

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Stargel, Chair
Senator Braynon, Vice Chair

MEETING DATE: Tuesday, April 2, 2013
TIME: 4:00 —6:00 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	CS/SB 378 Banking and Insurance / Bean (Similar CS/CS/H 573)	Manufactured and Mobile Homes; Requiring the Citizens Property Insurance Corporation to provide coverage for mobile homes and related structures; specifying the procedure for requesting and obtaining funds from the Florida Mobile Home Relocation Trust Fund to pay for the operational costs of the Florida Mobile Home Relocation Corporation and the relocation costs of mobile home owners, etc. BI 03/14/2013 Fav/CS RI 04/02/2013 Favorable AP RC	Favorable Yeas 10 Nays 0

A proposed committee substitute for the following bill (SB 580) is expected to be considered:

2	SB 580 Hays (Compare CS/CS/CS/H 73, H 7119, CS/CS/S 436)	Homeowners' Associations; Providing for association members to take photographs or images of association records without charge in certain circumstances; requiring association directors to file with the association secretary certification that they have read certain association documents, will uphold the documents, and will uphold their fiduciary responsibility to the members, or that they have completed an educational course approved by the department; providing procedures to be followed which relate to contracts or transactions between the association and a director or entity in which a director or officer is financially interested, etc. RI 04/02/2013 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0
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COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Tuesday, April 2, 2013, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 642 Hays (Compare CS/H 347)	Distilled Spirits; Revising provisions with respect to the licensure and operation of distilleries; providing requirements for craft distilleries; providing for the sale of distilled spirits by licensed distilleries under certain conditions; prohibiting the shipment of certain distilled spirits; providing for the transportation of distilled spirits by licensed distilleries under certain conditions; providing requirements relating to the payment of taxes, etc. RI 04/02/2013 Fav/CS AFT AP	Fav/CS Yeas 10 Nays 0
4	SB 1048 Gardiner (Compare CS/CS/H 701)	Electronic Benefits Transfer Cards; Providing that an electronic benefits transfer card may not be used or accepted at certain establishments licensed under the Beverage Law, an adult entertainment establishment, a pari-mutuel facility, an internet cafe that offers game promotions, an unauthorized commercial bingo facility, a casino, slot machine facility, or other gaming establishment; specifying penalties for violations of card use restrictions, etc. RI 04/02/2013 Fav/CS CF AP	Fav/CS Yeas 10 Nays 0
5	SB 1174 Ring (Identical H 727)	Liens on Personal Property in Self-service Storage Facilities and Self-contained Storage Units; Revising notice requirements for enforcement of liens by the owner of the self-service storage facility or self-contained storage unit; specifying a limit on the value of property stored in the tenant's storage unit; authorizing the towing of a vehicle in a storage unit under certain circumstances; limiting the liability of the owner of a self-service storage facility or self-contained storage unit after a vehicle is towed from such facility or unit, etc. RI 04/02/2013 Temporarily Postponed JU RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Tuesday, April 2, 2013, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 64 Sachs (Identical H 245, Compare H 227)	Commercial Parasailing; Citing this act as the "White-Miskell Act"; requiring the owner of a vessel engaged in commercial parasailing to obtain and carry an insurance policy; prohibiting commercial parasailing unless certain conditions are met; providing for the launch from and recovery of riders to a towing vessel; prohibiting commercial parasailing in certain areas, during certain hours, and under certain weather conditions; requiring a safety briefing for passengers and parasail riders, etc. RI 04/02/2013 Fav/CS CM TR EP	Fav/CS Yeas 10 Nays 0
7	CS/SB 248 Health Policy / Thrasher (Similar CS/H 349)	Treatment Programs for Impaired Licensees and Applicants; Exempting an entity retained by the Department of Health as an impaired practitioner consultant from certain licensure requirements; authorizing impaired practitioner consultants to contract with schools or programs to provide services to impaired students who are enrolled for the purpose of preparing for licensure as a specified health care practitioner or as a veterinarian; providing that the impaired practitioner consultant is the official custodian of records relating to the referral of the licensee or applicant to the consultant and any other interaction between them, etc. HP 03/14/2013 Fav/CS RI 04/02/2013 Favorable	Favorable Yeas 10 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: CS/SB 378

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Manufactured and Mobile Homes

DATE: March 25, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Fav/CS
2.	Oxamendi	Imhof	RI	Favorable
3.			AP	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

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

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 378 requires Citizens Property Insurance Corporation to issue policies for manufactured or mobile homes and attached structures, including screened enclosures, carports, and covered patios. The bill also specifies the manner in which funds from the Florida Mobile Home Relocation Trust Fund are to be disbursed to the Florida Mobile Home Relocation Corporation.

The bill would take effect upon becoming law.

This CS substantially amends 627.351 and 723.06115, Florida Statutes.

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.¹ Citizens is not a private insurance company.² Citizens was

¹ Admitted market means insurance companies licensed to transact insurance in Florida.

² Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with s. 627.351(6), F.S. It is governed by an eight member Board of Governors³ (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer (CFO) each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens Accounts

Citizens offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁴ Assets may not be commingled or used to fund losses in another account.⁵ The three Citizens accounts are:

Personal Lines Account (PLA): Statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

- Policies in Force: 838,143
- In Force Premium: \$1,379,410,864
- Total Exposure: \$175,864,284,312

Coastal Account (Coastal): Coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial nonresidential wind-only policies issued in limited eligible coastal areas. In addition, in August of 2007, Citizens began offering personal and commercial residential multiperil policies in the Coastal account.

- Policies in Force: 438,642
- In Force Premium: \$1,144,655,922
- Total Exposure: \$191,101,715,209

Commercial Lines Account (CLA): Statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.

- Policies in Force: 8,016
- In Force Premium: \$200,296,331
- Total Exposure: \$38,748,152,744

³ The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appoint two members each.

⁴ The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵ Section 627.351(6)(b)2.b., F.S.

Total All Accounts Combined:⁶

- Policies in Force: 1,284,801
- In Force Premium: \$2,724,363,117
- Total Exposure: \$405,714,152,265

Citizens Financial Resources

According to Citizens, its financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. As of December 13, 2013, Citizens will have an accumulated surplus of approximately \$6.34 billion. For the 2013 hurricane season Citizens will have purchased \$1.75 billion in private reinsurance coverage along with the \$5.73 billion in mandatory layer reinsurance from the FHCF. For the 2013 hurricane season Citizens' probable maximum loss (PML) from a 1-in-100 year event is \$20.42 billion.

If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.⁷ The assessments Citizens may impose and their sequence is as follows:

Citizens Surcharge: Requires up to 15 percent of premium surcharge for 12 months on all Citizens policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens accounts with a maximum assessment of 45 percent of premium.

Regular Assessment: If the Citizens surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers comp). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens' policyholders.

Emergency Assessment: Requires any remaining deficit for either of Citizens' three accounts to be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens' policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

Citizens Rates

Citizens' rates for coverage are required to be actuarially sound and are subject to the rate standards for property and casualty insurance in s. 627.062, F.S., except as otherwise provided.⁸

⁶ Citizens weekly report as of March 1, 2013 on file with Senate Committee on Banking and Insurance.

⁷ See 267.736(6)(b)3.f., F.S., Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are.

⁸ Section 627.351(6)(n)1., F.S.

From 2007 until 2010, Citizens rates were frozen by statute⁹ at the level that had been established in 2006. In 2010, the Legislature established a “glide path” to impose annual rate increases up to a level that is actuarially sound.¹⁰ Citizens must implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase ceases when Citizens has achieved actuarially sound rates. Section 215.555(5)(b), F.S., provides, in addition to the overall glide path rate increase, that Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage.

Mobile Home Coverage

Current law limits Citizen’s coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.¹¹

Coverage B (Other Structures)

Effective February 1, 2012, Citizens ceased providing Coverage B for the following structures whether attached to the dwelling or not:

- Screened enclosures that are aluminum framed or not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering not constructed of the same or substantially the same materials as that of the primary dwelling.
- Awnings.
- Structures with a roof or wall covering that are thatch, lattice, slats or a similar material.
- Slat houses, chickees, tiki huts, gazebos, cabanas, canopies, pergolas or similar structures constructed to be open to the weather.

However, Citizens subsequently reconsidered its policy and approved a limited buyback option to allow mobile home owners to purchase coverage for attached carports, screened enclosures, and covered patios up to a limit of \$10,000. The coverage is limited to actual cash value and subject to policy deductibles. The coverage does not apply to awnings, screens, aluminum frame enclosures, gazebos, and other similar structures.¹²

Florida Mobile Home Relocation Corporation

Section 723.061(1)(d), F.S., provides that a mobile home owner and/or tenant can be evicted from his or her mobile home due to a change in the use of the land comprising the mobile home park. The park owner must give the affected mobile home owners and tenants at least 6 months’

⁹ Section 627.351(6)(n)4., F.S.

¹⁰ Ch. 2009-87; s.10, L.O.F.

¹¹ Section 627.351(6)(c)16., F.S.

¹² Citizens Property Insurance Corporation, *Citizens Reinstates Limited Coverages for Sinkhole, Mobile Homes, Builders*, Press Release Dated March 27, 2013. A copy of the press release is available at: <https://www.citizensfla.com/shared/press/articles/104/03.27.2013.pdf> (Last visited March 27, 2013).

notice of the eviction due to the projected change in use, and of their need to secure other accommodations.¹³

In 2001, the Florida Mobile Home Relocation Corporation (corporation) was created to provide payments to mobile home owners who are required to move due to a change in the use of the land comprising their mobile home park, pursuant to s. 723.061(1)(d), F.S.¹⁴ The corporation is administered by a volunteer-based, six-member board.¹⁵ The board also employs or retains attorneys, accountants, and administrative personnel to perform its duties.¹⁶

If a mobile home owner is required to move due to a change in use of the land, the mobile home owner is entitled to payment from the corporation in the amount of actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park. Alternatively, the mobile homeowner is entitled to payment in the amount of \$3,000 for a single-section mobile home or \$6,000 for a multisection mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.¹⁷

The corporation receives funding from three sources:

- An annual one dollar surcharge on mobile home lots located in a mobile home park, collected by the Department of Business and Professional Regulation (department) pursuant to s. 723.007(2), F.S.;
- An annual one dollar surcharge on registration payments by mobile home owners collected by the Department of Highway Safety and Motor Vehicles; and
- Funds collected from mobile home park owners when the mobile home owner applies for payment of moving expenses or mobile home abandonment allowance.¹⁸

All funds are deposited into the Florida Mobile Home Relocation Trust Fund (Trust Fund), established by s. 723.06115, F.S. Chapter 723, F.S., does not specify how the funds are to be disbursed to the corporation. Instead, the transfer of funds is conducted pursuant to a Memorandum of Understanding entered into by the department and the corporation.

Currently, funds are disbursed to the corporation on a monthly basis, less any amounts withheld for the required 8 percent contribution to the general revenue fund. According to the department, during fiscal year 2011-2012, \$759,376.86 was deposited into the trust fund with \$698,945.71 of that amount transferred to the corporation.

The department's Office of Inspector General issued an audit of the Florida Mobile Home Relocation Program. The audit expressed concerns regarding the need for greater segregation of the duties for the two employees of the corporation so that no employee is in a position to

¹³ Section 723.061(1)(d)2., F.S.

¹⁴ See generally, ss. 723.0611, 723.0612 and 723.06116, F.S.

¹⁵ Department of Business and Professional Regulation, Internal Audit Report A-1112-BPR-032, page 2, dated October 4, 2012.

¹⁶ Id.

¹⁷ Section 723.0612(1), F.S.

¹⁸ Department of Business and Professional Regulation, Internal Audit Report A-1112-BPR-032, dated October 4, 2012.

perpetuate and conceal errors or fraud in the normal course of their duties. The report also noted the cash balances amassed in multiple non-interest bearing accounts during periods with few payout requests. The audit recommended:

- Amending the department’s current Memorandum of Understanding with the corporation “to address the transfer of funds, submission of additional financial reporting, and periodic review of the Memorandum. Financial information should be reviewed and analyzed by Department staff to enhance detective controls to mitigate the risks associated with inadequate segregation of duties.”
- That the department “consider policy and operational changes to better align the corporation’s operations with current needs.”¹⁹

Florida Qualified Public Depository (QPD)

The Florida Security for Public Deposits Act (act)²⁰ delineates the powers and duties of the CFO and the requirements that must be met by QPDs and public depositors.²¹ To provide protection of public deposits, each QPD is required to pledge collateral at a level commensurate with the amount of public deposits²² held and a measure of its financial stability, as determined by the CFO. The CFO may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events as provided for in law.²³ The act provides that when the CFO determines that a QPD default or insolvency has occurred, the loss to public depositors is to be satisfied, insofar as possible, first through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD.²⁴ The CFO is to provide coverage of any remaining loss by use of amounts assessed and collected from the other QPDs.

III. Effect of Proposed Changes:

Section 1. The CS amends s. 627.351(6)(c), F.S., to require that Citizens provide coverage for manufactured or mobile home dwellings for a minimum insured value of at least \$3,000. Such coverage must also include the following attached structures:

- Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as that of the primary dwelling.

¹⁹ *Id.*

²⁰ Chapter 280, F.S.

²¹ A public depositor is the official custodian of funds for a governmental unit who is responsible for handling public deposits.

²² A public deposit is defined as the moneys of the State or of any State university, county, school district, community college, special district, metropolitan governments, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, that are placed on deposit in a bank, savings bank, or saving association and for which the bank, savings bank, or savings association is required to maintain reserves.

²³ *See* s. 280.041(6), F.S. Examples of triggering events include those instances in which the CFO determines that an immediate danger to the public health, safety, or welfare exists; the QPD defaults or becomes insolvent; the QPD fails to pay an administrative penalty; the QPD fails to meet financial condition standards; and the QPD pledges, deposits, or has issued insufficient or unacceptable collateral to meet required collateral within the required time.

²⁴ Section 280.08, F.S.

- Carports that are aluminum or carports not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering constructed of materials that are not the same or substantially the same materials as that of the primary dwelling.

Section 2. The CS amends s. 723.06115, F.S., to specify the manner in which funds from the Florida Mobile Home Relocation Trust Fund are to be disbursed by the department to the corporation. All funds transferred from the trust fund to the corporation must be transferred electronically and maintained in a qualified public depository (QPD) specified by the corporation.

The CS requires, before the beginning of each fiscal year, that the corporation submit its written annual operating budget, as approved by the corporation's board, for the fiscal year. The department is required to electronically transfer one-fourth of the operating budget to the corporation each quarter. The department must make the first one-fourth quarter transfer on the first business day of the fiscal year and make the remaining one-fourth quarter transfers before the second business day of the second, third, and fourth quarters. The corporation board may approve changes to the operational budget for a fiscal year by providing written notification of such changes to the department. The written notification must indicate the changes to the operational budget and the conditions that were unforeseen at the time the corporation developed the operational budget and why the changes are essential in order to continue operation of the corporation.

The CS requires the corporation to periodically submit requests to the department for the electronic transfer the funds needed to make payments to the mobile home owners whose applications have been approved under the corporation's relocation program. The corporation's requests for the additional funds must include documentation indicating the amount of funds needed, the name and location of the mobile home park, the number of approved applications for moving expenses or abandonment allowance, and summary information specifying the number and type, single-section or multisection, of homes moved or abandoned. The department must process the requests that include the required documentation, subject to the availability of sufficient funds, within the trust fund within 5 business days after receipt of the request.

Additionally, the CS allows the department to inspect the corporation's records upon written notice of five business days.

Section 3. This bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Manufactured or mobile home owners will be able to purchase Citizens Property Insurance coverage for their screen enclosures, carports and patios.

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 Banking and Insurance on March 14, 2013:

The committee substitute (CS) requires Citizens to provide coverage for manufactured or mobile home dwellings for a minimum insured value of at least \$3,000. Such coverage must also include the following attached structures:

- Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or carports not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering constructed of materials that are not the same or substantially the same materials as that of the primary dwelling.

The CS also requires that the board of the Florida Mobile Home Relocation Corporation must approve the corporation's operational budget before submitting to the department. The corporation must provide to the department certain documentation before monies can be transferred from the trust fund for relocation payments. The CS provides that all funds

transferred from the trust fund are to be transferred electronically and placed in a qualified public depository. Additionally, the CS allows the department to inspect the corporation's records at anytime with 5 business days notice.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Bean

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1 A bill to be entitled
 2 An act relating to manufactured and mobile homes;
 3 amending s. 627.351, F.S.; requiring the Citizens
 4 Property Insurance Corporation to provide coverage for
 5 mobile homes and related structures; amending s.
 6 723.06115, F.S.; specifying the procedure for
 7 requesting and obtaining funds from the Florida Mobile
 8 Home Relocation Trust Fund to pay for the operational
 9 costs of the Florida Mobile Home Relocation
 10 Corporation and the relocation costs of mobile home
 11 owners; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (c) of subsection (6) of section
 16 627.351, Florida Statutes, is amended to read:
 17 627.351 Insurance risk apportionment plans.—
 18 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
 19 (c) The corporation's plan of operation:
 20 1. Must provide for adoption of residential property and
 21 casualty insurance policy forms and commercial residential and
 22 nonresidential property insurance forms, which must be approved
 23 by the office before use. The corporation shall adopt the
 24 following policy forms:
 25 a. Standard personal lines policy forms that are
 26 comprehensive multiperil policies providing full coverage of a
 27 residential property equivalent to the coverage provided in the
 28 private insurance market under an HO-3, HO-4, or HO-6 policy.
 29 b. Basic personal lines policy forms that are policies

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30 similar to an HO-8 policy or a dwelling fire policy that provide
 31 coverage meeting the requirements of the secondary mortgage
 32 market, but which is more limited than the coverage under a
 33 standard policy.
 34 c. Commercial lines residential and nonresidential policy
 35 forms that are generally similar to the basic perils of full
 36 coverage obtainable for commercial residential structures and
 37 commercial nonresidential structures in the admitted voluntary
 38 market.
 39 d. Personal lines and commercial lines residential property
 40 insurance forms that cover the peril of wind only. The forms are
 41 applicable only to residential properties located in areas
 42 eligible for coverage under the coastal account referred to in
 43 sub-subparagraph (b)2.a.
 44 e. Commercial lines nonresidential property insurance forms
 45 that cover the peril of wind only. The forms are applicable only
 46 to nonresidential properties located in areas eligible for
 47 coverage under the coastal account referred to in sub-
 48 subparagraph (b)2.a.
 49 f. The corporation may adopt variations of the policy forms
 50 listed in sub-subparagraphs a.-e. which contain more restrictive
 51 coverage.
 52 g. Effective January 1, 2013, the corporation shall offer a
 53 basic personal lines policy similar to an HO-8 policy with
 54 dwelling repair based on common construction materials and
 55 methods.
 56 2. Must provide that the corporation adopt a program in
 57 which the corporation and authorized insurers enter into quota
 58 share primary insurance agreements for hurricane coverage, as

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59 defined in s. 627.4025(2)(a), for eligible risks, and adopt
60 property insurance forms for eligible risks which cover the
61 peril of wind only.

62 a. As used in this subsection, the term:

63 (I) "Quota share primary insurance" means an arrangement in
64 which the primary hurricane coverage of an eligible risk is
65 provided in specified percentages by the corporation and an
66 authorized insurer. The corporation and authorized insurer are
67 each solely responsible for a specified percentage of hurricane
68 coverage of an eligible risk as set forth in a quota share
69 primary insurance agreement between the corporation and an
70 authorized insurer and the insurance contract. The
71 responsibility of the corporation or authorized insurer to pay
72 its specified percentage of hurricane losses of an eligible
73 risk, as set forth in the agreement, may not be altered by the
74 inability of the other party to pay its specified percentage of
75 losses. Eligible risks that are provided hurricane coverage
76 through a quota share primary insurance arrangement must be
77 provided policy forms that set forth the obligations of the
78 corporation and authorized insurer under the arrangement,
79 clearly specify the percentages of quota share primary insurance
80 provided by the corporation and authorized insurer, and
81 conspicuously and clearly state that the authorized insurer and
82 the corporation may not be held responsible beyond their
83 specified percentage of coverage of hurricane losses.

84 (II) "Eligible risks" means personal lines residential and
85 commercial lines residential risks that meet the underwriting
86 criteria of the corporation and are located in areas that were
87 eligible for coverage by the Florida Windstorm Underwriting

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88 Association on January 1, 2002.

89 b. The corporation may enter into quota share primary
90 insurance agreements with authorized insurers at corporation
91 coverage levels of 90 percent and 50 percent.

92 c. If the corporation determines that additional coverage
93 levels are necessary to maximize participation in quota share
94 primary insurance agreements by authorized insurers, the
95 corporation may establish additional coverage levels. However,
96 the corporation's quota share primary insurance coverage level
97 may not exceed 90 percent.

98 d. Any quota share primary insurance agreement entered into
99 between an authorized insurer and the corporation must provide
100 for a uniform specified percentage of coverage of hurricane
101 losses, by county or territory as set forth by the corporation
102 board, for all eligible risks of the authorized insurer covered
103 under the agreement.

104 e. Any quota share primary insurance agreement entered into
105 between an authorized insurer and the corporation is subject to
106 review and approval by the office. However, such agreement shall
107 be authorized only as to insurance contracts entered into
108 between an authorized insurer and an insured who is already
109 insured by the corporation for wind coverage.

110 f. For all eligible risks covered under quota share primary
111 insurance agreements, the exposure and coverage levels for both
112 the corporation and authorized insurers shall be reported by the
113 corporation to the Florida Hurricane Catastrophe Fund. For all
114 policies of eligible risks covered under such agreements, the
115 corporation and the authorized insurer must maintain complete
116 and accurate records for the purpose of exposure and loss

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117 reimbursement audits as required by fund rules. The corporation
118 and the authorized insurer shall each maintain duplicate copies
119 of policy declaration pages and supporting claims documents.

120 g. The corporation board shall establish in its plan of
121 operation standards for quota share agreements which ensure that
122 there is no discriminatory application among insurers as to the
123 terms of the agreements, pricing of the agreements, incentive
124 provisions if any, and consideration paid for servicing policies
125 or adjusting claims.

126 h. The quota share primary insurance agreement between the
127 corporation and an authorized insurer must set forth the
128 specific terms under which coverage is provided, including, but
129 not limited to, the sale and servicing of policies issued under
130 the agreement by the insurance agent of the authorized insurer
131 producing the business, the reporting of information concerning
132 eligible risks, the payment of premium to the corporation, and
133 arrangements for the adjustment and payment of hurricane claims
134 incurred on eligible risks by the claims adjuster and personnel
135 of the authorized insurer. Entering into a quota sharing
136 insurance agreement between the corporation and an authorized
137 insurer is voluntary and at the discretion of the authorized
138 insurer.

139 3.a. May provide that the corporation may employ or
140 otherwise contract with individuals or other entities to provide
141 administrative or professional services that may be appropriate
142 to effectuate the plan. The corporation may borrow funds by
143 issuing bonds or by incurring other indebtedness, and shall have
144 other powers reasonably necessary to effectuate the requirements
145 of this subsection, including, without limitation, the power to

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146 issue bonds and incur other indebtedness in order to refinance
147 outstanding bonds or other indebtedness. The corporation may
148 seek judicial validation of its bonds or other indebtedness
149 under chapter 75. The corporation may issue bonds or incur other
150 indebtedness, or have bonds issued on its behalf by a unit of
151 local government pursuant to subparagraph (q)2. in the absence
152 of a hurricane or other weather-related event, upon a
153 determination by the corporation, subject to approval by the
154 office, that such action would enable it to efficiently meet the
155 financial obligations of the corporation and that such
156 financings are reasonably necessary to effectuate the
157 requirements of this subsection. The corporation may take all
158 actions needed to facilitate tax-free status for such bonds or
159 indebtedness, including formation of trusts or other affiliated
160 entities. The corporation may pledge assessments, projected
161 recoveries from the Florida Hurricane Catastrophe Fund, other
162 reinsurance recoverables, policyholder surcharges and other
163 surcharges, and other funds available to the corporation as
164 security for bonds or other indebtedness. In recognition of s.
165 10, Art. I of the State Constitution, prohibiting the impairment
166 of obligations of contracts, it is the intent of the Legislature
167 that no action be taken whose purpose is to impair any bond
168 indenture or financing agreement or any revenue source committed
169 by contract to such bond or other indebtedness.

170 b. To ensure that the corporation is operating in an
171 efficient and economic manner while providing quality service to
172 policyholders, applicants, and agents, the board shall
173 commission an independent third-party consultant having
174 expertise in insurance company management or insurance company

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175 management consulting to prepare a report and make
 176 recommendations on the relative costs and benefits of
 177 outsourcing various policy issuance and service functions to
 178 private servicing carriers or entities performing similar
 179 functions in the private market for a fee, rather than
 180 performing such functions in-house. In making such
 181 recommendations, the consultant shall consider how other
 182 residual markets, both in this state and around the country,
 183 outsource appropriate functions or use servicing carriers to
 184 better match expenses with revenues that fluctuate based on a
 185 widely varying policy count. The report must be completed by
 186 July 1, 2012. Upon receiving the report, the board shall develop
 187 a plan to implement the report and submit the plan for review,
 188 modification, and approval to the Financial Services Commission.
 189 Upon the commission's approval of the plan, the board shall
 190 begin implementing the plan by January 1, 2013.

191 4. Must require that the corporation operate subject to the
 192 supervision and approval of a board of governors consisting of
 193 eight individuals who are residents of this state, from
 194 different geographical areas of this state.

195 a. The Governor, the Chief Financial Officer, the President
 196 of the Senate, and the Speaker of the House of Representatives
 197 shall each appoint two members of the board. At least one of the
 198 two members appointed by each appointing officer must have
 199 demonstrated expertise in insurance and ~~is~~ deemed to be within
 200 the scope of the exemption provided in s. 112.313(7)(b). The
 201 Chief Financial Officer shall designate one of the appointees as
 202 chair. All board members serve at the pleasure of the appointing
 203 officer. All members of the board are subject to removal at will

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204 by the officers who appointed them. All board members, including
 205 the chair, must be appointed to serve for 3-year terms beginning
 206 annually on a date designated by the plan. However, for the
 207 first term beginning on or after July 1, 2009, each appointing
 208 officer shall appoint one member of the board for a 2-year term
 209 and one member for a 3-year term. A board vacancy shall be
 210 filled for the unexpired term by the appointing officer. The
 211 Chief Financial Officer shall appoint a technical advisory group
 212 to provide information and advice to the board in connection
 213 with the board's duties under this subsection. The executive
 214 director and senior managers of the corporation shall be engaged
 215 by the board and serve at the pleasure of the board. Any
 216 executive director appointed on or after July 1, 2006, is
 217 subject to confirmation by the Senate. The executive director is
 218 responsible for employing other staff as the corporation may
 219 require, subject to review and concurrence by the board.

220 b. The board shall create a Market Accountability Advisory
 221 Committee to assist the corporation in developing awareness of
 222 its rates and its customer and agent service levels in
 223 relationship to the voluntary market insurers writing similar
 224 coverage.

225 (I) The members of the advisory committee consist of the
 226 following 11 persons, one of whom must be elected chair by the
 227 members of the committee: four representatives, one appointed by
 228 the Florida Association of Insurance Agents, one by the Florida
 229 Association of Insurance and Financial Advisors, one by the
 230 Professional Insurance Agents of Florida, and one by the Latin
 231 American Association of Insurance Agencies; three
 232 representatives appointed by the insurers with the three highest

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233 voluntary market share of residential property insurance
 234 business in the state; one representative from the Office of
 235 Insurance Regulation; one consumer appointed by the board who is
 236 insured by the corporation at the time of appointment to the
 237 committee; one representative appointed by the Florida
 238 Association of Realtors; and one representative appointed by the
 239 Florida Bankers Association. All members shall be appointed to
 240 3-year terms and may serve for consecutive terms.

