything of value.

495 h. Whether the obligee and the other person have jointly
496 contributed to the purchase of any real or personal property.

497 i. Evidence in support of a claim that the obligee and the
498 other person have an express agreement regarding property
499 sharing or support.

500 j. Evidence in support of a claim that the obligee and the
501 other person have an implied agreement regarding property
502 sharing or support.

503 k. Whether the obligee and the other person have provided
504 support to the children of one another, regardless of any legal
505 duty to do so.

506 ~~4.3~~ This paragraph does not abrogate the requirement that
507 every marriage in this state be solemnized under a license, does
508 not recognize a common law marriage as valid, and does not
509 recognize a de facto marriage. This paragraph recognizes only
510 that relationships do exist that provide economic support
511 equivalent to a marriage and that alimony terminable on
512 remarriage may be reduced or terminated upon the establishment
513 of equivalent equitable circumstances as described in this
514 paragraph. The existence of a conjugal relationship, though it
515 may be relevant to the nature and extent of the relationship, is
516 not necessary for the application of the provisions of this
517 paragraph.

518 5. There is a rebuttable presumption that any modification
519 or termination of an alimony award is retroactive to the date of
520 the filing of the petition. In an action under this section, if
521 it is determined that the obligee unnecessarily or unreasonably
522 litigated the underlying petition for modification or

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523 termination, the court may award the obligor his or her
 524 reasonable attorney fees and costs pursuant to s. 61.16 and
 525 applicable case law.

526 (c) For each support order reviewed by the department as
 527 required by s. 409.2564(11), if the amount of the child support
 528 award under the order differs by at least 10 percent but not
 529 less than \$25 from the amount that would be awarded under s.
 530 61.30, the department shall seek to have the order modified and
 531 any modification shall be made without a requirement for proof
 532 or showing of a change in circumstances.

533 (d) The department ~~may shall have authority to~~ adopt rules
 534 to administer ~~implement~~ this section.

535 (11)

536 (c) If the court orders alimony payable concurrent with a
 537 child support order, the alimony award may not be modified
 538 solely because of a later reduction or termination of child
 539 support payments, unless the alimony award as determined by the
 540 court at the time of dissolution is insufficient to meet the
 541 needs of the obligee.

542 (12) (a) The fact that an obligor has reached a reasonable
 543 retirement age for his or her profession, has retired, and has
 544 no intent to return to work, or has reached the normal
 545 retirement age for social security benefits, is considered a
 546 substantial change in circumstances as a matter of law. An
 547 obligor who has reached the normal retirement age for social
 548 security benefits shall be considered to have reached a
 549 reasonable retirement age. With regard to an obligor who has
 550 retired before the normal retirement age for social security
 551 benefits, the court shall consider the following in determining

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552 whether the obligor's retirement age is reasonable:

553 1. Age.

554 2. Health.

555 3. Type of work.

556 4. Normal retirement age for that type of work.

557 (b) In anticipation of retirement, the obligor may file a
 558 petition for termination or modification of the alimony award
 559 effective upon the earlier of the retirement date or the date
 560 the obligor reaches the normal retirement age for social
 561 security benefits. The court shall terminate the award or reduce
 562 the award based on the circumstances of the parties after
 563 retirement and based on the factors in s. 61.08, unless the
 564 obligee proves by clear and convincing evidence that the need
 565 for alimony at the present level continues to exist and that the
 566 obligor's ability to pay has not been diminished.

567 Section 5. Section 61.19, Florida Statutes, is amended to
 568 read:

569 61.19 Entry of judgment of dissolution of marriage~~,7~~ delay
 570 period; separate adjudication of issues.-

571 (1) A ~~No~~ final judgment of dissolution of marriage may not
 572 be entered until at least 20 days have elapsed from the date of
 573 filing the original petition for dissolution of marriage~~,7~~ but
 574 the court, on a showing that injustice would result from this
 575 delay, may enter a final judgment of dissolution of marriage at
 576 an earlier date.

577 (2) (a) During the first 180 days after the date of service
 578 of the original petition for dissolution of marriage, the court
 579 may not grant a final dissolution of marriage with a reservation
 580 of jurisdiction to subsequently determine all other substantive

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581 issues unless the court makes written findings that there are
 582 exceptional circumstances that make the use of this process
 583 clearly necessary to protect the parties or their children and
 584 that granting a final dissolution will not cause irreparable
 585 harm to either party or the children. Before granting a final
 586 dissolution of marriage with a reservation of jurisdiction to
 587 subsequently determine all other substantive issues, the court
 588 shall enter temporary orders necessary to protect the parties
 589 and their children, which orders remain effective until all
 590 other issues can be adjudicated by the court. The desire of one
 591 party to remarry does not justify the use of this process.

592 (b) If more than 180 days have elapsed after the date of
 593 service of the original petition for dissolution of marriage,
 594 the court may grant a final dissolution of marriage with a
 595 reservation of jurisdiction to subsequently determine all other
 596 substantive issues only if the court enters temporary orders
 597 necessary to protect the parties and their children, which
 598 orders remain effective until such time as all other issues can
 599 be adjudicated by the court, and makes a written finding that no
 600 irreparable harm will result from granting a final dissolution.

601 (c) If more than 365 days have elapsed after the date of
 602 service of the original petition for dissolution of marriage,
 603 absent a showing by either party that irreparable harm will
 604 result from granting a final dissolution, the court shall, upon
 605 request of either party, immediately grant a final dissolution
 606 of marriage with a reservation of jurisdiction to subsequently
 607 determine all other substantive issues. Before granting a final
 608 dissolution of marriage with a reservation of jurisdiction to
 609 subsequently determine all other substantive issues, the court

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610 shall enter temporary orders necessary to protect the parties
 611 and their children, which orders remain effective until all
 612 other issues can be adjudicated by the court.

613 (d) The temporary orders necessary to protect the parties
 614 and their children entered before granting a dissolution of
 615 marriage without an adjudication of all substantive issues may
 616 include, but are not limited to, temporary orders that:

- 617 1. Restrict the sale or disposition of property.
- 618 2. Protect and preserve the marital assets.
- 619 3. Establish temporary support.
- 620 4. Provide for maintenance of health insurance.
- 621 5. Provide for maintenance of life insurance.

622 (e) The court is not required to enter temporary orders to
 623 protect the parties and their children if the court enters a
 624 final judgment of dissolution of marriage which adjudicates
 625 substantially all of the substantive issues between the parties
 626 but reserves jurisdiction to address ancillary issues such as
 627 the entry of a qualified domestic relations order or the
 628 adjudication of attorney fees and costs.

629 Section 6. (1) The amendments to chapter 61, Florida
 630 Statutes, made by this act apply to all initial awards of, and
 631 agreements for, alimony entered before July 1, 2013, and to all
 632 modifications of such awards or agreements made before July 1,
 633 2013, with the exception of agreements that are expressly
 634 nonmodifiable. Such amendments may serve as a basis to modify
 635 awards entered before July 1, 2013, or as a basis to change the
 636 amount or duration of an award existing before July 1, 2013.
 637 Such amendments may also serve as a basis to modify an agreement
 638 for alimony if the agreement is 25 percent or more in duration

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639 or amount than an alimony award calculated under the amendments
640 made by this act.

641 (2) An obligor whose initial award or modification of such
642 award was made before July 1, 2013, may file a modification
643 action according to the following schedule:

644 (a) An obligor who was married to the alimony recipient 8
645 years or less may file a modification action on or after July 1,
646 2013.

647 (b) An obligor who was married to the alimony recipient 8
648 years or more, but less than 15 years, may file a modification
649 action on or after July 1, 2014.

650 (c) An obligor who has agreed to durational alimony of less
651 than 10 years may file a modification action on or after July 1,
652 2015.

653 (3) An obligor whose initial agreement or modification of
654 such agreement was made before July 1, 2013, may file a
655 modification action according to the following schedule:

656 (a) An obligor who has agreed to permanent alimony may file
657 a modification action on or after July 1, 2013.

658 (b) An obligor who has agreed to durational alimony of 10
659 years or more may file a modification action on or after July 1,
660 2014.

661 (c) An obligor who has agreed to durational alimony of more
662 than 5 years but less than 10 years may file a modification
663 action on or after July 1, 2015.

664 Section 7. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12-13

Meeting Date

Topic Alimony

Bill Number SB 718
(if applicable)

Name Barbara A. Devane

Amendment Barcode _____
(if applicable)

Job Title Ms. / Organizer / Lobbyist

Address 625 E. Brevard St

Phone 850-222-3969

Tallahassee FL 32308
City State Zip

E-mail barbaradevane1@
yahoo.com

Speaking: For Against Information

Representing FL NOW (Nat'l Organization for Women)
and FLARA (FL Alliance for Retired Americans)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13
Meeting Date

Topic DISSOLUTION of MARRIAGE / ALIMONY Bill Number SB 718
(if applicable)

Name TERTANCE POWER Amendment Barcode _____
(if applicable)

Job Title CONSULTANT / FLORIDA ALIMONY REFORM

Address 2291 Sweetgrass CT Phone 813-781-3266

Clearwater FL 33759
City State Zip

Speaking: For Against Information

Representing SELF - WILL WAIVE IN SUPPORT OF BILL

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13
Meeting Date

Topic alimony reform

Bill Number SB 718
(if applicable)

Name Alan Elkins

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 10857 King Bay Dr.
Street

Phone 954 605-7020

Boca Raton FL 33498
City State Zip

E-mail AlanElkins@icloud.com

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

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3-12-13

Meeting Date

Topic Dissolution of Marriage/Alimony

Bill Number SB 718
(if applicable)

Name Tarie Mac Millan

Amendment Barcode _____
(if applicable)

Job Title Fashion Jewelry Manager

Address 15822 Aurora Lake Cir

Phone 813-545-3342

Street

Wimauma

FL

33598

E-mail tariemac@verizon.net

City

State

Zip

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-12-13

Meeting Date

Topic ALIMONT REFORM

Bill Number SB 718
(if applicable)

Name R.C. LINDSEY

Amendment Barcode _____
(if applicable)

Job Title CHAIRMAN

Address 6308 SE HELD CT 101

Phone 772-287-9235

Street

STUART

FL 34997

E-mail ALIMONTREFORM@

City

State

Zip

HOTMAIL.COM

Speaking: For Against Information

Representing ALLIANCE FOR FREEDOM FROM ALIMONT, INC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13

Meeting Date

Topic

DISOLUTION of Marriage/Alimony

Bill Number

SB 718

(if applicable)

Name

ALAN FRISHER

Amendment Barcode

(if applicable)

Job Title

President Family Law Reform

Address

7630 N. Wickham Rd

Phone

321-242-7526

Street

Melbourne

FL

32940

City

State

Zip

E-mail

ALAN.FRISHER@gmail.com

Speaking:

For

Against

Information

Representing

FAMILY LAW REFORM, INC

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 12 / 2013

Meeting Date

Topic _____

Bill Number 718
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic Alimony

Bill Number 718
(if applicable)

Name Norberto Ketz

Amendment Barcode _____
(if applicable)

Job Title Magistrate

Address 425 W. Orange Avenue, Ste. 540

Phone (407) 836-2112

Street

Orlando

FL

32801

E-mail ctadnk1@ocnjcc.org

City

State

Zip

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13
Meeting Date

Topic DISSOLUTION of MARRIAGE / ALIMONY

Bill Number SB 718
(if applicable)

Name STEVEN SCHANG

Amendment Barcode _____
(if applicable)

Job Title MD, FACP, FACC

Address 707 E CERVANTES ST
PENSACOLA, FL 32501
Street City State Zip

Phone 850 324 6915

E-mail STEVEN@SCHANG.COM

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13
Meeting Date

Topic Alimony

Bill Number 718
(if applicable)

Name THOMAS DUGGAR

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 1391 Timberline Rd
Street

Phone 850-386-6124

Tull FL 32312
City State Zip

E-mail thomd@duggarduggar.com

Speaking: For Against Information

Representing Family Law Section of Fla. Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Committee on Judiciary

BILL: SB 1014

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Participants in Treatment-based Drug Court Programs

DATE: March 11, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Shankle | Cibula | JU | Favorable |
| 2. | | | GO | |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SB 1014 creates a public records exception for substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports relating to a participant in a treatment-based drug court program under s. 397.344, F.S. The exemption is subject to legislative review and repeal under the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the State Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 397.334, Florida Statutes.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at

¹ FLA. CONST., Art. I, s. 24(a).

² *Id.*

which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or open meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

³ FLA. CONST., Art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *See Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., Art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62, August 1, 1985.

¹⁰ FLA. CONST., Art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., Art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁵ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷

When reenacting an exemption to prevent its automatic repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.¹⁸ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception¹⁹ to the exemption is created.²⁰

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S. The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System. Section 119.15(2), F.S.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

¹⁹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²⁰ See *State of Florida v. Ronald Knight*, 661 So. 2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, Art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

Records from Treatment-Based Drug Court Programs

Section 397.334, F.S., allows counties to fund a treatment-based drug court program under which persons in the justice system identified as having a substance abuse problem can receive individually tailored treatment.²¹ Entry into a treatment-based drug court program must be voluntary. Written consent of the individual is necessary for a court to order him or her into a program.²² As part of a program, a person may be required to receive substance abuse screenings and continual monitoring and evaluations.²³ Records to the screenings and evaluations can be reviewed by court officials as part of a process of determining the individual's compliance with the treatment-based drug court program.²⁴

Currently these records are not exempt from public disclosure. However, 42 C.F.R. 2 exempts the records relating to an individual in a substance abuse program regulated by a department or agency of the United States Government that are confidential under 42 C.F.R. 2.²⁵

III. Effect of Proposed Changes:

The bill amends s. 397.334, F.S., to create a public records exemption for substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports relating to a participant in a treatment-based drug court program under s. 397.344, F.S.

The exemption is subject to legislative review and repeal under the Open Government Sunset Review Act and as such, stands repealed October 2, 2018, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill also contains a statement of public necessity as required by the State Constitution. It provides that the exemption is necessary to protect privacy rights of individuals in a treatment-based drug court program. The chilling effect that the release of records of treatment would have on a person seeking treatment outweighs any public benefit derived from disclosure of the records.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present

²¹ Section 397.334(1), F.S.

²² Section 397.334(2), F.S.

²³ Section 397.334(4), F.S.

²⁴ Section 397.334(5), F.S.

²⁵ 42 C.F.R. 2

and voting in each house. This bill creates a new public records exemption; therefore, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. This bill creates a new public records exemption; therefore, this bill includes a public necessity statement.

Single Subject Requirement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill creates a public records exemption, it does not contain other substantive provisions.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates public records exemption by exempting substance abuse screenings, behavioral health evaluations and subsequent treatment status reports relating to a participant in a treatment-based drug court program. The public necessity statement provides that the expansion is necessary to necessary to protect privacy rights of individuals in a treatment-based drug court program. The chilling effect of a participant who seeks treatment which would result from the release of records of the treatment outweighs any public benefit derived from disclosure to the public.

C. Trust Funds Restrictions:

None.

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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Garcia

38-00927-13

20131014__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 397.334, F.S.; exempting from public records
 4 requirements the initial screenings for a treatment-
 5 based drug court program, substance abuse screenings,
 6 behavioral health evaluations, and subsequent
 7 treatment status reports regarding a participant in a
 8 treatment-based drug court program; providing for
 9 future repeal and legislative review of the exemption
 10 under the Open Government Sunset Review Act; providing
 11 a statement of public necessity; providing an
 12 effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Subsection (10) is added to section 397.334,
 17 Florida Statutes, to read:

18 397.334 Treatment-based drug court programs.—

19 (10) Initial screenings for participation in a treatment-
 20 based drug court program, substance abuse screenings, behavioral
 21 health evaluations, and subsequent treatment status reports
 22 relating to a participant in a treatment-based drug court
 23 program under this section are confidential and exempt from s.
 24 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 25 subsection is subject to the Open Government Sunset Review Act
 26 in accordance with s. 119.15 and shall stand repealed on October
 27 2, 2018, unless reviewed and saved from repeal through
 28 reenactment by the Legislature.

