

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Stargel, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, January 24, 2013
TIME: 10:30 a.m.—12:30 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 118 Benacquisto (Similar H 15, S 240, Identical H 185)	Funerals, Burials, and Memorial Services; Prohibiting picketing or engaging in other protest activities within a specified distance of the property line of the location of a funeral, burial, or memorial service for certain persons; providing criminal penalties, etc. RI 01/24/2013 Favorable MS CJ	Favorable Yeas 8 Nays 0
2	SB 120 Latvala (Similar H 175, Compare H 73, 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 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 RC	Fav/CS Yeas 8 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 Regulated Industries

BILL: SB 118

INTRODUCER: Senator Benacquisto

SUBJECT: Funerals, Burials, and Memorial Services

DATE: January 24, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.			MS	
3.			CJ	
4.				
5.				
6.				

I. Summary:

The bill provides that it is a misdemeanor of the first degree¹ to knowingly picket or engage in a protest to disrupt or intend to disrupt or disturb a funeral, burial, or memorial service for any military service member, emergency response worker, elected official, or minor. The prohibited protest activities may not occur:

- Within 500 feet of the property line of any residence, cemetery, funeral home, house of worship, or other location, and
- During or within 1 hour before or 1 hour after the conducting of a funeral, burial, or memorial service at that place.

A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.

The bill defines “protest activities” to mean “any actions that are disruptive or undertaken to disrupt a funeral, burial, or memorial service.”

This bill creates section 871.015, of the Florida Statutes.

¹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

II. Present Situation:

Demonstrations at Funerals

Rev. Fred Phelps, a minister from Topeka, Kansas, has been picketing military funerals and the funerals of AIDS victims across America.² He and family members of his congregation now often appear at military funerals with signs stating “God Hates You,” and “Thank God for Dead Soldiers.”³ The Phelps family’s premise for its protests is that the American war casualties are divine punishment for the country tolerating homosexuality.⁴ This same group threatened to picket the funerals of the 26 people, including 20 children, who were killed by a gunman at a Newtown, Connecticut elementary school on December 14, 2012.⁵

Florida Law Prohibiting Disturbances at Assemblies

Section 870.01, F.S., provides a first degree misdemeanor⁶ for a person to commit an affray. This section also provides a third degree felony⁷ for rioting, or inciting or encouraging a riot. Although the terms “affray” and “riot” are not defined, the courts have upheld the statute against vagueness challenges.⁸

Section 871.01(1), F.S., provides a misdemeanor of the second degree for willfully interrupting or disturbing any school or any assembly of people met for the worship of God or for any lawful purpose.⁹ This provision was challenged on appeal as being overly broad and therefore void. The Florida Supreme Court upheld the constitutionality of this provision in 1978, holding that the provision was not unconstitutional or overbroad.¹⁰ The Second District Court of Appeals has also upheld s. 871.01(1), F.S., as not unconstitutionally overbroad or vague.¹¹

Section 871.01(2), F.S., provides a first degree misdemeanor¹² penalty for anyone who willfully interrupts or disturbs an assembly of people who have met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. s. 1491.

Federal Law Prohibiting Disturbances at Military Funerals

Federal law prohibits persons to engage in a disruptive activity during the period beginning 60 minutes before and ending 60 minutes after a funeral for a member or former member of the

² “Targeting Protests at Military Funerals” *Capitol Hill Blue* (March 15, 2006).

³ “Military Funeral Protests Outrage Families, Lawmakers” *ABC News* (March 15, 2006).

⁴ “Constitutionality of Protest Ban At Issue” *Tallahassee Democrat* (April 7, 2006).

⁵ “Phelps’ Son Condemns Plan to Picket Newtown Funerals,” *The Washington Post* (December 17, 2012).

⁶ *Supra* n. 1.

⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding \$5,000.

⁸ *See D.L.B. v. State*, 707 So.2d 844, 845 (Fla. 2d DCA 1998) (statute sufficiently defines “affray,” given that “readily available dictionaries define “affray” as a public fight or brawl”); *State v. Beasley*, 317 So.2d 750, 753 (Fla. 1975) (upholding s. 870.01(2), F.S. as constitutional upon the court’s authoritative, limiting construction).