241 (II) The committee shall report to the corporation at each
 242 board meeting on insurance market issues which may include rates
 243 and rate competition with the voluntary market; service,
 244 including policy issuance, claims processing, and general
 245 responsiveness to policyholders, applicants, and agents; and
 246 matters relating to depopulation.

247 5. Must provide a procedure for determining the eligibility
 248 of a risk for coverage, as follows:

249 a. Subject to s. 627.3517, with respect to personal lines
 250 residential risks, if the risk is offered coverage from an
 251 authorized insurer at the insurer's approved rate under a
 252 standard policy including wind coverage or, if consistent with
 253 the insurer's underwriting rules as filed with the office, a
 254 basic policy including wind coverage, for a new application to
 255 the corporation for coverage, the risk is not eligible for any
 256 policy issued by the corporation unless the premium for coverage
 257 from the authorized insurer is more than 15 percent greater than
 258 the premium for comparable coverage from the corporation. If the
 259 risk is not able to obtain such offer, the risk is eligible for
 260 a standard policy including wind coverage or a basic policy
 261 including wind coverage issued by the corporation; however, if

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262 the risk could not be insured under a standard policy including
 263 wind coverage regardless of market conditions, the risk is
 264 eligible for a basic policy including wind coverage unless
 265 rejected under subparagraph 8. However, a policyholder of the
 266 corporation or a policyholder removed from the corporation
 267 through an assumption agreement until the end of the assumption
 268 period remains eligible for coverage from the corporation
 269 regardless of any offer of coverage from an authorized insurer
 270 or surplus lines insurer. The corporation shall determine the
 271 type of policy to be provided on the basis of objective
 272 standards specified in the underwriting manual and based on
 273 generally accepted underwriting practices.

274 (I) If the risk accepts an offer of coverage through the
 275 market assistance plan or through a mechanism established by the
 276 corporation before a policy is issued to the risk by the
 277 corporation or during the first 30 days of coverage by the
 278 corporation, and the producing agent who submitted the
 279 application to the plan or to the corporation is not currently
 280 appointed by the insurer, the insurer shall:

281 (A) Pay to the producing agent of record of the policy for
 282 the first year, an amount that is the greater of the insurer's
 283 usual and customary commission for the type of policy written or
 284 a fee equal to the usual and customary commission of the
 285 corporation; or

286 (B) Offer to allow the producing agent of record of the
 287 policy to continue servicing the policy for at least 1 year and
 288 offer to pay the agent the greater of the insurer's or the
 289 corporation's usual and customary commission for the type of
 290 policy written.

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291
 292 If the producing agent is unwilling or unable to accept
 293 appointment, the new insurer shall pay the agent in accordance
 294 with sub-sub-sub-subparagraph (A).

295 (II) If the corporation enters into a contractual agreement
 296 for a take-out plan, the producing agent of record of the
 297 corporation policy is entitled to retain any unearned commission
 298 on the policy, and the insurer shall:

299 (A) Pay to the producing agent of record, for the first
 300 year, an amount that is the greater of the insurer's usual and
 301 customary commission for the type of policy written or a fee
 302 equal to the usual and customary commission of the corporation;
 303 or

304 (B) Offer to allow the producing agent of record to
 305 continue servicing the policy for at least 1 year and offer to
 306 pay the agent the greater of the insurer's or the corporation's
 307 usual and customary commission for the type of policy written.
 308

309 If the producing agent is unwilling or unable to accept
 310 appointment, the new insurer shall pay the agent in accordance
 311 with sub-sub-sub-subparagraph (A).

312 b. With respect to commercial lines residential risks, for
 313 a new application to the corporation for coverage, if the risk
 314 is offered coverage under a policy including wind coverage from
 315 an authorized insurer at its approved rate, the risk is not
 316 eligible for a policy issued by the corporation unless the
 317 premium for coverage from the authorized insurer is more than 15
 318 percent greater than the premium for comparable coverage from
 319 the corporation. If the risk is not able to obtain any such

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320 offer, the risk is eligible for a policy including wind coverage
 321 issued by the corporation. However, a policyholder of the
 322 corporation or a policyholder removed from the corporation
 323 through an assumption agreement until the end of the assumption
 324 period remains eligible for coverage from the corporation
 325 regardless of an offer of coverage from an authorized insurer or
 326 surplus lines insurer.

327 (I) If the risk accepts an offer of coverage through the
 328 market assistance plan or through a mechanism established by the
 329 corporation before a policy is issued to the risk by the
 330 corporation or during the first 30 days of coverage by the
 331 corporation, and the producing agent who submitted the
 332 application to the plan or the corporation is not currently
 333 appointed by the insurer, the insurer shall:

334 (A) Pay to the producing agent of record of the policy, for
 335 the first year, an amount that is the greater of the insurer's
 336 usual and customary commission for the type of policy written or
 337 a fee equal to the usual and customary commission of the
 338 corporation; or

339 (B) Offer to allow the producing agent of record of the
 340 policy to continue servicing the policy for at least 1 year and
 341 offer to pay the agent the greater of the insurer's or the
 342 corporation's usual and customary commission for the type of
 343 policy written.
 344

345 If the producing agent is unwilling or unable to accept
 346 appointment, the new insurer shall pay the agent in accordance
 347 with sub-sub-sub-subparagraph (A).

348 (II) If the corporation enters into a contractual agreement

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349 for a take-out plan, the producing agent of record of the
 350 corporation policy is entitled to retain any unearned commission
 351 on the policy, and the insurer shall:

352 (A) Pay to the producing agent of record, for the first
 353 year, an amount that is the greater of the insurer's usual and
 354 customary commission for the type of policy written or a fee
 355 equal to the usual and customary commission of the corporation;
 356 or

357 (B) Offer to allow the producing agent of record to
 358 continue servicing the policy for at least 1 year and offer to
 359 pay the agent the greater of the insurer's or the corporation's
 360 usual and customary commission for the type of policy written.

361
 362 If the producing agent is unwilling or unable to accept
 363 appointment, the new insurer shall pay the agent in accordance
 364 with sub-sub-sub-subparagraph (A).

365 c. For purposes of determining comparable coverage under
 366 sub-subparagraphs a. and b., the comparison must be based on
 367 those forms and coverages that are reasonably comparable. The
 368 corporation may rely on a determination of comparable coverage
 369 and premium made by the producing agent who submits the
 370 application to the corporation, made in the agent's capacity as
 371 the corporation's agent. A comparison may be made solely of the
 372 premium with respect to the main building or structure only on
 373 the following basis: the same coverage A or other building
 374 limits; the same percentage hurricane deductible that applies on
 375 an annual basis or that applies to each hurricane for commercial
 376 residential property; the same percentage of ordinance and law
 377 coverage, if the same limit is offered by both the corporation

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378 and the authorized insurer; the same mitigation credits, to the
 379 extent the same types of credits are offered both by the
 380 corporation and the authorized insurer; the same method for loss
 381 payment, such as replacement cost or actual cash value, if the
 382 same method is offered both by the corporation and the
 383 authorized insurer in accordance with underwriting rules; and
 384 any other form or coverage that is reasonably comparable as
 385 determined by the board. If an application is submitted to the
 386 corporation for wind-only coverage in the coastal account, the
 387 premium for the corporation's wind-only policy plus the premium
 388 for the ex-wind policy that is offered by an authorized insurer
 389 to the applicant must be compared to the premium for multiperil
 390 coverage offered by an authorized insurer, subject to the
 391 standards for comparison specified in this subparagraph. If the
 392 corporation or the applicant requests from the authorized
 393 insurer a breakdown of the premium of the offer by types of
 394 coverage so that a comparison may be made by the corporation or
 395 its agent and the authorized insurer refuses or is unable to
 396 provide such information, the corporation may treat the offer as
 397 not being an offer of coverage from an authorized insurer at the
 398 insurer's approved rate.

399 6. Must include rules for classifications of risks and
 400 rates.

401 7. Must provide that if premium and investment income for
 402 an account attributable to a particular calendar year are in
 403 excess of projected losses and expenses for the account
 404 attributable to that year, such excess shall be held in surplus
 405 in the account. Such surplus must be available to defray
 406 deficits in that account as to future years and used for that

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407 purpose before assessing assessable insurers and assessable
408 insureds as to any calendar year.

409 8. Must provide objective criteria and procedures to be
410 uniformly applied to all applicants in determining whether an
411 individual risk is so hazardous as to be uninsurable. In making
412 this determination and in establishing the criteria and
413 procedures, the following must be considered:

414 a. Whether the likelihood of a loss for the individual risk
415 is substantially higher than for other risks of the same class;
416 and

417 b. Whether the uncertainty associated with the individual
418 risk is such that an appropriate premium cannot be determined.

419

420 The acceptance or rejection of a risk by the corporation shall
421 be construed as the private placement of insurance, and the
422 provisions of chapter 120 do not apply.

423 9. Must provide that the corporation make its best efforts
424 to procure catastrophe reinsurance at reasonable rates, to cover
425 its projected 100-year probable maximum loss as determined by
426 the board of governors.

427 10. The policies issued by the corporation must provide
428 that if the corporation or the market assistance plan obtains an
429 offer from an authorized insurer to cover the risk at its
430 approved rates, the risk is no longer eligible for renewal
431 through the corporation, except as otherwise provided in this
432 subsection.

433 11. Corporation policies and applications must include a
434 notice that the corporation policy could, under this section, be
435 replaced with a policy issued by an authorized insurer which

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436 does not provide coverage identical to the coverage provided by
437 the corporation. The notice must also specify that acceptance of
438 corporation coverage creates a conclusive presumption that the
439 applicant or policyholder is aware of this potential.

440 12. May establish, subject to approval by the office,
441 different eligibility requirements and operational procedures
442 for any line or type of coverage for any specified county or
443 area if the board determines that such changes are justified due
444 to the voluntary market being sufficiently stable and
445 competitive in such area or for such line or type of coverage
446 and that consumers who, in good faith, are unable to obtain
447 insurance through the voluntary market through ordinary methods
448 continue to have access to coverage from the corporation. If
449 coverage is sought in connection with a real property transfer,
450 the requirements and procedures may not provide an effective
451 date of coverage later than the date of the closing of the
452 transfer as established by the transferor, the transferee, and,
453 if applicable, the lender.

454 13. Must provide that, with respect to the coastal account,
455 any assessable insurer with a surplus as to policyholders of \$25
456 million or less writing 25 percent or more of its total
457 countrywide property insurance premiums in this state may
458 petition the office, within the first 90 days of each calendar
459 year, to qualify as a limited apportionment company. A regular
460 assessment levied by the corporation on a limited apportionment
461 company for a deficit incurred by the corporation for the
462 coastal account may be paid to the corporation on a monthly
463 basis as the assessments are collected by the limited
464 apportionment company from its insureds, but a limited

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465 apportionment company must begin collecting the regular
 466 assessments not later than 90 days after the regular assessments
 467 are levied by the corporation, and the regular assessments must
 468 be paid in full within 15 months after being levied by the
 469 corporation. A limited apportionment company shall collect from
 470 its policyholders any emergency assessment imposed under sub-
 471 subparagraph (b)3.d. The plan must provide that, if the office
 472 determines that any regular assessment will result in an
 473 impairment of the surplus of a limited apportionment company,
 474 the office may direct that all or part of such assessment be
 475 deferred as provided in subparagraph (q)4. However, an emergency
 476 assessment to be collected from policyholders under sub-
 477 subparagraph (b)3.d. may not be limited or deferred.

478 14. Must provide that the corporation appoint as its
 479 licensed agents only those agents who also hold an appointment
 480 as defined in s. 626.015(3) with an insurer who at the time of
 481 the agent's initial appointment by the corporation is authorized
 482 to write and is actually writing personal lines residential
 483 property coverage, commercial residential property coverage, or
 484 commercial nonresidential property coverage within the state.

485 15. Must provide a premium payment plan option to its
 486 policyholders which, at a minimum, allows for quarterly and
 487 semiannual payment of premiums. A monthly payment plan may, but
 488 is not required to, be offered.

489 16. Must limit coverage on mobile homes or manufactured
 490 homes built before 1994 to actual cash value of the dwelling
 491 rather than replacement costs of the dwelling.

492 17. Must provide coverage for manufactured or mobile home
 493 dwellings. Such coverage must also include the following

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494 attached structures:

495 a. Screened enclosures that are aluminum framed or screened
 496 enclosures that are not covered by the same or substantially the
 497 same materials as that of the primary dwelling;

498 b. Carports that are aluminum or carports not covered by
 499 the same or substantially the same materials as that of the
 500 primary dwelling; and

501 c. Patios that have a roof covering constructed of
 502 materials that are not the same or substantially the same
 503 materials as that of the primary dwelling.

504
 505 The corporation shall make available a policy for mobile homes
 506 or manufactured homes for a minimum insured value of at least
 507 \$3,000.

508 ~~18.17.~~ May provide such limits of coverage as the board
 509 determines, consistent with the requirements of this subsection.

510 ~~19.18.~~ May require commercial property to meet specified
 511 hurricane mitigation construction features as a condition of
 512 eligibility for coverage.

513 ~~20.19.~~ Must provide that new or renewal policies issued by
 514 the corporation on or after January 1, 2012, which cover
 515 sinkhole loss do not include coverage for any loss to
 516 appurtenant structures, driveways, sidewalks, decks, or patios
 517 that are directly or indirectly caused by sinkhole activity. The
 518 corporation shall exclude such coverage using a notice of
 519 coverage change, which may be included with the policy renewal,
 520 and not by issuance of a notice of nonrenewal of the excluded
 521 coverage upon renewal of the current policy.

522 ~~21.20.~~ As of January 1, 2012, must require that the agent

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523 obtain from an applicant for coverage from the corporation an
 524 acknowledgment signed by the applicant, which includes, at a
 525 minimum, the following statement:

526
 527 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
 528 AND ASSESSMENT LIABILITY:
 529

530 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
 531 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
 532 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
 533 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
 534 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
 535 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
 536 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
 537 LEGISLATURE.

538 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
 539 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
 540 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
 541 FLORIDA LEGISLATURE.

542 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
 543 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
 544 STATE OF FLORIDA.

545 a. The corporation shall maintain, in electronic format or
 546 otherwise, a copy of the applicant's signed acknowledgment and
 547 provide a copy of the statement to the policyholder as part of
 548 the first renewal after the effective date of this subparagraph.

549 b. The signed acknowledgment form creates a conclusive
 550 presumption that the policyholder understood and accepted his or
 551 her potential surcharge and assessment liability as a

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552 policyholder of the corporation.

553 Section 2. Section 723.06115, Florida Statutes, is amended
 554 to read:

555 723.06115 Florida Mobile Home Relocation Trust Fund.—

556 (1) The Florida Mobile Home Relocation Trust Fund ~~There is~~
 557 established within the Department of Business and Professional
 558 Regulation. ~~The Florida Mobile Home Relocation trust fund, is to~~
 559 be used to fund ~~by the department for the purpose of funding~~ the
 560 administration and operations of the Florida Mobile Home
 561 Relocation Corporation. All interest earned from the investment
 562 or deposit of moneys in the trust fund shall be deposited in the
 563 trust fund. The trust fund shall be funded from ~~the moneys~~
 564 collected by the corporation ~~department under s. 723.06116~~ from
 565 mobile home park owners under s. 723.06116, ~~who change the use~~
 566 ~~of their mobile home parks~~; the surcharge collected by the
 567 department under s. 723.007(2), ~~+~~ the surcharge collected by the
 568 Department of Highway Safety and Motor Vehicles, ~~+~~ and from ~~by~~
 569 other appropriated funds.

570 (2) Moneys in the Florida Mobile Home Relocation Trust Fund
 571 may be expended only:

572 (a) To pay the administration costs of the Florida Mobile
 573 Home Relocation Corporation; and

574 (b) To carry out the purposes and objectives of the ~~Florida~~
 575 ~~Mobile Home Relocation~~ corporation by making payments to mobile
 576 home owners under the relocation program.

577 (3) The department shall distribute moneys in the Florida
 578 Mobile Home Relocation Trust Fund to the Florida Mobile Home
 579 Relocation Corporation in accordance with the following:

580 (a) Before the beginning of each fiscal year, the

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581 corporation shall submit its annual operating budget, as
 582 approved by the corporation board, for the fiscal year and set
 583 forth that amount to the department in writing. One-fourth of
 584 the operating budget shall be transferred to the corporation
 585 each quarter. The department shall make the first one-fourth
 586 quarter transfer on the first business day of the fiscal year
 587 and make the remaining one-fourth quarter transfers before the
 588 second business day of the second, third, and fourth quarters.
 589 The corporation board may approve changes to the operational
 590 budget for a fiscal year by providing written notification of
 591 such changes to the department. The written notification must
 592 indicate the changes to the operational budget and the
 593 conditions that were unforeseen at the time the corporation
 594 developed the operational budget and why the changes are
 595 essential in order to continue operation of the corporation.
 596 (b) The corporation shall periodically submit requests to
 597 the department for the transfer of funds to the corporation
 598 needed to make payments to mobile home owners under the
 599 relocation program. Requests must include documentation
 600 indicating the amount of funds needed, the name and location of
 601 the mobile home park, the number of approved applications for
 602 moving expenses or abandonment allowance, and summary
 603 information specifying the number and type, single-section or
 604 multisection, of homes moved or abandoned. The department shall
 605 process requests that include such documentation, subject to the
 606 availability of sufficient funds within the trust fund within 5
 607 business days after receipt of the request. Transfer requests
 608 may be submitted electronically.
 609 (c) Funds transferred from the trust fund to the

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610 corporation shall be transferred electronically and shall be
 611 transferred to and maintained in a qualified public depository
 612 as defined in s. 280.02 which is specified by the corporation.
 613 (4) Other than the requirements specified under this
 614 section, neither the corporation nor the department are required
 615 to take any other action as a prerequisite to accomplishing the
 616 provisions of this section.
 617 (5) This section does not preclude department inspection of
 618 corporation records 5 business days after receipt of written
 619 notice.
 620 Section 3. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

March 14, 2013

The Honorable Kelli Stargel
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I am writing to respectfully request you consider placing CS/SB 378, relating to Manufactured and Mobile Homes on the next Regulated Industries Committee agenda. I would greatly appreciate the opportunity to discuss the bill at great length before your committee.

Thank you in advance for your consideration. As always, please do not hesitate to contact me with any question or comments you, or your staff may have.

Respectfully,

A handwritten signature in cursive script, appearing to read "Aaron".

Aaron Bean
Senator District 4

A handwritten note in cursive script that says "Thank you!".

Cc: Patrick "Booter" Imhof, Staff Director
330 Knott Building

REPLY TO:

302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004

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)

Tabi

4/2/13
Meeting Date

Topic Mobile Homes

Bill Number SB 378
(if applicable)

Name Lori Killinger

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 315 S. Calhoun St., Ste. 830

Phone 850/222-5702

Tallahassee FL 32301
City State Zip

E-mail lkillinger@llw-law.com

Speaking: For Against Information

Representing Florida Manufactured Housing Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

Tab 1

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

4/2/13
Meeting Date

Topic Mobile Homes / Citizens Inv

Bill Number CS/SB 378
(if applicable)

Name DAVID SIGERSON

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2410 VAN BUREN ST

Phone 954 336 3544

Hollywood FL 33020
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

Tab 1

THE FLORIDA SENATE APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic mobile homes

Bill Number 378
(if applicable)

Name Nancy Stewart

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1535 Killerra Center Blvd

Phone 850-385-7805

TLH FL 32309
City State Zip

E-mail _____

Speaking: For Against Information

Representing Federation of Manufactured Home Owners of FL

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.

Tab 1

THE FLORIDA SENATE APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic Mobile & Manufactured Homes Bill Number 378
(if applicable)

Name Christine Ashburn Amendment Barcode _____
(if applicable)

Job Title Director of Legislative & External Affairs

Address ~~XXXXXXXXXX~~ 2312 Kellan Center Blvd Phone 850-513-3746
Street

Tallahassee FL 32304 E-mail christine.ashburn@
City State Zip citizensfla.com

Speaking: For Against Information

Representing Citizens Property Ins Corp

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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



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Proposed Committee Substitute by the Committee on Regulated Industries

A bill to be entitled

An act relating to homeowners' associations; amending s. 468.436, F.S.; providing grounds for disciplinary actions against community association managers; amending s. 720.303, F.S.; requiring official records to be maintained within a specified distance of the association for a specified time; authorizing associations to maintain such records online; requiring associations to allow a member to use a portable device to make an electronic copy of the official records and prohibiting associations from charging a fee for such an electronic copy; removing provisions allowing the association to charge fees for personnel costs related to records access; requiring budgets to designate permissible uses of reserve accounts; requiring a community association manager, or the association in the absence of a community association manager, to report certain information to the Division of Florida Condominiums, Timeshares, and Mobile Homes; providing an expiration date for the reporting requirements; creating s. 720.3033, F.S.; requiring association directors to file with the association secretary written certification that they have read certain association documents, will uphold the documents, and will uphold their fiduciary responsibility to the members; providing that such certification is valid while the director is on the



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board; providing penalties for failure to file such certification; requiring the association secretary to retain such certification for 5 years; requiring the board to follow specified procedures relating to contracts or transactions between the association and certain entities; providing for disclosure of the contract or transaction to members; providing for the cancellation of such contract or transaction under certain circumstances; prohibiting any association officer, director, or manager from soliciting or receiving certain personal benefits from any person providing or offering to provide goods or services to the association and providing for removal for knowingly taking such action; providing an exception; providing for the removal of any director or officer charged with a felony theft or embezzlement offense involving association funds or property; providing for the reinstatement of such person under certain circumstances; prohibiting a member with pending criminal charges from certain positions; requiring the association to maintain insurance or a bond to cover funds that will be in the custody of the association or its management agent; providing a definition; amending s. 720.306, F.S.; revising procedures for the election of directors; amending s. 720.307, F.S.; providing additional circumstances for authorizing members to elect a majority of association board members; providing circumstances under which members other than the developer are authorized to elect a



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57 specified number of members to the board of directors;
58 amending s. 720.308, F.S.; prohibiting the levy of
59 special assessments or an increase in assessments
60 levied pursuant to the annual budget under certain
61 circumstances; providing an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Paragraph (b) of subsection (2) of section
66 468.436, Florida Statutes, is amended to read:

67 468.436 Disciplinary proceedings.—

68 (2) The following acts constitute grounds for which the
69 disciplinary actions in subsection (4) may be taken:

70 (b)1. Violation of any provision of this part.

71 2. Violation of any lawful order or rule rendered or
72 adopted by the department or the council.

73 3. Being convicted of or pleading nolo contendere to a
74 felony in any court in the United States.

75 4. Obtaining a license or certification or any other order,
76 ruling, or authorization by means of fraud, misrepresentation,
77 or concealment of material facts.

78 5. Committing acts of gross misconduct or gross negligence
79 in connection with the profession.

80 6. Contracting, on behalf of an association, with any
81 entity in which the licensee has a financial interest that is
82 not disclosed.

83 7. Failing to report to the division as required in s.
84 720.303(13).

85 8. Violating any provision of chapter 720 during the course



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86 of performing community association management services pursuant
87 to a contract with a homeowners' association.

88 Section 2. Subsection (5) and paragraph (b) of subsection
89 (6) of section 720.303, Florida Statutes, are amended, and
90 subsection (13) is added to that section, to read:

91 720.303 Association powers and duties; meetings of board;
92 official records; budgets; financial reporting; association
93 funds; recalls.—

94 (5) INSPECTION AND COPYING OF RECORDS.—The official records
95 shall be maintained within the state for at least 7 years and
96 shall be made available to a parcel owner for inspection or
97 photocopying within 45 miles of the community or within the
98 county in which the association is located within 10 business
99 days after receipt by the board or its designee of a written
100 request must be open to inspection and available for
101 photocopying by members or their authorized agents at reasonable
102 times and places within 10 business days after receipt of a
103 written request for access. This subsection may be complied with
104 by having a copy of the official records available for
105 inspection or copying in the community or, at the option of the
106 association, by making the records available to a parcel owner
107 electronically via the Internet or by allowing the records to be
108 viewed in electronic format on a computer screen and printed
109 upon request. If the association has a photocopy machine
110 available where the records are maintained, it must provide
111 parcel owners with copies on request during the inspection if
112 the entire request is limited to no more than 25 pages. An
113 association shall allow a member or his or her authorized
114 representative to use a portable device, including a smartphone,



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115 tablet, portable scanner, or any other technology capable of
116 scanning or taking photographs, to make an electronic copy of
117 the official records in lieu of providing the member or his or
118 her authorized representative with a copy of such records. The
119 association may not charge a fee to a member or his or her
120 authorized representative for such use of a portable device.

121 (a) The failure of an association to provide access to the
122 records within 10 business days after receipt of a written
123 request submitted by certified mail, return receipt requested,
124 creates a rebuttable presumption that the association willfully
125 failed to comply with this subsection.

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

132 (c) The association may adopt reasonable written rules
133 governing the frequency, time, location, notice, records to be
134 inspected, and manner of inspections, but may not require a
135 parcel owner to demonstrate any proper purpose for the
136 inspection, state any reason for the inspection, or limit a
137 parcel owner's right to inspect records to less than one 8-hour
138 business day per month. The association may impose fees to cover
139 the costs of providing copies of the official records,
140 including, without limitation, the costs of copying and the
141 costs required for personnel to retrieve and copy the records if
142 retrieving the records exceeds one-half hour and if the
143 personnel costs do not exceed \$20 per hour. The association may



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144 charge up to 25 ~~50~~ cents per page for copies made on the
145 association's photocopier. If the association does not have a
146 photocopy machine available where the records are kept, or if
147 the records requested to be copied exceed 25 pages in length,
148 the association may have copies made by an outside duplicating
149 service vendor or association management company personnel and
150 may charge the actual cost of copying, as supported by the
151 vendor invoice including any reasonable costs involving
152 personnel fees and charges at an hourly rate for vendor or
153 employee time to cover administrative costs to the vendor or
154 association. The association shall maintain an adequate number
155 of copies of the recorded governing documents, to ensure their
156 availability to members and prospective members. Notwithstanding
157 this paragraph, the following records are not accessible to
158 members or parcel owners:

159 1. Any record protected by the lawyer-client privilege as
160 described in s. 90.502 and any record protected by the work-
161 product privilege, including, but not limited to, a record
162 prepared by an association attorney or prepared at the
163 attorney's express direction which reflects a mental impression,
164 conclusion, litigation strategy, or legal theory of the attorney
165 or the association and which was prepared exclusively for civil
166 or criminal litigation or for adversarial administrative
167 proceedings or which was prepared in anticipation of such
168 litigation or proceedings until the conclusion of the litigation
169 or proceedings.

170 2. Information obtained by an association in connection
171 with the approval of the lease, sale, or other transfer of a
172 parcel.



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173 3. Personnel records of the association's employees,
174 including, but not limited to, disciplinary, payroll, health,
175 and insurance records. For purposes of this subparagraph, the
176 term "personnel records" does not include written employment
177 agreements with an association employee or budgetary or
178 financial records that indicate the compensation paid to an
179 association employee.