29 Section 2. The Legislature finds that it is a public

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

38-00927-13

20131014__

30 necessity that initial screenings for participation in a
 31 treatment-based drug court program, substance abuse screenings,
 32 behavioral health evaluations, and subsequent treatment status
 33 reports relating to a participant in a treatment-based drug
 34 court program under s. 397.334, Florida Statutes, be made exempt
 35 from public records requirements. This exemption is necessary to
 36 protect the privacy rights of participants in treatment-based
 37 drug court programs. These records are federally recognized as
 38 confidential in 42 C.F.R. 2, regarding the confidentiality of
 39 records of patients who suffer from alcohol or drug abuse.
 40 Accordingly, the Legislature finds that the chilling effect to a
 41 participant who is seeking treatment for his or her substance
 42 abuse which would result from the release of his or her
 43 evaluations, screenings, and reports substantially outweighs any
 44 public benefit derived from disclosure to the public.

45 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13
Meeting Date

Topic Confidentiality of Drug Court Records Bill Number 1014
(if applicable)

Name Nancy Daniels Amendment Barcode _____
(if applicable)

Job Title Public Defender, 2nd Circuit

Address Leon County Courthouse, 3015 Monroe St. Phone 850 606-1010
Street

Tallahassee FL 32301
City State Zip

E-mail nancy.daniels@
f1pd2.com

Speaking: For Against Information

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12/13

Meeting Date

Topic Drug Court Public Records

Bill Number SB 1014
(if applicable)

Name Eric Maclure

Amendment Barcode _____
(if applicable)

Job Title Director of Intergov. Relations, State Courts Admin.

Address 500 South Duval St.

Phone 922-5692 office

Tallahassee FL 32399
Street City State Zip

E-mail maclure@flcourts.org

Speaking: For Against Information

Representing State Courts System

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 12 / 2013

Meeting Date

Topic _____

Bill Number 1014
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Committee on Judiciary

BILL: CS/SB 1172

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Land Trusts

DATE: March 13, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Munroe | Cibula | JU | Fav/CS |
| 2. | | | BI | |
| 3. | | | RC | |
| 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:

CS/SB 1172 revises the laws relating to land trusts. In general, a land trust is a written instrument in which title to real property is vested in a trustee who has the authority to manage or dispose of the property.

More specifically, the bill:

- Clarifies the distinction between a land trust governed by s. 689.071, F.S., and other trusts governed by the Florida Trust Code.
- Defines a land trust based on the functional scope of the land trustee's duties, although the power to manage or dispose of property remains an essential element of a Florida land trust.
- Relocates provisions of s. 689.071, F.S., to a newly-created section, s. 689.073, F.S. These provisions generally state that purchasers and others can rely on a land trustee's authority over property as described in a recorded instrument. These provisions will remain equally applicable to any recorded instrument, created before or after the effective date of the bill, which conveys title to property and the power to manage or dispose of the property.

- Codifies a number of land trust practices and principles commonly used in Florida and Illinois which are derived from judicial precedents or treatises on land trusts.¹

This bill creates section 689.073, Florida Statutes.

This bill substantially amends sections 689.071, 689.073, and 736.0102 of the Florida Statutes.

II. Present Situation:

“A land trust is a unique creature of Illinois law where real estate is conveyed to a trustee under an arrangement reserving to the beneficiaries the full management and control of the property.”²
Under a land trust:

[t]he trustee executes deeds, mortgages or otherwise deals with the property at the written direction of the beneficiaries. The beneficiaries collect rents, improve and operate the property and exercise all rights of ownership other than holding or dealing with the legal title.... While legal title to the real estate is held by the trustee, the beneficiaries retain ‘the power of direction’ to deal with the title, to manage and control the property, to receive proceeds from sales or mortgages and all rentals and avails on the property.³

Land trusts were initially developed in Illinois. The use of these trusts in Florida was validated by the enactment of s. 689.071, F.S., the Florida Land Trust Act, in 1963.⁴ Section 689.071, F.S., has always focused primarily on the authority of the land trustee to convey good title to third parties if the prior deed to the land trustee granted to the trustee certain powers to deal with and dispose of the property, commonly referred to as “deed powers.”⁵ Serving primarily as a “purchaser protection” statute, s. 689.071, F.S., because the statute protects third party grantees, mortgagees, and lessees who rely on the statutory authority of the trustee based on those recorded *deed powers*. Those who rely on a trustee are not required to inquire into the identity of the beneficiaries or the terms of the unrecorded trust agreement.⁶ All persons dealing with the trustee of a land trust under a recorded instrument take free of claims of beneficiaries.⁷ The interests of beneficiaries under a land trust are personal property.⁸

¹ The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Amendments to Land Trust Act* (2013) (on file with the Senate Committee on Judiciary). By codifying the land trust practices, it will facilitate and encourage the use of land trusts in Florida real property transactions. *Id.*

² 3A HORNER PROBATE PRAC. & ESTATES s.68:46 (2013); *In re Marriage of Gross*, 756 N.E.2d 312, 315 (1st Dist. 2001).

³ *In re Marriage of Gross*, 756 N.E.2d at 315.

⁴ Chapter 63-468, ss. 1-6, Laws of Fla. The statute was enacted to confirm the marketability and insurability of land purchased from a land trustee. Correspondence from the Real Property, Probate, and Trust Law Section of The Florida Bar (on file with the Senate Committee on Judiciary).

⁵ The Real Property, Probate, and Trust Law Section of the Florida Bar, *supra* note 1 and *also see* “Deed powers” refer to those that “the recorded instrument confers on the trustee the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument.” Section 689.071(3), F.S.

⁶ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 1; s. 689.071(4), F.S.

⁷ Section 689.071(5), F.S.

⁸ Section 689.071(6), F.S.

In Florida, the aspects of the land trust under s. 689.071, F.S., which confer legal title to the trustee, also apply to any recorded instrument that grants deed powers to a trustee.⁹ In order to obtain the *purchaser protection* aspects of the statute,¹⁰ it became common practice in Florida for conveyances to trustees to include s. 689.071, F.S., deed powers although the trust was not intended to be a land trust.

The primary purpose of this bill is to provide greater clarity in the manner that the Florida Land Trust Act and the Florida Trust Code¹¹ are intended to relate to each other by specifying a comprehensive statutory definition of land trust.¹²

III. Effect of Proposed Changes:

General overview

The bill clarifies the distinction between a land trust governed by s. 689.071, F.S. and other express trusts governed by the Florida Trust Code,¹³ but preserves the “title protection” benefits of the existing statute for any conveyance to trustee containing deed powers. To do so, the bill:

- Defines land trusts based on the functional scope of the land trustee’s duties, although deed powers remain an essential element of a Florida land trust.
- Relocates all the *purchaser protection* provisions of s. 689.071, F.S., to a newly-created section, s. 689.073, F.S., which will remain equally applicable to any conveyance containing deed powers to a trustee of any trust.
- Codifies a number of land trust practices and principles commonly used in Florida and Illinois which are derived from judicial precedents or treatises on land trusts.¹⁴

Purchaser Protection Provision transferred to Section 689.073, F.S.

The bill transfers and amends the purchaser protection provisions in ss. 689.071(3), (4), and (5), F.S., to newly-created s. 689.073, F.S.

The existing ss. 689.071(3), (4), and (5), F.S., are that are transferred to s. 689.073, F.S., are intended to have exactly the same legal effect: the provisions protect a purchaser who buys or leases land from a trustee if the trustee acquired the land by a recorded deed or other instrument that granted certain powers “deed powers” to the trustee. If those deed powers are recorded, then the statute protects the purchaser by confirming that:

- The trustee is vested with title to the property and is fully able to transfer the title to the purchaser;
- The purchaser is protected from title assaults by the beneficiaries of the trust;

⁹ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 1.

¹⁰Section 689.071, F.S.

¹¹ Chapter 736, F.S.

¹² Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 1.

¹³ Chapter 736, F.S.

¹⁴ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 1. By codifying the land trust practices, it will facilitate and encourage the use of land trusts in Florida real property transactions. *Id.*

- The beneficiaries need not be disclosed;
- The trust document need not be disclosed; and
- The purchaser may safely deal with the trustee without inquiring whether the trustee has authority to deal with the land.¹⁵

The new statute deletes language that vests both legal and equitable title in the trustee; removes a reference to real property “in this state” in the current law, thereby confirming that out-of-state lands may be held in Florida land trusts.¹⁶ Additionally, the new statute requires that the statute apply without regard to whether any reference is made in the recorded instrument to the beneficiaries of such trust or to any separate collateral unrecorded declarations or agreements, without regard to the provisions of any unrecorded trust agreement or declaration of trust, and without regard to whether the trust is governed by the Florida Land Trust Act or the Florida Trust Code. This statute applies both to recorded instruments that are recorded after the effective date of this bill and to recorded instruments that were previously recorded and governed by similar provisions contained in s. 689.071(3), F.S. (2012). The statute validates all previous conveyances as vesting the trustee with the requisite deed powers.

Definition of Land Trust under s. 689.071(2), F.S.

The bill revises the remaining provisions of s. 689.071, F.S., which were not moved to the newly-created s. 689.073, F.S. The revised definition of land trust in s. 689.071(2)(c), F.S., still requires a conveyance to a trustee by a recorded instrument containing deed powers, but beginning with the effective date of the bill, this definition focuses on the key functional distinction between land trust and other express trusts. Under a land trust, a land trustee functions almost entirely as the agent of the beneficiaries or the person holding the power of directions under the trust agreement. Whereas, a trustee who is subject to the Florida Trust Code in ch. 736, F.S., has more extensive fiduciary duties and responsibilities to the trust beneficiaries, along with more extensive potential liability if the trustee fails to perform the trustee’s discretionary duties prudently.¹⁷

A land trustee has a fiduciary relationship to the land trust beneficiaries and the person holding the power of direction over the actions of the land trustee, just as any agent is bound a fiduciary to the principal for whom the agent acts.¹⁸ In practice, land trustees are rarely delegated discretionary duties under a land trust agreement, beyond ministerial and administrative matters.¹⁹ This lack of duties is a logical parallel to the exemption that land trustees enjoy from ch. 736, F.S., responsibilities and liabilities.²⁰ The bill makes clear this practical distinction in the revised definition of a land trust in s. 689.071(2)(c), F.S., by stating that the trustee has limited duties as specified in the statute.²¹

¹⁵ Correspondence from the Real Property, Probate, and Trust Law Section of The Florida Bar (on file with the Senate Committee on Judiciary).

¹⁶ Real Property, Probate and Trust Law Section of The Florida Bar, *supra* note 1.

¹⁷ *Id.*

¹⁸ *Id.* See also, *Raborn v. Menotte*, 974 So. 2d 328 (Fla. 2008).

¹⁹ *Id.* See also, “The trustee is a mere vessel of title.” *Brigham v. Brigham*, 11 So. 3d 374, 385 (Fla. 3d DCA 2009).

²⁰ Real Property, Probate and Trust Law Section of The Florida Bar, *supra* note 1.

²¹ *Id.*

For trust created on or after the effective date of the bill, the revised definition limits the duties of a trustee of a land trust to:

- The duty to exercise the trustee’s deed powers as directed by the beneficiary or by the holder of the power of direction (the agent’s fiduciary duty to follow the principal’s directions);
- The duty to dispose of the trust property at the termination of the trust;
- The duty to perform ministerial and administrative functions delegated to the trustee; and
- The duties required of certain timeshare trustees by ch. 721, F.S.²²

If the trustee’s duties exceed the foregoing limited duties and the trust is created after the effective date of the bill, then the trust will not be treated as a land trust and will not be excluded from the operation of the Florida Trust Code.²³ Because the purchaser protection provisions of the statute operate on any conveyance containing deed powers, the classification of the trust as a land trust will have no effect on the title to any real property held by the trustee.²⁴

Other Definitions

The bill revises the definition for “holder of the power of direction” to “power of direction. The phrase, “person or entity” is shortened to “person.”

The bill creates new definitions for some basic trust concepts, such as “trust agreement,” “trust property,” and “recorded instrument.” “Trustee” is redefined to mean the trustee of a land trust or the trustee of another trust. Numerous references to “trustee” in s. 689.071, F.S., are revised in the bill to specifically refer to “trustee of a land trust” where appropriate.

Vesting of Legal and Equitable Title Revisions to s. 689.071(3), F.S.

The bill continues the existing statutory statement that a land trustee is vested with both legal and equitable title to the trust property. This concept does not appear in the transferred purchaser protection provisions in s. 689.073, created in the bill because it universally applies to any type of trust with deed powers.²⁵

The bill makes technical revisions to s. 689.071(3), F.S., to maintain a consistent use of defined terms such as “land trust,” trust agreement,” and “trust property.”

Statute of Uses and Doctrine of Merger – Revisions to ss. 689.071(4) and (5), F.S.

When s. 689.071, F.S., was first enacted for the purpose of validating the use of Illinois land trusts in Florida, one commonly assumed result was that land trusts would not be executed as “passive trusts” or “dry trusts” by the statute of uses, which is codified in Florida in s. 689.09,

²² *Id.* Section 721.08, F.S., provides that time-share accommodations may be placed into a trust.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

F.S.²⁶ The bill makes that result explicit with respect to a land trust, overriding not only s. 689.09, F.S., but also the common-law statute of uses.²⁷

New subsection 689.071(5), F.S., overrides the doctrine of merger with respect to a land trust, so that a land trust will not be extinguished if the trustee is the sole beneficiary.²⁸

Personal Property Option

Currently s. 689.071, F.S., provides that the recorded instrument may define and declare the interests of land trust beneficiaries as personal property under Florida law. The bill clarifies that this designation of personal property must be made in the recorded instrument or the trust agreement, or it will be considered real property. Subsection 689.071(6), F.S., is modified to allow the optional personal property declaration to be made in the recorded instrument or in the trust agreement.

Beneficiary Provisions

Currently, customary provisions in land trusts are based upon treatises by Illinois land trust authorities. The bill revises s. 689.071(8), F.S., in a number of respects to codify these land trust practices.²⁹

The bill adds s. 689.071(8)(b), F.S., as a statutory endorsement of flexible beneficial ownership techniques described in the *Kenoe* treatise.³⁰ The purpose of including these provisions directly in the Florida Land Trust Act is to increase public awareness that such techniques are available without making reference to the treatise, thereby promoting the usage of land trusts in Florida generally.³¹

The bill revises s. 689.071(8)(c), F.S., to reconcile the Florida Land Trust Act with the Uniform Commercial Code Article 9 exclusion of interests in real property.³² Caselaw³³ holds that a beneficial interest in a land trust is a general intangible within the scope of the Florida Uniform Commercial Code, and this result is codified in the present version of s. 689.071(8)(c), F.S., which provides that Uniform Commercial Code Article 9 governs the perfection of a security interest in a beneficial interest in a land trust. However, if the beneficial interest is defined as real property under s. 689.071(6), F.S., then there is a possible contradiction between the Florida Land Trust Act (which says Article 9 applies to beneficial interests) and the Uniform Commercial Code (which says Article 9 excludes real property interests).

The Florida Vacation Plan and Timeshare Act³⁴ authorizes the creation and marketing of timeshare estates through trusts.³⁵ Because timeshare estates are defined as real property,³⁶ the

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* Henry W. Kenoe wrote a number of treatises on land trusts. *Id.*

³¹ *Id.*

³² These provisions are found in s. 679.1091(4)(k), F.S.

³³ *In re Cowsert*, 14 B.R. 335 (Bankr.S.D.Fla. 1981).