⁹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

¹⁰ *S.H.B. v. State*, 355 So. 2d 1176 (Fla. 1978).

¹¹ *State v. Sweet*, 616 So.2d 114 (Fla. 2nd DCA 1993).

¹² *Supra* n. 1.

Armed Forces that is not located at a cemetery under the control of the National Cemetery Administration or part of Arlington National Cemetery.¹³

The following activity is prohibited within the boundaries of the funeral's location or within 150 feet of the point of the intersection between the boundary of the location of such funeral, and a road, pathway, or other route of ingress to or egress from the location of such funeral:

Willfully making of any noise or diversion that is not part of such funeral and that disturbs or tends to disturb the peace or good order of such funeral with the intent of disturbing the peace or good order of that funeral.¹⁴

Within 300 feet of the boundary of the funeral's location, it is prohibited to willfully and without proper authorization impede "the access to or egress from such location with the intent to impede the access to or egress from such location."¹⁵

Persons who violate this prohibition may be subject to a fine or imprisonment of not more than one year, or both.¹⁶

Snyder v. Phelps

In *Snyder v. Phelps*,¹⁷ the U.S. Supreme Court addressed the First Amendment's relation to funeral protests. In March 2006, Westboro Baptist Church demonstrated near the funeral of Marine Lance Cpl. Matthew Snyder, who had been killed in Iraq. The demonstration included the display of signs reading "Thank God for Dead Soldiers," took place within 200-300 feet of the funeral procession, and concluded before the funeral began. Cpl. Snyder's father subsequently sued Phelps under state tort law, including a claim for intentional infliction of emotional distress. The jury found in favor of Snyder and awarded damages.

On appeal, the U.S. Supreme Court found that the First Amendment protected Phelps' speech because the speech took place in a public forum and the content was a matter of public concern. The Supreme Court also noted that, even though the speech in this case was protected, even protected speech "may be subject to reasonable time, place, or manner restrictions that are consistent with the standards announced in this Court's precedents."¹⁸

The *Snyder* case did not involve the constitutionality of a state statute regulating picketing. Rather, the Court addressed whether the First Amendment was a defense to a state tort claim for intentional emotional distress, which is a separate issue.

Military Funeral Honors for Veterans

Under federal law, the Secretary of Defense is directed to provide special military funeral honors

¹³ 18 U.S.C. s. 1388

¹⁴ 18 U.S.C. s. 1388(a)(1)

¹⁵ 18 U.S.C. s. 1388(a)(2)

¹⁶ 18 U.S.C. s. 1388(b)

¹⁷ *Snyder v. Phelps*, 131 S.Ct. 1207(2011).

¹⁸ *Id.* at 1218.

for any deceased veteran¹⁹ when so requested by the veteran's family. The funeral honors detail must consist of at least two uniformed members of the armed forces, one of whom must be a member of the armed force of which the veteran was a member. At a minimum the detail shall perform the folding of the United States flag and its presentation to the family as well as the playing of Taps.²⁰

III. Effect of Proposed Changes:

The bill creates s. 871.015, F.S, to prohibit a person to knowingly picket or engage in other protests at a funeral, burial, or memorial service for any military service member, emergency response worker, elected official, or minor. The prohibited protest activities may not occur:

- Within 500 feet of the property line of any residence, cemetery, funeral home, house of worship, or other location, and
- During or within 1 hour before or 1 hour after the conducting of a funeral, burial, or memorial service at that place.

The bill defines "protest activities" to mean "any actions that are disruptive or undertaken to disrupt a funeral, burial, or memorial service."

A person who violates this section commits a misdemeanor of the first degree.

The prohibition created in s. 871.015, F.S., differs in several respects from the prohibitions in s. 871.01(2), F.S., and in 18 U.S.C. s. 1388. To violate s. 871.01(2), F.S., a person must interrupt or disturb a military funeral honors detail pursuant to 10 U.S.C. s. 1491. This bill encompasses assemblies to honor military service members but does not require that the funeral must be a military funeral honors detail. The bill also relates to funerals, burial, memorial services for persons whose funerals do not fall within the scope of s. 871.01(2), F.S., to include an emergency response worker, elected official, and minor.