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

181 5. Social security numbers, driver's license numbers,
182 credit card numbers, electronic mailing addresses, telephone
183 numbers, facsimile numbers, emergency contact information, any
184 addresses for a parcel owner other than as provided for
185 association notice requirements, and other personal identifying
186 information of any person, excluding the person's name, parcel
187 designation, mailing address, and property address. However, an
188 owner may consent in writing to the disclosure of protected
189 information described in this subparagraph. The association is
190 not liable for the disclosure of information that is protected
191 under this subparagraph if the information is included in an
192 official record of the association and is voluntarily provided
193 by an owner and not requested by the association.

194 6. Any electronic security measure that is used by the
195 association to safeguard data, including passwords.

196 7. The software and operating system used by the
197 association which allows the manipulation of data, even if the
198 owner owns a copy of the same software used by the association.
199 The data is part of the official records of the association.

200 (d) The association or its authorized agent is not required
201 to provide a prospective purchaser or lienholder with



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202 information about the residential subdivision or the association
203 other than information or documents required by this chapter to
204 be made available or disclosed. The association or its
205 authorized agent may charge a reasonable fee to the prospective
206 purchaser or lienholder or the current parcel owner or member
207 for providing good faith responses to requests for information
208 by or on behalf of a prospective purchaser or lienholder, other
209 than that required by law, if the fee does not exceed \$150 plus
210 the reasonable cost of photocopying and any attorney's fees
211 incurred by the association in connection with the response.

212 (6) BUDGETS.—

213 (b) In addition to annual operating expenses, the budget
214 may include reserve accounts for capital expenditures and
215 deferred maintenance for which the association is responsible.
216 If reserve accounts are established, the budget must designate
217 the components for which the reserve accounts may be used. If
218 reserve accounts are not established pursuant to paragraph (d),
219 funding of such reserves is limited to the extent that the
220 governing documents limit increases in assessments, including
221 reserves. If the budget of the association includes reserve
222 accounts established pursuant to paragraph (d), such reserves
223 shall be determined, maintained, and waived in the manner
224 provided in this subsection. Once an association provides for
225 reserve accounts pursuant to paragraph (d), the association
226 shall thereafter determine, maintain, and waive reserves in
227 compliance with this subsection. This section does not preclude
228 the termination of a reserve account established pursuant to
229 this paragraph upon approval of a majority of the total voting
230 interests of the association. Upon such approval, the



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231 terminating reserve account shall be removed from the budget.

232 (13) REPORTING REQUIREMENT.—The community association
233 manager, or the association when there is no community
234 association manager, shall report to the division by November
235 22, 2013, and annually thereafter, in a manner and form
236 prescribed by the division.

237 (a) The report shall include the association's:

- 238 1. Legal name.
- 239 2. Federal employer identification number.
- 240 3. Mailing and physical addresses.
- 241 4. Total number of parcels.
- 242 5. Total amount of revenues and expenses from the
243 association's annual budget.

244 (b) For associations in which control of the association
245 has not been transitioned to nondeveloper members, as set forth
246 in s. 720.307, the report shall also include the developer's:

- 247 1. Legal name.
- 248 2. Mailing address.
- 249 3. Total number of parcels owned on the date of reporting.

250 (c) By October 1, 2013, the department shall establish and
251 implement a registration system through an Internet website that
252 provides for the reporting requirements of paragraphs (a) and
253 (b).

254 (d) On or before December 1, 2013, and annually thereafter
255 by December 1, the department shall submit a report to the
256 Governor, the President of the Senate, and the Speaker of the
257 House of Representatives providing the homeowner association
258 data reported pursuant to this subsection.

259 (e) The department may adopt rules pursuant to ss.



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260 120.536(1) and 120.54 to implement the provisions of this
261 subsection.

262 (f) This subsection shall expire on July 1, 2016, unless
263 reenacted by the Legislature.

264 Section 3. Section 720.3033, Florida Statutes, is created
265 to read:

266 720.3033 Officers and directors.—

267 (1) (a) Within 90 days after being elected or appointed to
268 the board, each director shall certify in writing to the
269 secretary of the association that he or she has read the
270 association's declaration of covenants, articles of
271 incorporation, bylaws, and current written rules and policies;
272 that he or she will work to uphold such documents and policies
273 to the best of his or her ability; and that he or she will
274 faithfully discharge his or her fiduciary responsibility to the
275 association's members.

276 (b) The written certification is valid for the
277 uninterrupted tenure of the director on the board. A director
278 who does not timely file the written certification shall be
279 suspended from the board until he or she complies with the
280 requirement. The board may temporarily fill the vacancy during
281 the period of suspension.

282 (c) The secretary shall retain each director's written
283 certification for inspection by the members for 5 years after
284 the director's election.

285 (2) If the association enters into a contract or other
286 transaction with any of its directors or a corporation, firm,
287 association, or other entity in which an association director is
288 also a director or officer or is financially interested, the



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289 board must:

290 (a) Comply with the requirements of s. 617.0832.

291 (b) Enter the disclosures required by s. 617.0832 into the
292 written minutes of the meeting.

293 (c) Approve the contract or other transaction by an
294 affirmative vote of two-thirds of the directors present.

295 (d) At the next regular or special meeting of the members,
296 disclose the existence of the contract or other transaction to
297 the members. Upon motion of any member, the contract or
298 transaction shall be brought up for a vote and may be canceled
299 by a majority vote of the members present. If the members cancel
300 the contract, the association is only liable for the reasonable
301 value of goods and services provided up to the time of
302 cancellation and is not liable for any termination fee,
303 liquidated damages, or other penalty for such cancellation.

304 (3) An officer, director, or manager may not solicit, offer
305 to accept, or accept any good or service of value for which
306 consideration has not been provided for his or her benefit or
307 for the benefit of a member of his or her immediate family from
308 any person providing or proposing to provide goods or services
309 to the association. If the board finds that an officer or
310 director has violated this subsection, the board shall
311 immediately remove from office the officer or director. The
312 vacancy shall be filled according to law until the end of the
313 period of the end of the director's term of office. However, an
314 officer, director, or manager may accept food to be consumed at
315 a business meeting with a value of less than \$25 per individual
316 or a service or good received in connection with trade fairs or
317 education programs.



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318 (4) The board shall immediately remove from office a
319 director or officer charged by information or indictment with a
320 felony theft or embezzlement offense involving the association's
321 funds or property. The vacancy shall be filled according to
322 general law until the end of the period of the suspension or the
323 end of the director's term of office, whichever occurs first.
324 However, if the charges are resolved without a finding of guilt
325 or without acceptance of a plea of guilt or nolo contendere, the
326 director or officer shall be reinstated for any remainder of his
327 or her term of office. A member who has criminal charges pending
328 may not be appointed or elected to a position as a director or
329 officer.

330 (5) All associations shall maintain insurance or a fidelity
331 bond for all persons who control or disburse funds of the
332 association. The insurance policy or fidelity bond must cover
333 the maximum funds that will be in the custody of the association
334 or its management agent at any one time. As used in this
335 subsection, the term "persons who control or disburse funds of
336 the association" includes, but is not limited to, persons
337 authorized to sign checks on behalf of the association, and the
338 president, secretary, and treasurer of the association. The
339 association shall bear the cost of any insurance or bond.

340 Section 4. Paragraph (a) of subsection (9) of section
341 720.306, Florida Statutes, is amended to read:

342 720.306 Meetings of members; voting and election
343 procedures; amendments.-

344 (9) (a) ELECTIONS AND BOARD VACANCIES.—Elections of
345 directors must be conducted in accordance with the procedures
346 set forth in the governing documents of the association. All



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347 members of the association are eligible to serve on the board of
348 directors, and a member may nominate himself or herself as a
349 candidate for the board at a meeting where the election is to be
350 held; provided, however, that ~~or~~, if the election process allows
351 candidates to nominate themselves ~~voting by absentee ballot,~~ in
352 advance of the balloting, the association is not required to
353 allow nominations at the meeting. An election is not required
354 unless more candidates are nominated than vacancies exist.
355 Except as otherwise provided in the governing documents, boards
356 of directors must be elected by a plurality of the votes cast by
357 eligible voters.

358 Section 5. Subsection (1) of section 720.307, Florida
359 Statutes, is amended, present subsections (2) through (4) are
360 renumbered as subsections (4) through (6), respectively, and new
361 subsections (2) and (3) are added to that section, to read:

362 720.307 Transition of association control in a community.-
363 With respect to homeowners' associations:

364 (1) Members other than the developer are entitled to elect
365 at least a majority of the members of the board of directors of
366 the homeowners' association when the earlier of the following
367 events occurs:

368 (a) Three months after 90 percent of the parcels in all
369 phases of the community that will ultimately be operated by the
370 homeowners' association have been conveyed to members; ~~or~~

371 (b) Such other percentage of the parcels has been conveyed
372 to members, or such other date or event has occurred, as is set
373 forth in the governing documents in order to comply with the
374 requirements of any governmentally chartered entity with regard
375 to the mortgage financing of parcels;



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376 (c) Two years after the developer has ceased construction
377 or ceased to offer parcels for sale in the ordinary course of
378 business;

379 (d) Upon the developer abandoning or deserting its
380 responsibility to maintain and complete the advertised amenities
381 or infrastructure. There is a rebuttable presumption that the
382 developer has abandoned and deserted the property if the
383 developer has not engaged in construction or sale of properties
384 or has unpaid assessments or guaranteed amounts under s. 720.308
385 for a period of more than 2 years;

386 (e) Upon the developer filing a petition seeking protection
387 under chapter 7 of the federal Bankruptcy Code;

388 (f) Upon the developer losing title to the property through
389 a foreclosure action or the transfer of a deed in lieu of
390 foreclosure; or

391 (g) Upon a receiver for the developer being appointed by a
392 circuit court and not being discharged within 30 days after such
393 appointment, unless the court determines within 30 days after
394 such appointment that transfer of control would be detrimental
395 to the association or its members.

396
397 For purposes of this section, the term "members other than the
398 developer" shall not include builders, contractors, or others
399 who purchase a parcel for the purpose of constructing
400 improvements thereon for resale.

401 (2) Members other than the developer are entitled to elect
402 at least one member of the board of directors of the homeowners'
403 association if 15 percent of the parcels in all phases of the
404 community which will ultimately be operated by the association



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405 have been conveyed to members.

406 (3) Members other than the developer are entitled to elect
407 at least two members of the board of directors of the
408 homeowners' association if 50 percent of the parcels in all
409 phases of the community which will ultimately be operated by the
410 association have been conveyed to members.

411 Section 6. Subsection (7) is added to section 720.308,
412 Florida Statutes, to read:

413 720.308 Assessments and charges.—

414 (7) Assessments levied pursuant to the annual budget may
415 not be increased, and special assessments may not be levied,
416 without the approval of the majority of nondeveloper voting
417 interests while the developer is in control of the association
418 and entitled to elect the majority of the members of the board,
419 unless the budget specifically describes and justifies the
420 increased assessment or the levy of the special assessment.

421 Section 7. This act shall take effect July 1, 2013.

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 580

INTRODUCER: Committee on Regulated Industries and Senator Hays

5240ECT: Homeowners' Associations

DATE: April 2, 2013 REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 580 revises requirements for the governance of homeowners' associations. The bill provides additional grounds for disciplining licensed community association managers, including failing to report specified information to the Department of Business and Professional Regulation (department), and failing to comply with ch. 720, F.S., relating to homeowners' associations. Regarding the homeowner's access to official records of the association, the bill:

- Requires that the official records must be maintained for seven years and maintained within 45 miles of the community or within the same county;
- Permits associations to maintain the records electronically;
- Permits members to photograph records using a camera or other electronic device at no charge;
- Permits the association to charge copying costs and personnel costs required to retrieve and copy records that exceed one half hour, but the cost may not exceed \$20 per hour;
- Decreases the cost of copies provided on the association's photocopier from 50 cents per page to 25 cents per page; and
- Permits associations to use an outside duplicating service to make copies of official records, and to charge the actual cost of copying as supported by an invoice.

The bill requires community association managers, or the association if there is no manager, to annually report information about the association to the department. It requires the department to establish an Internet-based registration system and to submit an annual report to the Governor and, the President of the Senate, and the Speaker of the House of Representatives. This reporting requirement would expire on July 1, 2016, unless reenacted by the Legislature.

The bill revises requirements for elections in homeowners' associations by providing that the association does not have to allow nominations at the meeting where the election is to be held if it permits members to nominate themselves in advance of the balloting. It also provides that an election is not required unless more candidates are nominated than board vacancies exist.

Regarding the officers and directors of homeowners' associations, the bill requires:

- Newly elected directors to certify that they have read, and will uphold, the governing documents;
- Requires contracts with interested directors to be disclosed and approved by a two-thirds vote of the board, and permits the contract to be cancelled by a vote of the members of the association;
- Requires the removal of officers and directors who solicit or accept things of value from anyone providing or offering to provide services to the association, with exceptions;
- Requires the removal of officers or directors charged with theft or embezzlement of association funds; and
- Requires associations to maintain insurance or fidelity bonding.

Regarding developer control of homeowners' associations, the bill provides:

- Additional events that trigger control of the association by the non-developer members, including when the developer has ceased constructing or selling of parcels for two years, has failed to complete the amenities and infrastructure, has filed chapter 7 bankruptcy, has lost title through foreclosure, or when a receiver has been appointed;
- Entitles homeowners to elect at least one member to the board once 15 percent of the parcels are conveyed to non-developer members, and two members once 50 percent of the parcels are conveyed to non-developer members; and
- Prohibits assessment increases and special assessments in developer-controlled associations, unless the budget specifically describes and justifies the reason or reasons for the increase or special assessment.

The bill provides an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 468.436, 720.303, 720.3033, 720.306, 720.307, and 720.308.

II. Present Situation:

Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations, and protects the rights of

association members without unduly impairing the ability of such associations to perform their functions.¹

A “homeowners’ association” is defined as a:

Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.²

Homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.³

Section 720.301(4), F.S., defines the terms "declaration of covenants," or "declaration," to mean:

a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.

Section 720.301(8), F.S., defines the term “member” to mean “a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof.”

Section 720.301(10), F.S., defines the term "parcel owner" to mean the record owner of legal title to a parcel.

Section 720.301(11), F.S., defines the term "voting interest" to mean “the voting rights distributed to the members of the homeowners’ association, pursuant to the governing documents.”

Homeowners’ associations are administered by a board of directors whose members are elected.⁴ The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.⁵ The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.⁶

¹ See s. 720.302(1), F.S.

² Section 720.301(9), F.S.

³ Section 720.302(5), F.S.

⁴ See ss. 720.303 and 720.307, F.S.

⁵ See ss. 720.301 and 720.303, F.S.

⁶ Section 720.303(1), F.S.

State Regulation of Homeowners' Associations

Unlike condominium and cooperative associations,⁷ which are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department), homeowners' associations are not regulated by a state agency.

Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The number of homeowners' associations or persons living in homeowners' associations in Florida is unknown. Although homeowners' associations are required to file articles of incorporation with the Division of Corporations (division) in the Department of State, the division cannot identify corporations that are homeowners' associations under ch. 720, F.S.⁸

Division of Florida Condominiums, Timeshares, and Mobile Homes

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to condominium and cooperative associations that are still under developer control.⁹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.¹⁰

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

⁷ See chs. 718 and 719, F.S., respectively.

⁸ Homeowners' Association Task Force, *Final Report of the Homeowners' Association Task Force*, February 2004, page 5. A copy of the report is available on the internet at <http://www.ccfj.net/DBPRTFfinalreport.pdf> (Last visited March 28, 2013).

⁹ Section 718.501(1), F.S., and s. 719.501(1), F.S., respectively.

¹⁰ Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.¹¹

Community Association Management

Community association managers are regulated and licensed pursuant to part VIII of ch. 468, F.S. To be licensed, a community association manager must satisfactorily complete an examination for licensure.

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

any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.¹²

Inspection and Copying of Homeowners' Association Records

Section 720.303(4), F.S., requires homeowners' associations to maintain the official records of the association. Section 720.303(5), F.S., requires that a homeowners' association permit members to inspect and copy its official records within 10 days of a written request for access. The official records must be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access.

If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. The association may impose fees to cover the cost of providing copies of the official records, including, without limitation, the cost of copying. The association may also charge any reasonable costs involving personnel fees and charges at an hourly rate to cover the association's or vendors administrative costs.

Any failure by the association to comply with a request in a timely fashion creates a rebuttable presumption that the association willfully failed to do so, and entitles the requesting party to actual damages, or a minimum fine of \$50 per calendar day, for up to 10 calendar days, commencing on the eleventh business day.

¹¹ See s. 720.303(10)(d), F.S.

¹² Section 468.431(2), F.S.

Reserves for Capital Expenditures and Deferred Maintenance

Reserve accounts are separate portion of the association's budget in which funds are set aside for capital expenditures and deferred maintenance. Reserves are used to fund expenses that do not occur on a regular basis, such as repaving roads.¹³ Associations are required to have reserve accounts if they were initially established by the developer or if the membership has affirmatively elected to provide for reserves by a majority of the total voting interests of the association at a duly called meeting of the membership or by the written consent.¹⁴ Associations may terminate and remove from the budget reserve accounts upon the approval of a majority of the total voting interests of the association.¹⁵ Current law does not specify that the budget must designate the components for which the reserve accounts may be used.

Post-Election Certification of Directors

Chapter 720, F.S. does not provide for the post-election certification of directors of the homeowners' association as is required for members of a condominium association's board.

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

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

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.¹⁶ The curriculum must be administered by a condominium education provider approved by the division.¹⁷ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.¹⁸ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment.¹⁹ The validity

¹³ See Peter M. Dunbar and Charles F.S. Dudley, *The Law of Florida Homeowners' Associations*, 9th ed. (2012-2013) s. 5.3.

¹⁴ Section 720.303(6)(d), F.S.

¹⁵ Section 720.303(6)(b), F.S.

¹⁶ *Id.* The department's Internet site provides a listing of approved educational providers. See Division of Florida Condominiums, Timeshares, and Mobile Homes, *Approved Education Providers*, available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/ApprovedEducationProviders.html> (Last visited March 28, 2013).

¹⁷ Section 718.112(2)(d)3.b., F.S.

¹⁸ *Id.*

¹⁹ *Id.*

of any action by the condominium board is not affected by the association's failure to have the certification on file.²⁰

Director Conflicts of Interest

Section 617.0832, F.S., provides for the process for the disclosure and approval of conflicts of interest related to contracts between the board of a not-for-profit corporation and a member or members of the board. Section 617.0832(1), F.S., provides that such a contract is not void or voidable, if:

- The relationship is disclosed to the board or committee that approves, or ratifies the contract or transaction by a vote or consent that does not count the interested director or directors;
- The fact of such relationship or interest is disclosed or known to the members of the board or committee entitled to vote on such contract or transaction, if any, and they authorize, approve, or ratify it by vote or written consent; or
- The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.

Sections 617.0832(2) and (3), F.S., require an affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no relationship or interest in the transaction or contract. The contract or transaction may not be approved or ratified by a single director.

A quorum is present for the purpose of taking action if a majority of the directors who have no relationship or interest in the transaction vote to authorize, approve, or ratify the transaction.

The presence of, or a vote cast by, a director having a relationship or interest in the transaction does not invalidate the approval or ratification if the transaction is otherwise authorized, approved, or ratified as provided in 617.0832(1), F.S.

Elections

Section 720.306(9), F.S., provides the process for elections to the board. Section 720.306(9)(a), F.S., requires that elections of directors must be conducted according to the procedures set forth in the governing documents of the association. It provides that all members are eligible to serve on the board. A member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held or, if the election process allows voting by absentee ballot, in advance of the balloting.

Representatives for homeowners' associations have advised that many associations require, in their governing documents, that nominations for a seat on the board must be made before the meeting at which the election will be conducted. This gives the association the ability to produce ballots for the election. However, s. 720.306(9)(a), F.S., requires that that associations must still allow nominations from the floor, even if the election process allows nominations in advance of the balloting.

²⁰ *Id.*

Transition of Association Control

Section 720.307, F.S., provides the situations in which the parcel owners other than the developer are entitled to elect at least a majority of the members of the board of directors:

- Three months after 90 percent of the parcels that will be operated ultimately by the association have been conveyed to purchasers; or
- When such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.

Builders, contractors, or others who purchase a parcel for the purpose of constructing improvements on the parcel for resale are not considered members other than the developer.²¹

In contrast, s. 718.301(1), F.S., provides the following circumstances that require transition of control of the condominium association from the developer to the non-developer unit owners:

- Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;
- When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;
- When the developer files a petition seeking protection in bankruptcy;
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or
- Seven years after recordation of the declaration of condominium with some conditions.

III. Effect of Proposed Changes:**Community Association Managers**

The bill amends s. 468.436(2)(b), F.S., to authorize the division to discipline community association managers for failure to report to the division as required in s. 720.303(13), F.S., as provided in the bill.

The bill also authorizes the division to discipline community association manager any provision of ch. 720, F.S., during the course of performing community association management under a contract with an association. This provision limited to community association managers who

²¹ Section 720.307(1), F.S.

provide services to homeowners' associations under ch. 720, F.S. It would not apply to violation conduct related to condominium associations under ch. 718, F.S., and cooperative associations under ch. 719, F.S.

Official Records

The bill amends s. 720.303(5), F.S., to require homeowners' associations to maintain official records seven years. It requires that the records must be maintained within 45 miles of the community or within the same county. It also permits associations the option of making records available electronically via the Internet or by allowing the records to be viewed on a computer screen and printed upon request.

The bill amends s. 720.303(5), F.S., to require homeowners' associations to permit members or their authorized representatives to photograph records using portable devices, tablets, portable scanners, and other devices capable of taking photographs. The member cannot be charged for taking the photograph.

The bill deletes the provision in s. 720.303(5)(c), F.S., that permits the association to impose fees to cover the cost of providing copies of the official records, including, without limitation, the cost of copying. It permits the association to charge copying costs and personnel costs required to retrieve and copy records that exceed one half hour may not exceed \$20 per hour. It also decreases the cost of copies provided on the association's photocopier from 50 cents per page to 25 cents per page.

The bill deletes the provision that permits the association to charge any reasonable costs involving personnel fees and charges at an hourly rate to cover the association's or vendors administrative costs. The bill deletes the provision that permits the association to charge for the actual cost using community association management personnel to make copies of official records. Instead, it permits the association to use an outside duplicating service to make copies of official records, and to charge the actual cost of copying as supported by an invoice.

Reserves for Capital Expenditures and Deferred Maintenance

The bill amends s. 720.303(6), F.S., to require that a homeowners' association's budget must designate the components for which the reserve accounts may be used. This provision does not require that the association establish or maintain a reserve account.

Reporting Requirement

The bill creates s. 720.303(13), F.S., to require community association managers, or the association if there is no manager, to report the following information to the division annually:

- The legal name of the association.
- The Federal Employee Identification Number of the association.
- The mailing and physical addresses of the association.
- The number of parcels.
- The total amount of revenues and expenses from the annual budget of the association.

For associations in which the developer retains control, the following additional information is required:

- The legal name of the developer.
- The mailing address of the developer.
- The number of parcels the developer owns as of the date of reporting.

The bill requires the department to establish and implement an Internet-based registration system by December 1, 2013 for associations to use for reporting the required information.

The bill requires the department to submit a report, on or before December 1, 2013, to the Governor, the President of the Senate, and the Speaker of the House of Representatives providing the homeowner association data reported as required by the bill.

The bill authorizes the department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement this reporting requirement.

The reporting requirement in s. 720.303(13), F.S., would expire on July 1, 2016, unless reenacted by the Legislature.

Post-Election Certification of Directors

The bill creates s. 720.3033(1), F.S., to require the post-election certification of homeowners' association directors. These provisions are similar to the post-election certification requirement for members of a condominium association board in s. 718.112(2)(d)4.b., F.S.

The bill requires that newly elected directors must certify in writing, within 90 days, that they have read the association's governing documents and policies, that they will work to uphold the documents and policies, and that they will faithfully discharge their fiduciary responsibility to the associations' members. A director who fails to comply with the certification requirement is suspended from the board until he or she complies. The association must maintain a copy of the certification for 5 years after the director's election.

Contracts with Members of the Board

The bill creates s. 720.3033(2), F.S., to provide that contracts between homeowners' associations and directors, or entities in which a director has a financial interest, must:

- Comply with conflict of interest procedures outlined in s. 617.0832, F.S.;
- Comply with disclosure requirements outlined in s. 617.0832, F.S.;
- Be approved by a two-thirds vote of the directors present; and
- Be disclosed at the next regular or special meeting of the members.

If any member makes a motion at the next regular or special meeting of the members, the contract may be canceled by a majority vote of the members present.²² If the contract is canceled,

²² Section 720.306(1)(a), F.S., provides that a quorum at a meeting of the members is 30 percent of the total voting interests, unless a lower number is provided in the bylaws. Decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained, unless otherwise provided in ch. 720, F.S., or in the articles of incorporation or bylaws.

the association is only liable for the reasonable value of goods and service previously provided and is not liable for any fee or damages connected to the cancellation.

Prohibited Solicitations by Board Members

The bill creates s. 720.3033(3), F.S., to provide that officers, directors and managers may not solicit or accept anything of value from any person providing or offering to provide goods or services to the association. The bill requires that the board immediately remove from office any officer or director upon a finding by the board that the officer or director has violated this subsection.

The bill provides an exception from the prohibition for accepting food to be consumed at a business meeting with a value of less than \$25 per individual or services or items in connection to trade fairs or education programs.

Removal of Board Members for Crimes

The bill creates s. 720.3033(4), F.S., to provide that the board immediately remove from office any officer or director who is charged with felony theft or embezzlement involving association funds. If the charges are resolved without a finding of guilt or without acceptance of a plea of guilt or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. It is not clear whether a director must be removed from office if the criminal case is resolved without an adjudication of guilt.

Insurance or Fiduciary Bond Requirement

The bill creates s. 720.3033(5), F.S., to require homeowners' associations to maintain insurance or fidelity bonding for anyone who controls or disburses association funds, which includes persons authorized to sign check on behalf of the association, and the president, secretary, and treasurer of the association. The association would bear the cost of the bond or insurance.

Elections

The bill amends s. 720.306(9)(a), F.S., to provide that the association does not have to allow nomination at the meeting where the election is to be held if it permits members to nominate themselves in advance of the balloting.

The bill also provides that an election is not required unless more candidates are nominated than board vacancies exist.

Transition of Association Control

The bill amends s. 720.307(1), F.S., to provide the following additional events which would entitle the non-developer parcel owners to elect the majority of the members of the board:

- Two years after the developer has ceased construction or ceased to offer parcels for sale in the ordinary course of business;
- When the developer has abandoned or deserted his or her responsibility to maintain and complete the advertised amenities or infrastructure. There is a rebuttable presumption that the developer has abandoned and deserted the property, if the developer has not engaged in construction or sale of properties or has unpaid assessments or guaranteed amounts under s. 720.308, F.S., for a period of more than two years;

- When the developer files a petition seeking protection in bankruptcy under chapter 7 of the United States Bankruptcy Code;
- When the developer loses title to the property either through a foreclosure action or the transfer of a deed in lieu of foreclosure; and
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

The bill also amends s. 720.307(2), F.S., to provide that non-developer parcel owners are entitled to elect at least one member of the board of directors once 15 percent of the parcels in all phases of the community have been conveyed to members.

The bill also amends s. 720.307(3), F.S., to provide that non-developer parcel owners are entitled to elect at least two members of the board of directors once 50 percent of the parcels in all phases of the community have been conveyed to members.