³⁴ Chapter 721, F.S.

purchasers of Florida timeshare estates typically finance their purchase with a mortgage recorded against the timeshare estate. However, if the timeshare estate is created as a beneficial interest in a timeshare trust a land trust is created. As a result, two different statutes prescribe two different methods of perfection, causing possible confusion in the mechanics of perfecting the lien.³⁷

The bill revises s. 689.071(8)(c), F.S., to resolve this apparent contradiction by clarifying that the Uniform Commercial Code governs perfection if the beneficial interest in a land trust is declared to be personal property (as was the case in *Cowsert*), but that a mortgage instrument recorded in the real estate records is the proper method of perfection if the beneficial interest in a land trust is declared to be real property. If real property is involved, the proper county for recording the mortgage may be specified in the recorded instrument or in a declaration of trust or memorandum that is recorded in the same county as the recorded instrument; otherwise the location of the trust property determines the proper county for recording the mortgage. The bill provides a transition rule to provide for the continuation of perfection for any Uniform Commercial Code financing statement that may have been filed before the effective date of this clarification.³⁸ It is an abbreviated version of the transition rules that were included in Revised Uniform Commercial Code Article 9 in 2001.³⁹

The bill revises s. 689.071(8)(c), F.S., to state more clearly that a lien or security interest perfected against a beneficial interest in a land trust does not affect in any way the legal or equitable title of the land trustee to the trust property. Section 689.071(8)(d), F.S., is amended to make explicit a concept that is inherent in a beneficiary's ability to encumber a beneficial interest as described in existing s. 689.071(8)(c), F.S. The trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property. A lien, judgment, mortgage, security interest or other encumbrance against one interest does not automatically attach to the other interest. Section 689.071(8)(e), F.S., is also revised to clarify this same point. Documents recorded by a beneficiary to transfer or encumber a beneficial interest do not affect the legal and equitable title of the trustee or the deed powers granted to the trustee in the recorded instrument.

The bill adds s. 689.071(8)(i), F.S., which is intended to end the reported occasional practice by some judges of appointing a guardian ad litem to represent the interests of land trust beneficiaries in a foreclosure or other litigation affecting title to the trust property.⁴⁰ Because a land trustee is vested with both legal and equitable title to the trust property, joinder of the land trustee in the action is sufficient without a party incurring the additional expense of a guardian ad litem.⁴¹

Successor Trustee Provisions – Revisions to s. 689.071(9), F.S.

The use of “each and every successor trustee” is substituted in s. 689.071(9), F.S., for the shorter expression: “each successor trustee.”

³⁵ See s. 721.08(2)(c)4, F.S.

³⁶ See s. 721.05(34), F.S.,

³⁷ The conflict exists between the Uniform Commercial Code Article 9 and the Florida Land Trust Act.

³⁸ Real Property, Probate and Trust Law Section of The Florida Bar, *supra* note 1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

The bill redesignates the existing paragraph 689.071(9)(f), F.S., as paragraph 689.071(9)(e), F.S., to provide that a trust agreement may authorize, in addition to beneficiaries, the person holding the power of direction, to direct the land trustee to convey the trust property to another trustee.

Trustee as a Creditor

The bill amends s. 689.071(10)(a), F.S., to include a reference to a mortgage and a security interest against a beneficial interest in a land trust to conform to other changes in the bill.

Notice to Trustee Provisions – Revisions to s. 689.071(11), F.S.

The bill adds a new s. 689.071(11), F.S., to assure that the right parties receive any third-party notices concerning property held in a land trust by requiring that notice to a land trustee include certain identifying information if it appears in the recorded instrument.

Transition Rule Provision; Timeshare Trusts- Revisions to s. 689.071(12), F.S.

The revised definition of “land trust” in the bill contains a cross-reference to a transition rule that appears in s. 689.071(12), F.S. This transition rule exempts existing land trusts from the new duties-based test in s. 689.071(2)(c), F.S.; rather, an existing trust is a land trust (or not) based on the intentions expressed in (or discernible from) the existing trust agreement.⁴² As a practical matter, the overwhelming majority of existing land trusts sharply curtail the discretionary duties of the land trustee, such that those existing trusts would meet the new duties-based “land trust” definition even if it were applied to them retroactively.⁴³ But, because there are some land trust agreements that vest the land trustee with greater discretion, the transition rule provision does not apply the duties-based test to any existing land trust agreement that says the trust is a “land trust” or clearly was intended to be a land trust.⁴⁴ In this way, existing obvious land trusts are “grandfathered” into the land trust statute.⁴⁵

There are two necessary exceptions to the transition rule provision: (1) if it is not obvious from reading the existing trust agreement that the parties intended to create a land trust, then the duties-based test applies; and (2) if an existing land trust agreement is amended to add or expand duties of the trustee, then the duties-based test is applied only to the added or expanded duties that were not found in the trust agreement before the effective date of the amended act. In either case, if the trustee has or adds too many duties beyond those in the land trust definition, the result is that the trustee becomes subject to the tougher trustee standards of ch. 736, F.S., but there is no effect on the title to the trust property.

As noted above in the discussion of timeshare interests, current statutes⁴⁶ authorize the use of trusts for the creation and marketing of timeshare estates and specify similar requirements for

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Chapter 721, F.S.

using trusts for multi-site vacation clubs.⁴⁷ These statutes specify that certain provisions of the Florida Trust Code govern the liability of the trustees of such qualifying trusts,⁴⁸ and these provisions are usually recited in the ch. 721, F.S., trust agreements. If such an existing timeshare trust were created as a land trust, however, then the trust agreement would contain provisions stating that the trust is a land trust (making it a land trust)⁴⁹ and would also refer to governance by ch. 736, F.S.

Florida Trust Code – Revisions to s. 736.0102, F.S.

The bill includes a conforming amendment to s. 736.0102, F.S., of the Florida Trust Code. The bill divides this section into two subsections, and a third subsection is added to address the exclusion of land trusts from the Florida Trust Code. The newly-created s. 736.0102(3), F.S., provides that the Trust Code does not apply to land trusts under s. 689.071, F.S., except to the extent provided in s. 689.071(7), F.S., of the Land Trust Act and in the two provisions of ch. 721, F.S., that apply parts of ch. 736, F.S., to timeshare trusts.

Effective date

The bill directs the Division of Law Revision and Information to replace the phrase “effective date of the act” wherever it occurs in this bill with such date.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁷ Section 721.53(1)(e), F.S.

⁴⁸ See specifically, ss. 736.08125, 736.08163, 736.1013, and 736.1015, F.S.

⁴⁹ See s. 689.071(14)(b)1, F.S.

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 Judiciary on March 12, 2013:

The committee substitute clarifies that certain statutory cross-references are to the Florida Statutes 2012.

B. Amendments:

None.



297084

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/13/2013 | . | |
| | . | |
| | . | |
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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment

Delete lines 110 - 113
and insert:
and governed by similar provisions contained in s. 689.071(3),
Florida Statutes 2012, and any such recorded instrument
purporting to confer power and authority on a trustee under such
provisions of s. 689.071(3), Florida Statutes 2012, is valid and
has the

By Senator Simmons

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1 A bill to be entitled
 2 An act relating to land trusts; creating s. 689.073,
 3 F.S., and transferring, renumbering, and amending s.
 4 689.071(4) and (5), F.S.; providing requirements
 5 relating to vesting of ownership in a trustee;
 6 providing exclusion and applicability; amending s.
 7 689.071, F.S.; revising and providing definitions;
 8 revising provisions relating to land trust transfers
 9 of real property and vesting of ownership in a
 10 trustee; prohibiting the operation of the statute of
 11 uses to execute a land trust or to vest the trust
 12 property under certain conditions; prohibiting the
 13 operation of the doctrine of merger to execute a land
 14 trust or to vest the trust property under certain
 15 conditions; providing conditions under which a
 16 beneficial interest is deemed real property; revising
 17 and providing rights, liabilities, and duties of land
 18 trust beneficiaries; authorizing certain beneficial
 19 ownership methods; providing for the perfection of
 20 security documents; providing that a trustee's legal
 21 and equitable title to the trust property is separate
 22 and distinct from the beneficiary's beneficial
 23 interest in the land trust and the trust property;
 24 prohibiting a lien, judgment, mortgage, security
 25 interest, or other encumbrance against one interest
 26 from automatically attaching to another interest;
 27 providing that the appointment of a guardian ad litem
 28 is not necessary in certain foreclosure litigation
 29 affecting the title to trust property of a land trust;

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30 conforming provisions to changes made by the act;
 31 deleting provisions relating to the applicability of
 32 certain successor trustee provisions; providing notice
 33 requirements; providing for the determination of
 34 applicable law for certain trusts; providing for
 35 applicability relating to Uniform Commercial Code
 36 financing statements; providing requirements for
 37 recording effectiveness; amending s. 736.0102, F.S.;
 38 revising and providing scope of the Florida Trust
 39 Code; providing a directive to the Division of Law
 40 Revision and Information; providing an effective date.

42 Be It Enacted by the Legislature of the State of Florida:

43
 44 Section 1. Section 689.073, Florida Statutes, is created,
 45 and present subsections (4) and (5) of section 689.071, Florida
 46 Statutes, are transferred and renumbered as subsections (2) and
 47 (3), respectively, of section 689.073, Florida Statutes, and
 48 amended, to read:

49 689.073 Powers conferred on trustee in recorded
 50 instrument.-

51 (1) OWNERSHIP VESTS IN TRUSTEE.-Every conveyance, deed,
 52 mortgage, lease assignment, or other instrument heretofore or
 53 hereafter made, hereinafter referred to as the "recorded
 54 instrument," transferring any interest in real property,
 55 including, but not limited to, a leasehold or mortgagee
 56 interest, to any person or any corporation, bank, trust company,
 57 or other entity duly formed under the laws of its state of
 58 qualification, which recorded instrument designates the person,

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 59 corporation, bank, trust company, or other entity "trustee" or
 60 "as trustee" and confers on the trustee the power and authority
 61 to protect, to conserve, to sell, to lease, to encumber, or
 62 otherwise to manage and dispose of the real property described
 63 in the recorded instrument, is effective to vest, and is
 64 declared to have vested, in such trustee full power and
 65 authority as granted and provided in the recorded instrument to
 66 deal in and with such property, or interest therein or any part
 67 thereof, held in trust under the recorded instrument.

68 (2)(4) NO DUTY TO INQUIRE.—Any grantee, mortgagee, lessee,
 69 transferee, assignee, or person obtaining satisfactions or
 70 releases or otherwise in any way dealing with the trustee with
 71 respect to the real property or any interest in such property
 72 held in trust under the recorded instrument, as hereinabove
 73 provided for, is not obligated to inquire into the
 74 identification or status of any named or unnamed beneficiaries,
 75 or their heirs or assigns to whom a trustee may be accountable
 76 under the terms of the recorded instrument, or under any
 77 unrecorded separate declarations or agreements collateral to the
 78 recorded instrument, whether or not such declarations or
 79 agreements are referred to therein; or to inquire into or
 80 ascertain the authority of such trustee to act within and
 81 exercise the powers granted under the recorded instrument; or to
 82 inquire into the adequacy or disposition of any consideration,
 83 if any is paid or delivered to such trustee in connection with
 84 any interest so acquired from such trustee; or to inquire into
 85 any of the provisions of any such unrecorded declarations or
 86 agreements.

87 (3)(5) BENEFICIARY CLAIMS.—All persons dealing with the

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 88 trustee under the recorded instrument as hereinabove provided
 89 take any interest transferred by the trustee thereunder, within
 90 the power and authority as granted and provided therein, free
 91 and clear of the claims of all the named or unnamed
 92 beneficiaries of such trust, and of any unrecorded declarations
 93 or agreements collateral thereto whether referred to in the
 94 recorded instrument or not, and of anyone claiming by, through,
 95 or under such beneficiaries. However, this section does not
 96 prevent a beneficiary of any such unrecorded collateral
 97 declarations or agreements from enforcing the terms thereof
 98 against the trustee.

99 (4) EXCLUSION.—This section does not apply to any deed,
 100 mortgage, or other instrument to which s. 689.07 applies.

101 (5) APPLICABILITY.—The section applies without regard to
 102 whether any reference is made in the recorded instrument to the
 103 beneficiaries of such trust or to any separate collateral
 104 unrecorded declarations or agreements, without regard to the
 105 provisions of any unrecorded trust agreement or declaration of
 106 trust, and without regard to whether the trust is governed by s.
 107 689.071 or chapter 736. This section applies both to recorded
 108 instruments that are recorded after the effective date of this
 109 act and to recorded instruments that were previously recorded
 110 and governed by similar provisions formerly contained in s.
 111 689.071(3), and any such recorded instrument purporting to
 112 confer power and authority on a trustee under such formerly
 113 effective provisions of s. 689.071(3) is valid and has the
 114 effect of vesting full power and authority in such trustee as
 115 provided in this section.

116 Section 2. Section 689.071, Florida Statutes, as amended by

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117 this act, is amended to read:

118 689.071 Florida Land Trust Act.—

119 (1) SHORT TITLE.—This section may be cited as the “Florida
120 Land Trust Act.”

121 (2) DEFINITIONS.—As used in this section, the term:

122 (a) “Beneficial interest” means any interest, vested or
123 contingent and regardless of how small or minimal such interest
124 may be, in a land trust which is held by a beneficiary.

125 (b) “Beneficiary” means any person or entity having a
126 beneficial interest in a land trust. A trustee may be a
127 beneficiary of the land trust for which such trustee serves as
128 trustee.

129 ~~(c) “Holder of the power of direction” means any person or~~
130 ~~entity having the authority to direct the trustee to convey~~
131 ~~property or interests, execute a mortgage, distribute proceeds~~
132 ~~of a sale or financing, and execute documents incidental to the~~
133 ~~administration of a land trust.~~

134 (c)(d) “Land trust” means any express written agreement or
135 arrangement by which a use, confidence, or trust is declared of
136 any land, or of any charge upon land, under which the title to
137 real property, including, but not limited to, a leasehold or
138 mortgagee interest, both legal and equitable, is vested in a
139 trustee by a recorded instrument that confers on the trustee the
140 power and authority prescribed in s. 689.073(1) and under which
141 the trustee has no duties other than the following:

142 1. The duty to convey, sell, lease, mortgage, or deal with
143 the trust property, or to exercise such other powers concerning
144 the trust property as may be provided in the recorded
145 instrument, in each case as directed by the beneficiaries or by

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146 the holder of the power of direction;

147 2. The duty to sell or dispose of the trust property at the
148 termination of the trust;

149 3. The duty to perform ministerial and administrative
150 functions delegated to the trustee in the trust agreement or by
151 the beneficiaries or the holder of the power of direction; or

152 4. The duties required of a trustee under chapter 721, if
153 the trust is a timeshare estate trust complying with s.
154 721.08(2)(c)4. or a vacation club trust complying with s.
155 721.53(1)(e);

156
157 however, the duties of the trustee of a land trust created
158 before the effective date of this act may exceed the limited
159 duties listed in this paragraph to the extent authorized in
160 subsection (12) subsection (3). The recorded instrument does not
161 itself create an entity, regardless of whether the relationship
162 among the beneficiaries and the trustee is deemed to be an
163 entity under other applicable law.

164 (d) “Power of direction” means the authority of a person,
165 as provided in the trust agreement, to direct the trustee of a
166 land trust to convey property or interests, execute a lease or
167 mortgage, distribute proceeds of a sale or financing, and
168 execute documents incidental to the administration of a land
169 trust.

170 (e) “Recorded instrument” has the same meaning as provided
171 in s. 689.073(1).

172 (f) “Trust agreement” means the written agreement governing
173 a land trust or other trust, including any amendments.

174 (g) “Trust property” means any interest in real property,

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175 including, but not limited to, a leasehold or mortgagee
 176 interest, conveyed by a recorded instrument to a trustee of a
 177 land trust or other trust.