The term "emergency response worker" is not defined. It is not clear whether the term is limited to firefighters and paramedics, or whether the term also includes law enforcement officers or other public safety workers.²¹

However, it appears that the facts or circumstances that would constitute a violation of s. 871.01(2), F.S., may also constitute a violation of the prohibition in this bill if the distance and time requirements in s. 871.015, F.S., are also met. Either violation would be a first degree misdemeanor.

¹⁹ A veteran is defined in Title 10 U.S.C. s. 1491(h) as a decedent who (1) served in the active military, naval, or air service, as defined in 38 U.S.C. s. 101(24), and who was discharged or released there from under conditions other than dishonorable; or (2) was a member or former member of the Selected Reserve described in 18 U.S.C. s. 2301(f).

²⁰ 10 U.S.C. s. 1491(b), (c).

²¹ For example, s. 112.181(1) (b), F.S., defines the term: "emergency rescue or public safety worker" to mean "any person employed full time by the state or any political subdivision of the state as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety worker" does not include any person employed by a public hospital licensed under chapter 395 or any person employed by a subsidiary thereof."

Similar conduct may also violate both s. 871.015, F.S., and 18 U.S.C. s. 1388. For example, the distance restriction in 18 U.S.C. s. 1388 is 300 feet from the location of the assembly. Such a distance would fall well within the 500 feet restriction in the bill.

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:

It is a fundamental constitutional principle that debate, particularly on issues of public concern, should not be inhibited by the government.²² Therefore, the most important question regarding the First Amendment issues of the bill is *whether the government is prohibiting speech based on disfavored content*.²³ Such “content-based” regulations are presumptively suspect and are subject to strict scrutiny by the court.²⁴

On the other hand, the government *may* restrict speech through time, place, and manner regulations that are *justified without reference to the content of the speech*.²⁵ The Eighth Circuit Court of Appeals has found both a city ordinance²⁶ and a state statute²⁷ prohibiting protest activities within a certain time and distance of a funeral to be content-neutral.

Content-neutral restrictions are subject to intermediate scrutiny by the court.²⁸ Under intermediate scrutiny, the court looks at the relationship, or “fit” between the *end* and the *means* of the statute. In other words, the restrictions of the statute must be *narrowly tailored* to achieve a *significant state interest*.²⁹ Additionally, the statute must leave open “ample alternative channels” for the restricted speech.³⁰

²² *Snyder*, 131 S.Ct. at 1215 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

²³ *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

²⁴ *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 658 (1994).

²⁵ *See Ward*, 491 U.S. at 791 (emphasis added; internal quotations omitted); *Snyder*, 131 S.Ct. at 1218.

²⁶ *Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir. 2012).

²⁷ *Phelps-Roper v. Nixon*, 545 F.3d 685, 691 (8th Cir. 2008).

²⁸ *See Turner*, 512 U.S. at 642.

²⁹ *Ward*, 491 U.S. at 791.

³⁰ *Id.*

- A *significant state interest* is grounded in the state’s traditionally broad police powers.³¹ Courts have found a state has a significant interest in protecting its citizens from disruption during events associated with a funeral or burial service,³² and in public safety concerns resulting from disruptions of the public order.³³ Additionally, citizens have a recognized interest in avoiding unwanted speech, including in confrontational settings.³⁴
- A statute is *narrowly tailored* to a significant state interest if it does not burden substantially more speech than necessary to achieve the state’s goal.³⁵ To be narrowly tailored in this context, the statute does *not* have to be the least restrictive means available.³⁶
- In the context of a statute regulating picketing in residential areas, the U.S. Supreme Court found there were *ample alternative channels* when: “Protestors have not been barred from the residential neighborhoods. They may enter such neighborhoods, alone or in groups, even marching.... They may go door-to-door to proselytize their views. They may distribute literature in this manner ... or through the mails. They may contact residents by telephone, short of harassment.”³⁷