Assessments

The bill amend s. 720.308, F.S., to provide that assessments levied pursuant to the annual budget may not be increased, or special assessments levied, without the approval of the majority of non-developer voting interests. This limitation applies while the developer is in control of the association and entitled to elect the majority of the members of the board. The bill would permit the assessments to be increased, or a special assessment to be levied, if the budget specifically describes and justifies the reason or reasons for the increase or special assessment.²³

Effective Date

The bill would take effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ Section 720.315, F.S., provides that, before turnover, the board of directors controlled by the developer may not levy a special assessment unless a majority of the parcel owners other than the developer have approved the special assessment by a majority vote at a duly called special meeting of the membership at which a quorum is present.

D. Other Constitutional Issues:

The bill would impose several requirements on the governance and administration of homeowners' associations. The bill may affect existing homeowners' associations governing documents. The governing documents of homeowners' associations are generally considered to be contracts.²⁴ To the extent that the provisions of this bill may be applied retroactively, provisions of the bill may prompt concerns regarding the unconstitutional impairment of contract.

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.²⁵ The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.²⁶ In *Exxon Corp. v Eagerton*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

Article I, s. 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.²⁷ This exception extends to laws that are reasonable and necessary to serve and important public purpose,²⁸ to include protecting the public's health, safety or welfare.²⁹ For a statute to offend the constitutional prohibition against impairment of contract, the statute must have the effect of changing substantive rights of the parties to an existing contract. Any retroactive application of a statute affecting substantive contractual rights would be constitutionally suspect.³⁰

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.³¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁴ See *Venetian Isles Homeowners' Assoc., Inc., v. Albrecht*, 823 So.2d 813 (Fla. 2nd D.C.A. 2002) and *Cudjoe Gardens Property Owners Assoc., Inc. v. Patne*, 779 So.2d 598 (Fla. 3rd D.C.A. 2001).

²⁵ *Stone v. Mississippi*, 101 U.S. 814 (1880).

²⁶ *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

²⁷ *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980).

²⁸ *Yellow Cab Co. v. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982).

²⁹ *Khoury v. Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla. 1981).

³⁰ *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965 (Fla. 1st DCA 1984).

³¹ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So2d 774 (Fla. 1979).

B. Private Sector Impact:

The bill requires homeowners' associations to maintain insurance or fidelity bonding for anyone who controls or disburses association funds, which includes persons authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association would bear the cost for the bond or insurance.

The bill requires homeowners' associations to annually report to the division information about the association. Associations may incur costs related to gathering and reporting the information.

C. Government Sector Impact:

The bill requires the department to establish and implement an Internet-based registration system by December 1, 2013 for associations to use for reporting the information that the bill requires that they annually report to the division. It also requires the department to submit a report, on or before December 1, 2013 and then annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives providing the homeowner association data reported as required by the bill. The division may incur indeterminate expenses to comply with these requirements; however the department can absorb these costs within existing resources.

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 Committee on April 2, 2013:

The committee substitute (CS) differs from SB 580 as follows:

- The CS amends s. 468.436(2)(b), F.S., to provide two additional grounds for the discipline of community association managers.
- The CS amends s. 720.303(5), F.S., to require homeowners' associations to maintain official records for seven years, and within 45 miles of the community or within the same county. It also permits associations the option of making records available electronically via the Internet or by allowing the records to be viewed on a computer screen and printed upon request. The CS amends s. 720.303(5)(c), F.S., that permits the association to impose fees to cover the cost of providing copies of the official records, including the cost of copying. It permits the association to charge copying costs and personnel costs required to retrieve and

copy records that exceed one half hour, but the cost may not exceed \$20 per hour. It decreases the cost of copies provided on the association's photocopier from 50 cents per page to 25 cents per page. It permits the association to use an outside duplicating service to make copies of official records, and permits the association to charge the actual cost of copying as supported by an invoice.

- The CS amends s. 720.303(5), F.S., to include portable devices, tablets, portable scanners, and other devices capable of taking photographs among the type of devices that homeowners' associations must permit their member to use to make copies of official records. It permits authorized representatives of the member to make the photographic copies.
- The CS amends s. 720.303(6), F.S., to require that a homeowners' association's budget must designate the components for which the reserve accounts may be used.
- The CS creates s. 720.303(13), F.S., to provide an annual reporting requirement for community association managers, associations, and developers in developer-controlled associations. It also requires the department to establish and implement an Internet-based registration system and requires the department to submit an annual report to the Governor and, the President of the Senate, and the Speaker of the House of Representatives. It authorizes the department to adopt rules to implement this reporting requirement. It also provides that reporting requirement in s. 720.303(13), F.S., would expire on July 1, 2016, unless reenacted by the Legislature.
- The CS does not provide in s. 720.3033(1), F.S., that the post-election certification requirement may be satisfied by submission of a certificate of satisfactory completion of the educational curriculum approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes. It also does not provide that failure to have the written certification or education certificate on file does not affect the validity of any board action.
- In s. 720.3033(3), F.S., the CS does not provide that managers must be removed from office if they violate the prohibition in this subsection. Regarding the officer or director's removal from office, the CS specifies that the board must immediately remove them from office upon a finding by the board that any officer or director has violated the prohibition in this subsection.
- The CS amends s. 720.306(9), F.S., to revise requirements for elections in homeowners' associations by providing that the association does not have to allow nominations at the meeting where the election is to be held if it permits members to nominate themselves in advance of the balloting. It also provides that an election is not required unless more candidates are nominated than board vacancies exist.
- The CS amends s. 720.307(1), F.S., to provide additional events which would entitle the non-developer parcel owners to elect the majority of the members of the board.
- The CS amends s. 720.307(2), F.S., to provide that non-developer parcel owners are entitled to elect at least one member of the board of directors once 15 percent of the parcels in all phases of the community have been conveyed to members.

- The CS amends s. 720.307(3), F.S., to provide that non-developer parcel owners are entitled to elect at least two member of the board of directors once 50 percent of the parcels in all phases of the community have been conveyed to members.
- The CS amend s. 720.308, F.S., to limit increases in assessments and the levying of special assessments in developer-controlled associations.

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 Hays

11-00540A-13

2013580

1 A bill to be entitled
 2 An act relating to homeowners' associations; amending
 3 s. 720.303, F.S.; providing for association members to
 4 take photographs or images of association records
 5 without charge in certain circumstances; decreasing
 6 the amount of time an association has to comply with
 7 access to the records; clarifying provisions relating
 8 to fees that an association may charge for providing
 9 copies of records; creating s. 720.3033, F.S.;
 10 requiring association directors to file with the
 11 association secretary certification that they have
 12 read certain association documents, will uphold the
 13 documents, and will uphold their fiduciary
 14 responsibility to the members, or that they have
 15 completed an educational course approved by the
 16 department; providing that the certificate is valid
 17 while the director is on the board; providing
 18 penalties for failure to file a written certification
 19 or educational certificate; requiring the secretary to
 20 retain each written certification or educational
 21 certificate for 5 years; providing procedures to be
 22 followed which relate to contracts or transactions
 23 between the association and a director or entity in
 24 which a director or officer is financially interested;
 25 providing for disclosure of the contract or other
 26 transaction to members; providing for the cancellation
 27 of such contract or transaction under certain
 28 circumstances; prohibiting any officer, director, or
 29 association manager from soliciting or receiving

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30 certain personal benefits from any person providing or
 31 offering to provide goods or services to the
 32 association; providing a penalty; providing an
 33 exception; providing for the removal of any director
 34 or officer charged with a felony theft or embezzlement
 35 offense involving association funds or property;
 36 providing for the reinstatement of such person under
 37 certain circumstances; requiring the association to
 38 maintain insurance or a bond to cover funds that will
 39 be in the custody of the association or its management
 40 agent; providing an effective date.

41
 42 Be It Enacted by the Legislature of the State of Florida:

43
 44 Section 1. Subsection (5) of section 720.303, Florida
 45 Statutes, is amended to read:

46 720.303 Association powers and duties; meetings of board;
 47 official records; budgets; financial reporting; association
 48 funds; recalls.—

49 (5) INSPECTION AND COPYING OF RECORDS.—The official records
 50 shall be maintained within the state and must be open to
 51 inspection and available for photocopying by members or their
 52 authorized agents at reasonable times and places within 5 ~~10~~
 53 business days after receipt of a written request for access.
 54 This subsection may be complied with by having a copy of the
 55 official records available for inspection or copying in the
 56 community. If the association has a photocopy machine available
 57 where the records are maintained, it must provide parcel owners
 58 with copies on request during the inspection if the entire

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59 request is limited to no more than 25 pages. The association
 60 must also permit a member to take photographic images of such
 61 records with a camera or other electronic device at no charge.

62 (a) The failure of an association to provide access to the
 63 records within 5 ~~10~~ business days after receipt of a written
 64 request submitted by certified mail, return receipt requested,
 65 creates a rebuttable presumption that the association willfully
 66 failed to comply with this subsection.

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

73 (c) The association may adopt reasonable written rules
 74 governing the frequency, time, location, notice, records to be
 75 inspected, and manner of inspections, but may not require a
 76 parcel owner to demonstrate any proper purpose for the
 77 inspection, state any reason for the inspection, or limit a
 78 parcel owner's right to inspect records to less than one 8-hour
 79 business day per month. ~~The association may impose fees to cover~~
 80 ~~the costs of providing copies of the official records,~~
 81 ~~including, without limitation, the costs of copying.~~ The
 82 association may charge up to 50 cents per page for copies made
 83 on the association's photocopier. If the association does not
 84 have a photocopy machine available where the records are kept,
 85 or if the records requested to be copied exceed 25 pages in
 86 length, the association may have copies made by an outside
 87 vendor or association management company personnel and may

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88 charge the actual cost of copying, ~~including any reasonable~~
 89 ~~costs involving personnel fees and charges at an hourly rate for~~
 90 ~~vendor or employee time to cover administrative costs to the~~
 91 ~~vendor or association.~~ The association shall maintain an
 92 adequate number of copies of the recorded governing documents,
 93 to ensure their availability to members and prospective members.
 94 Notwithstanding this paragraph, the following records are not
 95 accessible to members or parcel owners:

96 1. Any record protected by the lawyer-client privilege as
 97 described in s. 90.502 and any record protected by the work-
 98 product privilege, including, but not limited to, a record
 99 prepared by an association attorney or prepared at the
 100 attorney's express direction which reflects a mental impression,
 101 conclusion, litigation strategy, or legal theory of the attorney
 102 or the association and which was prepared exclusively for civil
 103 or criminal litigation or for adversarial administrative
 104 proceedings or which was prepared in anticipation of such
 105 litigation or proceedings until the conclusion of the litigation
 106 or proceedings.

107 2. Information obtained by an association in connection
 108 with the approval of the lease, sale, or other transfer of a
 109 parcel.

110 3. Personnel records of the association's employees,
 111 including, but not limited to, disciplinary, payroll, health,
 112 and insurance records. For purposes of this subparagraph, the
 113 term "personnel records" does not include written employment
 114 agreements with an association employee or budgetary or
 115 financial records that indicate the compensation paid to an
 116 association employee.

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

118 5. Social security numbers, driver's license numbers,
119 credit card numbers, electronic mailing addresses, telephone
120 numbers, facsimile numbers, emergency contact information, any
121 addresses for a parcel owner other than as provided for
122 association notice requirements, and other personal identifying
123 information of any person, excluding the person's name, parcel
124 designation, mailing address, and property address. However, an
125 owner may consent in writing to the disclosure of protected
126 information described in this subparagraph. The association is
127 not liable for the disclosure of information that is protected
128 under this subparagraph if the information is included in an
129 official record of the association and is voluntarily provided
130 by an owner and not requested by the association.

131 6. Any electronic security measure that is used by the
132 association to safeguard data, including passwords.

133 7. The software and operating system used by the
134 association which allows the manipulation of data, even if the
135 owner owns a copy of the same software used by the association.
136 The data is part of the official records of the association.

137 (d) The association or its authorized agent is not required
138 to provide a prospective purchaser or lienholder with
139 information about the residential subdivision or the association
140 other than information or documents required by this chapter to
141 be made available or disclosed. The association or its
142 authorized agent may charge a reasonable fee to the prospective
143 purchaser or lienholder or the current parcel owner or member
144 for providing good faith responses to requests for information
145 by or on behalf of a prospective purchaser or lienholder, other

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146 than that required by law, if the fee does not exceed \$150 plus
147 the reasonable cost of photocopying and any attorney's fees
148 incurred by the association in connection with the response.

149 Section 2. Section 720.3033, Florida Statutes, is created
150 to read:

151 720.3033 Officers and directors.-

152 (1) (a) Within 90 days after being elected or appointed to
153 the board, each director shall certify in writing to the
154 secretary of the association that he or she has read the
155 association's declaration of covenants, articles of
156 incorporation, bylaws, and current written rules and policies;
157 that he or she will work to uphold such documents and policies
158 to the best of his or her ability; and that he or she will
159 faithfully discharge his or her fiduciary responsibility to the
160 association's members.

161 (b) In lieu of the written certification, a director may
162 submit a certificate showing that he or she has satisfactorily
163 completed the educational curriculum administered by an
164 education provider approved by the division within 1 year before
165 or 90 days after the date of his or her election or appointment
166 to the board.

167 (c) The written certification or educational certificate is
168 valid for the uninterrupted tenure of the director on the board.
169 A director who does not timely file the written certification or
170 educational certificate shall be suspended from the board until
171 he or she complies with the requirement. The board may
172 temporarily fill the vacancy during the period of suspension.

173 (d) The secretary shall retain each director's written
174 certification or educational certificate for inspection by the

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 175 members for 5 years after the director's election. However, the
 176 failure to have the written certification or educational
 177 certificate on file does not affect the validity of any board
 178 action.

179 (2) If the association enters into a contract or other
 180 transaction with any of its directors or a corporation, firm,
 181 association, or other entity in which an association director is
 182 also a director or officer or is financially interested, the
 183 board must:

184 (a) Comply with the requirements of s. 617.0832.

185 (b) Enter the disclosures required by s. 617.0832 into the
 186 written minutes of the meeting.

187 (c) Approve the contract or other transaction by an
 188 affirmative vote of two-thirds of the directors present.

189 (d) At the next regular or special meeting of the members,
 190 disclose the existence of the contract or other transaction to
 191 the members. Upon motion of any member, the contract or
 192 transaction shall be brought up for a vote and may be canceled
 193 by a majority vote of the members present. If the members cancel
 194 the contract, the association is only liable for the reasonable
 195 value of goods and services provided up to the time of
 196 cancellation and is not liable for any termination fee,
 197 liquidated damages, or other penalty for such cancellation.

198 (3) An officer, director, or manager may not solicit, offer
 199 to accept, or accept any thing or service of value for which
 200 consideration has not been provided for his or her benefit or
 201 for the benefit of a member of his or her immediate family, from
 202 any person providing or proposing to provide goods or services
 203 to the association. Any officer, director, or manager who

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 204 knowingly solicits, offers to accept, or accepts any thing or
 205 service of value is subject to a civil penalty as provided in s.
 206 718.501(1)(d). However, this paragraph does not prohibit an
 207 officer, director, or manager from accepting services or items
 208 received in connection with trade fairs or education programs.

209 (4) A director or officer charged by information or
 210 indictment with a felony theft or embezzlement offense involving
 211 the association's funds or property must be removed from office.
 212 The vacancy shall be filled according to law until the end of
 213 the period of the suspension or the end of the director's term
 214 of office, whichever occurs first. A director or officer who has
 215 criminal charges pending may not be appointed or elected to a
 216 position as a director or officer. However, if the charges are
 217 resolved without a finding of guilt, the director or officer
 218 shall be reinstated for any remainder of his or her term of
 219 office.

220 (5) The association shall maintain insurance or a fidelity
 221 bond for all persons who control or disburse funds of the
 222 association. The insurance policy or fidelity bond must cover
 223 the maximum funds that will be in the custody of the association
 224 or its management agent at any one time. As used in this
 225 subsection, the term "persons who control or disburse funds of
 226 the association" includes, but is not limited to, persons
 227 authorized to sign checks on behalf of the association, and the
 228 president, secretary, and treasurer of the association. The
 229 association shall bear the cost of any insurance or bond.

230 Section 3. This act shall take effect July 1, 2013.



The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Regulated Industries

CC: Patrick L. "Booter" Imhof, Staff Director
Lynn Koon, Administrative Assistant

Subject: Committee Agenda Request

Date: February 7, 2013

I respectfully request that **Senate Bill #580**, relating to Homeowners' Associations, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink that reads "Alan Hays".

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

Tab 2

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic SB 580

Bill Number 580
(if applicable)

Name Eric Glazer

Amendment Barcode 524072
(if applicable)

Job Title Attorney

Address 3113 Stirling Road

Phone 305-773-9125

Fort Lauderdale FL 33312
City State Zip

E-mail eric@condo-laws.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-2-13

Meeting Date

Topic _____

Bill Number 580
(if applicable)

Name Pete Dunbar

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe
Street

Phone 222-3533

Tallahassee 32312
City State Zip

E-mail pete@pennington.com

Speaking: For Against Information

Representing Real Property Section of Fla Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tab 2

APPEARANCE RECORD

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

4-2-13

Meeting Date

ye-lee-nee

Topic Homes Owners Associations

Bill Number 580
(if applicable)

Name Yeline Goin

Amendment Barcode 524072
(if applicable)

Job Title Executive Director

Address 204 S. Monroe St. Ste 203

Phone 850-284-2460

Street

Tallahassee FL 32301

City

State

Zip

E-mail ygoin@becker-pollakoff.com

Speaking: For Against Information

Representing Community Association Leadership Lobby

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

Tab 2

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/13

Meeting Date

Topic Homeowner Associations

Bill Number 580 (TRPCS) (if applicable)

Name TRAVIS MOORE

Amendment Barcode (if applicable)

Job Title

Address P.O. Box 781

Phone 727.421.6902

Street

City Largo FL State Zip 33779

E-mail MOORETA

Speaking: [] For [] Against [x] Information

Representing Community Associations Institute - FLA

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

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

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

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

S-001 (10/20/11)

The Florida Senate
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 642

INTRODUCER: Regulated Industries Committee and Senator Hays

SUBJECT: Distilled Spirits

DATE: April 2, 2013 REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 642 permits craft distilleries to sell the distilled spirits they produce on their licensed premises, to consumers for off premises consumption. The bill defines a “craft distillery” to mean a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises per calendar year.

The sales must be made at the souvenir shop that is located on private property contiguous to the licensed distillery premises. Craft distilleries and licensed distilleries may only sell distilled spirits in face-to-face transactions with consumers making the purchases for personal use and not for resale. The craft distillery is limited to selling no more than two containers per customer per year.

The bill requires that craft distilleries must cease making sales to consumers on the day after they reach the 75,000 gallon production limitation. The craft distilleries may not ship to consumers within the state. However, the craft distillery may ship, arrange to ship, or deliver manufacturers of distilled spirits, wholesale distributors, bonded warehouses, and exporters.

The bill prohibits the transfer of a craft distillery license, including the transfer of an ownership interest in the license to any individual or entity with a direct or indirect interest in another distillery. However, the bill permits a craft distillery to have its ownership interest affiliated with another distiller if the other distiller produces 75,000 gallons or fewer of distilled spirits on its licensed premises per calendar year.

The bill provides the legislative intent that the provisions of the bill are not severable. It provides that the provision of the bill are not to be severed if a court determines that any provision of this bill is in conflict with any law of this state, a federal law or regulation, the State Constitution, or the United States Constitution, or is otherwise invalid for any other reason.

The bill authorizes the division to adopt rules to administer s. 565.03, F.S.

The bill would take effect on July 1, 2013.

This bill substantially amends section 565.03, Florida Statutes.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.¹ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.² The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.³

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean:

that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Section 565.03(1)(a), F.S., requires each liquor manufacturer to pay an annual \$4,000 license tax for each plant or branch it operates in the state, if the manufacturer is engaged:

- In the business of distilling spirituous liquors and nothing else; or
- In the business of rectifying and blending spirituous liquors and nothing else.

Licensed liquor manufacturers may also rectify and blend spirituous liquors in addition to distill without paying an additional license tax.⁴

Florida law does not define the term “distillery.”

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 565.03(1)(b), F.S.

According to the Florida Craft Distillers Guild, there are 15 distilleries that are located in Florida and members of the guild.⁵

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. In a three-tier system, each license classification has clearly delineated functions.

In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁶ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.⁷ Alcoholic beverage manufacturers cannot hold a vendor’s license.⁸ Importers, whether resident or nonresident, are licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else. An importer can have no direct or indirect affiliation with any vendor licensed in this state.⁹

The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹⁰

There are some exceptions to this regulatory system. The exceptions include allowing vendors to manufacture malt beverages¹¹ and to sell them to consumers,¹² allowing individuals to bring small quantities of alcohol back from trips out-of-state,¹³ and allowing in-state wineries to manufacture and sell directly to consumers.¹⁴

There are two license options that permit vendors to manufacture malt beverages for sale directly to consumers. Section 561.221(2), F.S., permits a vendor to manufacture malt beverages, even if the vendor is also licensed as a distributor. The malt beverages the vendor manufactures must be sold on property consisting of a single complex that includes a brewery and other structures that promote the brewery and the tourist industry of the state. The property may be divided by no more than one public street or highway. This type of license does not limit the amount of malt beverages that may be manufactured.

⁵ See Florida Craft Distillers Guild at <http://floridadistillers.org/members> (Last visited March 27, 2013).

⁶ Section 561.14(3), F.S. However, see discussion *supra* regarding the exceptions.

⁷ Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

⁸ Section 561.22, F.S.

⁹ Section 561.14(5), F.S.

¹⁰ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (Last visited February 28, 2013).

¹¹ Section 563.01, F.S., defines the terms “beer” and “malt beverage” to mean all brewed beverages containing malt.

¹² See ss 561.221(2) and (3), F.S., which permits the limited manufacture of beer by vendors.

¹³ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

¹⁴ See s. 561.221(1), F.S.

Section 561.221(3), F.S., permits a vendor also to be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount that does not exceed 10,000 kegs per year.¹⁵ The malt beverages must be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor. These vendors are known as "brew pubs."

Florida law allows in-state wineries to manufacture and sell directly to consumers.¹⁶

Florida's Direct Shipping Prohibition

Section 561.545(1), F.S., prohibits the direct shipping of all alcoholic beverages to consumers from out-of-state. It also prohibits common carriers from transporting alcoholic beverages from an out-of-state location to anyone in this state who does not hold a valid manufacturer, wholesaler, or exporter's license, or who is not a state-bonded warehouse.

A first violation of this prohibition results in the issuance of an order to show cause why a cease and desist order should not be issued. A violation within two years of a cease and desist order, or within two years of a previous conviction, constitutes a felony of the third degree.

Section 561.545(5), F.S., provides an exception for the direct shipping of sacramental alcoholic beverages to bona fide religious organizations as authorized by the division. It also exempts registered exporters.

Section 561.54(1), F.S., prohibits deliveries of alcoholic beverages from out-of-state by common or permit carriers, operators of privately owned cars, trucks, buses, or other conveyances, except to manufacturers, wholesalers, or exporters, or bonded warehouses in this state. Section 561.54(2), F.S., provides a cause of action for any licensee who is aggrieved by a violation of this prohibition. The court must assess damages equal to three times the amount of delivery charges or the fair market value of the merchandise unlawfully brought into the state. The court must also award the plaintiff its costs and reasonable attorney's fees.

Florida's prohibition against direct shipping is limited to the direct shipping of alcoholic beverages from out-of-state to Florida; it does not prohibit direct shipping from a Florida winery to another state or from a Florida winery to a person in Florida.

III. Effect of Proposed Changes:

Definitions

The bill creates s. 565.03(1)(a), F.S., to define the term "craft distillery" to mean a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. The distillery must have also notified the division in writing of its status as a craft distillery.

¹⁵ Section 561.221(3)(a)1., F.S., defines the term "keg" as 15.5 gallons.

¹⁶ See s. 561.221, F.S.

The bill creates s. 565.03(1)(b), F.S., to define the term “distillery” to mean a manufacturer of distilled spirits.

The bill amends s. 565.03(2), F.S., to require distilleries licensed to distill, rectify, or blend distilled spirits to pay a state license tax of \$4,000.

The bill deletes the current provision that permits distilleries to rectify or blend spirituous liquors without payment of an additional license tax. The beverage law and the bill do not provide an additional license tax.

Craft Distillery Licensees

The bill creates s. 565.03(3), F.S., to permit a craft distillery to sell the distilled spirits it produces on its premises, to consumers, for off premises consumption. The sales must occur at the distillery’s souvenir gift shop that is located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.¹⁷ The bill requires that the division approve any subsequent revisions to a craft distillery’s sketch to verify that the retail location operated by the craft distillery is “owned or leased by the craft distillery and on property contiguous to the craft distillery’s production building.”

Section 565.03(3)(a), F.S., prohibits craft distilleries and licensed distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and not for resale. The distillery may sell no more than two individual containers to the consumer. The container must comply with the container limits in s. 565.10, F.S.¹⁸

The bill references both craft distilleries and licensed distilleries in the context of the face-to-face transaction requirement. This is the only provision in s. 565.03(3), F.S., that references both craft distilleries and licensed distilleries. It appears that the bill would permit all distilleries to sell distilled spirits directly to consumers, but that only the craft distilleries are subject to the other restrictions in s. 565.03(3), F.S.

Section 565.03(3)(b), F.S., prohibits the craft distillery from shipping their distilled spirits to consumers within the state. However, the craft distillery may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors, bonded warehouses, and exporters.

Section 565.03(3)(c), F.S., prohibits the transfer of a craft distillery license, including the transfer of an ownership interest in the license to any individual or entity with a direct or indirect interest in another distillery.

Section 565.03(3)(d), F.S., permits a craft distillery to have its ownership interest affiliated with another distiller if the other distiller produces 75,000 gallons or fewer of distilled spirits on its licensed premises per calendar year.

¹⁷ See s. 561.01(11), F.S., which defines the term “licensed premises” to include the area embraced within the sketch that appears on, or is attached to, the application for the license.

¹⁸ Section 565.10, F.S., prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.

Section 565.03(3)(e), F.S., requires the craft distillery to report to the division with five business days after it has reached the 75,000 gallon production limitation. The craft distillery must cease making sales to consumers on the day after it reaches the production limit. The bill also requires that a distillery must submit any beverage excise taxes under the Beverage Law in its monthly report to the division with any tax payments due to the state.

The bill authorizes the division to adopt rules to administer s. 565.03, F.S.

Severability

The bill provides the legislative intent that the provisions of the bill are not severable. It provides that the provision of the bill are not to be severed if a court determines that any provision of this bill is in conflict with any law of this state, a federal law or regulation, the State Constitution, or the United States Constitution, or is otherwise invalid for any other reason.

The effect of this provision is unclear because it is not clear which state or federal laws or regulations could conflict with any provision of this bill.

As noted in the *Manual for Drafting General Bills* for the Florida Senate, the “[c]ourts do not need a severability section to sever unconstitutional provisions or applications and allow the other provisions or applications to stand.”¹⁹ If a severability clause is included in a bill, the standard severability clause provides:

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.²⁰

Effective Date

The bill would take effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁹ *Manual for Drafting General Bills*, Legal Research and Drafting Services, Office of the Secretary of the Senate, The Florida Senate (5th Edition, 1999) at page 50.

²⁰ *Id.*

D. Other Constitutional Issues:

Granholm vs. Heald

In *Granholm v. Heald*,²¹ consolidated cases from Michigan and New York, the U.S. Supreme Court held that a state cannot allow in-state wineries to sell wine directly to consumers in that state while simultaneously prohibiting out-of-state wineries from also selling wine directly to consumers. The decision invalidated laws in Michigan and New York that discriminated between in-state and out-of-state wine manufacturers in this manner.