178 (h)(e) "Trustee" means the person or entity designated in a
 179 recorded instrument or trust agreement trust instrument to hold
 180 legal and equitable title to the trust property of a land trust
 181 or other trust.

182 (3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument
 183 conveyance, deed, mortgage, lease assignment, or other
 184 instrument heretofore or hereafter made, hereinafter referred to
 185 as the "recorded instrument," transferring any interest in real
 186 property to the trustee of a land trust and conferring upon the
 187 trustee the power and authority prescribed in s. 689.073(1), in
 188 this state, including, but not limited to, a leasehold or
 189 mortgagee interest, to any person or any corporation, bank,
 190 trust company, or other entity duly formed under the laws of its
 191 state of qualification, in which recorded instrument the person,
 192 corporation, bank, trust company, or other entity is designated
 193 "trustee" or "as trustee," whether or not reference is made in
 194 the recorded instrument to the beneficiaries of such land trust
 195 or to the trust agreement or any separate collateral unrecorded
 196 declarations or agreements, is effective to vest, and is hereby
 197 declared to have vested, in such trustee both legal and
 198 equitable title, and full rights of ownership, over the trust
 199 real property or interest therein, with full power and authority
 200 as granted and provided in the recorded instrument to deal in
 201 and with the trust property or interest therein or any part
 202 thereof. The recorded instrument does not itself create an
 203 entity, regardless of whether the relationship among the

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204 beneficiaries and the trustee is deemed to be an entity under
 205 other applicable law; provided, the recorded instrument confers
 206 on the trustee the power and authority to protect, to conserve,
 207 to sell, to lease, to encumber, or otherwise to manage and
 208 dispose of the real property described in the recorded
 209 instrument.

210 (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the
 211 statute of uses do not execute a land trust or vest the trust
 212 property in the beneficiary or beneficiaries of the land trust,
 213 notwithstanding any lack of duties on the part of the trustee or
 214 the otherwise passive nature of the land trust.

215 (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of merger
 216 does not extinguish a land trust or vest the trust property in
 217 the beneficiary or beneficiaries of the land trust, regardless
 218 of whether the trustee is the sole beneficiary of the land
 219 trust.

220 (6) PERSONAL PROPERTY.—In all cases in which the recorded
 221 instrument or the trust agreement, as hereinabove provided,
 222 contains a provision defining and declaring the interests of
 223 beneficiaries of a land trust thereunder to be personal property
 224 only, such provision is shall be controlling for all purposes
 225 when such determination becomes an issue under the laws or in
 226 the courts of this state. If no such personal property
 227 designation appears in the recorded instrument or in the trust
 228 agreement, the interests of the land trust beneficiaries are
 229 real property.

230 (7) TRUSTEE LIABILITY.—In addition to any other limitation
 231 on personal liability existing pursuant to statute or otherwise,
 232 the provisions of ss. 736.08125 and 736.1013 apply to the

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233 trustee of a land trust created pursuant to this section.

234 (8) LAND TRUST BENEFICIARIES.—

235 (a) Except as provided in this section, the beneficiaries
236 of a land trust are not liable, solely by being beneficiaries,
237 under a judgment, decree, or order of court or in any other
238 manner for a debt, obligation, or liability of the land trust.

239 ~~(b)~~ Any beneficiary acting under the trust agreement of a
240 land trust is not liable to the land trust's trustee or to any
241 other beneficiary for the beneficiary's good faith reliance on
242 the provisions of the trust agreement. A beneficiary's duties
243 and liabilities under a land trust may be expanded or restricted
244 in a trust agreement or beneficiary agreement.

245 (b)1. If provided in the recorded instrument, in the trust
246 agreement, or in a beneficiary agreement:

247 a. A particular beneficiary may own the beneficial interest
248 in a particular portion or parcel of the trust property of a
249 land trust;

250 b. A particular person may be the holder of the power of
251 direction with respect to the trustee's actions concerning a
252 particular portion or parcel of the trust property of a land
253 trust; and

254 c. The beneficiaries may own specified proportions or
255 percentages of the beneficial interest in the trust property or
256 in particular portions or parcels of the trust property of a
257 land trust.

258 2. Multiple beneficiaries may own a beneficial interest in
259 a land trust as tenants in common, joint tenants with right of
260 survivorship, or tenants by the entireties.

261 (c) If a beneficial interest in a land trust is determined

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262 to be personal property as provided in subsection (6), chapter
263 679 applies to the perfection of any security interest in that a
264 beneficial interest in a land trust. If a beneficial interest in
265 a land trust is determined to be real property as provided in
266 subsection (6), then to perfect a lien or security interest
267 against that beneficial interest, the mortgage, deed of trust,
268 security agreement, or other similar security document must be
269 recorded in the public records of the county that is specified
270 for such security documents in the recorded instrument or in a
271 declaration of trust or memorandum of such declaration of trust
272 recorded in the public records of the same county as the
273 recorded instrument. If no county is so specified for recording
274 such security documents, the proper county for recording such a
275 security document against a beneficiary's interest in any trust
276 property is the county where the trust property is located. The
277 perfection of a lien or security interest in a beneficial
278 interest in a land trust does not affect, attach to, or encumber
279 the legal or equitable title of the trustee in the trust
280 property and does not impair or diminish the authority of the
281 trustee under the recorded instrument, and parties dealing with
282 the trustee are not required to inquire into the terms of the
283 unrecorded trust agreement or any lien or security interest
284 against a beneficial interest in the land trust.

285 (d) The trustee's legal and equitable title to the trust
286 property of a land trust is separate and distinct from the
287 beneficial interest of a beneficiary in the land trust and in
288 the trust property. A lien, judgment, mortgage, security
289 interest, or other encumbrance attaching to the trustee's legal
290 and equitable title to the trust property of a land trust does

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291 not attach to the beneficial interest of any beneficiary; and
 292 any lien, judgment, mortgage, security interest, or other
 293 encumbrance against a beneficiary or beneficial interest does
 294 not attach to the legal or equitable title of the trustee to the
 295 trust property held under a land trust, unless the lien,
 296 judgment, mortgage, security interest, or other encumbrance by
 297 its terms or by operation of other law attaches to both the
 298 interest of the trustee and the interest of such beneficiary. A
 299 ~~beneficiary's duties and liabilities may be expanded or~~
 300 ~~restricted in a trust agreement or beneficiary agreement.~~

301 (e) Any subsequent document appearing of record in which a
 302 beneficiary of a land trust transfers or encumbers any the
 303 beneficial interest in the land trust does not transfer or
 304 encumber the legal or equitable title of the trustee to the
 305 trust property and does not diminish or impair the authority of
 306 the trustee under the terms of the recorded instrument. Parties
 307 dealing with the trustee of a land trust are not required to
 308 inquire into the terms of the unrecorded trust agreement.

309 (f) ~~The An unrecorded~~ trust agreement ~~giving rise to a~~
 310 ~~recorded instrument~~ for a land trust may provide that one or
 311 more persons ~~or entities~~ have the power to direct the trustee to
 312 convey property or interests, execute a mortgage, distribute
 313 proceeds of a sale or financing, and execute documents
 314 incidental to administration of the land trust. The power of
 315 direction, unless provided otherwise in the ~~land~~ trust agreement
 316 of the land trust, is conferred upon the holders of the power
 317 for the use and benefit of all holders of any beneficial
 318 interest in the land trust. In the absence of a provision in the
 319 ~~land~~ trust agreement of a land trust to the contrary, the power

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320 of direction shall be in accordance with the percentage of
 321 individual ownership. In exercising the power of direction, the
 322 holders of the power of direction are presumed to act in a
 323 fiduciary capacity for the benefit of all holders of any
 324 beneficial interest in the land trust, unless otherwise provided
 325 in the ~~land~~ trust agreement. A beneficial interest in a land
 326 trust is indefeasible, and the power of direction may not be
 327 exercised so as to alter, amend, revoke, terminate, defeat, or
 328 otherwise affect or change the enjoyment of any beneficial
 329 interest in a land trust.

330 (g) A land trust ~~relating to real estate~~ does not fail, and
 331 any use relating to the trust property ~~real estate~~ may not be
 332 defeated, because beneficiaries are not specified by name in the
 333 recorded instrument deed of conveyance to the trustee or because
 334 duties are not imposed upon the trustee. The power conferred by
 335 any recorded instrument deed of conveyance on a trustee of a
 336 land trust to sell, lease, encumber, or otherwise dispose of
 337 property described in the recorded instrument deed is effective,
 338 and a person dealing with the trustee of a land trust is not
 339 required to inquire any further into the right of the trustee to
 340 act or the disposition of any proceeds.

341 (h) The principal residence of a beneficiary shall be
 342 entitled to the homestead tax exemption even if the homestead is
 343 held by a trustee in a land trust, provided the beneficiary
 344 qualifies for the homestead exemption under chapter 196.

345 (i) In a foreclosure against trust property or other
 346 litigation affecting the title to trust property of a land
 347 trust, the appointment of a guardian ad litem is not necessary
 348 to represent the interest of any beneficiary.

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349 (9) SUCCESSOR TRUSTEE.-

350 ~~(a) The provisions of s. 736.0705 relating to the~~
 351 ~~resignation of a trustee do not apply to the appointment of a~~
 352 ~~successor trustee under this section.~~

353 ~~(a)(b)~~ If the recorded instrument and the unrecorded ~~land~~
 354 trust agreement are silent as to the appointment of a successor
 355 trustee of a land trust in the event of the death, incapacity,
 356 resignation, or termination due to dissolution of a ~~land~~ trustee
 357 or if a ~~land~~ trustee is unable to serve as trustee of a land
 358 trust, one or more persons ~~or entities~~ having the power of
 359 direction ~~of the land trust agreement~~ may appoint a successor
 360 trustee or trustees of the land trust by filing a declaration of
 361 appointment of a successor trustee or trustees in the public
 362 records of office of the recorder of deeds in the county in
 363 which the trust property is located. The declaration must be
 364 signed by a beneficiary or beneficiaries of the land trust and
 365 by the each successor trustee or trustees, must be acknowledged
 366 in the manner provided for acknowledgment of deeds, and must
 367 contain:

- 368 1. The legal description of the trust property.
- 369 2. The name and address of the former trustee.
- 370 3. The name and address of the each successor trustee or
 371 trustees.

372 4. A statement that ~~each successor trustee has been~~
 373 ~~appointed by~~ one or more persons ~~or entities~~ having the power of
 374 direction of the land trust appointed the successor trustee or
 375 trustees, together with an acceptance of appointment by the each
 376 successor trustee or trustees.

377 ~~(b)(c)~~ If the recorded instrument is silent as to the

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378 appointment of a successor trustee or trustees of a land trust
 379 but an unrecorded ~~land~~ trust agreement provides for the
 380 appointment of a successor trustee or trustees in the event of
 381 the death, incapacity, resignation, or termination due to
 382 dissolution of the ~~land~~ trustee, of a land trust, then upon the
 383 appointment of any successor trustee pursuant to the terms of
 384 the unrecorded ~~land~~ trust agreement, the each successor trustee
 385 or trustees shall file a declaration of appointment of a
 386 successor trustee in the public records of office of the
 387 ~~recorder of deeds~~ in the county in which the trust property is
 388 located. The declaration must be signed by both the former
 389 trustee and the each successor trustee or trustees, must be
 390 acknowledged in the manner provided for acknowledgment of deeds,
 391 and must contain:

- 392 1. The legal description of the trust property.
- 393 2. The name and address of the former trustee.
- 394 3. The name and address of the successor trustee or
 395 trustees.
- 396 4. A statement of resignation by the former trustee and a
 397 statement of acceptance of appointment by the each successor
 398 trustee or trustees.
- 399 5. A statement that the each successor trustee or trustees
 400 were was duly appointed under the terms of the unrecorded ~~land~~
 401 trust agreement.

402
 403 If the appointment of any successor trustee of a land trust is
 404 due to the death or incapacity of the former trustee, the
 405 declaration need not be signed by the former trustee and a copy
 406 of the death certificate or a statement that the former trustee

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407 is incapacitated or unable to serve must be attached to or
408 included in the declaration, as applicable.

409 ~~(c)(d)~~ If the recorded instrument provides for the
410 appointment of any successor trustee of a land trust and any
411 successor trustee is appointed in accordance with the recorded
412 instrument, no additional declarations of appointment of any
413 successor trustee are required under this section.

414 ~~(d)(e)~~ Each successor ~~land~~ trustee appointed with respect
415 to a land trust is fully vested with all the estate, properties,
416 rights, powers, trusts, duties, and obligations of the
417 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee
418 of a land trust is not under any duty to inquire into the acts
419 or omissions of a predecessor trustee and is not liable for any
420 act or failure to act of a predecessor trustee. A person dealing
421 with any successor trustee of a land trust pursuant to a
422 declaration filed under this section is not obligated to inquire
423 into or ascertain the authority of the successor trustee to act
424 within or exercise the powers granted under the recorded
425 instruments or any unrecorded trust agreement ~~declarations or~~
426 ~~agreements~~.

427 ~~(e)(f)~~ A ~~land~~ trust agreement may provide that the trustee
428 of a land trust, when directed to do so by the holder of the
429 power of direction or by the beneficiaries of the land trust or
430 legal representatives of the beneficiaries, may convey the trust
431 property directly to another trustee on behalf of the
432 beneficiaries or to another representative named in such
433 directive ~~others named by the beneficiaries~~.

434 (10) TRUSTEE AS CREDITOR.—

435 (a) If a debt is secured by a security interest or mortgage

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436 against ~~it~~ a beneficial interest in a land trust or by a
437 mortgage on ~~land~~ trust property of a land trust, the validity or
438 enforceability of the debt, security interest, or mortgage and
439 the rights, remedies, powers, and duties of the creditor with
440 respect to the debt or the security are not affected by the fact
441 that the creditor and the trustee are the same person ~~or entity~~,
442 and the creditor may extend credit, obtain any necessary
443 security interest or mortgage, and acquire and deal with the
444 property comprising the security as though the creditor were not
445 the trustee.

446 (b) A trustee of a land trust does not breach a fiduciary
447 duty to the beneficiaries, and it is not evidence of a breach of
448 any fiduciary duty owed by the trustee to the beneficiaries for
449 a trustee to be or become a secured or unsecured creditor of the
450 land trust, the beneficiary of the land trust, or a third party
451 whose debt to such creditor is guaranteed by a beneficiary of
452 the land trust.

453 (11) NOTICES TO TRUSTEE.—Any notice required to be given to
454 a trustee of a land trust regarding trust property by a person
455 who is not a party to the trust agreement must identify the
456 trust property to which the notice pertains or include the name
457 and date of the land trust to which the notice pertains, if such
458 information is shown on the recorded instrument for such trust
459 property.

460 (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise
461 provided in this section, chapter 736 does not apply to a land
462 trust governed by this section.

463 (a) A trust is not a land trust governed by this section if
464 there is no recorded instrument that confers on the trustee the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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465 power and authority prescribed in s. 689.073(1).

466 (b) For a trust created before the effective date of this
 467 act:

468 1. The trust is a land trust governed by this section if a
 469 recorded instrument confers on the trustee the power and
 470 authority described in s. 689.073(1) and if:

471 a. The recorded instrument or the trust agreement expressly
 472 provides that the trust is a land trust; or

473 b. The intent of the parties that the trust be a land trust
 474 is discerned from the trust agreement or the recorded
 475 instrument;

476 without regard to whether the trustee's duties under the trust
 477 agreement are greater than those limited duties described in s.
 478 689.071(2)(c).