The bill limits the definition of “protest activities” as actions “undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service.” The Sixth Circuit U.S. Court of Appeals found a statute was narrowly tailored that described protest activities as “any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service.”³⁸ The court noted that the language limited “protest activities” to those *directed* at a particular funeral.³⁹ Furthermore, the Eighth Circuit U.S. Court of Appeals found that a statute that did *not* contain such language was likely *not* narrowly tailored for injunction purposes.⁴⁰

Regarding the distance restrictions in the bill, in 2007, the U.S. District Court for the Northern District of Ohio held an Ohio statute’s 300 feet “fixed” restriction surrounding funeral locations constitutional, but held the “floating buffer zone” surrounding funeral *processions* unconstitutional because it was not narrowly tailored.⁴¹ That holding

³¹ See *Hill v. Colorado*, 530 U.S. 703, 715 (2000).

³² *Phelps-Roper v. Taft*, 523 F.Supp.2d 612, 618 (N.D. Ohio 2007) aff’d in part sub nom. *Phelps-Roper v. Strickland*, 539 F.3d 356 (6th Cir. 2008).

³³ *Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. Dist. of Columbia*, 972 F.2d 365, 372 (D.C. Cir. 1992) (citing *Mosley*, 408 U.S. at 98).

³⁴ *Hill* at 716-17.

³⁵ See *Turner*, 512 U.S. at 662.

³⁶ *Id.* See also *Hill*, 530 U.S. at 726.

³⁷ *Frisby v. Schultz*, 487 U.S. 474, 484 (1988).

³⁸ *Phelps-Roper v. Strickland*, 539 F.3d 356, 368 (6th Cir. 2008).

³⁹ *Id.* (citing *Frisby v. Schultz*, 487 U.S. 474 (1988)).

⁴⁰ *Phelps-Roper v. Nixon*, 545 F.3d 685, 693 (finding statute likely not narrowly tailored “[b]ecause the Missouri statute does not contain any such [narrowing] provisions”).

⁴¹ *Phelps-Roper v. Taft*, 523 F.Supp.2d at 620 (N.D. Ohio 2007) (“statute not narrowly tailored, in that it burdens substantially more speech than necessary to serve the State of Ohio’s interest protecting its citizens from disruption during the events associated with a funeral or burial service”).

conforms to a prior Supreme Court case addressing buffer zones.⁴² Additionally, courts have found the *size* of the restricted area itself to be context-specific.⁴³

Regarding the bill’s prohibitions against protest activities, the First Amendment affords the highest protection to speech based on matters of public concern or “political speech.”⁴⁴ However, citizens also have a recognized interest not to be forced to hear unwanted speech.⁴⁵ Protecting citizens from hearing unwanted speech is referred to as the “captive audience” doctrine.⁴⁶ To illustrate the point, there is a difference between someone holding a sign displaying an offensive message, where the burden falls on offended viewers to “avoid further bombardment of their sensibilities simply by averting their eyes,”⁴⁷ and forcing citizens to “undertake Herculean efforts to escape the cacophony of political protests.”⁴⁸ The Supreme Court has held that in some cases, funeral attendees are not a “captive audience” to protest speech.⁴⁹ In other cases, courts have held that forcing a funeral attendee to choose between attending a funeral and hearing the unwanted protest communication effectively makes the attendees a “captive audience.”⁵⁰ The Supreme Court noted in *Snyder v. Phelps* that the captive audience doctrine has been applied “only sparingly.”⁵¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

⁴² See *Schenck v. Pro-Choice Network of W. New York*, 519 U.S. 357, 377 (1997) (finding that injunction imposing floating buffer zones of 15 feet from people and vehicles entering and leaving clinics were not narrowly tailored).

⁴³ See *Madsen*, 512 U.S. at 772; *Strickland*, 539 F.3d at 368.

⁴⁴ See *Snyder*, 131 S.Ct. at 1215.

⁴⁵ See *Hill*, 530 U.S. at 716-17.

⁴⁶ *Snyder*, 131 S.Ct. at 1220.

⁴⁷ *Hill* at 716 (internal quotations omitted).

⁴⁸ *Id.* (quoting *Madsen*, 512 U.S. at 772-73).

⁴⁹ *Snyder*, 131 S.Ct. at 1220 (finding mourner was not a captive audience to protest speech when protestors stayed 1,000 feet away from the funeral location, mourner could only see the tops of the signs when driving to the funeral, and there was no indication that the picketing in any way interfered with the funeral service itself.”).