Michigan and New York regulated the sale and importation of wine through three-tier system. These schemes allowed in-state, but not out-of-state, wineries to make direct sales to consumers. The Court held that this differential treatment violated the Commerce Clause, Art.I, s. 8, cl. 3 of the U.S. Constitution, which provides that “[t]he Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”

Under the Michigan law in place at the time,²² wine producers were required to distribute their wine through wholesalers. Michigan had an exception and allowed the in-state wineries to ship directly in-state consumers. Out-of-state wineries could apply for an out-of-state seller of wine license that allowed them to sell to in-state wholesalers, but not directly to Michigan consumers.²³

New York’s licensing scheme was somewhat different from Michigan’s.²⁴ It also provided for distribution through the three-tier system and made exceptions for in-state farm wineries to ship to in-state consumers. An out-of-state winery could ship directly to consumers only if the winery became licensed as a New York Wine shipping license, established a distribution operation in New York, and had a physical presence in the state, i.e., a warehouse, office, or storeroom. New York law did not require a separate direct shipping license for its farm wineries.²⁵

The United States Supreme Court consolidated the cases and held that:

²¹ *Granholm v. Heald*, 544 U.S. 460, 471(2005).

²² See Michigan Comp. Laws Ann. ss. 436.1109(1), 436.1305, 436.1403, and 436.1607(1) (West 2000).

²³ Effective December 16, 2005, Michigan amended its law to allow direct shipment of wine under certain circumstances, P.A. 2005, No. 268. See Mich. Comp. Laws Ann. s. 436.1203. Michigan’s direct wine shipping requirements can be found at http://www.michigan.gov/documents/LC-MW102_154466_7.DirectShipperRequirements.pdf (Last visited March 11, 2009). It allows for a winery anywhere in the US that obtains a direct shippers permit from the State of Michigan to ship up to 1,500 cases (9 liters per case) of wine annually to Michigan consumers. The winery must have an approved direct shipper’s permit, register with the Michigan Department of Treasury, and pay sales and excise taxes. The license fee is \$100.

²⁴ See N. Y. Alco. Bev. Cont. Law Ann. ss.76-a(3) and 76-a(6)(a) and ss. 3(20-a) and 3(37) (West Supp. 2005).

²⁵ New York amended its law, effective August 11, 2005 to provide for a Direct Shipper’s License under certain circumstances. See N. Y. Alco. Bev. Cont. Law Ann. s. 79-c. To be eligible for a license, the applicant out-of-state wine manufacturer must be located in a state that allows New York State wine manufacturers substantially similar direct wine shipping privileges. The applicant must have a tax authority certificate, register as an alcoholic beverage distributor, and consent to New York State jurisdiction, among other requirements. The direct wine shipper may not ship more than 36 cases of wine (9 liters per case) to a New York resident. The license fee is \$125 for an interstate direct shipper’s license.

the laws in both States discriminate against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3, [United States Constitution] and that the discrimination is neither authorized nor permitted by the Twenty-first Amendment. Accordingly, we affirm the judgment of the Court of Appeals for the Sixth Circuit, which invalidated the Michigan laws; and we reverse the judgment of the Court of Appeals for the Second Circuit, which upheld the New York laws.²⁶

Granholm explicitly noted that states may regulate the distribution and sale of wine via a three-tier system of licensed manufacturers, distributors, and retailers and could prohibit the direct shipment of alcoholic beverages to consumers.²⁷

Bainbridge v. Turner

Florida's direct shipping prohibition was challenged in the case of *Bainbridge v. Turner* by wine consumers and out-of-state wineries.²⁸ After the Supreme Court issued its decision in *Granholm*, the case resulted in two written federal appellate court opinions. In the first opinion, *Bainbridge v. Martelli (Bainbridge I)*,²⁹ the United States District Court for the Middle District of Florida held that s. 561.54, F.S., and the statutory scheme that bars direct shipping violated the Commerce Clause. In *Bainbridge v. Turner (Bainbridge II)*,³⁰ the United States Eleventh Circuit Court of Appeals held that, if Florida could demonstrate that its statutory scheme was closely related to raising revenue and was not a pretext to mere protectionism, Florida's statutory scheme could be upheld against a Commerce Clause challenge. The appellate court remanded the case to the district court for further consideration of this issue.

On August 5, 2005, the United States District Court for the Middle District of Florida issued an order finding ss. 561.54(1)-(2) and 561.545(1), F.S., violated the Commerce Clause and were therefore unconstitutional under the authority in *Granholm*, and enjoined the enforcement of these provisions.³¹ The court found that these statutes discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

Face-to-Face Transaction Requirement

Although the holdings in *Granholm vs. Heald* and *Bainbridge v. Turner* were limited to wine sales by wineries to consumers, the holding in these cases may implicate the prohibition in s. 561.545(1), F.S., as applied to the sale of distilled spirits by out-of-state manufacturers to Florida consumers. Regarding the face to-face transaction requirement in the bill, one federal appellate circuit court has ruled that a face to face transaction prerequisite for direct sales from a manufacturer to consumers was unconstitutional. In

²⁶ *Granholm* at 466.

²⁷ The court's analysis is based, in part, upon the Webb-Kenyon Act, 27 U.S.C. s. 122, which prohibits the shipping of alcoholic beverages into a state in violation of that states laws, and the Twenty First Amendment of the U.S. Constitution.

²⁸ *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla.).

²⁹ *Bainbridge v. Martell*, 148 F.Supp.2d 1306 (M.D. Fla. 2001).

³⁰ *Bainbridge v. Turner*, 311 F.3d 1104 (11th Cir. 2002).

³¹ *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla. August 5, 2005).

Cherry Hill Vineyard, L.L.C., v. Lilly,³² the United States First Circuit Court of Appeals held that Maine's face-to-face transaction requirement for sales by a farm winery to consumers was unconstitutional because it discriminated against out-of-state manufacturers.

However, since *Granholtm*, several federal circuit courts have upheld face-to-face transaction requirements as lawful prerequisites for wineries to make direct sales of wine to consumers in the First, Fifth, Sixth, and Ninth Circuits.³³ In *Cherry Hill Vineyard, LLC v. Baldacci*, the court held that *Granholtm* and related cases could be distinguishable because the state's statutory scheme allowed farm winery licenses that were available on equal terms to both in-state and out-of-state vineyards and the state prohibited direct shipping evenhandedly across the board. The plaintiffs in this case were unable to prove that allowing farm wineries to sell face to face, either on the premises or at an approved in-state location discriminated against interstate commerce to violate the Commerce Clause.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³² *Cherry Hill Vineyard, L.L.C., v. Lilly*, 551 F.3d 423 (6th Cir. 2008).

³³ See *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809, (5th Cir.2010); *Black Star Farms LLC v. Oliver*, 600 F.3d 1225, (9th Cir 2010); *Cherry Hill Vineyard, LLC v. Baldacci*, 505 F.3d 28, (1st Cir.2007); and *Baude v. Heath*, 538 F. 3d 608 (6th Cir. 2008).

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 Committee on April 2, 2013:

The committee substitute (CS) amends the definition of “craft distillery” in s. 565.03(1)(a), F.S., to provide that the 75,000 gallon production limitation is per calendar year. It also requires that the distillery must have notified the division of its status as a craft distillery.

The CS amends the definition of “distillery” in s. 565.03(1)(b), F.S., to mean a manufacturer of distilled spirits. It does not include rectifier, blender, or processor of distilled spirits within the definition.

The CS deletes the provision in s. 565.03(3), F.S., that the Beverage Law does not prohibit, a licensed distillery from owning 100 percent of a vendor’s license, a licensed distillery from transporting its distilled spirits to a vendor’s licensed premises, and a distillery also licensed as a vendor from purchasing alcoholic beverage products directly from the distillery.

The CS amends s. 565.03(3)(a), F.S., to limited the total sales to no more than two containers per customer per year. It also provides that a craft distillery may not have its ownership affiliated with another distillery, unless the distillery produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. The bill does not permit the sale of distilled spirits for consumption on the premises of the craft distillery. It also provides that the container for the distilled spirits must comply with the container limits in s. 565.10, F.S.

The CS deletes the provision in s. 565.03(1)(c)1., F.S., that craft distiller license does not impact any land use for a craft distillery approved before July 1, 2013.

The CS provides that the provision of the bill are not to be severed if a court determines that any provision of this bill is in conflict with any law of this state, a federal law or regulation, the State Constitution, or the United States Constitution, or is otherwise invalid for any other reason.

- B. **Amendments:**

None.



141414

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 565.03, Florida Statutes, is amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

(1) As used in this section, the term:

(a) "Craft distillery" means a licensed distillery that produces 75,000 or fewer gallons per calendar year of distilled



141414

13 spirits on its premises and that has notified the division in
14 writing of its status as a craft distillery.

15 (b) "Distillery" means a manufacturer of distilled spirits.

16 (2)(1)(a) A distillery ~~Each liquor manufacturer authorized~~
17 ~~to do business~~ under the Beverage Law to distill, rectify, or
18 blend spirituous liquors shall pay an annual state license tax
19 of \$4,000 for each plant or branch operating ~~he or she operates~~
20 in the state, as follows:

21 1. If engaged in the business of distilling spirituous
22 liquors and nothing else, a state license tax of \$4,000.

23 2. If engaged in the business of rectifying and blending
24 spirituous liquors and nothing else, a state license tax of
25 \$4,000.

26 ~~(b) Persons licensed hereunder in the business of~~
27 ~~distilling spirituous liquors may also engage in the business of~~
28 ~~rectifying and blending spirituous liquors without the payment~~
29 ~~of an additional license tax.~~

30 (3) A craft distillery licensed under this section may sell
31 spirits distilled on its premises in this state to consumers in
32 factory-sealed containers that are filled at the distillery for
33 consumption at its souvenir gift shop. Such sales are authorized
34 only on private property contiguous to the licensed distillery
35 premises in this state and included on the sketch or diagram
36 defining the licensed premises which has been submitted with the
37 distillery's license application. All sketch or diagram
38 revisions by the distillery require the division's approval.
39 Before approval, the division shall verify that the souvenir
40 gift shop operated by the licensed distillery is owned or leased
41 by the distillery and is on property contiguous to the



141414

42 distillery's production building in this state.

43 (a) A craft distillery or licensed distillery may not sell
44 any factory-sealed individual containers of spirits except in a
45 face-to-face sales transaction on the distillery's premises in
46 this state with a consumer who purchases no more than two
47 individual containers that comply with container limits in s.
48 565.10, for the consumer's personal use and not for resale.

49 (b) A craft distillery may not ship, arrange to ship, or
50 deliver any of its distilled spirits to consumers within this
51 state except in a face-to-face transaction on the distillery's
52 premises. However, a craft distillery may ship, arrange to ship,
53 or deliver such spirits to manufacturers of distilled spirits,
54 wholesale distributors of distilled spirits, state or federal
55 bonded warehouses, and exporters.

56 (c) Except as provided in paragraph (d), it is unlawful to
57 transfer a distillery license for a distillery that produces
58 75,000 gallons or fewer per calendar year of distilled spirits
59 on its premises, or to transfer an ownership interest in such
60 license, to an individual or entity that has any direct or
61 indirect ownership interest in a distillery licensed by this
62 state, another state, a territory, the United States government,
63 or another country to manufacture, blend, or rectify distilled
64 spirits for beverage purposes.

65 (d) A craft distillery may not have its ownership
66 affiliated with another distillery unless such distillery
67 produces 75,000 gallons or fewer of distilled spirits on its
68 premises per calendar year.

69 (e) A craft distillery must report to the division within 5
70 days after it reaches the production limitations provided in



141414

71 paragraph (1) (a). Any sale to a consumer at the craft
72 distillery's licensed premises is prohibited beginning on the
73 day after the craft distillery reaches the production limitation
74 for the year. A craft distillery that sells spirits under this
75 subsection shall submit any beverages excise taxes under the
76 Beverage Law in its monthly report to the division with any tax
77 payments due to the state.

78 (4) ~~(2)~~ Distributors authorized to do business under the
79 Beverage Law, unless otherwise provided, shall pay a state
80 license tax of \$4,000 for each and every establishment or branch
81 they may operate or conduct in the state. However, in counties
82 having a population of 15,000 or less according to the latest
83 state or federal census, the state license tax for a restricted
84 license shall be \$1,000, but the holder of such a license shall
85 be permitted to sell only to vendors and distributors licensed
86 in the same county, and such license shall contain such
87 restrictions. In such counties, licenses without such
88 restrictions may be obtained as in other counties, but the tax
89 for a license without such restrictions shall be the same as in
90 other counties. Warehouses of a licensed distributor used solely
91 for storage and located in the county in which the license is
92 issued to such distributor shall not be construed to be separate
93 establishments or branches.

94 (5) ~~(3)~~ Each broker or sales agent and each importer of
95 alcoholic beverages, as defined in s. 561.14(4) and (5),
96 respectively, shall pay an annual state license tax of \$500.

97 (6) The division may adopt rules to administer this
98 section.

99 Section 2. Subsection (1) of section 561.14, Florida



141414

100 Statutes, is amended to read:

101 561.14 License and registration classification.—Licenses
102 and registrations referred to in the Beverage Law shall be
103 classified as follows:

104 (1) Manufacturers licensed to manufacture alcoholic
105 beverages and distribute the same at wholesale to licensed
106 distributors and to no one else within the state, unless
107 authorized by statute. Persons engaged in the business of
108 distilling, rectifying, or blending spirituous liquors licensed
109 under s. 565.03(2) ~~565.03(1)(a)1. and (b)~~ shall sell and
110 distribute such beverages at wholesale only to other
111 manufacturers and to licensed distributors and to no one else
112 within this state.

113 Section 3. The Legislature declares that it would not have
114 individually enacted any of the provisions of this act and
115 expressly finds the provisions not to be severable. If a court
116 of competent jurisdiction determines any provision of this act
117 to be in conflict with any law of this state, a federal law or
118 regulation, the State Constitution, or the United States
119 Constitution, or to be otherwise invalid for any reason, it is
120 the intent of the Legislature that all of the provisions of this
121 act be void, that such invalidity void only the changes made by
122 this act, and that no other law be affected.

123 Section 4. This act shall take effect July 1, 2013.

124
125 ===== T I T L E A M E N D M E N T =====

126 And the title is amended as follows:

127 Delete everything before the enacting clause
128 and insert:



141414

129 A bill to be entitled
130 An act relating to distilled spirits; amending s.
131 565.03, F.S.; providing definitions; revising
132 provisions regarding a state license tax involved with
133 the operation of distilleries; providing requirements
134 for craft distilleries under certain conditions;
135 prohibiting the shipment of certain distilled spirits;
136 restricting license transferability and ownership
137 affiliation; providing reporting requirements;
138 providing requirements relating to the payment of
139 taxes; providing for the adoption of rules; amending
140 s. 561.14, F.S.; conforming a cross-reference;
141 declaring that the provisions of this act are not
142 severable; providing an effective date.



578628

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2013	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (141414)

Delete lines 30 - 33
and insert:

(3) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, spirits distilled on its premises in this state in factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized

By Senator Hays

11-00533B-13

2013642__

1 A bill to be entitled
 2 An act relating to distilled spirits; amending s.
 3 565.03, F.S.; providing definitions; revising
 4 provisions with respect to the licensure and operation
 5 of distilleries; providing requirements for craft
 6 distilleries; providing for the sale of distilled
 7 spirits by licensed distilleries under certain
 8 conditions; providing reporting requirements;
 9 prohibiting the shipment of certain distilled spirits;
 10 providing for the transportation of distilled spirits
 11 by licensed distilleries under certain conditions;
 12 providing requirements relating to the payment of
 13 taxes; providing for applicability; providing
 14 rulemaking authority; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 565.03, Florida Statutes, is amended to
 19 read:

20 565.03 License fees; manufacturers, distributors of
 21 distilled spirits, brokers, sales agents, and importers of
 22 alcoholic beverages; vendor licenses and fees; craft
 23 distilleries.—

24 (1) As used in this section, the term:

25 (a) "Craft distillery" means a licensed distillery that
 26 produces 75,000 or fewer gallons of distilled spirits on its
 27 premises.

28 (b) "Distillery" means a ~~Each liquor~~ manufacturer,
 29 rectifier, blender, or processor of distilled spirits.

11-00533B-13

2013642__

30 (2) (a) A distillery authorized to do business under the
 31 Beverage Law shall pay an annual state license tax for each
 32 plant or branch operating ~~he or she operates~~ in the state, as
 33 follows:

34 1. If engaged in the business of manufacturing, rectifying,
 35 blending, or processing distilled spirits ~~distilling spirituous~~
 36 ~~liquors and nothing else~~, a state license tax of \$4,000.

37 2. If engaged in the business of rectifying and blending
 38 spirituous liquors and nothing else, a state license tax of
 39 \$4,000.

40 (b) Persons licensed under this section who are hereunder
 41 in the business of distilling spirituous liquors may also engage
 42 in the business of rectifying and blending spirituous liquors
 43 without the payment of an additional license tax.

44 (c) A craft distillery licensed under this section may sell
 45 distilled spirits produced on its premises in this state to
 46 consumers for on-premises consumption and in factory-sealed
 47 containers for off-premises consumption. Such sales are
 48 authorized only on private property contiguous to the licensed
 49 distillery premises in this state and included on the sketch or
 50 diagram defining the licensed premises submitted with the
 51 distillery's license application. All sketch or diagram
 52 revisions by the distillery shall require the division's
 53 approval verifying that all alcoholic beverage retail sales
 54 locations operated by the licensed distillery are owned or
 55 leased by the distillery and on property contiguous to the
 56 distillery's production building in this state. A craft
 57 distillery or licensed distillery may not sell any distilled
 58 spirits except in face-to-face sales transactions with consumers

11-00533B-13 2013642
 59 who are making a purchase for the consumer's personal use and
 60 not for resale and who are present at the distillery's licensed
 61 premises in this state.

62 1. This paragraph does not impact any land use for a craft
 63 distillery approved before July 1, 2013.

64 2. A craft distillery must report to the division within 5
 65 days after it reaches the production limitations provided in
 66 paragraph (1) (a). Any retail sales to consumers at the craft
 67 distillery's licensed premises are prohibited on the day after
 68 it reaches the production limitation.

69 3. A licensed craft distillery may not ship, arrange to
 70 ship, or deliver any of its distilled spirits to consumers
 71 within the state. However, a craft distiller licensed under this
 72 section may ship, arrange to ship, or deliver such spirits to
 73 manufacturers of distilled spirits, wholesale distributors of
 74 distilled spirits, state or federal bonded warehouses, and
 75 exporters.

76 (3)(2) Distributors authorized to do business under the
 77 Beverage Law, unless otherwise provided, shall pay a state
 78 license tax of \$4,000 for each and every establishment or branch
 79 they may operate or conduct in the state. However, in counties
 80 having a population of 15,000 or less according to the latest
 81 state or federal census, the state license tax for a restricted
 82 license shall be \$1,000, but the holder of such a license shall
 83 be permitted to sell only to vendors and distributors licensed
 84 in the same county, and such license shall contain such
 85 restrictions. In such counties, licenses without such
 86 restrictions may be obtained as in other counties, but the tax
 87 for a license without such restrictions shall be the same as in

11-00533B-13 2013642
 88 other counties. Warehouses of a licensed distributor used solely
 89 for storage and located in the county in which the license is
 90 issued to such distributor shall not be construed to be separate
 91 establishments or branches.

92 (4)(3) Each broker or sales agent and each importer of
 93 alcoholic beverages, as defined in s. 561.14(4) and (5),
 94 respectively, shall pay an annual state license tax of \$500.

95 (5) The Beverage Law does not prohibit:

96 (a) One hundred percent ownership of any vendor's license
 97 by a licensed distillery in the state that is engaged in the
 98 manufacturing of distilled spirits, if the vendor's premises
 99 meets the minimum qualifications for the vendor's license. The
 100 vendor's licensed premises must be owned or leased by the
 101 distillery and situated on property contiguous to the licensed
 102 premises where distilled spirits are produced.

103 (b) A licensed distillery from transporting and
 104 transferring its distilled spirits in compliance with federal
 105 and state alcoholic beverage laws and administrative rules to
 106 any vendor's licensed premises on property contiguous to the
 107 distillery and owned or leased by the distillery or to its
 108 retail alcoholic beverage sales locations authorized under
 109 paragraph (2) (c). Notwithstanding s. 561.14, any licensed
 110 distillery licensed as a vendor and operating at a premises
 111 under paragraph (2) (c) or paragraph (5) (a) may purchase or
 112 acquire alcoholic beverage products produced at a licensed
 113 distillery in this state directly from the distillery. Each
 114 distillery transporting its distilled spirits to its licensed
 115 retail premises or making sales under paragraphs (2) (c) and
 116 (5) (a) is responsible for submitting any beverages excise taxes

11-00533B-13

2013642__

117 under the Beverage Law in its monthly report to the division
118 with any tax payments due to the state.

119 (6) The division may adopt rules to administer this
120 section.

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



The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Regulated Industries

CC: Patrick L. "Booter" Imhof , Staff Director
Lynn Koon, Administrative Assistant

Subject: Committee Agenda Request

Date: February 14, 2013

I respectfully request that **Senate Bill #642**, relating to Distilled Spirits, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink that reads "Alan Hays".

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

Tab 3

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic CRAFT DISTILLERIES

Bill Number ~~684~~ 642
(if applicable)

Name BRECHT HEUCHAN

Amendment Barcode _____
(if applicable)

Job Title BOV'T AFFAIRS

Address PO BOX 10549

Phone (850) 702-0143

Street
Tallahassee FL 32302
City State Zip

E-mail _____

Speaking: For Against Information

Representing SOUTHERN WINE & SPIRITS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

Waive in
Support

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

4/2/13

Meeting Date

Topic Craft Distillers

Bill Number 642
(if applicable)

Name Mitch Rubin

Amendment Barcode _____
(if applicable)

Job Title Ex Director

Address 215 S. Monroe St #348

Phone (850) 274-2337

Street

Tallahassee, FL 32301

City

State

Zip

E-mail MRubin2505@aol.com

Speaking: For Against Information

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

Tab 3

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Microdistilleries

Bill Number SB 642

Name Scott Ashley

Amendment Barcode Thrasher
(if applicable)

Job Title President

Address 215 S. Monroe St. #800 A

Phone (850) 681-8700

Street
Talla. FL 32301
City State Zip

E-mail scott@wsdfloirida.com

Speaking: For Against Information

Representing Wine & Spirits Distributors of Florida

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.

Tab 3

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-2-13

Meeting Date

Topic Distilled Spirits

Bill Number 642
(if applicable)

Name Jason Unger

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 301 S. Bronough St #600

Phone 577 9090

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing FLORIDA DISTILLERS GUILD

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 2, 2013
Meeting Date

Topic Distilled Spirits Bill - Senator Alan Hays

Bill Number 642
(if applicable)

Name Philip McDaniel

Amendment Barcode _____
(if applicable)

Job Title Chair, Florida Craft Distillers Guild

Address 51 Water Street
Street
St. Augustine FL 32084
City State Zip

Phone 904-806-1440

E-mail philip@mcdaniel.net

Speaking: For Against Information

Representing Members of the Florida Craft Distillers Guild

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 record for this meeting.

tab 3

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 2, 2013
Meeting Date

Topic Distilled Spirits

Bill Number SB 642
(if applicable)

Name Stephanie Dick

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 210 South Monroe
Street

Phone _____

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 1048

INTRODUCER: Regulated Industries Committee and Senator Gardiner

SUBJECT: Electronic Benefits Transfer Cards

DATE: April 3, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			CF	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

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

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1048 amends s. 402.82, F.S., relating to Electronic Benefits Transfer Cards. The bill prohibits the use or acceptance of electronic benefits transfer cards (EBT cards) for the following activities or at the following locations: establishments licensed to sell distilled spirits, at adult entertainment establishments, pari-mutuel facilities, slot machine facilities, commercial bingo facilities, casinos, gaming facilities, gaming , and gaming establishments, or any gaming activities authorized under part II of ch. 285, F.S., (the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed on April 7, 2010).

The bill provides an October 1, 2013 effective date.

The bill substantially amends section 402.82, Florida Statutes:

II. Present Situation:

The federal government provides to the state certain grant monies known as Temporary Assistance for Needy Families (TANF) benefits that are payable pursuant to the Social Security

Act.¹ A portion of the Middle Class Tax Relief and Job Creation Act (federal act) enacted in February 2012 includes a requirement for the implementation of state spending policies and practices for TANF benefits. The federal act was amended to prohibit electronic benefit transfer (EBT) transactions relating to TANF benefits at certain locations.²

The state is required to report to the Secretary of the Department of Health and Human Services concerning the implementation of the state's spending policies and practices preventing TANF assistance from being used in EBT transactions at the locations set forth in the federal act, in order to avoid a 5% reduction in the state's TANF grant monies.³

The term "electronic benefit transfer transaction" is defined as the "use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service."⁴

States to which TANF grants are made are directed to maintain policies and practices to prevent TANF assistance from being used in EBT transactions in certain locations described below. In order to avoid a 5% reduction in a state's TANF grant, each state is required to report by February 22, 2014 to the Secretary of the Department of Health and Human Services its implementation of those policies and practices preventing TANF assistance from being used in EBT transactions at prohibited locations.⁵

The Office of Family Assistance of the Administration for Children & Families in the United States Department of Health & Human Services, in responses to questions regarding the requirements related to EBT transactions, has stated:

P.L. 112-96 does not specifically require state or local legislation to implement the federal statutory requirements. Each state will need to make its own determination as to whether state legislation is needed in order to meet the federal requirements. States should review their policies and practices If a state determines that existing efforts are insufficient [to comply with the law], the state should then take additional actions . . . [that] may include enactment of state legislation, issuance of executive orders and/or amendments to agency policies.⁶

The federal act states that the spending of TANF benefits is not authorized in any:

- Liquor store (retail establishing selling intoxicating liquor (exclusively or primarily) but excluding grocery stores selling both liquor and groceries including defined staple foods);
- Casino, gambling casino, or gaming establishment (excluding grocery stores selling groceries including defined staple foods that offer casino, gambling or gaming activities (or are located in the same building or complex) or other establishment that offers such activities incidental to the establishment's principal purpose);

¹ See 42 U.S.C. s. 608(a).

² See the Welfare Integrity and Data Improvement Act, Title IV, P.L. 112-96, ss. 4001-4004, 126 Stat. 197.

³ 42.U.S.C. s. 609(a)(16).

⁴ See 42 U.S.C. s. 608(a)(12)(B)(iii).

⁵ 42.U.S.C. s. 609(a)(16).

⁶ See <http://www.acf.hhs.gov/programs/ofa/resource/q-a-ebt-transactions> (Last visited March 26, 2013).

- Retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.⁷

In Florida “adult entertainment establishments” are governed by s. 847.001, F.S. An adult entertainment establishment is defined as:

- An “adult bookstore” means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material;
- An “adult theater” means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults;
- A “special cabaret” means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults; or
- An “unlicensed massage establishment” means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term “unlicensed massage establishment” does not include an establishment licensed under s. 480.043, F.S., which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041, F.S.

Pari-mutuel gambling is authorized at pari-mutuel facilities under ch. 550, F.S. Pari-mutuel facilities are defined as a “racetrack, fronton, or other facility used by a permit holder for the conduct of pari-mutuel wagering.”⁸

Slot machines are currently authorized at pari-mutuel facilities in Miami-Dade and Broward counties pursuant to ch. 551, F.S. Slot machines and banked table games are authorized at the Seminole Tribe of Florida’s facilities through the Gaming Compact between the Tribe and the State of Florida that is ratified by s. 285.710, F.S.