480 2. The trust is not a land trust governed by this section
 481 if:

482 a. The recorded instrument or the trust agreement expressly
 483 provides that the trust is to be governed by chapter 736, or by
 484 any predecessor trust code or other trust law other than this
 485 section; or

486 b. The intent of the parties that the trust be governed by
 487 chapter 736, or by any predecessor trust code or other trust law
 488 other than this section, is discerned from the trust agreement
 489 or the recorded instrument;

490 without regard to whether the trustee's duties under the trust
 491 agreement are greater than those limited duties listed in s.
 492 689.071(2)(c), and without consideration of any references in
 493

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494 the trust agreement to provisions of chapter 736 made applicable
 495 to the trust by chapter 721, if the trust is a timeshare estate
 496 trust complying with s. 721.08(2)(c)4. or a vacation club trust
 497 complying with s. 721.53(1)(e).

498 3. Solely for the purpose of determining the law governing
 499 a trust under subparagraph 1. or subparagraph 2., the
 500 determination shall be made without consideration of any
 501 amendment to the trust agreement made on or after the effective
 502 date of this act, except as provided in paragraph (d).

503 4. If the determination of whether a trust is a land trust
 504 governed by this section cannot be made under either
 505 subparagraph 1. or subparagraph 2., the determination shall be
 506 made under paragraph (c) as if the trust was created on or after
 507 the effective date of this act.

508 (c) If a recorded instrument confers on the trustee the
 509 power and authority described in s. 689.073(1) and the trust was
 510 created on or after the effective date of this act, the trust
 511 shall be determined to be a land trust governed by this section
 512 only if the trustee's duties under the trust agreement,
 513 including any amendment made on or after such date, are greater
 514 than those limited duties described in s. 689.071(2)(c).

515 (d) If the trust agreement for a land trust created before
 516 the effective date of this act is amended on or after such date
 517 to add to or increase the duties of the trustee beyond the
 518 duties provided in the trust agreement as of the effective date
 519 of this act, the trust shall remain a land trust governed by
 520 this section only if the additional or increased duties of the
 521 trustee implemented by the amendment are greater than those
 522 limited duties described in s. 689.071(2)(c).

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523 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section
 524 does not render ineffective any effective Uniform Commercial
 525 Code financing statement filed before July 1, 2014, to perfect a
 526 security interest in a beneficial interest in a land trust that
 527 is determined to be real property as provided in subsection (6),
 528 but such a financing statement ceases to be effective at the
 529 earlier of July 1, 2019, or the time the financing statement
 530 would have ceased to be effective under the law of the
 531 jurisdiction in which it is filed, and the filing of a Uniform
 532 Commercial Code continuation statement after July 1, 2014, does
 533 not continue the effectiveness of such a financing statement.
 534 The recording of a mortgage, deed of trust, security agreement,
 535 or other similar security document against such a beneficial
 536 interest that is real property in the public records specified
 537 in paragraph (8)(c) continues the effectiveness and priority of
 538 a financing statement filed against such a beneficial interest
 539 before July 1, 2014, if:

540 (a) The recording of the security document in that county
 541 is effective to perfect a lien on such beneficial interest under
 542 paragraph (8)(c);

543 (b) The recorded security document identifies a financing
 544 statement filed before July 1, 2014, by indicating the office in
 545 which the financing statement was filed and providing the dates
 546 of filing and the file numbers, if any, of the financing
 547 statement and of the most recent continuation statement filed
 548 with respect to the financing statement; and

549 (c) The recorded security document indicates that such
 550 financing statement filed before July 1, 2014, remains
 551 effective.

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552
 553 If no original security document bearing the debtor's signature
 554 is readily available for recording in the public records, a
 555 secured party may proceed under this subsection with such
 556 financing statement filed before July 1, 2014, by recording a
 557 copy of a security document verified by the secured party as
 558 being a true and correct copy of an original authenticated by
 559 the debtor. This subsection does not apply to the perfection of
 560 a security interest in any beneficial interest in a land trust
 561 that is determined to be personal property under subsection (6).

562 (14)(11) REMEDIAL ACT.—This act is remedial in nature and
 563 shall be given a liberal interpretation to effectuate the intent
 564 and purposes hereinabove expressed.

565 (15)(12) EXCLUSION.—This act does not apply to any deed,
 566 mortgage, or other instrument to which s. 689.07 applies.

567 Section 3. Section 736.0102, Florida Statutes, is amended
 568 to read:

569 736.0102 Scope.—

570 (1) Except as otherwise provided in this section, this code
 571 applies to express trusts, charitable or noncharitable, and
 572 trusts created pursuant to a law, judgment, or decree that
 573 requires the trust to be administered in the manner of an
 574 express trust.

575 (2) This code does not apply to constructive or resulting
 576 trusts; conservatorships; custodial arrangements pursuant to the
 577 Florida Uniform Transfers to Minors Act; business trusts
 578 providing for certificates to be issued to beneficiaries; common
 579 trust funds; ~~land trusts under s. 689.071, except to the extent~~
 580 ~~provided in s. 689.071(7);~~ trusts created by the form of the

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581 account or by the deposit agreement at a financial institution;
582 voting trusts; security arrangements; liquidation trusts; trusts
583 for the primary purpose of paying debts, dividends, interest,
584 salaries, wages, profits, pensions, or employee benefits of any
585 kind; and any arrangement under which a person is nominee or
586 escrowee for another.

587 (3) This code does not apply to any land trust under s.
588 689.071, except to the extent provided in s. 689.071(7), s.
589 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its
590 creation by chapter 736, former chapter 737, or any prior trust
591 statute superseded or replaced by any provision of former
592 chapter 737, is not a land trust regardless of any amendment or
593 modification of the trust, any change in the assets held in the
594 trust, or any continuing trust resulting from the distribution
595 or retention in further trust of assets from the trust.

596 Section 4. The Division of Law Revision and Information is
597 directed to replace the phrase "the effective date of this act"
598 wherever it occurs in this act with such date.

599 Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.12.13

Meeting Date

Topic Support the Land Trust Bill

Bill Number 1172
(if applicable)

Name Martha Edenfield

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address PO Box 10095

Phone 850-222-3533

^{Street}
Tallahassee FL 32302
City State Zip

E-mail _____

Speaking: For Against Information

Representing The Real Property, Probate & Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Committee on Judiciary

BILL: CS/SB 120

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Condominiums

DATE: March 11, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | Shankle | Cibula | JU | Favorable |
| 3. | _____ | _____ | RC | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 120 amends the Florida Condominium Act to clarify that regardless of any requirement or description that a declaration of condominium may provide regarding when a condominium is created, condominium units are created when the declaration is recorded.

For the following procedural time periods, the bill substitutes the recording date of the certificate of a surveyor and mapper, or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit (known as the first unit owner deed), rather than the recording of the declaration of condominium:

- The deadline to bring an action to correct an omission or error in a declaration, which must be brought within 3 years after the recording of the first event;
- The beginning of the 2-year time period, during which the developer and unit owners, when the developer has not turned over control of the association, may vote to waive the financial reporting requirement;
- The date when the developer’s right to waive or reduce the funding of reserves expires;

- The beginning date for the 12-month period during which an association may enter into agreements for leasehold interests or membership rights before such an agreement or leasehold is considered a material alteration or substantial addition to the association property which would require a majority vote of the total voting interests or as authorized by the declaration; and
- The beginning date for the time periods for the turnover of association control from the developer to the unit owners.

These changes allow a developer to record a declaration, and thus be able to provide a description of the property to a prospective buyer in compliance with the Interstate Land Sales Full Disclosure Act without beginning the running of any of the above time periods.

The bill extends to 5 years from 3 years the period of time that the county clerk is required to hold funds deposited by a developer who has not prepared and provided the surveyors certificate of the land which will be a part of the condominium. This provides additional time for developers to provide the surveyor's certificate of the land to the county clerk.

The bill revises the 7-year period for completion of all phases of a condominium project to provide that the 7-year period runs from the date the surveyor's affidavit of substantial completion is recorded, or 7 years from the date the sale of a unit to a non-developer is recorded in the initial phase of the condominium. The bill deletes from the current provision that counted the beginning of the 7-year period from the date the declaration was recorded. The bill also creates a mechanism to extend the seven-year time period for an additional 3 years.

This bill substantially amends the following sections of the Florida Statutes: 718.104, 718.105, 718.110, 718.111, 718.112, 718.114, 718.301, and 718.403.

II. Present Situation:

Creation of Condominiums

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 where the condominium is located.² A declaration:

strictly 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

Section 718.116(1), F.S., provides that a unit owner is liable for all assessments which come due while he or she is the unit owner. Section 718.103(12), F.S., defines the term "unit" as:

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

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

a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

Upon recordation of the declaration or an amendment to an existing declaration that adds a phase to the condominium, all units described in the declaration or amendment as being located in or on the land then being submitted to condominium ownership comes into existence, regardless of the state of completion of planned improvements in which the units may be located. Upon recordation, the developer must file the recording information with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation within 120 days.⁴

Units in Unconstructed Condominiums

Condominium units that are created when the declaration of condominium is recorded before the construction of the condominium is completed are known as “phantom condominium units.” There is conflicting case law regarding the extent to which the owners of phantom units are subject to assessments on those units.

In *Hyde Park Condominium Association v. Estero Island Real Estate, Inc.*,⁵ the Florida Second District Court of Appeal held that the owner of unimproved lots in an unconstructed condominium was liable for unpaid assessments for common expenses on that property because the property was subject to a recorded declaration of condominium, and therefore a condominium had been created.

In *Winkelman v. Toll*,⁶ the Florida Fourth District Court of Appeal also held that the owner of unimproved land that was subject to a recorded declaration of condominium was liable for assessments on that property.

However, in *R.I.S. Investment Group, Inc. v. Department of Business and Professional Regulation*,⁷ the Fourth District Court of Appeal held that undeveloped “raw” land did not constitute a condominium unit which was subject to assessment. The court noted the detailed description of the unit in the declaration, which referenced boundaries of the unit to include a floor, a ceiling, and walls. The court relied on the “clear” intent of the scrivener of the declaration that undeveloped land did not constitute a unit.

Recording of the Declaration of a Condominium

A declaration is required to have a survey of the land and a graphic description of the improvements.⁸ When the developer attempts to record the declaration with a clerk of courts, if

⁴ Section 718.104(2), F.S.

⁵ *Hyde Park Condominium Association v. Estero Island Real Estate, Inc.*, 486 So. 2d 1, (Fla. 2nd DCA 1986). *See also*, *Estancia Condominium Association v. Sunfield Homes, Inc.*, 619 So. 2d 1008 (Fla. 2nd DCA 1993), holding that unimproved land that was subject to a recorded declaration of condominium was subject to assessments on that property.

⁶ *Winkelman v. Toll*, 661 So. 2d 102 (Fla. 4th DCA 1995),

⁷ *R.I.S. Investment Group, Inc. v. Department of Business and Professional Regulation*, 695 So. 2d 357 (Fla. 4th DCA 1997).

⁸ Section 718.104(4)(e), F.S.

the deceleration does not have the required survey of the land and graphic description of the improvements, the developer is required to deliver to the clerk of court a deposit in the amount of an estimate of the cost of the final survey or graphic description.⁹ The clerk is to hold the sum of money until an amendment to the declaration is recorded that complies with the certificate requirements. Then the sum of money is returned to the developer or to the person presenting the amendment.¹⁰ If the clerk does not pay the sum within 3 years after the date the declaration was originally recorded, the clerk may notify the registered agent of the association that the sum is still available and the reason it was originally deposited.¹¹

Amending the Declaration of a Condominium

Section 718.110(10), F.S., provides that if there is an omission or error in a declaration or any other document which would affect the valid existence of the condominium, and if no action is taken to determine whether the declaration or other document complies with the mandatory requirements for the formation of a condominium within 3 years after the date of the recordation of the declaration, the declaration and other documents shall serve as effective enough to create a condominium as of the date the declaration was recorded, whether or not the documents substantially comply with the mandatory requirements of law.

Application of the Interstate Land Sales Full Disclosure Act to Condominium Sales

The federal Interstate Land Sales Full Disclosure Act (ILSFDA or act)¹² provides consumer protections to persons who purchase or lease lots in large, uncompleted housing developments, including condominiums. The act applies to both the conveying of a unit or lot and to all related marketing and sales promotional efforts.

The act specifies the information that the developers must provide to prospective purchasers or lessees. If the developer fails to provide this information, the purchaser or lessee has the right to revoke the purchase contract or lease agreement for two years from the date of the signing of the contract or agreement.¹³

The act permits buyers and lessees to revoke their purchase or lease agreements within a prescribed time if certain conditions are met, including the failure of the developer to make the required disclosures.¹⁴ In relevant part, the developer must provide prospective purchasers or lessees with:

- (1) a description of the lot which makes such lot clearly identifiable and which is in a form acceptable for recording by the appropriate public official responsible for maintaining land records in the jurisdiction in which the lot is located;¹⁵

⁹ Section 718.105(4)(a), F.S.

¹⁰ Section 718.105(4)(b), F.S.

¹¹ Section 718.105(4)(c), F.S.

¹² 15 U.S.C. ss. 1701-20

¹³ See 15 U.S.C. s. 1703(d)

¹⁴ See 15 U.S.C. s. 1703

¹⁵ 15 U.S.C. s. 1703(d)(1)

Of concern to condominium developers, according to the Real Property, Probate, and Trust Law Section of The Florida Bar, is the application of ILSFDA to the sale, or offering for sale, of pre-construction condominium units.

State and federal court decisions have addressed the issue of what is an acceptable description of the property under ILSFDA.

In *Bacolitsas v. 86th & 3rd Owner, LLC*,¹⁶ the United State Court of Appeals for the Second Circuit (New York) held that the description requirement in ISLFDA was satisfied where the purchaser was provided a plan with a detailed description of the unit that identified the dimensions and locations of all rooms and windows, the floor plan, the location of the unit within the building, and the direction the unit faced. The purchaser was also provided a draft declaration that included a metes and bounds description of the condominium and indicated the specific tax lots on which the building was to be erected. The court held that the description itself and not the agreement had to be in a form acceptable for record.

In *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*,¹⁷ the Fourth District Court of Appeals held that the developer had complied with ISLFDA by providing the buyer a copy of the proposed declaration of condominium, which was included in the prospectus, the unit number, address, development name, site map, and floor plans. The court found that this information, which was incorporated into the contract, made the property purchased “clearly identifiable” and “in a form acceptable for recording.”

In *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*,¹⁸ the United States District Court for the Middle District of Florida also found that ISLFDA disclosure requirement was not violated when the developer provided a purchase contract that designated the condominium unit and the name of the development. The court held that ISLFDA requirement that the description must be in “recordable form” does not mean that the developer must provide “recording data identifying [the] declaration” as is required by s. 718.109, F.S., i.e., the developer is not required to give the purchaser the identifying reference number when the declaration is recorded.

However, in a recent case, *Berkovich v. Vue-North Carolina, L.L.C.*,¹⁹ the United States District Court for the Western District of North Carolina concluded that the purchasers had the right to revoke the contract because it did not contain a recordable legal description that included the information contained in the filing of the declaration. Consistent with North Carolina law, the developer provided the purchaser with a contract that included a legal description of the unit in which the unit was identified by number and the name of the condominium building as described in the declaration of condominium. However, the description did not include recording data from the filing recording of the declaration because North Carolina law did not permit the declaration to be filed until the construction of the condominium was substantially completed. (Florida law does not prohibit the filing of a declaration before the condominium construction is completed.) Although North Carolina law made it impractical or impossible to provide a description for the

¹⁶ *Bacolitsas v. 86th & 3rd Owner, LLC*, 702 F.3d 673 (C.A.2 (N.Y.)) December 19, 2012.

¹⁷ *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*, 82 So. 3d 924 (Fla. 4th DCA 2011)

¹⁸ *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*, 755 F.Supp.2d 1197 (M.D. Fla. 2009).

¹⁹ *Berkovich v. Vue-North Carolina, L.L.C.*, 2011 WL 5037124 (W.D.N.C. 2011).

unit that included “recording data”, the court held that the purchasers were entitled to the “prophylactic measure Congress granted purchasers deprived of a recordable legal description.”