⁵⁰ See *Phelps-Roper v. Strickland*, at 362; *McQueary v. Stumbo*, 453 F.Supp.2d 975, 992 (E.D. Ky. 2006). *But compare Phelps-Roper v. Nixon*, 545 F.3d 685 (8th Cir. 2008).

⁵¹ *Snyder*, 131 S.Ct. at 1220.

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 Benacquisto

30-00168-13

2013118__

1 A bill to be entitled
 2 An act relating to funerals, burials, and memorial
 3 services; creating s. 871.015, F.S.; providing a
 4 definition; prohibiting picketing or engaging in other
 5 protest activities within a specified distance of the
 6 property line of the location of a funeral, burial, or
 7 memorial service for certain persons; providing
 8 criminal penalties; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 871.015, Florida Statutes, is created to
 13 read:

14 871.015 Unlawful protests.-

15 (1) As used in this section, the term "other protest
 16 activities" means any action that is disruptive or that is
 17 undertaken to disrupt or disturb a funeral, burial, or memorial
 18 service.

19 (2) A person may not knowingly picket or engage in other
 20 protest activities or knowingly cause picketing or other protest
 21 activities to occur within 500 feet of the property line of a
 22 residence, cemetery, funeral home, house of worship, or other
 23 location during or within 1 hour before or 1 hour after the
 24 conducting at such places of a funeral or burial of, or a
 25 memorial service for, a military service member, an emergency
 26 response worker, an elected official, or a minor.

27 (3) A person who violates this section commits a
 28 misdemeanor of the first degree, punishable as provided in s.
 29 775.082 or s. 775.083.

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30-00168-13

2013118__

30 Section 2. This act shall take effect October 1, 2013.

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

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

1/24/2013
Date

118
Bill Number

Name BRIAN PITTS

Phone 727/897-9291

Address 1119 Newton Ave S.

E-mail justice2jesus@yahoo.com

Street

St. Petersburg

FL

State

33705

Zip

Job Title Trustee

Speaking: For Against Information

Appearing at request of Chair

Subject Protests

Representing Justice-2-Jesus

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

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 Regulated Industries

BILL: CS/SB 120

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Condominiums

DATE: January 24, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	_____	_____	JU	_____
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:

The bill 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 three years of the recording of the first event;
- The beginning of the two 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 that 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.

The bill extends from three to five 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.

According to the Real Property, Probate, and Trust Law Section of The Florida Bar, these changes would permit a 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. This also would comply with the requirements of the federal Interstate Land Sales Full Disclosure Act, particularly the pre-construction sale of condominium units and the act's requirement that the developer must provide the purchaser with a recordable description of the property.

The bill revises the seven-year period for completion of all phases of a condominium project to provide that the seven year period runs from the date the surveyor's affidavit of substantial completion is recorded, or seven 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 seven year period from the date the declaration was recorded.

The bill also creates a mechanism to extend the seven-year time period with an additional three years, if the membership approves the extension during the last three years of the seven-year period. The completion of all phases may not exceed 10 years. An amendment that extends the seven-year period does not require that all unit owners and all record owners of liens on the unit to approve the amendment.

The bill would take effect upon becoming law.

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:

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

¹ Section 718.103(11), F.S.

created by recording a declaration of condominium in the public records of the county where the condominium is located.² 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.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:

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.

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.⁴ A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁵ Condominiums are administered by a board of directors referred to as a “board of administration.”⁶

The declaration of condominium includes within its definition any amendments which may be made to it, together with all exhibits that are attached to it. All persons with recorded title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of 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 in the Department of Business and Professional Regulation within 120 days.⁷

The declaration of condominium must contain:

- A certificate of a surveyor and mapper, and
- A graphic description of the improvements in which units are located and a plot plan thereof.

² Section 718.104(2), F.S.

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

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S. But see, exceptions to the subject matter and procedure for the amendment of a declaration of condominium in s. 718.110(4) and (8), F.S.

⁶ Section 718.103(4), F.S.

⁷ Section 718.104(2), F.S.