Slot machine facility is defined in s. 551.102(9), F.S., as a facility at which slot machines are lawfully offered for play. In turn, “slot machine” means any mechanical or electrical contrivance, terminal (whether or not able of downloading games from a central server system), machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, whether skill or chance or both, may deliver or entitle the player to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash

⁷ 42 U.S.C. s. 608(12).

⁸ Section 550.002(23), F.S. A person must be issued a permit to conduct pari-mutuel wagering in Florida. An initial permit must be approved or rejected by the electors in the county in a special election conducted pursuant to s. 550.0651, F.S.

or to receive merchandise or anything of value, whether the payoff is made automatically or manually. Slot machines may use spinning reels, video displays, or both, but is not a “coin-operated amusement machine” as defined in s. 212.02(24), F.S., or an amusement game or machine as described in s. 849.161, F.S.⁹

Pursuant to s. 849.0931, F.S., the only entities or groups authorized to conduct bingo are charitable, nonprofit, or veterans’ organizations directly involved in the conduct of a bingo game, or condominium associations, cooperative associations, homeowners’ associations as defined in s. 720.301, F.S., mobile home owners’ associations, groups of residents of mobile home parks as defined in ch. 723, F.S., or groups of residents of a mobile home park or recreational vehicle park as defined in ch. 513, F.S., where the net proceeds from such games are returned to players in the form of prizes after deduction of the actual business expenses for such games for articles designed for and essential to the operation, conduct, and playing of bingo.

The sale of liquor is regulated under the Beverage Law.¹⁰ The number of liquor licenses granted under s. 565.02, F.S., is limited by population under s. 561.20, F.S. These licenses are referred to as “quota” licenses. Retailers (vendors) who receive a license under s. 565.02, F.S., may sell any alcoholic beverages regardless of alcoholic content. Liquor is defined in s. 565.01, F.S., to include “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors,” and to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Section 565.04, F.S., limits what can be sold by vendors licensed under s. 565.02(1)(a), F.S., and s. 565.045, F.S., provides regulations for consumption on the premises. Bottle clubs are defined in s. 561.01(15), F.S., to include commercial establishments that allow patrons to bring their own alcoholic beverages for consumption on the premises. The term does not include sporting facilities, licensed hotels, motels, or restaurants.

The bill prohibits use or acceptance of EBT cards at a casino, gaming facility, or gambling facility, or for any gaming activities authorized under part II of ch. 285, F.S. (the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed on April 7, 2010).

According to the Department of Children and Families (DCF), while the current EBT vendor does not have the capability to block use of EBT cards in prohibited locations, a subsequent EBT vendor will be required to provide that service effective October 1, 2013.¹¹ The machines in which EBT cards are attempted to be used will be programmed to reject the cards, based on the Merchant Category Code (MCC) for point-of-sale terminals¹² in prohibited locations.¹³ An accurate MCC must be present in the terminal and on the vendor’s “no process” list in order for

⁹ Section 551.102(8), F.S.

¹⁰ Section 561.01(6) defines the Beverage Law to mean chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

¹¹ *2013 Legislative Analysis for SB 1048*, Office of Legislative Affairs, Department of Children and Families, dated March 20, 2013 and telephone interview with D. McLemore, Chief, Electronic Benefits Program, Department of Children and Families (March 26, 2013).

¹² Point-of-sale terminals are part of a customer-checkout system that uses automated devices linked to a computer that directly transmits sales data as part of a computerized system for accounting and inventory control. See

<http://dictionary.reference.com/browse/point+of+sale+terminal?s=t>

¹³ See *supra* note 4.

the transaction to be declined.¹⁴ As to automatic teller machines (ATMs) that dispense money when a coded card is used, the vendor will program a block based on the ATM's identification, which will require on-site visits to all ATMs in prohibited locations.¹⁵

The bill does not address the benefits, other than TANF benefits, that are set forth in s. 402.82, F.S. Other benefits that may be disseminated through the electronic benefits transfer program are food assistance benefits, refugee cash assistance payments, asylum applicant payments, and certain child support payments.

III. Effect of Proposed Changes:

The bill amends s. 402.82(1), F.S., to revise the term "electronic benefit transfer" to "electronic benefits transfer." A portion of the Middle Class Tax Relief and Job Creation Act (federal act) enacted in February 2012 includes a requirement for the implementation of state spending policies and practices for benefits designated as Temporary Assistance for Needy Families (TANF) benefits payable pursuant to the Social Security Act.¹⁶ The federal act was amended to prohibit certain electronic benefit transfer (EBT) transactions relating to TANF benefits.¹⁷

The bill provides that the use or acceptance of an EBT card is prohibited at:

- Any establishment licensed to sell distilled spirits as a vendor and restricted in the types of products that can be sold by package stores under s. 565.04, F.S., and by restaurants and bars under s. 565.045, F.S., or by a bottle club as defined in s. 561.01, F.S.;
- An adult entertainment establishment as defined in s. 847.001, F.S.;
- A pari-mutuel facility as defined in s. 550.002, F.S.;
- A slot machine facility as defined in s. 551.102, F.S.;
- A commercial bingo facility that operates outside the provisions of s. 849.0931, F.S; and
- A casino, gaming facility, or gambling facility, or any gaming activities authorized under part II of ch. 285, F.S.

The bill directs the department to develop enforcement procedures for the EBT program.

The bill revises the name of "Department of Children and Family Services" to "Department of Children and Families."

The bill provides an October 1, 2013 effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁴ *Id.*

¹⁵ See *supra* note 4.

¹⁶ See 42 U.S.C. s. 608(a).

¹⁷ See *supra* note 2.

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:

According to the Department of Children and Families, owners of point-of-sale terminals and automated teller machines in prohibited locations will be required to program those machines so that any card issued with the Florida EBT Bank Identification Number will be rejected.¹⁸

C. Government Sector Impact:

None, according to the Department of Children and Families.¹⁹

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 April 2, 2013:

The committee substitute clarifies the type of distilled spirit retail establishments and those gambling facilities where electronic benefits transfer cards may not be used or accepted. The committee substitute provides that use or acceptance of electronic benefits transfer cards is prohibited at the following locations or for the following activities:

- Establishments licensed under the Beverage Law sell distilled spirits (no longer restricted to those vendors selling distilled spirits containing 6 percent or more alcohol by volume);

¹⁸ See *supra* note 5.

¹⁹ *Id.*

- Adult entertainment establishments;
- Pari-mutuel facilities;
- Slot machine facilities;
- Commercial bingo facilities operating outside the provisions of s. 849.0931; and
- Casinos, gaming facilities, gambling facilities, or any gaming activities authorized under part II of ch. 285, F.S., (the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed on April 7, 2010).

B. Amendments:

None.



607400

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 39 - 58

and insert:

card is prohibited at the following locations or for the following activities:

(a) An establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045, or a bottle club as defined in s. 561.01.

(b) An adult entertainment establishment as defined in s. 847.001.



607400

- 13 (c) A pari-mutuel facility as defined in s. 550.002.
- 14 (d) A slot machine facility as defined in s. 551.102.
- 15 (e) A commercial bingo facility that operates outside the
16 provisions of s. 849.0931.
- 17 (f) A casino, gaming facility, or gambling facility, or any
18 gaming activities authorized under part II of chapter 285.

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

21 And the title is amended as follows:

22 Delete lines 9 - 13

23 and insert:

24 facility, a slot machine facility, an unauthorized
25 commercial bingo facility, a casino, a gaming facility
26 or gambling facility, or any gaming activities
27 authorized under part II of ch. 285; providing an
28 effective date.

By Senator Gardiner

13-00355B-13

20131048__

A bill to be entitled

An act relating to electronic benefits transfer cards; amending s. 402.82, F.S.; conforming terminology; restricting the use of electronic benefits transfer cards; providing that an electronic benefits transfer card may not be used or accepted at certain establishments licensed under the Beverage Law, an adult entertainment establishment, a pari-mutuel facility, an internet cafe that offers game promotions, an unauthorized commercial bingo facility, a casino, slot machine facility, or other gaming establishment; specifying penalties for violations of card use restrictions; providing an effective date.

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

Section 1. Section 402.82, Florida Statutes, is amended to read:

402.82 Electronic ~~benefits benefit~~ transfer program.—

(1) The Department of Children and ~~Families Family Services~~ shall establish an electronic ~~benefits benefit~~ transfer program for the dissemination of food assistance benefits and temporary cash assistance payments, including refugee cash assistance payments, asylum applicant payments, and child support disregard payments. If the Federal Government does not enact legislation or regulations providing for dissemination of supplemental security income by electronic ~~benefits benefit~~ transfer, the state may include supplemental security income in the electronic ~~benefits benefit~~ transfer program.

Page 1 of 3

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

13-00355B-13

20131048__

(2) The department shall, in accordance with applicable federal laws and regulations, develop minimum program requirements and other policy initiatives, including enforcement procedures, for the electronic ~~benefits benefit~~ transfer program.

(3) The department shall enter into public-private contracts for all provisions of electronic transfer of public assistance benefits.

(4) Use or acceptance of an electronic benefits transfer card is prohibited at:

(a) Any establishment licensed under the Beverage Law to sell distilled spirits containing 6 percent or more alcohol by volume as a vendor and restricted in the types of products that can be sold under ss. 565.04 and 565.045, or a bottle club as defined in s. 561.01.

(b) An adult entertainment establishment as defined in s. 847.001.

(c) A pari-mutuel facility as defined in s. 550.002.

(d) An internet cafe wherein electronic machine users are entered into a game promotion as defined in s. 849.094.

(e) A commercial bingo facility that operates outside the provisions of s. 849.0931.

(f) A casino, slot machine facility, or other gaming establishment.

(5) A cardholder who violates the restrictions in subsection (4) shall be barred from the program:

(a) For 6 months for the first violation.

(b) For 12 months for the second violation.

(c) Permanently for the third violation.

Page 2 of 3

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

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20131048__

59

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ANDY GARDINER

13th District

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Finance and Tax
Environmental Preservation and Conservation
Ethics and Elections
Gaming
Judiciary
Military Affairs, Space, and Domestic Security
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

February 26, 2013

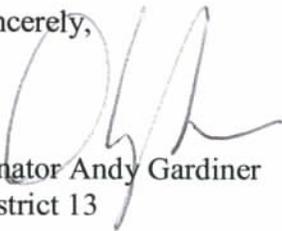
The Honorable Kelli Stargel, Chair
Regulated Industries Committee
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Stargel,

Senate Bill 1048 Electronic Benefits Transfer Cards has been referred to your committee. This legislation prohibits the use of electronic benefits transfer cards at certain establishments. I respectfully request that Senate Bill 1048 be heard before your committee.

If you have any questions regarding this request, please do not hesitate to contact my office. Thank you for your time and consideration of this legislation.

Sincerely,


Senator Andy Gardiner
District 13

AG:svc

Cc: Mr. Patrick Imhof, Staff Director

REPLY TO:

- 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5013

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

0

Tab 4

THE FLORIDA SENATE APPEARANCE RECORD

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

4/2/13

Meeting Date

Topic EBT Card Restrictions

Bill Number 1048
(if applicable)

Name Jeri Flora

Amendment Barcode _____
(if applicable)

Job Title ACCESS Director

Address 1317 Winewood Blvd Bldg 3
Street

Phone 717-4093

Tallahassee FL 32399
City State Zip

E-mail jeri.flora@dcf.state.fl.us

Speaking: For Against Information

Representing DCF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1174

INTRODUCER: Senator Ring

SUBJECT: Liens on Personal Property

DATE: March 29, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1174 amends s. 83.806, F.S., relating to Liens on Personal Property in Self-Service Storage Facilities and Self-contained Storage Units. The bill allows for the advertisement of the sale or other disposition of personal property in a self-storage facility or self-contained storage unit to be posted on an Internet website accessible to the public. The bill deletes the requirement for physical posting in three conspicuous places in the neighborhood of the storage facility or unit, if there is no general circulation newspaper in the area of the storage facility or unit.

The bill provides that if the rental agreement for a storage unit states a limit on the value of the property to be stored, that limit is deemed to be the maximum value of the stored property.

The bill allows for the owners of a storage unit to have a vehicle towed from the storage unit, when the vehicle's title is deemed to have no prior lienholder. The bill provides that the storage unit owner is not liable for the vehicle or any damages to it after the vehicle is removed from the unit by a wrecker, tow truck, or car carrier.

The bill provides a July 1, 2013 effective date.

This bill substantially amends section 83.806, Florida Statutes.

II. Present Situation:

Sections 83.801 to 83.809, F.S., constitute the Self-storage Facility Act (act). Nothing in the act may be construed to impair or affect the rights of parties to create additional rights, duties, and

obligations in a rental agreement, and the provisions of the act are in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.¹

A self-service storage facility (storage facility) is any real property designed and used for renting or leasing individual storage space to tenants who have access to the space in order to store and remove personal property, but not to use it as a residence.² A storage facility is not a warehouse as used in ch. 677, F.S.,³ and if a storage facility owner issues any warehouse receipt, bill of lading, or other document of title for the stored personal property, the owner and the tenant are subject to the provisions of ch. 677, F.S., and not the provisions of the act.⁴

A self-contained storage unit (unit) is a unit (such as a trailer, box or other shipping container) at least 200 cubic feet in size, which is leased by a tenant primarily for use as storage space and is located at a facility owned or operated by the owner or at a location designated by the tenant.⁵ An owner is defined as an owner, operator, lessor, or sublessor of a storage facility or unit, or his agent or any other person authorized by the owner to manage the facility or to receive rent from a tenant pursuant to a rental agreement for a unit.⁶

Section 83.803(4), F. S., defines tenant as a person or his sublessee, successor, or assign entitled pursuant to a rental agreement to the exclusive use agreement of storage space at a storage facility or in a unit, and s. 83.803(5), F.S., defines rental agreement as any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a storage facility or a unit.

The act addresses liens against the personal property located at a storage facility or in a unit.⁷ An owner of a storage facility or unit (and the owner's heirs, executors, administrators, successors, and assigns) has a lien upon all personal property at a storage facility or in a unit, even if that property is not owned by the tenant, for rent, labor charges, or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to the act.

The lien attaches as of the date that the personal property is brought to the storage facility or the date the tenant takes possession of the unit, and the priority of this lien is the same as a landlord's lien pursuant to s. 83.08, F.S.⁸ In the event of default, the owner must give notice to persons who have properly documented security interests against the tenant (known as perfected interests against a debtor under the Uniform Commercial Code set forth in chs. 670 to 680, F.S.)⁹.

¹ Section 83.809, F.S.

² Section 83.803(1), F.S.

³ Chapter 677, F.S., codifies article 7 of the Uniform Commercial Code and governs warehouse receipts, bills of lading, and other documents and procedures relating to goods, storage, and contracts to deliver them.

⁴ *Id.*

⁵ Section 83.803(2), F.S.

⁶ Section 83.803(3), F.S.

⁷ See s. 83.805, F.S.

⁸ The lien rights provided by s. 83.08(2), F.S., are in favor of owners to whom rent may be due, upon the property found upon or off the leased or rented premises, and are superior to any lien acquired subsequent to the bringing of the property onto the leased premises.

⁹ See *supra* note 5 and s. 671.101, F.S.

When a tenant does not timely pay rent, the owner may deny access (without any notice) to the property located in the storage facility or unit, beginning five days after the due date.¹⁰ The owner may then pursue legal action, or may proceed without using the courts, if doing so will not create a breach of the peace.¹¹

Section 83.806, F.S., addresses satisfaction of an owner's lien against a tenant lien. A tenant is notified in writing either in person, by electronic mail, or by first-class mail with a certificate of mailing to the tenant's last known address¹² and a copy conspicuously posted at the storage facility or on the unit. If no response, return receipt or delivery confirmation is received from the same last known electronic address of the tenant, notice of the sale must be sent by the owner to the tenant by first-class mail with a certificate of mailing to the tenant's last known address, before proceeding with the sale.¹³

As required by s. 83.806(2), F.S., the notice of the sale shall include:

- An itemized statement of the claim indicating the due date and the amount due;
- The same description, or a reasonably similar description, of the personal property as stated in the rental agreement;
- A demand for payment within a specified time not less than 14 days after delivery of the notice (notice period);
- A conspicuous statement that, unless the claim is paid within the notice period, the personal property will be advertised for sale or other disposition (sale) and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

A notice of sale is presumed delivered when deposited with the United States Postal Service, properly addressed and with prepaid postage.¹⁴ After the expiration of the notice period, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the storage facility or unit is located. A single advertisement and a single sale may be used to dispose of property, even the property is owned by more than one person.¹⁵

Section 83.806(4), F.S., requires that the advertisement of the sale include:

- A brief and general description of what is believed to constitute the personal property contained in the storage unit, pursuant to the rental agreement;

¹⁰ Section 83.8055, F.S.

¹¹ *Id.* Section 877.03, F.S., states that person who commits acts that corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not exceeding \$500.

¹² Section 83.803(6), F.S., provides that the last known address is the street address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided by hand delivery, first-class mail, or e-mail.

¹³ Section 83.806(1), F.S.

¹⁴ Section 83.806(3), F.S.

¹⁵ Section 83.806(4), F.S.

- The address of the storage facility or unit and the tenant's name; and
- The time, place, and manner of the sale, which may not be sooner than 15 days after the first publication.

If there is no newspaper of general circulation in the area where the facility or unit is located, the advertisement of the sale must be posted at least 10 days before the date of the sale, in at least three conspicuous places in the neighborhood where the facility or unit is located.¹⁶

Section 83.806(5), F.S., states that a sale must be properly noticed and advertised, and conducted in a commercially reasonable manner.¹⁷ Before any sale, the tenant may redeem the property by paying the amount due and the reasonable expenses incurred by the owner in complying with the enforcement procedures required by s. 83.806, F.S. (the compliance expenses).¹⁸ Upon receipt of payment, the owner must return the property to the tenant. If the tenant fails to redeem the property or satisfy the lien and the compliance expenses, the tenant is deemed to have unjustifiably abandoned the storage facility or storage unit, and the owner may resume possession of the premises.¹⁹

Section 83.806(7), F.S., provides that a good faith purchaser of property sold to satisfy a lien for amounts due for rental of a storage facility or unit and for compliance expenses, takes the property free of any claims, except those interests provided for in s. 83.808, F.S., despite any noncompliance by the owner with the enforcement procedures.²⁰

After a sale, if the owner's lien has priority over all other liens in the property, s. 83.806(8), F.S., states:

- The owner may satisfy the lien from the sale proceeds;
- The lien rights of secured lienholders are automatically transferred to the remaining sale proceeds of the sale;
- Any balance must be held by the owner for delivery to the tenant upon demand;
- A notice of any balance must be delivered by the owner to the tenant either in person or by first-class mail with a certificate of mailing to the tenant's last known address; and
- If the tenant does not claim the balance of the proceeds within 2 years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation for payment of the balance.

However, if the owner's lien does not have priority over all other liens, s. 83.806(8), F.S., states:

- The sale proceeds must be held for the benefit of the holders of all superior liens;

¹⁶ *Id.*

¹⁷ Section 679.627(2), F.S., states that a disposition of collateral is made in a commercially reasonable manner if the disposition is made in the usual manner and at the current price in any recognized market at the time of disposition, or otherwise in conformity with reasonable commercial practices among dealers in the type of property.

¹⁸ Section 83.806(6), F.S.

¹⁹ *Id.*

²⁰ Section 83.808, F.S., states that nothing in the act affects liens created by special contract or agreement, or any other lien arising at common law, in equity, or by any state statute or any other lien, other than the lien for charges established in s. 83.805, F.S.

- A notice of the amount of sale proceeds must be delivered by the owner to the tenant or to the secured lienholders either in person or by first-class mail with a certificate of mailing to their last known addresses; and
- If the tenant or the secured lienholders do not claim the sale proceeds within 2 years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation for payment of the proceeds.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 83.806, F.S., concerning the enforcement and satisfaction of liens held by an owner of a storage unit. The bill allows for the advertisement of the sale or other disposition of personal property (notice of sale) in a self-storage facility or self-contained storage unit (storage unit) to be posted on an Internet website accessible to the public. The bill deletes the requirement for physical posting of a notice of sale in three conspicuous places in the neighborhood of the storage unit, when there is no general circulation newspaper in the area of the storage unit. Owners of storage units in areas without a general circulation newspaper will be required to post a notice of sale on an Internet website accessible to the public.

The bill amends s. 83.806, F.S., to provide that if the rental agreement for a storage unit states a limit on the value of the property to be stored, that limit is deemed to be the maximum value of the stored property. Section 83.808, F.S., also addresses contracts, and contains a requirement that there must be a provision disclosing whether the applicant is a member of the uniformed services as defined in federal law.²¹

The bill allows for the owners of a storage unit to have a vehicle towed from the storage unit, when the vehicle's title is deemed to have no prior lienholder. The bill does not describe the process to be followed to deem that a title has no prior lienholder. Vehicle Information checks may be conducted using title or vehicle identification numbers through an Internet inquiry²² or by completion of a records request to the Division of Motorist Services at the Department of Highway Safety and Motor Vehicles.²³

The bill provides that the owner of a storage unit is not liable for the vehicle or any damages to it after the vehicle is removed from the storage unit by a wrecker,²⁴ tow truck, or car carrier. The provisions of s. 713.78 (2), F.S., address liens for services rendered by those persons regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier (wrecker). A wrecker has a lien for towing and storage charges for the recovery, removal, or storage of a vehicle, conditioned upon instructions from:

- The owner of the vehicle;

²¹ 10 U.S.C. s. 101(a)(5) defines uniformed services as the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

²² Florida Highway Safety and Motor Vehicles, *Motor Vehicle Check*, <https://services.flhsmv.gov/MVCheckWeb/> (last visited Mar. 29, 2013).

²³ Florida Highway Safety and Motor Vehicles, *Forms*, <http://www.flhsmv.gov/dmv/forms/BTR/85054.pdf> (last visited Mar. 29, 2013).

²⁴ Section 713.78(c), F.S., defines wrecker as any truck or other vehicle used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

- The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle or vessel is wrongfully parked, and the removal is done in compliance with certain notice and other requirements in s. 715.07, F.S.,²⁵ or
- Any law enforcement agency.

Compliance with the notice provisions in s. 715.97, F.S., may be required for the towing of a vehicle from a storage facility or unit.

Section 2 of the bill provides a July 1, 2013 effective date.

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:

The reduction in publication of notices of sales may impact some newspapers of general circulation. The amount payable to a tenant after a sale may be increased by the difference in the cost associated with posting the notice of sale on an Internet website in lieu of publication of the notice in a newspaper.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

²⁵ Section 715.07, F.S., provides procedures for towing or removal of vehicles on private property.

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.



417994

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 17 - 47
and insert:

Section 1. Subsections (9) and (10) are added to section 83.806, Florida Statutes, to read:

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

And the title is amended as follows:

Delete lines 4 - 7

and insert:

units; amending s. 83.806, F.S.; specifying a limit on



417994

13

the value of

By Senator Ring

29-00915A-13

20131174__

A bill to be entitled

An act relating to liens on personal property in self-service storage facilities and self-contained storage units; amending s. 83.806, F.S.; revising notice requirements for enforcement of liens by the owner of the self-service storage facility or self-contained storage unit; specifying a limit on the value of property stored in the tenant's storage unit; authorizing the towing of a vehicle in a storage unit under certain circumstances; limiting the liability of the owner of a self-service storage facility or self-contained storage unit after a vehicle is towed from such facility or unit; providing an effective date.

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

Section 1. Subsection (4) of section 83.806, Florida Statutes, is amended, and subsections (9) and (10) are added to that section, to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located or posted for 2 consecutive weeks on an Internet website accessible to the public. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of

Page 1 of 3

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

29-00915A-13

20131174__

property at any one sale.

~~(a)~~ The advertisement shall include:

(a)1- A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

(b)2- The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

(c)3- The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication.

~~(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.~~

(9) If the rental agreement contains a limit on the value of property stored in the tenant's storage unit, the limit is deemed to be the maximum value of the property stored in that unit.

(10) If the personal property is a vehicle and the vehicle's title is deemed to have no prior lienholder, the owner of the self-service storage facility or self-contained storage unit may have the vehicle towed. An owner of a self-service storage facility or self-contained storage unit is not liable for the vehicle or any damages to the vehicle after the wrecker, tow truck, or car carrier removes the vehicle.

Page 2 of 3

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

29-00915A-13

20131174__

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JEREMY RING

29th District

March 20, 2013

Honorable Senator Kelli Stargel
330 Knott Building
404 South Monroe Street
Tallahassee, Fl 32399

Dear Chairwoman Stargel,

I am writing to respectfully request your cooperation in placing Senate Bill 1174, relating to Liens on Personal Property in Self-service Storage Facilities and Self-contained Storage Units on the Regulated Industries agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Patrick L. "Booter" Imhof

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senata Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

④
TABS

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

4/2/13

Meeting Date

Topic Public NOTICE

Bill Number SB 1174

Name JEFF KOTTKAMP

Amendment Barcode 417994
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For ^{AMENDMENT} Against Information

Representing KEEP THE PUBLIC NOTICE CONTINUED

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.

Tab 5

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/02/13

Meeting Date

Topic Liens on personal property (notice provision)

Bill Number 1174

(if applicable)

Name Dean Ridings

Amendment Barcode 417994

(if applicable)

Job Title President

Address 336 E. College Avenue, Suite 203

Phone 850-521-1162

Street

Tallahassee

FL

32301

E-mail deanr@flpress.com

City

State

Zip

Speaking: For Against Information

Representing Florida Press Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

Tab 5

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/2/13

Meeting Date

Topic Liens on Personal Property/Self Storage

Bill Number 1174

Name Brewster Bevis

Amendment Barcode 417994
(if applicable)

Job Title Senior Vice President

Address 516 N. Adams St

Phone 850-224-7173

Street

Tallahassee

FL

32312

City

State

Zip

E-mail bbevis@aif.com

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

Against Amend
FAVOR of Bill
Tab 5

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

4/2/13

Meeting Date

Topic Self-storage facilities

Bill Number SB 1174
(if applicable)

Name Jeanette Yague

Amendment Barcode 417994
(if applicable)

Job Title VP

Address 413 N. Meridian St.

Phone 412-0300

Street

Tallahassee FL 32301

City

State

Zip

E-mail JEANNETTE@JEAN180.COM

Speaking: For ^{the bill} Against ^{the amendment} Information

Representing Florida Self-Storage Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Public Notices Bill Number SB1174
(if applicable)

Name JACK CORY Amendment Barcode 417994
(if applicable)

Job Title _____

Address 110 E. College Ave Phone 850-893-0999
Street

Tallahassee E-mail JACKCORY@PA.com
City State Zip

Speaking: For Against Information

Representing Amendment - Daily Business Review

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.2.13
Meeting Date

Topic _____

Bill Number 1174
(if applicable)

Name WAYNE MALONEY

Amendment Barcode 417994
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

*Amendment
WAIVE IN SUPPORT*

Representing BAILEY PUBLISHING

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 64

INTRODUCER: Regulated Industries Committee and Senator Sachs

SUBJECT: Commercial Parasailing

DATE: April 3, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			CM	
3.			TR	
4.			EP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 64 amends ch. 327, F.S., relating to Commercial Parasailing. The bill defines commercial parasailing. The bill establishes minimum requirements for liability insurance, maintenance of a weather log, and safety briefings for parasailing participants.

The bill requires that parasailing providers evaluate weather conditions and wind speeds as defined in the bill and prohibits commercial parasailing during certain weather conditions. The bill requires that the vessel operator have licensure from the United States Coast Guard appropriate for the number of passengers and the displacement of the vessel.