Financial Reporting

Section 718.111(13), F.S., provides the financial reporting requirements for condominium associations. Within 90 days after the end of the fiscal year (or annually on a date provided in the bylaws), the association must prepare and complete a financial report for the preceding year. Within 21 days after completion, but no later than 120 days after the end of the fiscal year, the association must mail or hand deliver to each unit owner, a copy of the financial report or a notice that it will be mailed or hand delivered.²⁰ The financial reports must be prepared if approved by a majority of the voting interests present at a properly called meeting of the association, and may be done by one of these methods:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.²¹

The meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote was taken, except that the approval may also be effective for the following fiscal year.²²

If turnover of the association from the developer to the unit owners has not occurred, all unit owners including the developer may vote on issues relating to the preparation of financial reports for the first 2 fiscal years of the association’s operation, beginning with the fiscal year in which the declaration was recorded.²³ Thereafter, only unit owners may vote on such issues until turnover occurs.²⁴

Annual Budget Requirement

Section 718.112(2)(f), F.S., requires that the condominium associations bylaws must provide for a proposed annual budget that contains detailed estimates of revenues and expenses and show the amounts budgeted by accounts and expense classifications.

In addition to the annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These requirements do not apply to an adopted budget in which a majority vote of the unit owners determined to waive reserves or provide less reserves than required by law.²⁵

²⁰ Section 718.111(13), F.S.

²¹ Section 718.111(13)(d), F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Section 718.112(2)(f)2, F.S.

Prior to turnover, a developer may vote to waive the reserves or reduce funding of reserves for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the initial declaration is recorded. Thereafter, only the unit owners may vote on such issues by a majority vote.²⁶

Association Powers

Under Section 718.114, F.S., if the declaration allows, an association may enter into agreements for leasehold interests or membership rights and may obtain these benefits for the enjoyment of unit owners even if they are not contiguous to the lands of the condominium. All of these agreements must be fully described in the declaration.

After the 12 months following the recording date of the declaration, agreements acquiring interests are considered a material alteration to the association property, and the association may not acquire or enter into such agreements except by a vote of a majority of the total voting interests or as authorized by the declaration.²⁷

Transfer of Association Control

Section 718.301(1), F.S., delineates the process for transfer of association control from the developer to the unit owners. The latest that turnover of control of an association may occur is 7 years after the recording of a declaration when the association will operate a single condominium. In the case of an association that may ultimately operate more than one condominium, the time period is 7 years after the recordation of the declaration for the first condominium that it operates.²⁸

After the turnover occurs, the developer must relinquish all control of the association and deliver to the association all property of the unit owners.²⁹

Phase Condominiums

Section 718.403, F.S., permits a developer to develop a condominium in phases if the declaration allows, or if an amendment to the original declaration was approved by all of the unit owners. However, the final phase must be completed within 7 years from the date of the recording of the initial declaration.

III. Effect of Proposed Changes:

Section 1. Creation of Condominiums

The bill amends s. 718.104(2), F.S., to clarify that regardless of any requirement or description that a declaration may provide regarding when a condominium is created, condominium units are

²⁶ *Id.*

²⁷ Section 718.114, F.S.

²⁸ Section 718.301(1)(g), F.S.

²⁹ Section 718.301(4), F.S.

created when the declaration is recorded. According to the Real Property, Probate, and Trust Law Section of The Florida Bar, this change addresses the conflicting case law regarding whether condominium units are created when a declaration is recorded for condominium that has not been constructed and regarding the extent to which the owners of unconstructed units are subject to assessments on those units. Regardless of any description that a declaration provides, a unit owner can be subject to assessments from the date of recording of the declaration.

Section 2. Recording of Declaration

The bill amends s. 718.105(4)(c), F.S., to extend to 5 years from 3 years the period of time that the county clerk is required to hold funds deposited by a developer who has not prepared and provided the surveyors certificate of the land which will be a part of the condominium.

Section 3. Amending the Declaration of Condominium

The bill amends s. 718.110(10), F.S., to provide that an action to correct an omission or error in a declaration must be brought within 3 years after the first of these events to occur:

- The recording date of the certificate of a surveyor and mapper, or
- The recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit (known as the first unit owner deed).

If the action is not brought within the 3-year period, the declaration and other documents would effectively create the condominium on the date the declaration was recorded.

The bill deletes the current requirement that the action be brought within 3 years after the recording of the declaration.

In effect, this provision also permits the developer to provide a prospective condominium unit purchaser with a recorded legal description of the condominium unit at a time before the initial declaration is actually recorded. According to the Real Property, Probate and Trust Law Section of The Florida Bar, this change provides an acceptable legal description of condominium units during the pre-sale period which will comply with the federal Interstate Lands Full Disclosure Act

Section 4. Financial Reporting

The bill amends s. 718.111(13)(d), F.S., to allow the developer and unit owners, when the developer has not turned over control of the association, to vote to waive the financial reporting requirement from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded, or the recording of the first owner's deed, whichever occurs first. The bill deletes the current provision that the two year period begins on the date the declaration was recorded.

Section 5. Annual Budget

The bill amends s. 718.112(2)(f), F.S., to allow the developer to vote to waive or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded, or the recording of the first owner's deed, whichever occurs first. The bill deletes the current provision that the 2-year period begins on the date the initial declaration was recorded.

Section 6. Association Powers

The bill amends s. 718.114, F. S., to provide that the 12 months in which acquiring leaseholds, memberships, or other possessory or use interests is not considered a material alteration begins either on the date of the recording of a certificate of a surveyor and mapper, or the date of the recording of first owner's deed, whichever occurs first. The bill deletes the current provision that the 12-month period run from the date the initial declaration was recorded.

Section 7. Transfer of Association Control

The bill amends s. 718.301(1)(g), F.S., to change the beginning date for the time periods for the turnover of association control. Instead of commencing on the date the declaration is recorded, the effect periods run from the date of the recording of the certificate of a surveyor and mapper, or the first owner's deed, whichever occurs first.

The bill also creates paragraph 718.301(4)(q), F.S. to require that the developer provide the association a copy of the surveyor and mapper certificate recorded pursuant to s. 718.104(4)(e), F.S., or the recorded instrument that transfers title to a unit that is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

Section 8. Phase Condominiums

The bill amends s. 718.403(1), F.S., so that the period for completion of all phases of a condominium project runs from the date that the surveyor's affidavit of substantial completion is recorded, or 7 years from the date the sale of a unit to a non-developer is recorded in the initial phase of the condominium. The bill deletes the current provision that counted the beginning of the 7-year period from the date the declaration was recorded.

The bill also creates a mechanism to extend the 7-year time period for an additional 3 years, if the unit owners approve the extension during the last 3 years of the 7-year period.³⁰ The completion of all phases may not exceed 10 years.

An amendment that extends the 7-year period is not subject to the requirements of s. 718.110(4), F.S., which requires the record owner of units and all record owners of liens on the unit to join in the execution of an amendment to the declaration and unless all the record owners of all other units in the same condominium approve the amendment.

³⁰ The approval must be by "not less than two-thirds of the unit owners" which is the same as that required to amend the declaration of condominium under s. 718.110(1)(a), F.S.

Effective Date

The bill takes 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Developers of condominium will be subject to the cost of recoding the certificate of a surveyor and mapper, or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit (known as the first unit owner deed).

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 January 24, 2013:

The committee substitute reinstated the current statutory language in s. 718.112(2)(f)2., F.S., which requires the members of a condominium association to determine, by a majority vote at a duly called association meeting, whether to have no budget reserves or budget reserves less than the budget reserves required by statute. These reserves are for the deferred maintenance expense or replacement cost for roof replacement, painting, pavement resurfacing, and similar maintenance issues.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Regulated Industries; and Senator Latvala

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1 A bill to be entitled
 2 An act relating to condominiums; amending s. 718.104,
 3 F.S.; allowing condominium units to come into
 4 existence regardless of requirements or restrictions
 5 in a declaration; amending s. 718.105, F.S.; extending
 6 the amount of time that a clerk may hold a sum of
 7 money before notifying the registered agent of an
 8 association that the sum is still available and the
 9 purpose for which it was deposited; amending s.
 10 718.110, F.S.; changing the requirements relating to
 11 the circumstances under which a declaration of
 12 condominium or other documents are effective to create
 13 a condominium; making technical changes; amending s.
 14 718.111, F.S.; revising the conditions under which
 15 unit owners may vote on issues related to the
 16 preparation of financial reports; making technical
 17 changes; amending s. 718.112, F.S.; revising the
 18 conditions under which a developer may vote to waive
 19 or reduce the funding of reserves; making technical
 20 changes; amending s. 718.114, F.S.; revising the
 21 conditions under which a developer may acquire
 22 leaseholds, memberships, or other possessory or use
 23 interests; making technical changes; amending s.
 24 718.301, F.S.; revising the conditions under which
 25 unit owners other than the developer are entitled to
 26 elect at least a majority of the members of a board of
 27 administration; revising requirements related to the
 28 documents that the developer must deliver to the
 29 association; making technical changes; amending s.

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30 718.403, F.S.; revising the conditions under which a
 31 developer may amend a declaration of condominium
 32 governing a phase condominium; providing for an
 33 extension of the 7-year period for the completion of a
 34 phase; providing requirements for the adoption of an
 35 amendment; providing that an amendment adopted
 36 pursuant to this section is exempt from other
 37 requirements of law; providing an effective date.
 38
 39 Be It Enacted by the Legislature of the State of Florida:
 40
 41 Section 1. Subsection (2) of section 718.104, Florida
 42 Statutes, is amended to read:
 43 718.104 Creation of condominiums; contents of declaration.-
 44 Every condominium created in this state shall be created
 45 pursuant to this chapter.
 46 (2) A condominium is created by recording a declaration in
 47 the public records of the county where the land is located,
 48 executed and acknowledged with the requirements for a deed. All
 49 persons who have record title to the interest in the land being
 50 submitted to condominium ownership, or their lawfully authorized
 51 agents, must join in the execution of the declaration. Upon the
 52 recording of the declaration, or an amendment adding a phase to
 53 the condominium under s. 718.403(6), all units described in the
 54 declaration or phase amendment as being located in or on the
 55 land then being submitted to condominium ownership shall come
 56 into existence, regardless of the state of completion of planned
 57 improvements in which the units may be located or any other
 58 requirement or description that a declaration may provide. Upon

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59 recording the declaration of condominium pursuant to this
60 section, the developer shall file the recording information with
61 the division within 120 calendar days on a form prescribed by
62 the division.

63 Section 2. Paragraph (c) of subsection (4) of section
64 718.105, Florida Statutes, is amended to read:

65 718.105 Recording of declaration.—

66 (4)

67 (c) If the sum of money held by the clerk has not been paid
68 to the developer or association as provided in paragraph (b)
69 within 5 3 years after the date the declaration was originally
70 recorded, the clerk may notify, in writing, the registered agent
71 of the association that the sum is still available and the
72 purpose for which it was deposited. If the association does not
73 record the certificate within 90 days after the clerk has given
74 the notice, the clerk may disburse the money to the developer.
75 If the developer cannot be located, the clerk shall disburse the
76 money to the Division of Florida Condominiums, Timeshares, and
77 Mobile Homes for deposit in the Division of Florida
78 Condominiums, Timeshares, and Mobile Homes Trust Fund.

79 Section 3. Subsection (10) of section 718.110, Florida
80 Statutes, is amended to read:

81 718.110 Amendment of declaration; correction of error or
82 omission in declaration by circuit court.—

83 (10) If there is an omission or error in a declaration of
84 condominium, or any other document required to establish the
85 condominium, and the which omission or error would affect the
86 valid existence of the condominium, the circuit court may ~~has~~
87 ~~jurisdiction to~~ entertain a petition of one or more of the unit

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88 owners in the condominium, or of the association, to correct the
89 error or omission, and the action may be a class action. The
90 court may require that one or more methods of correcting the
91 error or omission be submitted to the unit owners to determine
92 the most acceptable correction. All unit owners, the
93 association, and the mortgagees of a first mortgage of record
94 must be joined as parties to the action. Service of process on
95 unit owners may be by publication, but the plaintiff must
96 furnish every unit owner not personally served with process with
97 a copy of the petition and final decree of the court by
98 certified mail, return receipt requested, at the unit owner's
99 last known residence address. If an action to determine whether
100 the declaration or another condominium document complies with
101 the mandatory requirements for the formation of a condominium is
102 not brought within 3 years of the recording of the certificate
103 of a surveyor and mapper pursuant to s. 718.104(4)(e) or the
104 recording of an instrument that transfers title to a unit in the
105 condominium which is not accompanied by a recorded assignment of
106 developer rights in favor of the grantee of such unit, whichever
107 occurs first, recording of the declaration, the declaration and
108 other documents will effectively ~~shall be effective under this~~
109 ~~chapter to~~ create a condominium, as of the date the declaration
110 was recorded, regardless of whether ~~whether or not~~ the documents
111 substantially comply with the mandatory requirements of law.
112 However, both before and after the expiration of this 3-year
113 period, the circuit court has jurisdiction to entertain a
114 petition permitted under this subsection for the correction of
115 the documentation, and other methods of amendment may be
116 utilized to correct the errors or omissions at any time.

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117 Section 4. Paragraph (d) of subsection (13) of section
 118 718.111, Florida Statutes, is amended to read:
 119 718.111 The association.—
 120 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 121 the fiscal year, or annually on a date provided in the bylaws,
 122 the association shall prepare and complete, or contract for the
 123 preparation and completion of, a financial report for the
 124 preceding fiscal year. Within 21 days after the final financial
 125 report is completed by the association or received from the
 126 third party, but not later than 120 days after the end of the
 127 fiscal year or other date as provided in the bylaws, the
 128 association shall mail to each unit owner at the address last
 129 furnished to the association by the unit owner, or hand deliver
 130 to each unit owner, a copy of the financial report or a notice
 131 that a copy of the financial report will be mailed or hand
 132 delivered to the unit owner, without charge, upon receipt of a
 133 written request from the unit owner. The division shall adopt
 134 rules setting forth uniform accounting principles and standards
 135 to be used by all associations and addressing the financial
 136 reporting requirements for multicondominium associations. The
 137 rules must include, but not be limited to, standards for
 138 presenting a summary of association reserves, including a good
 139 faith estimate disclosing the annual amount of reserve funds
 140 that would be necessary for the association to fully fund
 141 reserves for each reserve item based on the straight-line
 142 accounting method. This disclosure is not applicable to reserves
 143 funded via the pooling method. In adopting such rules, the
 144 division shall consider the number of members and annual
 145 revenues of an association. Financial reports shall be prepared

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146 as follows:

147 (d) If approved by a majority of the voting interests
 148 present at a properly called meeting of the association, an
 149 association may prepare:
 150 1. A report of cash receipts and expenditures in lieu of a
 151 compiled, reviewed, or audited financial statement;
 152 2. A report of cash receipts and expenditures or a compiled
 153 financial statement in lieu of a reviewed or audited financial
 154 statement; or
 155 3. A report of cash receipts and expenditures, a compiled
 156 financial statement, or a reviewed financial statement in lieu
 157 of an audited financial statement.
 158
 159 Such meeting and approval must occur before the end of the
 160 fiscal year and is effective only for the fiscal year in which
 161 the vote is taken, except that the approval may also be
 162 effective for the following fiscal year. If ~~With respect to an~~
 163 ~~association to which the developer has not turned over control~~
 164 ~~of the association, all unit owners, including the developer,~~
 165 ~~may vote on issues related to the preparation of the~~
 166 ~~association's financial reports for the first 2 fiscal years of~~
 167 ~~the association's operation, from beginning with the date of~~
 168 ~~incorporation of the association through the end of the second~~
 169 ~~fiscal year after the fiscal year in which the certificate of a~~
 170 ~~surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or~~
 171 ~~an instrument that transfers title to a unit in the condominium~~
 172 ~~which is not accompanied by a recorded assignment of developer~~
 173 ~~rights in favor of the grantee of such unit is recorded,~~
 174 ~~whichever occurs first declaration is recorded.~~ Thereafter, all

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175 unit owners except the developer may vote on such issues until
 176 control is turned over to the association by the developer. Any
 177 audit or review prepared under this section shall be paid for by
 178 the developer if done before turnover of control of the
 179 association. An association may not waive the financial
 180 reporting requirements of this section for more than 3
 181 consecutive years.