Together with the declaration, this information must be in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions.⁸

Recording of the Declaration of Condominium

A recorded declaration may contain exhibits consisting of graphic descriptions of improvements that are accompanied by a surveyor's certificate.⁹ If the declaration doesn't have the certificate or the survey or graphic description of the improvements required by law, 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.¹⁰ 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 that was held is then returned to the developer or to the person presenting the amendment.¹¹ If the sum of money is not paid 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.¹²

Amending the Declaration of Condominium

Section 718.110(10), F.S., provides that, if there is an omission or error in a declaration or any other document that 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 of 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.

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.*,¹³ 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. The property owners argued that they owned undeveloped "lots" and not "units," and that only "units" were subject to the assessment. The court rejected this line of reasoning. The court's decision relied on the fact that, under the 1969 Condominium Act, the term "unit" included land and improvements. The court noted that the only type of privately

⁸ Section 718.104(4)(e), F.S.

⁹ Section 718.105(2), F.S.

¹⁰ Section 718.105(4)(a), F.S.

¹¹ Section 718.105(4)(b), F.S.

¹² Section 718.105(4)(c), F.S.

¹³ *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.

owned property in a condominium was a “unit” and that to find the owners of the property to not be unit owners would have created a new type of ownership not contemplated by the Legislature or by the declaration of condominium.

In *Winkelman v. Toll*,¹⁴ 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 therefore liable for assessments on that property. The court rejected the owner’s argument that the declaration described units and the purchaser had not acquired condominium units because the units had not been constructed. The court noted that it is the recording of the declaration of condominium that creates a condominium unit and that a condominium unit is not created on the basis of how the scrivener of the declaration has chosen to describe the unit.

However, in *R.I.S. Investment Group, Inc. c. Department of Business and Professional Regulation*,¹⁵ the Fourth District Court of Appeal held that undeveloped “raw” land did not constitute a condominium unit that 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.

Interstate Land Sales Full Disclosure Act

The federal Interstate Land Sales Full Disclosure Act (ILSFDA or act)¹⁶ 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 requires developers to register the subdivision with the federal Bureau of Consumer Financial Protection.¹⁷ The developer must file a “statement of record” that contains the information required by the act and its regulations and pay a registration fee of no more than \$1,000.¹⁸ The act provides several exceptions. For example, the act does not apply to the sale or lease of lots in a subdivision that contains 25 or fewer lots.¹⁹

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

¹⁴ *Winkelman v. Toll*, 661 So.2d 102 (Fla. 4th DCA 1995),

¹⁵ *R.I.S. Investment Group, Inc. c. Department of Business and Professional Regulation*, 695 So.2d 357 (Fla. 4th DCA 1997).

¹⁶ 15 U.S.C. ss. 1701-20

¹⁷ Effective on July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the federal Bureau of Consumer Financial Protection all of the consumer protection functions of the Department of Housing and Urban Development (HUD) relating to the ILSFDA.

¹⁸ See 15 U.S.C. s. 1704 for the registration requirement, and 15 U.S.C. s. 1705 for the listing of the information that must be provided in the statement of record.

¹⁹ The exemptions are provided in 15 U.S.C. s. 1702. For a discussion of the various exemptions in the act, see Jennifer L. Dolce and William P. Sklar, *The Interstate Land Sales Full Disclosure Act's Two-Year Completion Exemption From the Condominium D*, *The Florida Bar Journal*, February 1999, Volume LXXIII, No. 2. A copy of this article is available at: <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/76d28aa8f2ee03e185256aa9005d8d9a/6b94f229434c8f3885256adb005d6240?OpenDocument> (Last visited January 18, 2013).

revoke the purchase contract or lease agreement for two years from the date of the signing of the contract or agreement.²⁰

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.²¹ 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;²²

Application of the Interstate Land Sales Full Disclosure Act to Condominium Sales

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*,²³ 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, 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.

Of concern to developers and legal practitioners, is difficulty of satisfying the requirement of a recordable legal description, i.e., the description provided in the declaration of condominium, before the actual construction and completion of the condominium. They advise that practical necessity prevents the recording of declarations until construction is nearly complete because accurate dimensions of the building and the units cannot be determined until that point. They also advise that the historical practice has been to clearly identify in the contract the property that is being sold by use of a unit identification linked to an accompanied sketch in the sales contract and offering prospectus.