The bill provides an effective date of October 1, 2013.

The bill amends sections 327.02, 320.08, 327.391, 328.17, 342.07, 713.78 and 715.07, Florida Statutes. The bill creates section 327.375, Florida Statutes.

II. Present Situation:

The Florida Fish and Wildlife Conservation Commission (FWC) estimates there are approximately 100 active commercial parasail operators in Florida, generally operating along the Atlantic Ocean and Gulf of Mexico coastlines.¹ One exception is Walt Disney World, which offers parasailing at its Sammy Duvall Watersports Centre on Bay Lake in Orange County.² Personal watercraft and vessel rentals are offered as well.³

Data compiled by the FWC indicates that:⁴

- From January 1, 2001, through December 3, 2012, 19 accidents involving parasail vessels have occurred in Florida, resulting in 18 injuries and six fatalities;
- In nine of the accidents, high winds or sudden wind gusts were a contributing factor;
- In five of the nine accidents with wind as a contributing factor, there was equipment failure;
- The boating accident reports state that the wind gusts were produced by sudden thunderstorms in the area of the parasailing operation;
- The other accidents were caused by a variety of factors, including equipment failure and operator error; and
- Equipment failure was a contributing factor in one accident that was fatal to the parasailing person, but whether a significant role in the equipment failure was played by weather is not yet determined.

Section 327.37, F.S., regulates vessels towing persons on water skis, parasails, and aquaplanes, and addresses safety requirements including observation of the person being towed, time restrictions, use of personal flotation devices, operational distance restrictions, and operations near airports.

Requirements for vessels towing a person on any waters of the state (except those engaged in certain regattas, boat races, marine parades, tournaments, or exhibitions)⁵ include:

- There must be a person, in addition to the operator, in a position to observe the progress of the person being towed on water skis, an aquaplane, or similar device, unless the vessel is equipped with a wide-angle rear view mirror mounted so that the operator of the vessel may observe the progress of the person being towed;⁶
- A person may not operate a vessel on any waters of this state towing a person attached to a parasail or similar device unless there is a person in the vessel, in addition to the operator, in a position to observe the progress of the person being towed, and use of a wide-angle rear view mirror is not acceptable;

¹2013 Legislative Analysis for SB 64, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission undated.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See s. 327.48, F.S.

⁶ This restriction does not apply to class A motorboats operated by the person being towed which are designed to be incapable of carrying the operator in the motorboat. See s. 327.37(1)(a), F.S.

- Water skiing, parasailing, aquaplaning, or any similar activity (water sports) may not be engaged in during the hours from one-half hour after sunset to one-half hour before sunrise;
- A noninflatable type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard must be worn by those engaged in water sports;
- A person may not operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, parasail, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person, to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing; and
- A person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway.

A violation of s. 327.37, F.S., is a noncriminal infraction under s. 327.73, F.S. The civil penalty that may be imposed in county court is \$50, but after written warning provided with the issuance of the boating citation, any person who fails to appear or otherwise properly respond to the citation, in addition to the charge relating to violation of the boating laws, shall be charged with the offense of failing to respond to the citation. Upon conviction for such failure to respond, the violator is guilty of a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500.

According to the FWC, the Federal Aviation Administration (FAA) regulates parasails as kites because a parasail is a parachute held aloft by wind resulting from the movement of the boat towing it.⁷ The FAA defines a kite as a framework, covered with paper, cloth, metal, or other material, intended to be flown at the end of a rope or cable, and having as its only support the force of the wind moving past its surfaces, and regulates them only to the extent that they are objects in airspace. The regulations provide:⁸

- Except as otherwise provided, no person may operate a moored balloon or kite less than 500 feet from the base of any cloud, more than 500 feet above the surface of the earth, from an area where the ground visibility is less than 3 miles, or within 5 miles of the boundary of any airport;
- The mooring lines must have colored pennants or streamers at not more than 50 foot intervals, starting at 150 feet above the surface of the earth, which are visible for at least one mile; and
- If a person wants to operate a moored balloon or kite between sunset and sunrise, the mooring lines must be lit, to give a visual warning for air navigation.

A parasail operator may obtain a certificate of authorization or a waiver from the FAA containing special provisions allowing deviation from the regulations, in order for the certificate of authorization to remain valid.⁹ According to the FWC, common special provisions imposed by the FAA are:¹⁰

⁷ See *supra* note 1.

⁸ See Title 14 C.F.R. Part 101

⁹ Title 14 C.F.R. s. 101.3

¹⁰ See *supra* note 1.

- Required attendance by parasail operators at an annual operator safety and standardization meeting sponsored by the FAA, if available in the area, and if an operator is unable to attend a scheduled annual meeting, the operator must arrange for an individual meeting;
- A prohibition against conducting parasail operations when the ceiling is less than 1,000 feet above ground level and the ground visibility is less than 2 miles, winds are above 20 miles per hour (mph), and/or gusts of wind are occurring at 15 mph or greater;
- Time restrictions including a prohibition on parasail operations between sunset and sunrise or during any period when a suspension of airport traffic or diversion of other aircraft will cause a hardship to scheduled air carrier operations;
- Distance limits requiring that parasail operations not be conducted closer than 500 feet to any aircraft, and the parasail not be maneuvered so as to force any aircraft toward the swim line (an imaginary line along the coast marking the offshore boundary where most people are likely to swim) or a populated beach;
- A requirement that parasail operators yield the right-of-way to all aircraft;
- Constant observation by the vessel captain and all crew members of the parasail and surrounding airspace to ensure safety, with the observers in a position to observe the operation and airspace and to halt or restrict the parasail operations if necessary; and
- A requirement that the holder of the Certificate of Waiver or Authorization contact the air traffic control tower of an airport when proposed parasail operations are to be conducted within five miles of the airport, at least one week prior to conducting parasail operations, for the purpose of providing real-time notice of activities including the proposed area of operation, the duration of the activity, and the altitude of the parasail.

III. Effect of Proposed Changes:

Section 1 of the bill provides that the title for the act is the White-Miskell Act.

Section 2 of the bill amends s. 327.02, F.S., to define commercial parasailing as the towing (for consideration) of a person by a motorboat, when one or more persons are tethered to the vessel, ascend above the water, and remain suspended under a canopy while the vessel is underway (excluding ultralight air vehicles). The bill also defines sustained wind speed as a wind speed determined by averaging the observed wind speed rounded up to the nearest whole knot of speed over a two-minute period.

Section 3 of the bill creates s. 327.375, F.S., which requires:

- Minimum bodily injury liability insurance coverage of at least \$1 million per person and \$2 million per occurrence, with proof of insurance available for inspection at the location where commercial parasailing is offered or provided for consideration;
- Providing the insurance carrier's name and address and the policy number to customers requesting that information;
- A current and valid license issued by the United States Coast Guard to the person operating the parasailing vessel which is appropriate for the number of passengers and the size of the vessel;

- The parasailing vessel to be equipped with a functional VHF marine transceiver and a separate electronic device capable of accessing National Weather Service forecasts and current weather conditions;
- Monitoring of certain wind speed, visibility and lightning storm distances, with operations prohibited when certain thresholds current exist or are forecasted by the National Weather Service; and
- Recording certain weather conditions and having the record available for inspection.

A violation of s. 327.375, F.S., regarding the commercial parasailing requirements is a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500.

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:

According to the FWC, commercial parasailing operators in Florida will incur additional costs to obtain the insurance coverage stated in the bill, and those costs are difficult to estimate because they will vary with each operator's claims history and current coverage amounts.¹¹

C. Government Sector Impact:

According to the FWC, there may be a fiscal impact from costs associated with FWC law enforcement officers educating current commercial parasailing operators on new regulations and how operators may come into compliance.¹²

¹¹ 2013 Legislative Analysis for SB 64, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission undated

¹² *Id.*

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 April 2, 2013:

The committee substitute:

- Requires the computation of sustained wind speed to be rounded up to the nearest mile per hour;
- Changes the insurance provisions to require bodily injury liability insurance at \$2 million per occurrence;
- Requires compliance with s. 327.37, F.S., as well as the provisions of the bill;
- Deletes the requirement for an observer, inspection and minimum requirements for the passenger support system, and specifications for the towline;
- Deletes restrictions for number of riders and the requirement for safety briefings;
- Deletes distance and time restrictions on operations; and
- Changes the effective date to October 1, 2013.

B. Amendments:

None.



949474

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "White-Miskell Act."

Section 2. Section 327.02, Florida Statutes, is amended to read:

327.02 Definitions of terms used in this chapter and in chapter 328.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(1) "Airboat" means a vessel that is primarily designed for



949474

13 use in shallow waters and powered by an internal combustion
14 engine with an airplane-type propeller mounted above the stern
15 and used to push air across a set of rudders.

16 (2) "Alien" means a person who is not a citizen of the
17 United States.

18 (3) "Boating accident" means a collision, accident, or
19 casualty involving a vessel in or upon, or entering into or
20 exiting from, the water, including capsizing, collision with
21 another vessel or object, sinking, personal injury, death,
22 disappearance of any person from on board under circumstances
23 that ~~which~~ indicate the possibility of death or injury, or
24 property damage to any vessel or dock.

25 (4) "Canoe" means a light, narrow vessel with curved sides
26 and with both ends pointed. A canoe-like vessel with a transom
27 may not be excluded from the definition of a canoe if the width
28 of its transom is less than 45 percent of the width of its beam
29 or it has been designated as a canoe by the United States Coast
30 Guard.

31 (5) (a) "Commercial parasailing" means providing or offering
32 to provide, for consideration, any activity involving the towing
33 of a person by a motorboat when:

- 34 1. One or more persons are tethered to the towing vessel;
35 2. The person or persons ascend above the water; and
36 3. The person or persons remain suspended under a canopy,
37 chute, or parasail above the water while the vessel is underway.

38 (b) The term does not include ultralight glider towing
39 conducted under rules of the Federal Aviation Administration
40 governing ultralight air vehicles as defined in 14 C.F.R. part
41 103.



949474

42 (6)~~(5)~~ "Commercial vessel" means:

43 (a) Any vessel primarily engaged in the taking or landing
44 of saltwater fish or saltwater products or freshwater fish or
45 freshwater products, or any vessel licensed pursuant to s.
46 379.361 from which commercial quantities of saltwater products
47 are harvested, from within and without the waters of this state
48 for sale either to the consumer, retail dealer, or wholesale
49 dealer.

50 (b) Any other vessel, except a recreational vessel as
51 defined in this section.

52 (7)~~(6)~~ "Commission" means the Fish and Wildlife
53 Conservation Commission.

54 (8)~~(7)~~ "Dealer" means any person authorized by the
55 Department of Revenue to buy, sell, resell, or otherwise
56 distribute vessels. Such person shall have a valid sales tax
57 certificate of registration issued by the Department of Revenue
58 and a valid commercial or occupational license required by any
59 county, municipality, or political subdivision of the state in
60 which the person operates.

61 (9)~~(8)~~ "Division" means the Division of Law Enforcement of
62 the Fish and Wildlife Conservation Commission.

63 (10)~~(9)~~ "Documented vessel" means a vessel for which a
64 valid certificate of documentation is outstanding pursuant to 46
65 C.F.R. part 67.

66 (11)~~(10)~~ "Floating structure" means a floating entity, with
67 or without accommodations built thereon, which is not primarily
68 used as a means of transportation on water but which serves
69 purposes or provides services typically associated with a
70 structure or other improvement to real property. The term



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71 "floating structure" includes, but is not limited to, each
72 entity used as a residence, place of business or office with
73 public access, hotel or motel, restaurant or lounge, clubhouse,
74 meeting facility, storage or parking facility, mining platform,
75 dredge, dragline, or similar facility or entity represented as
76 such. Floating structures are expressly excluded from the
77 definition of the term "vessel" provided in this section.
78 Incidental movement upon water or resting partially or entirely
79 on the bottom does ~~shall~~ not, in and of itself, preclude an
80 entity from classification as a floating structure.

81 (12) ~~(11)~~ "Florida Intracoastal Waterway" means the Atlantic
82 Intracoastal Waterway, the Georgia state line north of
83 Fernandina to Miami; the Port Canaveral lock and canal to the
84 Atlantic Intracoastal Waterway; the Atlantic Intracoastal
85 Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to
86 Fort Myers; the St. Johns River, Jacksonville to Sanford; the
87 Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf
88 Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to
89 Anclote open bay section (using Gulf of Mexico); the Gulf
90 Intracoastal Waterway, Carrabelle to the Alabama state line west
91 of Pensacola; and the Apalachicola, Chattahoochee, and Flint
92 Rivers in Florida.

93 (13) ~~(12)~~ "Homemade vessel" means any vessel built after
94 October 31, 1972, for which a federal hull identification number
95 is not required to be assigned by the manufacturer pursuant to
96 federal law, or any vessel constructed or assembled prior to
97 November 1, 1972, by other than a licensed manufacturer for his
98 or her own use or the use of a specific person. A vessel
99 assembled from a manufacturer's kit or constructed from an



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100 unfinished manufactured hull shall be considered to be a
101 homemade vessel if such a vessel is not required to have a hull
102 identification number assigned by the United States Coast Guard.
103 A rebuilt or reconstructed vessel shall in no event be construed
104 to be a homemade vessel.

105 (14)~~(13)~~ "Houseboat" means any vessel that ~~which~~ is used
106 primarily as a residence for a minimum of 21 days during any 30-
107 day period, in a county of this state, and this residential use
108 of the vessel is to the preclusion of the use of the vessel as a
109 means of transportation.

110 (15)~~(14)~~ "Length" means the measurement from end to end
111 over the deck parallel to the centerline excluding sheer.

112 (16)~~(15)~~ "Lien" means a security interest that ~~which~~ is
113 reserved or created by a written agreement recorded with the
114 Department of Highway Safety and Motor Vehicles pursuant to s.
115 328.15 and that ~~which~~ secures payment or performance of an
116 obligation and is generally valid against third parties.

117 (17)~~(16)~~ "Lienholder" means a person holding a security
118 interest in a vessel, which interest is recorded with the
119 Department of Highway Safety and Motor Vehicles pursuant to s.
120 328.15.

121 (18)~~(17)~~ "Live-aboard vessel" means:

122 (a) Any vessel used solely as a residence and not for
123 navigation;

124 (b) Any vessel represented as a place of business or a
125 professional or other commercial enterprise; or

126 (c) Any vessel for which a declaration of domicile has been
127 filed pursuant to s. 222.17.

128



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129 A commercial fishing boat is expressly excluded from the
130 term "live-aboard vessel."

131 ~~(19)(18)~~ "Livery vessel" means any vessel leased, rented,
132 or chartered to another for consideration.

133 ~~(20)(19)~~ "Manufactured vessel" means any vessel built after
134 October 31, 1972, for which a federal hull identification number
135 is required pursuant to federal law, or any vessel constructed
136 or assembled prior to November 1, 1972, by a duly licensed
137 manufacturer.

138 ~~(21)(20)~~ "Marina" means a licensed commercial facility that
139 ~~which~~ provides secured public moorings or dry storage for
140 vessels on a leased basis. A commercial establishment authorized
141 by a licensed vessel manufacturer as a dealership shall be
142 considered a marina for nonjudicial sale purposes.

143 ~~(22)(21)~~ "Marine sanitation device" means any equipment
144 other than a toilet, for installation on board a vessel, which
145 is designed to receive, retain, treat, or discharge sewage, and
146 any process to treat such sewage. Marine sanitation device Types
147 I, II, and III shall be defined as provided in 33 C.F.R. part
148 159.

149 ~~(23)(22)~~ "Marker" means any channel mark or other aid to
150 navigation, information or regulatory mark, isolated danger
151 mark, safe water mark, special mark, inland waters obstruction
152 mark, or mooring buoy in, on, or over the waters of the state or
153 the shores thereof, and includes, but is not limited to, a sign,
154 beacon, buoy, or light.

155 ~~(24)(23)~~ "Motorboat" means any vessel equipped with
156 machinery for propulsion, irrespective of whether the propulsion
157 machinery is in actual operation.



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158 ~~(25)~~~~(24)~~ "Muffler" means an automotive-style sound-
159 suppression device or system designed to effectively abate the
160 sound of exhaust gases emitted from an internal combustion
161 engine and prevent excessive sound when installed on such an
162 engine.

163 ~~(26)~~~~(25)~~ "Navigation rules" means the International
164 Navigational Rules Act of 1977, 33 U.S.C. appendix following s.
165 1602, as amended, including the annexes thereto, for vessels on
166 waters outside ~~of~~ established navigational lines of demarcation
167 as specified in 33 C.F.R. part 80 or the Inland Navigational
168 Rules Act of 1980, 33 U.S.C. ss. 2001 et seq., as amended,
169 including the annexes thereto, for vessels on all waters not
170 outside ~~of~~ such lines of demarcation.

171 ~~(27)~~~~(26)~~ "Nonresident" means a citizen of the United States
172 who has not established residence in this state and has not
173 continuously resided in this state for 1 year and in one county
174 for the 6 months immediately preceding the initiation of a
175 vessel titling or registration action.

176 ~~(28)~~~~(27)~~ "Operate" means to be in charge of or in command
177 of or in actual physical control of a vessel upon the waters of
178 this state, or to exercise control over or to have
179 responsibility for a vessel's navigation or safety while the
180 vessel is underway upon the waters of this state, or to control
181 or steer a vessel being towed by another vessel upon the waters
182 of the state.

183 ~~(29)~~~~(28)~~ "Owner" means a person, other than a lienholder,
184 having the property in or title to a vessel. The term includes a
185 person entitled to the use or possession of a vessel subject to
186 an interest in another person, reserved or created by agreement



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187 and securing payment of performance of an obligation, but the
188 term excludes a lessee under a lease not intended as security.

189 ~~(30)(29)~~ "Person" means an individual, partnership, firm,
190 corporation, association, or other entity.

191 ~~(31)(30)~~ "Personal watercraft" means a vessel less than 16
192 feet in length which uses an inboard motor powering a water jet
193 pump, as its primary source of motive power and which is
194 designed to be operated by a person sitting, standing, or
195 kneeling on the vessel, rather than in the conventional manner
196 of sitting or standing inside the vessel.

197 ~~(32)(31)~~ "Portable toilet" means a device consisting of a
198 lid, seat, containment vessel, and support structure which ~~that~~
199 is specifically designed to receive, retain, and discharge human
200 waste and which ~~that~~ is capable of being removed from a vessel
201 by hand.

202 ~~(33)(32)~~ "Prohibited activity" means such activity as will
203 impede or disturb navigation or creates a safety hazard on
204 waterways of this state.

205 ~~(34)(33)~~ "Racing shell," "rowing scull," or "racing kayak"
206 means a manually propelled vessel that ~~which~~ is recognized by
207 national or international racing associations for use in
208 competitive racing and in which all occupants, with the
209 exception of a coxswain, if one is provided, row, scull, or
210 paddle, and that ~~which~~ is not designed to carry and does not
211 carry any equipment not solely for competitive racing.

212 ~~(35)(34)~~ "Recreational vessel" means any vessel:

213 (a) Manufactured and used primarily for noncommercial
214 purposes; or

215 (b) Leased, rented, or chartered to a person for the



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216 person's noncommercial use.

217 (36)~~(35)~~ "Registration" means a state operating license on
218 a vessel which is issued with an identifying number, an annual
219 certificate of registration, and a decal designating the year
220 for which a registration fee is paid.

221 (37)~~(36)~~ "Resident" means a citizen of the United States
222 who has established residence in this state and has continuously
223 resided in this state for 1 year and in one county for the 6
224 months immediately preceding the initiation of a vessel titling
225 or registration action.

226 (38)~~(37)~~ "Sailboat" means any vessel whose sole source of
227 propulsion is the wind.

228 (39) "Sustained wind speed" means a wind speed determined
229 by averaging the observed wind speed rounded up to the nearest
230 mile per hour over a 2-minute period.

231 (40)~~(38)~~ "Unclaimed vessel" means any undocumented vessel,
232 including its machinery, rigging, and accessories, which is in
233 the physical possession of any marina, garage, or repair shop
234 for repairs, improvements, or other work with the knowledge of
235 the vessel owner and for which the costs of such services have
236 been unpaid for a period in excess of 90 days following ~~from~~ the
237 date written notice of the completed work is given by the
238 marina, garage, or repair shop to the vessel owner.

239 (41)~~(39)~~ "Vessel" is synonymous with boat as referenced in
240 s. 1(b), Art. VII of the State Constitution and includes every
241 description of watercraft, barge, and airboat, other than a
242 seaplane on the water, used or capable of being used as a means
243 of transportation on water.

244 (42)~~(40)~~ "Waters of this state" means any navigable waters



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245 of the United States within the territorial limits of this
246 state, ~~and~~ the marginal sea adjacent to this state and the high
247 seas when navigated as a part of a journey or ride to or from
248 the shore of this state, and all the inland lakes, rivers, and
249 canals under the jurisdiction of this state.

250 Section 3. Section 327.375, Florida Statutes, is created to
251 read:

252 327.375 Commercial parasailing.—

253 (1) The operator of a vessel engaged in commercial
254 parasailing shall, in addition to the provisions provided in
255 this section, ensure that the provisions of s. 327.37 are met.

256 (2) The owner or operator of a vessel engaged in commercial
257 parasailing may not offer or provide for consideration any
258 parasailing activity unless the owner or operator first obtains
259 and carries in full force and effect a liability insurance
260 policy, from an insurance carrier licensed in this state or
261 approved by the Office of Insurance Regulation, or from an
262 eligible surplus lines insurer. The liability insurance policy
263 must provide bodily injury liability coverage in the amounts of
264 at least \$1 million per person and \$2 million per occurrence.
265 Proof of insurance must be available for inspection at the
266 location where commercial parasailing is offered or provided for
267 consideration, and each customer who requests it shall be
268 provided with the insurance carrier's name and address and the
269 insurance policy number.

270 (3) The operator of a vessel engaged in commercial
271 parasailing must have a current and valid license issued by the
272 United States Coast Guard authorizing that person to carry
273 passengers for hire. The license must be appropriate for the



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274 number of passengers carried and the displacement of the vessel.
275 The license must be carried on the vessel and be available for
276 inspection while engaging in commercial parasailing activities.

277 (4) A vessel engaged in commercial parasailing must be
278 equipped with a functional VHF Marine transceiver and a separate
279 electronic device capable of access to National Weather Service
280 forecasts and current weather conditions.

281 (5) (a) Commercial parasailing is prohibited when the
282 current observed wind conditions in the area of operation
283 include a sustained wind speed of more than 20 miles per hour,
284 wind gusts of a difference of 15 miles per hour greater than the
285 sustained wind speed, the wind speed during gusts exceeds 25
286 miles per hour, rain or heavy fog results in reduced visibility
287 of less than 0.5 mile, or when a known lightning storm comes
288 within 7 miles of the parasailing area.

289 (b) The operator of the vessel engaged in commercial
290 parasailing shall use all available means to determine
291 prevailing and forecasted weather conditions and must record
292 this information in a weather log each time passengers are to be
293 taken out on the water. The weather log must be available for
294 inspection at all times at the place of business.

295 (6) A person or operator who violates any provision of this
296 section commits a misdemeanor of the second degree, punishable
297 as provided in s. 775.082 or s. 775.083.

298 Section 4. Paragraph (d) of subsection (5) of section
299 320.08, Florida Statutes, is amended to read:

300 320.08 License taxes.—Except as otherwise provided herein,
301 there are hereby levied and imposed annual license taxes for the
302 operation of motor vehicles, mopeds, motorized bicycles as



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303 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
304 and mobile homes, as defined in s. 320.01, which shall be paid
305 to and collected by the department or its agent upon the
306 registration or renewal of registration of the following:

307 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
308 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

309 (d) A wrecker, as defined in s. 320.01(40), which is used
310 to tow a vessel as defined in s. 327.02(41) ~~s. 327.02(39)~~, a
311 disabled, abandoned, stolen-recovered, or impounded motor
312 vehicle as defined in s. 320.01(38), or a replacement motor
313 vehicle as defined in s. 320.01(39): \$41 flat, of which \$11
314 shall be deposited into the General Revenue Fund.

315 Section 5. Subsection (1) of section 327.391, Florida
316 Statutes, is amended to read:

317 327.391 Airboats regulated.—

318 (1) The exhaust of every internal combustion engine used on
319 any airboat operated on the waters of this state shall be
320 provided with an automotive-style factory muffler, underwater
321 exhaust, or other manufactured device capable of adequately
322 muffling the sound of the exhaust of the engine as described in
323 s. 327.02(25) ~~s. 327.02(24)~~. The use of cutouts or flex pipe as
324 the sole source of muffling is prohibited, except as provided in
325 subsection (4). Any person who violates this subsection commits
326 a noncriminal infraction punishable as provided in s. 327.73(1).

327 Section 6. Subsection (4) of section 328.17, Florida
328 Statutes, is amended to read:

329 328.17 Nonjudicial sale of vessels.—

330 (4) A marina, as defined in s. 327.02(21) ~~s. 327.02(20)~~,
331 shall have:



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332 (a) A possessory lien upon any vessel for storage fees,
333 dockage fees, repairs, improvements, or other work-related
334 storage charges, and for expenses necessary for preservation of
335 the vessel or expenses reasonably incurred in the sale or other
336 disposition of the vessel. The possessory lien shall attach as
337 of the date the vessel is brought to the marina or as of the
338 date the vessel first occupies rental space at the marina
339 facility.

340 (b) A possessory lien upon any vessel in a wrecked, junked,
341 or substantially dismantled condition, which has been left
342 abandoned at a marina, for expenses reasonably incurred in the
343 removal and disposal of the vessel. The possessory lien shall
344 attach as of the date the vessel arrives at the marina or as of
345 the date the vessel first occupies rental space at the marina
346 facility. If the funds recovered from the sale of the vessel, or
347 from the scrap or salvage value of the vessel, are insufficient
348 to cover the expenses reasonably incurred by the marina in
349 removing and disposing of the vessel, all costs in excess of
350 recovery shall be recoverable against the owner of the vessel.
351 For a vessel damaged as a result of a named storm, the
352 provisions of this paragraph shall be suspended for 60 days
353 following the date the vessel is damaged in the named storm. The
354 operation of the provisions specified in this paragraph run
355 concurrently with, and do not extend, the 60-day notice periods
356 provided in subsections (5) and (7).

357 Section 7. Subsection (2) of section 342.07, Florida
358 Statutes, is amended to read:

359 342.07 Recreational and commercial working waterfronts;
360 legislative findings; definitions.-



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361 (2) As used in this section, the term "recreational and
362 commercial working waterfront" means a parcel or parcels of real
363 property which ~~that~~ provide access for water-dependent
364 commercial activities, including hotels and motels as defined in
365 s. 509.242(1), or provide access for the public to the navigable
366 waters of the state. Recreational and commercial working
367 waterfronts require direct access to or a location on, over, or
368 adjacent to a navigable body of water. The term includes water-
369 dependent facilities that are open to the public and offer
370 public access by vessels to the waters of the state or that are
371 support facilities for recreational, commercial, research, or
372 governmental vessels. These facilities include public lodging
373 establishments, docks, wharfs, lifts, wet and dry marinas, boat
374 ramps, boat hauling and repair facilities, commercial fishing
375 facilities, boat construction facilities, and other support
376 structures over the water. As used in this section, the term
377 "vessel" has the same meaning as in s. 327.02(41) ~~s. 327.02(39)~~.
378 Seaports are excluded from the definition.