182 Section 5. Paragraph (f) of subsection (2) of section
 183 718.112, Florida Statutes, is amended to read:

184 718.112 Bylaws.—

185 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 186 following and, if they do not do so, shall be deemed to include
 187 the following:

188 (f) *Annual budget.*—

189 1. The proposed annual budget of estimated revenues and
 190 expenses ~~must shall~~ be detailed and ~~must shall~~ show the amounts
 191 budgeted by accounts and expense classifications, including, if
 192 applicable, but not limited to, those expenses listed in s.
 193 718.504(21). A multicondominium association shall adopt a
 194 separate budget of common expenses for each condominium the
 195 association operates and shall adopt a separate budget of common
 196 expenses for the association. In addition, if the association
 197 maintains limited common elements with the cost to be shared
 198 only by those entitled to use the limited common elements as
 199 provided for in s. 718.113(1), the budget or a schedule attached
 200 to it must a schedule attached thereto shall show the amount
 201 budgeted for this maintenance amounts budgeted therefor. If,
 202 after turnover of control of the association to the unit owners,
 203 any of the expenses listed in s. 718.504(21) are not applicable,

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204 they need not be listed.

205 2. In addition to annual operating expenses, the budget
 206 ~~must shall~~ include reserve accounts for capital expenditures and
 207 deferred maintenance. These accounts ~~must shall~~ include, but are
 208 not limited to, roof replacement, building painting, and
 209 pavement resurfacing, regardless of the amount of deferred
 210 maintenance expense or replacement cost, and for any other item
 211 ~~that has a for which the~~ deferred maintenance expense or
 212 replacement cost that exceeds \$10,000. The amount to be reserved
 213 ~~must shall~~ be computed using by means of a formula ~~which is~~
 214 based upon estimated remaining useful life and estimated
 215 replacement cost or deferred maintenance expense of each reserve
 216 item. The association may adjust replacement reserve assessments
 217 annually to take into account any changes in estimates or
 218 extension of the useful life of a reserve item caused by
 219 deferred maintenance. This subsection does not apply to an
 220 adopted budget in which the members of an association have
 221 determined, by a majority vote at a duly called meeting of the
 222 association, to provide no reserves or less reserves than
 223 required by this subsection. However, prior to turnover of
 224 control of an association by a developer to unit owners other
 225 than a developer pursuant to s. 718.301, the developer may vote
 226 to waive the reserves or reduce the funding of reserves through
 227 the period expiring at the end of the second fiscal year after
 228 the fiscal year in which the certificate of a surveyor and
 229 mapper is recorded pursuant to s. 718.104(4) (e) or an instrument
 230 that transfers title to a unit in the condominium which is not
 231 accompanied by a recorded assignment of developer rights in
 232 favor of the grantee of such unit is recorded, whichever occurs

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233 ~~first, for the first 2 fiscal years of the association's~~
 234 ~~operation, beginning with the fiscal year in which the initial~~
 235 ~~declaration is recorded,~~ after which time reserves may be waived
 236 or reduced only upon the vote of a majority of all nondeveloper
 237 voting interests voting in person or by limited proxy at a duly
 238 called meeting of the association. If a meeting of the unit
 239 owners has been called to determine whether to waive or reduce
 240 the funding of reserves, and no such result is achieved or a
 241 quorum is not attained, the reserves ~~as~~ included in the budget
 242 shall go into effect. After the turnover, the developer may vote
 243 its voting interest to waive or reduce the funding of reserves.

244 3. Reserve funds and any interest accruing thereon shall
 245 remain in the reserve account or accounts, and may ~~shall~~ be used
 246 only for authorized reserve expenditures unless their use for
 247 other purposes is approved in advance by a majority vote at a
 248 duly called meeting of the association. Prior to turnover of
 249 control of an association by a developer to unit owners other
 250 than the developer pursuant to s. 718.301, the developer-
 251 controlled association shall not vote to use reserves for
 252 purposes other than that for which they were intended without
 253 the approval of a majority of all nondeveloper voting interests,
 254 voting in person or by limited proxy at a duly called meeting of
 255 the association.

256 4. The only voting interests ~~that~~ which are eligible to
 257 vote on questions that involve waiving or reducing the funding
 258 of reserves, or using existing reserve funds for purposes other
 259 than purposes for which the reserves were intended, are the
 260 voting interests of the units subject to assessment to fund the
 261 reserves in question. Proxy questions relating to waiving or

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262 reducing the funding of reserves or using existing reserve funds
 263 for purposes other than purposes for which the reserves were
 264 intended shall contain the following statement in capitalized,
 265 bold letters in a font size larger than any other used on the
 266 face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN
 267 PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY
 268 RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED
 269 SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

270 Section 6. Section 718.114, Florida Statutes, is amended to
 271 read:

272 718.114 Association powers.—An association may enter into
 273 agreements to acquire leaseholds, memberships, and other
 274 possessory or use interests in lands or facilities such as
 275 country clubs, golf courses, marinas, and other recreational
 276 facilities, regardless of whether ~~or not~~ the lands or facilities
 277 are contiguous to the lands of the condominium, if such lands
 278 and facilities are intended to provide enjoyment, recreation, or
 279 other use or benefit to the unit owners. All of these
 280 leaseholds, memberships, and other possessory or use interests
 281 existing or created at the time of recording the declaration
 282 must be stated and fully described in the declaration.
 283 Subsequent to the recording of the declaration, agreements
 284 acquiring these leaseholds, memberships, or other possessory or
 285 use interests which are not entered into within 12 months of the
 286 date of the recording of the certificate of a surveyor and
 287 mapper pursuant to s. 718.104(4)(e) or the recording of an
 288 instrument that transfers title to a unit in the condominium
 289 which is not accompanied by a recorded assignment of developer
 290 rights in favor of the grantee of such unit, whichever occurs

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291 ~~first, are following the recording of the declaration are a~~
 292 material alteration or substantial addition to the real property
 293 that is association property, and the association may not
 294 acquire or enter into such agreements except upon a vote of, or
 295 written consent by, a majority of the total voting interests or
 296 as authorized by the declaration as provided in s. 718.113. The
 297 declaration may provide that the rental, membership fees,
 298 operations, replacements, and other expenses are common expenses
 299 and may impose covenants and restrictions concerning their use
 300 and may contain other provisions not inconsistent with this
 301 chapter. A condominium association may conduct bingo games as
 302 provided in s. 849.0931.

303 Section 7. Subsections (1) and (4) of section 718.301,
 304 Florida Statutes, are amended to read:

305 718.301 Transfer of association control; claims of defect
 306 by association.—

307 (1) If unit owners other than the developer own 15 percent
 308 or more of the units in a condominium that will be operated
 309 ultimately by an association, the unit owners other than the
 310 developer are entitled to elect at least one-third of the
 311 members of the board of administration of the association. Unit
 312 owners other than the developer are entitled to elect at least a
 313 majority of the members of the board of administration of an
 314 association, upon the first to occur of any of the following
 315 events:

316 (a) Three years after 50 percent of the units that will be
 317 operated ultimately by the association have been conveyed to
 318 purchasers;

319 (b) Three months after 90 percent of the units that will be

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320 operated ultimately by the association have been conveyed to
 321 purchasers;

322 (c) When all the units that will be operated ultimately by
 323 the association have been completed, some of them have been
 324 conveyed to purchasers, and none of the others are being offered
 325 for sale by the developer in the ordinary course of business;

326 (d) When some of the units have been conveyed to purchasers
 327 and none of the others are being constructed or offered for sale
 328 by the developer in the ordinary course of business;

329 (e) When the developer files a petition seeking protection
 330 in bankruptcy;

331 (f) When a receiver for the developer is appointed by a
 332 circuit court and is not discharged within 30 days after such
 333 appointment, unless the court determines within 30 days after
 334 appointment of the receiver that transfer of control would be
 335 detrimental to the association or its members; or

336 (g) Seven years after the date of the recording of the
 337 certificate of a surveyor and mapper pursuant to s.
 338 718.104(4) (e) or the recording of an instrument that transfers
 339 title to a unit in the condominium which is not accompanied by a
 340 recorded assignment of developer rights in favor of the grantee
 341 of such unit, whichever occurs first; ~~recording of the~~
 342 ~~declaration of condominium;~~ or, in the case of an association
 343 that may ultimately operate more than one condominium, 7 years
 344 after the date of the recording of the certificate of a surveyor
 345 and mapper pursuant to s. 718.104(4) (e) or the recording of an
 346 instrument that transfers title to a unit which is not
 347 accompanied by a recorded assignment of developer rights in
 348 favor of the grantee of such unit, whichever occurs first,

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349 ~~recording of the declaration~~ for the first condominium it
 350 operates; or, in the case of an association operating a phase
 351 condominium created pursuant to s. 718.403, 7 years after the
 352 date of the recording of the certificate of a surveyor and
 353 mapper pursuant to s. 718.104(4)(e) or the recording of an
 354 instrument that transfers title to a unit which is not
 355 accompanied by a recorded assignment of developer rights in
 356 favor of the grantee of such unit, whichever occurs first
 357 ~~recording of the declaration creating the initial phase,~~
 358 ~~whichever occurs first.~~ The developer is entitled to elect at
 359 least one member of the board of administration of an
 360 association as long as the developer holds for sale in the
 361 ordinary course of business at least 5 percent, in condominiums
 362 with fewer than 500 units, and 2 percent, in condominiums with
 363 more than 500 units, of the units in a condominium operated by
 364 the association. After the developer relinquishes control of the
 365 association, the developer may exercise the right to vote any
 366 developer-owned units in the same manner as any other unit owner
 367 except for purposes of reacquiring control of the association or
 368 selecting the majority members of the board of administration.
 369 (4) At the time that unit owners other than the developer
 370 elect a majority of the members of the board of administration
 371 of an association, the developer shall relinquish control of the
 372 association, and the unit owners shall accept control.
 373 Simultaneously, or for the purposes of paragraph (c) not more
 374 than 90 days thereafter, the developer shall deliver to the
 375 association, at the developer's expense, all property of the
 376 unit owners and of the association which is held or controlled
 377 by the developer, including, but not limited to, the following

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378 items, if applicable, as to each condominium operated by the
 379 association:
 380 (a)1. The original or a photocopy of the recorded
 381 declaration of condominium and all amendments thereto. If a
 382 photocopy is provided, it must shall be certified by affidavit
 383 of the developer or an officer or agent of the developer as
 384 being a complete copy of the actual recorded declaration.
 385 2. A certified copy of the articles of incorporation of the
 386 association or, if the association was created prior to the
 387 effective date of this act and it is not incorporated, copies of
 388 the documents creating the association.
 389 3. A copy of the bylaws.
 390 4. The minute books, including all minutes, and other books
 391 and records of the association, if any.
 392 5. Any house rules and regulations that which have been
 393 promulgated.
 394 (b) Resignations of officers and members of the board of
 395 administration who are required to resign because the developer
 396 is required to relinquish control of the association.
 397 (c) The financial records, including financial statements
 398 of the association, and source documents from the incorporation
 399 of the association through the date of turnover. The records
 400 must shall be audited for the period from the incorporation of
 401 the association or from the period covered by the last audit, if
 402 an audit has been performed for each fiscal year since
 403 incorporation, by an independent certified public accountant.
 404 All financial statements must shall be prepared in accordance
 405 with generally accepted accounting principles and must shall be
 406 audited in accordance with generally accepted auditing

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407 standards, as prescribed by the Florida Board of Accountancy,
 408 pursuant to chapter 473. The accountant performing the audit
 409 shall examine to the extent necessary supporting documents and
 410 records, including the cash disbursements and related paid
 411 invoices to determine if expenditures were for association
 412 purposes and the billings, cash receipts, and related records to
 413 determine that the developer was charged and paid the proper
 414 amounts of assessments.

415 (d) Association funds or control thereof.

416 (e) All tangible personal property that is property of the
 417 association, which is represented by the developer to be part of
 418 the common elements or which is ostensibly part of the common
 419 elements, and an inventory of that property.

420 (f) A copy of the plans and specifications utilized in the
 421 construction or remodeling of improvements and the supplying of
 422 equipment to the condominium and in the construction and
 423 installation of all mechanical components serving the
 424 improvements and the site with a certificate in affidavit form
 425 of the developer or the developer's agent or an architect or
 426 engineer authorized to practice in this state that such plans
 427 and specifications represent, to the best of his or her
 428 knowledge and belief, the actual plans and specifications
 429 utilized in the construction and improvement of the condominium
 430 property and for the construction and installation of the
 431 mechanical components serving the improvements. If the
 432 condominium property has been declared a condominium more than 3
 433 years after the completion of construction or remodeling of the
 434 improvements, the requirements of this paragraph do not apply.

435 (g) A list of the names and addresses, ~~of which the~~

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436 ~~developer had knowledge at any time in the development of the~~
 437 ~~condominium,~~ of all contractors, subcontractors, and suppliers
 438 utilized in the construction or remodeling of the improvements
 439 and in the landscaping of the condominium or association
 440 property which the developer had knowledge of at any time in the
 441 development of the condominium.

442 (h) Insurance policies.

443 (i) Copies of any certificates of occupancy that ~~which~~ may
 444 have been issued for the condominium property.

445 (j) Any other permits applicable to the condominium
 446 property which have been issued by governmental bodies and are
 447 in force or were issued within 1 year prior to the date the unit
 448 owners other than the developer took ~~take~~ control of the
 449 association.

450 (k) All written warranties of the contractor,
 451 subcontractors, suppliers, and manufacturers, if any, that are
 452 still effective.

453 (l) A roster of unit owners and their addresses and
 454 telephone numbers, if known, as shown on the developer's
 455 records.

456 (m) Leases of the common elements and other leases to which
 457 the association is a party.

458 (n) Employment contracts or service contracts in which the
 459 association is one of the contracting parties or service
 460 contracts in which the association or the unit owners have an
 461 obligation or responsibility, directly or indirectly, to pay
 462 some or all of the fee or charge of the person or persons
 463 performing the service.

464 (o) All other contracts to which the association is a

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465 party.

466 (p) A report included in the official records, under seal
 467 of an architect or engineer authorized to practice in this
 468 state, attesting to required maintenance, useful life, and
 469 replacement costs of the following applicable common elements
 470 comprising a turnover inspection report:

- 471 1. Roof.
- 472 2. Structure.
- 473 3. Fireproofing and fire protection systems.
- 474 4. Elevators.
- 475 5. Heating and cooling systems.
- 476 6. Plumbing.
- 477 7. Electrical systems.
- 478 8. Swimming pool or spa and equipment.
- 479 9. Seawalls.
- 480 10. Pavement and parking areas.
- 481 11. Drainage systems.
- 482 12. Painting.
- 483 13. Irrigation systems.

484 (q) A copy of the certificate of a surveyor and mapper
 485 recorded pursuant to s. 718.104(4)(e) or the recorded instrument
 486 that transfers title to a unit in the condominium which is not
 487 accompanied by a recorded assignment of developer rights in
 488 favor of the grantee of such unit, whichever occurs first.