In *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*,²⁴ the Fourth District Court of Appeals held that ISLFDA the developer had complied with ISLA 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

²⁰ See 15 U.S.C. s. 1703(d)

²¹ See 15 U.S.C. s. 1703

²² 15 U.S.C. s. 1703(d)(1)

²³ *Bacolitsas v. 86th & 3rd Owner, LLC*, 2012 WL 6602795 (C.A.2 (N.Y.)) December 19, 2012.

²⁴ *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*, 82 So.3d 924 (Fla. 4th DCA 2011)

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.*,²⁵ 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.*, 2011 WL 5037124 (W.D.N.C.), 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 “recoding data.” Consistent with North Carolina law, the developer had 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. 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 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. 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: 1) a report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement; 2) a report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or 3) a report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement. 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.

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

²⁵ *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*, 755 F.S.Supp.2d 1197 (M.D. Fla. 2009).

for the first two fiscal years of the association's operation, beginning with the fiscal year in which the declaration was recorded. Thereafter, only unit owners may vote on such issues until turnover occurs. Any audits or prepared reviews must be paid by the developer prior to turnover. An association may not waive financial reporting for more than three consecutive years.

Annual Budget Requirement

Section 718.112(2)(f), F.S., requires that the condominium associations bylaws must provide the proposed annual budget with 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 would 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.

Prior to turnover, a developer may vote to waive the reserves or reduce funding of reserves for the first two 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.

Association Powers

Section 718.114, F.S., provides that, if the declaration allows, an association may enter into agreements for leasehold interests or membership rights, and may obtain these benefits or the use of such facilities for the enjoyment or recreation 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.

Subsequent to the recording of the declaration (and creation of the condominium), agreements acquiring these leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months following the recording date of the declaration are considered a material alteration or substantial addition 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.

Transfer of Association Control

Section 718.301(1), 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 seven years after the recording of a declaration, or in the case of an association that may ultimately operate more than one condominium, seven years after the recordation of the declaration for the first condominium that it operates; or in the case of a phase condominium, seven years after recordation of the declaration creating the initial phase, whichever occurs first.

After the turnover occurs, the developer must relinquish all control of the association and deliver to the association all property of the unit owners.

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 seven 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 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.

Section 2. Recording of Declaration

The bill amends s. 718.105(4)(c), F.S., to extend from three to five 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 three years of the first of these events to occur:

- 1) The recording date of the certificate of a surveyor and mapper, or
- 2) 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 three-year period, the declaration and other documents would effectively create the condominium from the date the declaration was recorded.

The bill deletes the current requirement that the action must be brought within three years of the recording of the declaration.

In effect, this provision would also permit 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 would provide an acceptable legal description of condominium units during the pre-sale period that will comply with the provisions of 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 two 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 association may enter into agreements acquiring leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months from the recording of a certificate of a surveyor and mapper, or the recording of first owner's deed, whichever occurs first. The bill deletes the current provision that the twelve-month period ran 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), to require that the developer provide the association a copy of the surveyor and mapper certificate recorded pursuant to s. 718.104(4)(e), or the recorded instrument that transfers title to a unit which 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., to revise the seven-year period for completion of all phases of a condominium project to provide that the seven year period runs from the date that the surveyor's affidavit of substantial completion is recorded, or seven 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 seven year period from the date the declaration was recorded.

The bill also creates a mechanism to extend the seven-year time period with an additional three years, if the unit owners approve the extension during the last three years of the seven-year period.²⁶ The completion of all phases may not exceed 10 years.

An amendment that extends the seven-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.

Effective Date

The bill would take effect upon becoming law.

²⁶ 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.

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 would 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., that 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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2013	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Sobel) recommended the following:

Senate Amendment

Delete lines 220 - 222
and insert:
adopted budget in which the members of an association have
determined, by a majority vote at a duly called meeting of the
association, to provide no reserves or less reserves than

By Senator Latvala

20-00229-13

2013120__

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

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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 voted
 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

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

January 7, 2013

The Honorable Kelli Stargel
Senate Regulated Industries Committee
404 S. Monroe St., 330 K
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I respectfully request that my bill, SB 120/Condominiums, be placed on the agenda of the Senate Regulated Industries Committee at the earliest possible time.

This bill will clarify when a legal description for a condominium unit is created. An enforceable pre-construction sales contract must contain a legal description of the unit which is difficult to do until the building is nearly complete and accurate dimensions have been determined. The bill will adjust timing provisions in Chapter 718 to accommodate recording of the declarations before completion to create the appropriate legal description without having the unintended consequences of creating "phantom unites" in the project.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

JL:tc

CC: Booter Imhof, Staff Director

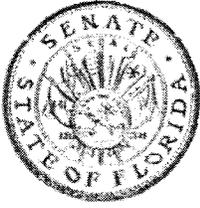
REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

January 17, 2013

The Honorable Kelli Stargel
Senate Regulated Industries Committee
404 S. Monroe St., 330 K
Tallahassee, FL 32399-1100

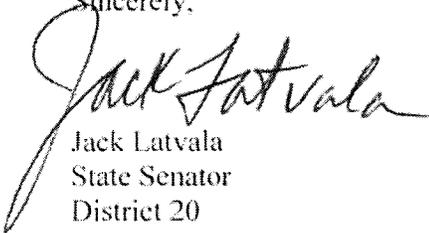
Dear Chair Stargel:

My bill, SB 120/Condominiums, is scheduled to be heard by the Senate Regulated Industries Committee on Thursday, January 24.

I respectfully request that the House companion sponsor, Rep. Heather Dawes Fitzenhagen, be permitted to present the bill at the meeting. I will be attending the meeting of the Senate Committee on Environmental Preservation & Conservation which is being held at the same time.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,


Jack Latvala
State Senator
District 20

JL:tc

CC: Booter Imhof, Staff Director

REPLY TO:

□ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
□ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic SB 120 - Support/information

Bill Number SB 120
(if applicable)

Name Pete Dunbar

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address PO Box 10095
Street

Phone 850-222-3533

Tallahassee FL 32302
City State Zip

E-mail Pete@penningtonlaw.com

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
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

1/24/2013
Date

120
Bill Number

Name BRIAN PITTS

Phone 727/897-9291

Address 1119 Newton Ave S.

E-mail justice2jesus@yahoo.com

Street

St. Petersburg FL 33705

City

State

Zip

Job Title Trustee

Speaking: For Against Information

Appearing at request of Chair

Subject condos

Representing Justice-2-Jesus

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

CourtSmart Tag Report

Room: SB 301

Case:

Type:

Caption: SSenate Regulated Industries

Judge:

Started: 1/24/2013 10:31:13 AM

Ends: 1/24/2013 10:52:31 AM **Length:** 00:21:19

10:32:58 AM SB 118 by Senator Benacquisto
10:33:22 AM Senator Benacquisto to explain
10:33:35 AM Senator Detert with questions
10:34:10 AM Brian Pitts, Justice-2-Jesus
10:38:04 AM Senator Stargel with remarks
10:38:44 AM Senator Benacquisto closing on SB118
10:39:07 AM Bill passes
10:39:27 AM SB 120 by Senator Latvala
10:40:02 AM Amendment #348318 by Senator Sobel
10:41:11 AM Amendment explained by Senator Sobel and Rep. Fitzenhagen
10:41:49 AM Senaator Detert commenting on the Amendment
10:42:24 AM Senator Gibson with questions
10:43:06 AM Amendment approved
10:43:36 AM Rep. Fitzenhagen to explain the bill
10:44:19 AM Senator Detert wiath questions
10:45:00 AM Senator Sobel with questions
10:45:32 AM Senator Sachs with question
10:45:43 AM Senator Thrasher with questions
10:47:25 AM Pete Dunbar, The Real Property Probaate and Trust
10:49:34 AM Senator Detert with questions
10:51:22 AM Brian Pitts, Justice-2-Jesus
10:51:34 AM CS/SB 120
10:52:05 AM CS/SB 120 - Passes
10:52:23 AM Meeting adjourned