489 Section 8. Subsection (1) of section 718.403, Florida
 490 Statutes, is amended to read:

491 718.403 Phase condominiums.—

492 (1) Notwithstanding the provisions of s. 718.110, a
 493 developer may develop a condominium in phases, if the original

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494 declaration of condominium submitting the initial phase to
 495 condominium ownership or an amendment to the declaration which
 496 has been approved by all of the unit owners and unit mortgagees
 497 provides for and describes in detail all anticipated phases; the
 498 impact, if any, which the completion of subsequent phases would
 499 have upon the initial phase; and the time period ~~(which may not~~
 500 ~~exceed 7 years from the date of recording the declaration of~~
 501 ~~condominium)~~ within which all phases must be added to the
 502 condominium and comply with the requirements of this section and
 503 at the end of which the right to add additional phases expires.

504 (a) All phases must be added to the condominium within 7
 505 years after the date of the recording of the certificate of a
 506 surveyor and mapper pursuant to s. 718.104(4)(e) or the
 507 recording of an instrument that transfers title to a unit in the
 508 condominium which is not accompanied by a recorded assignment of
 509 developer rights in favor of the grantee of such unit, whichever
 510 occurs first, unless the unit owners vote to approve an
 511 amendment extending the 7-year period pursuant to subsection (b)
 512 of this section.

513 (b) An amendment to extend the 7-year period shall require
 514 the approval of the owners necessary to amend the declaration of
 515 condominium pursuant to s. 718.110(1)(a). An extension of the 7-
 516 year period may be submitted for approval only during the last 3
 517 years of the 7-year period.

518 (c) An amendment must describe the time period within which
 519 all phases must be added to the condominium and such time period
 520 may not exceed 10 years from the date of the recording of the
 521 certificate of a surveyor and mapper pursuant to s.
 522 718.104(4)(e) or the recording of an instrument that transfers

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523 title to a unit in the condominium which is not accompanied by a
524 recorded assignment of developer rights in favor of the grantee
525 of such unit, whichever occurs first.

526 (d) An amendment that extends the 7-year period pursuant to
527 this section is not subject to the requirements of s.
528 718.110(4).

529 Section 9. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/12

Meeting Date

Topic _____

Bill Number S 120
(if applicable)

Name Pete Dunbar

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe
Street

Phone 222-3533

Tallahassee
City State Zip

E-mail pete@penningtonlaw

Speaking: For Against Information

Representing Real Property Section - Fla. Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Committee on Judiciary

BILL: CS/ SB 1372

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Pretrial Detention

DATE: March 13, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Brown | Cibula | JU | Fav/CS |
| 2. | | | CJ | |
| 3. | | | ACJ | |
| 4. | | | AP | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1372 provides an additional factor for a court to consider in determining whether to order the pretrial detention of a criminal defendant.

The court may order pretrial detention if:

- The defendant was previously sentenced, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal or the state attorney files a notice seeking that the defendant be sentenced as such;
- A substantial probability exists that the defendant committed the current crime charged; and
- The court finds that no conditions of release can reasonably protect the community from risk of physical harm or ensure the defendant’s presence at trial.

This bill substantially amends section 907.041, Florida Statutes.

II. Present Situation:

Pretrial Release in the Constitution

Article I, Section 14, of the Florida Constitution provides, in part:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of a municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Florida Law on Pretrial Release

Florida law provides a presumption in favor of release on nonmonetary conditions for a defendant pending trial.¹ The presumption applies unless the person is charged with a dangerous crime, including:

- Arson;
- Aggravated assault;
- Aggravated battery;
- Illegal use of explosives;
- Child abuse or aggravated child abuse;
- Abuse, or aggravated abuse of an elderly person or disabled adult;
- Aircraft piracy;
- Kidnapping;
- Homicide;
- Manslaughter;
- Sexual battery;
- Robbery;
- Carjacking;
- Sexual offenses against children;
- Burglary of a dwelling;
- Stalking and aggravated stalking;
- Domestic violence;
- Home invasion robbery;
- Terrorism;
- Manufacturing of controlled substances; or
- Attempting or conspiring to commit any of these crimes.²

¹ Section 907.041(3), F.S.

² Section 907.041(4)(a), F.S.

A court must impose monetary conditions upon the pretrial release of a defendant charged with one of the enumerated dangerous crimes if the court finds that monetary conditions are necessary to:

- Assure the presence of the defendant at criminal proceedings including trial;
- Protect the community from the risk of physical harm; or
- Ensure the integrity of the judicial process.³

Section 907.041(4)(c), F.S., authorizes the court to order pretrial detention of the defendant if the court finds a substantial probability that:

- The defendant previously violated conditions of release and no other conditions of release are reasonably likely to assure the defendant's presence at court proceedings.
- The defendant attempted to, or has engaged in witness, juror, or judicial officer tampering and no condition of release will reasonably prevent the defendant from obstructing the judicial process.
- The defendant is charged with, and a substantial probability exists that the defendant committed the crime of trafficking in controlled substances, and that no conditions of release will reasonably assure the defendant's presence at court proceedings.
- The defendant is charged with, and a substantial probability exists that the defendant committed DUI manslaughter, and the defendant poses a threat of harm to the community as evidenced through other driving violations, including driving while with a suspended license.
- The defendant poses a threat of harm to the community, which the court can glean from the dangerous nature of the present crime itself.
- The defendant was on probation, parole, or other release for a dangerous crime at the time of the current offense.
- The defendant violated a condition of pretrial release or bond, and the court finds that no conditions of release can reasonably protect the community from risk of physical harm or assure the presence of the defendant at court proceedings.

The court is required to hold a pretrial detention hearing within 5 days after the pretrial detention filing by the state attorney.⁴ The burden of proof is on the state attorney to demonstrate the need for pretrial detention.⁵

Enhanced Penalties

Prison Release Reoffender

A state attorney can seek enhanced sentencing of a defendant whom the court designates as a prison releasee reoffender.⁶ To establish a defendant as a prison releasee reoffender, the prosecutor must show:

³ Section 907.041(3)(a), F.S.

⁴ Section 907.041(4)(f), F.S.

⁵ Section 907.041(4)(g), F.S.

⁶ Section 775.082(9)(a)3., F.S.

- The defendant committed or attempted to commit certain crimes. These include the crimes of treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery or robbery; arson; kidnapping; aggravated assault with a deadly weapon, battery, or stalking; aircraft piracy; and felonies involving physical force;⁷ and
- The defendant attempted or committed the crime within 3 years after release from incarceration at a state correctional facility or while incarcerated at or as an escapee from a state correctional facility.⁸

Enhanced sentencing requires the court to sentence the defendant to the maximum prison sentence provided in law for a criminal charge.⁹ A court sentencing a prison releasee reoffender must impose the following sentence:

- For a life felony, life imprisonment.
- For a first degree felony, 30 years imprisonment.
- For a second degree felony, 15 years imprisonment.
- For a third degree felony, 5 years imprisonment.¹⁰

Habitual Felony Offender

The court can sentence a defendant as a habitual felony offender if the defendant has two or more prior felony convictions and committed the current felony:

- While serving a sentence, in prison or while under state supervision; or
- Within 5 years after the date of conviction of the last prior felony or 5 years after release from a sentence or state supervision.

The court can impose an extended term of sentencing as follows:

- For a first degree or life felony, life imprisonment.
- For a second degree felony, up to 30 years imprisonment.
- For a third degree felony, up to 10 years imprisonment.¹¹

Habitual Violent Felony Offender

The court can sentence a defendant as a habitual violent felony offender if the defendant has a current felony charge and was previously convicted of a qualifying felony or an attempt or conspiracy to commit a qualifying felony. Prior qualifying felony convictions include convictions for crimes such as arson, sexual battery, robbery, kidnapping, aggravated abuse of a child or an elderly or disabled person, murder, manslaughter, armed burglary, or aggravated battery or stalking.

⁷ Section 775.082(9)(a)1., F.S.

⁸ Section 775.082(9)(a)2., F.S.

⁹ Section 775.082(3), F.S. provides: Unless otherwise designated in law, for a first degree felony, imprisonment may not exceed 30 years, unless law provides for a life felony, in which case, a term of up to life imprisonment. For a second degree felony, a term of up to 15 years and for a third degree felony, a term of up to 5 years.

¹⁰ Section 775.082(9)(a)3., F.S.

¹¹ Section 775.084(4)(a), F.S.

For the court to designate a defendant as a habitual violent felony offender, the defendant must have committed the current felony:

- While serving a prison sentence or while under state supervision; or
- Within 5 years after the date of the prior conviction or release from a prison sentence or state supervision.

The court may impose an extended term of sentencing as follows:

- For a first degree or life felony, life imprisonment and no eligibility for release for 15 years.
- For a second degree felony, for up to 30 years, and no eligibility for release for 10 years.
- For a third degree felony, for up to 10 years, and no eligibility for release for 5 years.¹²

Three-time Violent Felony Offender

The court must sentence a defendant as a three-time violent felony offender if:

- The defendant has been previously convicted of committing or attempting to commit, two or more qualifying felony offenses as an adult. The offenses include arson; sexual battery; robbery; kidnapping; murder; manslaughter; aggravated battery or stalking; and carjacking;¹³ and
- At the time of the current offense, the defendant was serving a prison sentence or other sentence; or
- The defendant committed the current offense within 5 years after the conviction of the most recent qualifying offense or within 5 years after release from a prison sentence or state supervision.¹⁴

The court must impose a mandatory minimum term of imprisonment for a three-time violent felony offender as follows:

- For a life felony, life imprisonment.
- For a first degree felony, 30 years imprisonment.
- For a second degree felony, 15 years imprisonment.
- For a third degree felony, 5 years imprisonment.¹⁵

Violent Career Criminal

A violent career criminal is a defendant with three or more previous adult qualifying convictions.¹⁶ The court must impose imprisonment for a violent career criminal who:

¹² Section 775.084(4)(b), F.S.

¹³ Section 775.084(1)(c)1., F.S.

¹⁴ Section 775.084(1)(c)2., F.S.

¹⁵ Section 775.084(4)(c), F.S.

¹⁶ Section 775.084(1)(d), F.S.

- Previously served in a state or federal correctional facility; and
- Commits a qualifying offense while serving a prison sentence, other sentence, or while under state supervision; or
- Commits a qualifying offense within 5 years after the conviction of another qualifying felony.¹⁷

Qualifying convictions include forcible felonies; aggravated stalking; aggravated abuse against children, elderly persons, or disabled adults; lewd or lascivious battery, molestation, conduct, or exhibition; or escape.¹⁸

The court must impose a mandatory minimum term of imprisonment for a three-time violent felony offender as follows:

- For a life felony or a first degree felony, life imprisonment.
- For a second degree felony, up to 40, and no less than 30 years imprisonment.
- For a third degree felony, up to 15 years, and no less than 10 years imprisonment.¹⁹

III. Effect of Proposed Changes:

This bill provides an additional basis for the court to consider in determining whether to order pretrial detention.

The bill authorizes the court to order pretrial detention if:

- The defendant has been previously sentenced as a prison releasee reoffender, habitual violent felony offender, a three-time violent felony offender, or a violent career criminal or the state attorney files a notice seeking that the defendant be sentenced as one of these offenders; and
- A substantial probability exists that the defendant committed the current crime charged; and
- The court finds no conditions of release to reasonably protect the community from risk of physical harm or assure the defendant's presence at trial.

The provisions of this bill are permissive. Due to the nature of the circumstances surrounding this type of defendant's criminal record, a court may be authorized to order pretrial detention under other existing laws.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁷ Section 775.084(1)(d)2. and 3., F.S.

¹⁸ Section 775.084(1)(d)1., F.S.

¹⁹ Section 775.084(4)(d), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Any effect on jail beds is indeterminate at this time. The changes in this bill will not affect the number of prison beds needed, as pretrial detention is served in jail. In fact, to the extent that more defendants are detained pretrial under the provisions of this bill, the credit for time served during pretrial detention may have a negligible positive impact on prison bed costs.

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 Judiciary on March 12, 2013:**

The committee substitute clarifies that:

- The sentence that may serve as the basis for pretrial detention of a defendant is a previous sentence as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal.
- The offense referred to for purposes of the substantial probability standard is the current offense.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



924598

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 03/13/2013 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete lines 66 - 75
and insert:

8.a. The defendant has previously been sentenced pursuant to s. 775.082(9) or s. 775.084 as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced pursuant to s. 775.082(9) or s. 775.084, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;

b. There is a substantial probability that the defendant



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14 committed the current offense; and

By Senator Bradley

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1 A bill to be entitled
2 An act relating to pretrial detention; amending s.
3 907.041, F.S.; providing additional factors a court
4 may consider when ordering pretrial detention;
5 providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Paragraph (c) of subsection (4) of section
10 907.041, Florida Statutes, is amended to read:

11 907.041 Pretrial detention and release.—

12 (4) PRETRIAL DETENTION.—

13 (c) The court may order pretrial detention if it finds a
14 substantial probability, based on a defendant's past and present
15 patterns of behavior, the criteria in s. 903.046, and any other
16 relevant facts, that any of the following circumstances exists:

17 1. The defendant has previously violated conditions of
18 release and that no further conditions of release are reasonably
19 likely to assure the defendant's appearance at subsequent
20 proceedings;

21 2. The defendant, with the intent to obstruct the judicial
22 process, has threatened, intimidated, or injured any victim,
23 potential witness, juror, or judicial officer, or has attempted
24 or conspired to do so, and that no condition of release will
25 reasonably prevent the obstruction of the judicial process;

26 3. The defendant is charged with trafficking in controlled
27 substances as defined by s. 893.135, that there is a substantial
28 probability that the defendant has committed the offense, and
29 that no conditions of release will reasonably assure the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 defendant's appearance at subsequent criminal proceedings; ~~or~~

31 4. The defendant is charged with DUI manslaughter, as
32 defined by s. 316.193, and that there is a substantial
33 probability that the defendant committed the crime and that the
34 defendant poses a threat of harm to the community; conditions
35 that would support a finding by the court pursuant to this
36 subparagraph that the defendant poses a threat of harm to the
37 community include, but are not limited to, any of the following:

38 a. The defendant has previously been convicted of any crime
39 under s. 316.193, or of any crime in any other state or
40 territory of the United States that is substantially similar to
41 any crime under s. 316.193;

42 b. The defendant was driving with a suspended driver's
43 license when the charged crime was committed; or

44 c. The defendant has previously been found guilty of, or
45 has had adjudication of guilt withheld for, driving while the
46 defendant's driver's license was suspended or revoked in
47 violation of s. 322.34;

48 5. The defendant poses the threat of harm to the community.
49 The court may so conclude, if it finds that the defendant is
50 presently charged with a dangerous crime, that there is a
51 substantial probability that the defendant committed such crime,
52 that the factual circumstances of the crime indicate a disregard
53 for the safety of the community, and that there are no
54 conditions of release reasonably sufficient to protect the
55 community from the risk of physical harm to persons;—

56 6. The defendant was on probation, parole, or other release
57 pending completion of sentence or on pretrial release for a
58 dangerous crime at the time the current offense was committed;

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59 ~~ex~~

60 7. The defendant has violated one or more conditions of
61 pretrial release or bond for the offense currently before the
62 court and the violation, in the discretion of the court,
63 supports a finding that no conditions of release can reasonably
64 protect the community from risk of physical harm to persons or
65 assure the presence of the accused at trial; or

66 8.a. The defendant has ever been sentenced pursuant to s.
67 775.082(9) or s. 775.084 as a prison releasee reoffender,
68 habitual violent felony offender, three-time violent felony
69 offender, or violent career criminal, or the state attorney
70 files a notice seeking that the defendant be sentenced pursuant
71 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
72 habitual violent felony offender, three-time violent felony
73 offender, or violent career criminal;

74 b. There is a substantial probability that the defendant
75 committed the offense; and

76 c. There are no conditions of release that can reasonably
77 protect the community from risk of physical harm or ensure the
78 presence of the accused at trial.

79 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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3/12/2013

Meeting Date

Topic _____

Bill Number 1372

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

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City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