379 Section 8. Paragraph (b) of subsection (1) of section
380 713.78, Florida Statutes, is amended to read:

381 713.78 Liens for recovering, towing, or storing vehicles
382 and vessels.-

383 (1) For the purposes of this section, the term:

384 (b) "Vessel" means every description of watercraft, barge,
385 and airboat used or capable of being used as a means of
386 transportation on water, other than a seaplane or a "documented
387 vessel" as defined in s. 327.02(10) ~~s. 327.02(9)~~.

388 Section 9. Paragraph (b) of subsection (1) of section
389 715.07, Florida Statutes, is amended to read:



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390 715.07 Vehicles or vessels parked on private property;
391 towing.—

392 (1) As used in this section, the term:

393 (b) "Vessel" means every description of watercraft, barge,
394 and airboat used or capable of being used as a means of
395 transportation on water, other than a seaplane or a "documented
396 vessel" as defined in s. 327.02(10) ~~s. 327.02(9)~~.

397 Section 10. This act shall take effect October 1, 2013.

398

399

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

401 And the title is amended as follows:

402 Delete everything before the enacting clause
403 and insert:

404 A bill to be entitled
405 An act relating to commercial parasailing; providing a
406 short title; amending s. 327.02, F.S.; defining terms;
407 creating s. 327.375, F.S.; requiring the operator of a
408 vessel engaged in commercial parasailing to ensure
409 that the requirements of s. 327.37, F.S., are met;
410 requiring the owner of a vessel engaged in commercial
411 parasailing to obtain and carry an insurance policy;
412 providing minimum coverage requirements for the
413 insurance policy; providing requirements for proof of
414 insurance; specifying the insurance information that
415 must be provided to each rider; prohibiting commercial
416 parasailing unless certain conditions are met; and
417 under certain weather conditions; requiring that a
418 weather log be maintained and made available for



419 inspection; providing a penalty; amending ss. 320.08,
420 327.391, 328.17, 342.07, 713.78, and 715.07, F.S.;
421 conforming cross-references to changes made by the
422 act; providing an effective date.

By Senator Sachs

34-00053-13

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1 A bill to be entitled
 2 An act relating to commercial parasailing; providing a
 3 short title; amending s. 327.02, F.S.; defining terms;
 4 creating s. 327.375, F.S.; requiring the owner of a
 5 vessel engaged in commercial parasailing to obtain and
 6 carry an insurance policy; providing minimum coverage
 7 requirements for the insurance policy; providing
 8 requirements for proof of insurance; specifying the
 9 insurance information that must be provided to each
 10 rider; prohibiting commercial parasailing unless
 11 certain conditions are met; providing for the launch
 12 from and recovery of riders to a towing vessel;
 13 authorizing up to three persons to be tethered to the
 14 towing vessel; prohibiting commercial parasailing in
 15 certain areas, during certain hours, and under certain
 16 weather conditions; requiring that a weather log be
 17 maintained and made available for inspection;
 18 requiring a safety briefing for passengers and
 19 parasail riders; providing a penalty; amending ss.
 20 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07,
 21 F.S.; conforming cross-references to changes made by
 22 the act; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. This act may be cited as the "White-Miskell
 27 Act."

28 Section 2. Section 327.02, Florida Statutes, is amended to
 29 read:

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

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30 327.02 Definitions of terms used in this chapter and in
 31 chapter 328.—As used in this chapter and in chapter 328, unless
 32 the context clearly requires a different meaning, the term:
 33 (1) "Airboat" means a vessel that is primarily designed for
 34 use in shallow waters and powered by an internal combustion
 35 engine with an airplane-type propeller mounted above the stern
 36 and used to push air across a set of rudders.
 37 (2) "Alien" means a person who is not a citizen of the
 38 United States.
 39 (3) "Boating accident" means a collision, accident, or
 40 casualty involving a vessel in or upon, or entering into or
 41 exiting from, the water, including capsizing, collision with
 42 another vessel or object, sinking, personal injury, death,
 43 disappearance of any person from on board under circumstances
 44 that ~~which~~ indicate the possibility of death or injury, or
 45 property damage to any vessel or dock.
 46 (4) "Canoe" means a light, narrow vessel with curved sides
 47 and with both ends pointed. A canoe-like vessel with a transom
 48 may not be excluded from the definition of a canoe if the width
 49 of its transom is less than 45 percent of the width of its beam
 50 or it has been designated as a canoe by the United States Coast
 51 Guard.
 52 (5) (a) "Commercial parasailing" means providing or offering
 53 to provide, for consideration, any activity involving the towing
 54 of a person by a motorboat when:
 55 1. One or more persons are tethered to the towing vessel;
 56 2. The person or persons ascend above the water; and
 57 3. The person or persons remain suspended under a canopy
 58 above the water while the vessel is underway.

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

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59 (b) The term does not include ultralight glider towing
 60 conducted under rules of the Federal Aviation Administration
 61 governing ultralight air vehicles as defined in 14 C.F.R. part
 62 103.

63 ~~(6)(5)~~ "Commercial vessel" means:

64 (a) Any vessel primarily engaged in the taking or landing
 65 of saltwater fish or saltwater products or freshwater fish or
 66 freshwater products, or any vessel licensed pursuant to s.
 67 379.361 from which commercial quantities of saltwater products
 68 are harvested, from within and without the waters of this state
 69 for sale either to the consumer, retail dealer, or wholesale
 70 dealer.

71 (b) Any other vessel, except a recreational vessel as
 72 defined in this section.

73 ~~(7)(6)~~ "Commission" means the Fish and Wildlife
 74 Conservation Commission.

75 ~~(8)(7)~~ "Dealer" means any person authorized by the
 76 Department of Revenue to buy, sell, resell, or otherwise
 77 distribute vessels. Such person shall have a valid sales tax
 78 certificate of registration issued by the Department of Revenue
 79 and a valid commercial or occupational license required by any
 80 county, municipality, or political subdivision of the state in
 81 which the person operates.

82 ~~(9)(8)~~ "Division" means the Division of Law Enforcement of
 83 the Fish and Wildlife Conservation Commission.

84 ~~(10)(9)~~ "Documented vessel" means a vessel for which a
 85 valid certificate of documentation is outstanding pursuant to 46
 86 C.F.R. part 67.

87 ~~(11)(10)~~ "Floating structure" means a floating entity, with

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88 or without accommodations built thereon, which is not primarily
 89 used as a means of transportation on water but which serves
 90 purposes or provides services typically associated with a
 91 structure or other improvement to real property. The term
 92 "floating structure" includes, but is not limited to, each
 93 entity used as a residence, place of business or office with
 94 public access, hotel or motel, restaurant or lounge, clubhouse,
 95 meeting facility, storage or parking facility, mining platform,
 96 dredge, dragline, or similar facility or entity represented as
 97 such. Floating structures are expressly excluded from the
 98 definition of the term "vessel" provided in this section.
 99 Incidental movement upon water or resting partially or entirely
 100 on the bottom ~~does shall~~ not, in and of itself, preclude an
 101 entity from classification as a floating structure.

102 ~~(12)(11)~~ "Florida Intracoastal Waterway" means the Atlantic
 103 Intracoastal Waterway, the Georgia state line north of
 104 Fernandina to Miami; the Port Canaveral lock and canal to the
 105 Atlantic Intracoastal Waterway; the Atlantic Intracoastal
 106 Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to
 107 Fort Myers; the St. Johns River, Jacksonville to Sanford; the
 108 Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf
 109 Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to
 110 Anclote open bay section (using Gulf of Mexico); the Gulf
 111 Intracoastal Waterway, Carrabelle to the Alabama state line west
 112 of Pensacola; and the Apalachicola, Chattahoochee, and Flint
 113 Rivers in Florida.

114 ~~(13)(12)~~ "Homemade vessel" means any vessel built after
 115 October 31, 1972, for which a federal hull identification number
 116 is not required to be assigned by the manufacturer pursuant to

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 117 federal law, or any vessel constructed or assembled prior to
 118 November 1, 1972, by other than a licensed manufacturer for his
 119 or her own use or the use of a specific person. A vessel
 120 assembled from a manufacturer's kit or constructed from an
 121 unfinished manufactured hull shall be considered to be a
 122 homemade vessel if such a vessel is not required to have a hull
 123 identification number assigned by the United States Coast Guard.
 124 A rebuilt or reconstructed vessel shall in no event be construed
 125 to be a homemade vessel.

126 (14)~~(13)~~ "Houseboat" means any vessel that ~~which~~ is used
 127 primarily as a residence for a minimum of 21 days during any 30-
 128 day period, in a county of this state, and this residential use
 129 of the vessel is to the preclusion of the use of the vessel as a
 130 means of transportation.

131 (15)~~(14)~~ "Length" means the measurement from end to end
 132 over the deck parallel to the centerline excluding sheer.

133 (16)~~(15)~~ "Lien" means a security interest that ~~which~~ is
 134 reserved or created by a written agreement recorded with the
 135 Department of Highway Safety and Motor Vehicles pursuant to s.
 136 328.15 and that ~~which~~ secures payment or performance of an
 137 obligation and is generally valid against third parties.

138 (17)~~(16)~~ "Lienholder" means a person holding a security
 139 interest in a vessel, which interest is recorded with the
 140 Department of Highway Safety and Motor Vehicles pursuant to s.
 141 328.15.

142 (18)~~(17)~~ "Live-aboard vessel" means:

143 (a) Any vessel used solely as a residence and not for
 144 navigation;

145 (b) Any vessel represented as a place of business or a

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 146 professional or other commercial enterprise; or
 147 (c) Any vessel for which a declaration of domicile has been
 148 filed pursuant to s. 222.17.
 149

150 A commercial fishing boat is expressly excluded from the term
 151 "live-aboard vessel."

152 (19)~~(18)~~ "Livery vessel" means any vessel leased, rented,
 153 or chartered to another for consideration.

154 (20)~~(19)~~ "Manufactured vessel" means any vessel built after
 155 October 31, 1972, for which a federal hull identification number
 156 is required pursuant to federal law, or any vessel constructed
 157 or assembled prior to November 1, 1972, by a duly licensed
 158 manufacturer.

159 (21)~~(20)~~ "Marina" means a licensed commercial facility that
 160 ~~which~~ provides secured public moorings or dry storage for
 161 vessels on a leased basis. A commercial establishment authorized
 162 by a licensed vessel manufacturer as a dealership shall be
 163 considered a marina for nonjudicial sale purposes.

164 (22)~~(21)~~ "Marine sanitation device" means any equipment
 165 other than a toilet, for installation on board a vessel, which
 166 is designed to receive, retain, treat, or discharge sewage, and
 167 any process to treat such sewage. Marine sanitation device Types
 168 I, II, and III shall be defined as provided in 33 C.F.R. part
 169 159.

170 (23)~~(22)~~ "Marker" means any channel mark or other aid to
 171 navigation, information or regulatory mark, isolated danger
 172 mark, safe water mark, special mark, inland waters obstruction
 173 mark, or mooring buoy in, on, or over the waters of the state or
 174 the shores thereof, and includes, but is not limited to, a sign,

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175 beacon, buoy, or light.

176 (24)~~(23)~~ "Motorboat" means any vessel equipped with
177 machinery for propulsion, irrespective of whether the propulsion
178 machinery is in actual operation.

179 (25)~~(24)~~ "Muffler" means an automotive-style sound-
180 suppression device or system designed to effectively abate the
181 sound of exhaust gases emitted from an internal combustion
182 engine and prevent excessive sound when installed on such an
183 engine.

184 (26)~~(25)~~ "Navigation rules" means the International
185 Navigational Rules Act of 1977, 33 U.S.C. appendix following s.
186 1602, as amended, including the annexes thereto, for vessels on
187 waters outside of established navigational lines of demarcation
188 as specified in 33 C.F.R. part 80 or the Inland Navigational
189 Rules Act of 1980, 33 U.S.C. ss. 2001 et seq., as amended,
190 including the annexes thereto, for vessels on all waters not
191 outside of such lines of demarcation.

192 (27)~~(26)~~ "Nonresident" means a citizen of the United States
193 who has not established residence in this state and has not
194 continuously resided in this state for 1 year and in one county
195 for the 6 months immediately preceding the initiation of a
196 vessel titling or registration action.

197 (28)~~(27)~~ "Operate" means to be in charge of or in command
198 of or in actual physical control of a vessel upon the waters of
199 this state, or to exercise control over or to have
200 responsibility for a vessel's navigation or safety while the
201 vessel is underway upon the waters of this state, or to control
202 or steer a vessel being towed by another vessel upon the waters
203 of the state.

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204 (29)~~(28)~~ "Owner" means a person, other than a lienholder,
205 having the property in or title to a vessel. The term includes a
206 person entitled to the use or possession of a vessel subject to
207 an interest in another person, reserved or created by agreement
208 and securing payment of performance of an obligation, but the
209 term excludes a lessee under a lease not intended as security.

210 (30) "Passenger support system" means a device used to
211 tether, connect, or otherwise suspend a person under a canopy.

212 (31)~~(29)~~ "Person" means an individual, partnership, firm,
213 corporation, association, or other entity.

214 (32)~~(30)~~ "Personal watercraft" means a vessel less than 16
215 feet in length which uses an inboard motor powering a water jet
216 pump, as its primary source of motive power and which is
217 designed to be operated by a person sitting, standing, or
218 kneeling on the vessel, rather than in the conventional manner
219 of sitting or standing inside the vessel.

220 (33)~~(31)~~ "Portable toilet" means a device consisting of a
221 lid, seat, containment vessel, and support structure which that
222 is specifically designed to receive, retain, and discharge human
223 waste and which that is capable of being removed from a vessel
224 by hand.

225 (34)~~(32)~~ "Prohibited activity" means such activity as will
226 impede or disturb navigation or creates a safety hazard on
227 waterways of this state.

228 (35)~~(33)~~ "Racing shell," "rowing scull," or "racing kayak"
229 means a manually propelled vessel that which is recognized by
230 national or international racing associations for use in
231 competitive racing and in which all occupants, with the
232 exception of a coxswain, if one is provided, row, scull, or

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233 paddle, and ~~that which~~ is not designed to carry and does not
234 carry any equipment not solely for competitive racing.

235 ~~(36)-(34)~~ "Recreational vessel" means any vessel:

236 (a) Manufactured and used primarily for noncommercial
237 purposes; or

238 (b) Leased, rented, or chartered to a person for the
239 person's noncommercial use.

240 ~~(37)-(35)~~ "Registration" means a state operating license on
241 a vessel which is issued with an identifying number, an annual
242 certificate of registration, and a decal designating the year
243 for which a registration fee is paid.

244 ~~(38)-(36)~~ "Resident" means a citizen of the United States
245 who has established residence in this state and has continuously
246 resided in this state for 1 year and in one county for the 6
247 months immediately preceding the initiation of a vessel titling
248 or registration action.

249 ~~(39)-(37)~~ "Sailboat" means any vessel whose sole source of
250 propulsion is the wind.

251 (40) "Sustained wind speed" means a wind speed determined
252 by averaging the observed wind speed rounded to the nearest
253 whole knot over a 2-minute period.

254 ~~(41)-(38)~~ "Unclaimed vessel" means any undocumented vessel,
255 including its machinery, rigging, and accessories, which is in
256 the physical possession of any marina, garage, or repair shop
257 for repairs, improvements, or other work with the knowledge of
258 the vessel owner and for which the costs of such services have
259 been unpaid for a period in excess of 90 days following from the
260 date written notice of the completed work is given by the
261 marina, garage, or repair shop to the vessel owner.

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262 ~~(42)-(39)~~ "Vessel" is synonymous with boat as referenced in
263 s. 1(b), Art. VII of the State Constitution and includes every
264 description of watercraft, barge, and airboat, other than a
265 seaplane on the water, used or capable of being used as a means
266 of transportation on water.

267 ~~(43)-(40)~~ "Waters of this state" means any navigable waters
268 of the United States within the territorial limits of this
269 state, ~~and~~ the marginal sea adjacent to this state and the high
270 seas when navigated as a part of a journey or ride to or from
271 the shore of this state, and all the inland lakes, rivers, and
272 canals under the jurisdiction of this state.

273 Section 3. Section 327.375, Florida Statutes, is created to
274 read:

275 327.375 Commercial parasailing.—

276 (1) The owner of a vessel engaged in commercial parasailing
277 may not offer or provide for consideration any parasailing
278 activity unless the owner first obtains and carries in full
279 force and effect an insurance policy, from an insurance carrier
280 licensed in this state or approved by the Office of Insurance
281 Regulation, insuring against any accident, loss, injury,
282 property damage, death, or other casualty caused by or resulting
283 from any commercial parasailing activity. The insurance policy
284 must provide coverage of at least \$1 million per person and \$2
285 million per event. Proof of insurance must be available for
286 inspection at the location where commercial parasailing is
287 offered or provided for consideration, and each customer who
288 requests it shall be provided with the insurance carrier's name
289 and address and the insurance policy number.

290 (2) (a) Commercial parasailing is prohibited unless:

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291 1. The person operating the vessel engaged in commercial
 292 parasailing has a current and valid license issued by the United
 293 States Coast Guard authorizing that person to carry passengers
 294 for hire. The license must be appropriate for the number of
 295 passengers carried and the displacement of the vessel. The
 296 license must be carried on the vessel and be available for
 297 inspection while engaging in commercial parasailing activities.

298 2. An observer 18 years of age or older is present in the
 299 vessel at all times to monitor the progress of any tethered
 300 parasail rider and parasail equipment. The observer may not be a
 301 customer, must be attentive to the parasail rider or riders and
 302 equipment, and may not have any other duties while the rider or
 303 riders are in the water or suspended above the water.

304 3. The vessel's passenger support system, including, but
 305 not limited to, ropes and harnesses used to secure a parasail
 306 rider, has been inspected by the division pursuant to its
 307 enforcement authority provided in s. 327.70.

308 4. The towline is rated for a tensile strength exceeding
 309 4,800 pounds, is braided, and is a low-stretch type not
 310 exceeding 500 feet in length.

311 5. All riders wear an appropriate floatation device
 312 approved by the United States Coast Guard, other than an
 313 inflatable device, which is in serviceable condition and of the
 314 proper size.

315 6. The vessel is in full compliance with all requirements
 316 of the United States Coast Guard governing crewing and equipment
 317 carriage for passenger-carrying vessels as specified in the Code
 318 of Federal Regulations or as otherwise specified by the United
 319 States Coast Guard in the vessel's certificate of inspection.

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320 7. The vessel is equipped with a functional VHF marine
 321 transceiver and a separate electronic device capable of access
 322 to National Weather Service forecasts and current weather
 323 conditions.

324 (b) A person operating a vessel engaged in commercial
 325 parasailing shall launch riders only from and recover riders
 326 only to the vessel and no more than three persons may be
 327 tethered to the towing vessel and ascend above the water at any
 328 time.

329 (c) A person may not operate a vessel towing a commercial
 330 parasailing rider on any coastal waters of the state less than
 331 1,800 feet from the shore. This restriction applies to the
 332 entire commercial parasailing apparatus, including the vessel,
 333 towline, and rider.

334 (d) A person may not operate a vessel towing a commercial
 335 parasailing rider so that the vessel, towline, or rider comes
 336 within 400 feet of:

337 1. An anchored vessel;

338 2. A person in the water; or

339 3. A structure, bridge, power line, wharf, pier, dock,
 340 platform, piling, marker, or other similar fixed object.

341 (e) Commercial parasailing is prohibited within a distance
 342 of 100 feet of the marked channel of the Florida Intracoastal
 343 Waterway and during any time between the hours of one-half hour
 344 after sunset to one-half hour before sunrise.

345 (f) Commercial parasailing is prohibited when the current
 346 conditions or those forecasted by the National Weather Service
 347 include a sustained wind speed of more than 20 miles per hour in
 348 the area of operation, rain or heavy fog that results in reduced

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349 visibility of less than 0.5 miles, or a known lightning storm
350 within 7 miles of the parasailing area.

351 (g) The captain of the vessel engaged in commercial
352 parasailing shall use all available means to determine
353 prevailing and forecasted weather conditions and record this
354 information in a weather log each time passengers are to be
355 taken out on the water. The weather log must be available for
356 inspection at all times at the place of business.

357 (h) Each passenger and parasail rider must be given a
358 safety briefing before embarking or before the commercial
359 parasailing activity commences. This briefing must include a
360 description of the equipment, the parasailing activity, and the
361 inherent risks and instruction on how to safely evacuate from
362 the passenger support system during a water landing.

363 (3) A person or operator who violates any provision of this
364 section commits a misdemeanor of the second degree, punishable
365 as provided in s. 775.082 or s. 775.083.

366 Section 4. Paragraph (d) of subsection (5) of section
367 320.08, Florida Statutes, is amended to read:

368 320.08 License taxes.—Except as otherwise provided herein,
369 there are hereby levied and imposed annual license taxes for the
370 operation of motor vehicles, mopeds, motorized bicycles as
371 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
372 and mobile homes, as defined in s. 320.01, which shall be paid
373 to and collected by the department or its agent upon the
374 registration or renewal of registration of the following:

375 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
376 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

377 (d) A wrecker, as defined in s. 320.01(40), which is used

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378 to tow a vessel as defined in s. 327.02(42) ~~s. 327.02(39)~~, a
379 disabled, abandoned, stolen-recovered, or impounded motor
380 vehicle as defined in s. 320.01(38), or a replacement motor
381 vehicle as defined in s. 320.01(39): \$41 flat, of which \$11
382 shall be deposited into the General Revenue Fund.

383 Section 5. Subsection (1) of section 327.391, Florida
384 Statutes, is amended to read:

385 327.391 Airboats regulated.—

386 (1) The exhaust of every internal combustion engine used on
387 any airboat operated on the waters of this state shall be
388 provided with an automotive-style factory muffler, underwater
389 exhaust, or other manufactured device capable of adequately
390 muffling the sound of the exhaust of the engine as described in
391 s. 327.02(25) ~~s. 327.02(24)~~. The use of cutouts or flex pipe as
392 the sole source of muffling is prohibited, except as provided in
393 subsection (4). Any person who violates this subsection commits
394 a noncriminal infraction punishable as provided in s. 327.73(1).

395 Section 6. Subsection (4) of section 328.17, Florida
396 Statutes, is amended to read:

397 328.17 Nonjudicial sale of vessels.—

398 (4) A marina, as defined in s. 327.02(21) ~~s. 327.02(20)~~,
399 shall have:

400 (a) A possessory lien upon any vessel for storage fees,
401 dockage fees, repairs, improvements, or other work-related
402 storage charges, and for expenses necessary for preservation of
403 the vessel or expenses reasonably incurred in the sale or other
404 disposition of the vessel. The possessory lien shall attach as
405 of the date the vessel is brought to the marina or as of the
406 date the vessel first occupies rental space at the marina

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407 facility.

408 (b) A possessory lien upon any vessel in a wrecked, junked,
 409 or substantially dismantled condition, which has been left
 410 abandoned at a marina, for expenses reasonably incurred in the
 411 removal and disposal of the vessel. The possessory lien shall
 412 attach as of the date the vessel arrives at the marina or as of
 413 the date the vessel first occupies rental space at the marina
 414 facility. If the funds recovered from the sale of the vessel, or
 415 from the scrap or salvage value of the vessel, are insufficient
 416 to cover the expenses reasonably incurred by the marina in
 417 removing and disposing of the vessel, all costs in excess of
 418 recovery shall be recoverable against the owner of the vessel.
 419 For a vessel damaged as a result of a named storm, the
 420 provisions of this paragraph shall be suspended for 60 days
 421 following the date the vessel is damaged in the named storm. The
 422 operation of the provisions specified in this paragraph run
 423 concurrently with, and do not extend, the 60-day notice periods
 424 provided in subsections (5) and (7).

425 Section 7. Subsection (2) of section 342.07, Florida
 426 Statutes, is amended to read:

427 342.07 Recreational and commercial working waterfronts;
 428 legislative findings; definitions.—

429 (2) As used in this section, the term "recreational and
 430 commercial working waterfront" means a parcel or parcels of real
 431 property which ~~that~~ provide access for water-dependent
 432 commercial activities, including hotels and motels as defined in
 433 s. 509.242(1), or provide access for the public to the navigable
 434 waters of the state. Recreational and commercial working
 435 waterfronts require direct access to or a location on, over, or

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436 adjacent to a navigable body of water. The term includes water-
 437 dependent facilities that are open to the public and offer
 438 public access by vessels to the waters of the state or that are
 439 support facilities for recreational, commercial, research, or
 440 governmental vessels. These facilities include public lodging
 441 establishments, docks, wharfs, lifts, wet and dry marinas, boat
 442 ramps, boat hauling and repair facilities, commercial fishing
 443 facilities, boat construction facilities, and other support
 444 structures over the water. As used in this section, the term
 445 "vessel" has the same meaning as in s. 327.02(42) ~~s. 327.02(39)~~.
 446 Seaports are excluded from the definition.

447 Section 8. Paragraph (b) of subsection (1) of section
 448 713.78, Florida Statutes, is amended to read:

449 713.78 Liens for recovering, towing, or storing vehicles
 450 and vessels.—

451 (1) For the purposes of this section, the term:

452 (b) "Vessel" means every description of watercraft, barge,
 453 and airboat used or capable of being used as a means of
 454 transportation on water, other than a seaplane or a "documented
 455 vessel" as defined in s. 327.02(10) ~~s. 327.02(9)~~.

456 Section 9. Paragraph (b) of subsection (1) of section
 457 715.07, Florida Statutes, is amended to read:

458 715.07 Vehicles or vessels parked on private property;
 459 towing.—

460 (1) As used in this section, the term:

461 (b) "Vessel" means every description of watercraft, barge,
 462 and airboat used or capable of being used as a means of
 463 transportation on water, other than a seaplane or a "documented
 464 vessel" as defined in s. 327.02(10) ~~s. 327.02(9)~~.

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465

Section 10. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Senator Maria Lorts Sachs
Minority Leader Pro Tempore
District 34

Committees:

Gaming
Vice Chair

Agriculture

Education

Appropriations
Subcommittee on
Education

Appropriations
Subcommittee on Finance
and Tax

Military Affairs, Space,
and Domestic Security

Regulated Industries

STAFF:

Joshua Freeman
Legislative Assistant

Caitlin Lewis
Legislative Assistant

August Mangeney
Legislative Assistant

March 4, 2013

The Office of Senator Stargel
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I am writing to request that Senate Bill 64 (Commercial Parasailing) be heard during the Regulated Industries Committee Meeting on March 14th. If you have any questions feel free to contact me or my staff. Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Maria Lorts Sachs".

Sen. Maria Sachs,
District 34

Cc: Patrick L. "Booter" Imhof
Lynn Koon
Rachel Barnes
Chris Dowdy
Samantha Van Camp

17th Avenue, Suite E, Delray Beach, Florida 33445 (561) 279-1427
Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5091

Senate's Website: www.flsenate.gov

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

tab 6

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/2/13

Meeting Date

Topic Commonwealth PARASAILING

Bill Number SB 64
(if applicable)

Name DAVE ERICKS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 205 S ADAMS ST
Street

Phone 870-224-0880

TALMAHASSO FL 32301
City State Zip

E-mail ERICKSDAVE@AOL.COM

Speaking: For Against Information

Representing BROWARD COUNTY

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.

Tab 6

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/2/13

Meeting Date

Topic SB 64 PARASAILS

Bill Number SB 64
(if applicable)

Name JACK DAUGHERTY

Amendment Barcode 949474
(if applicable)

Job Title FWC MAJOR - BOATING AND WATERWAYS

Address 620 S MERIDIAN ST. TALLAHASSEE
Street

Phone 352 427 2892

TALLAHASSEE FL
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA FISH AND WILDLIFE

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.

Tab 6

THE FLORIDA SENATE APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic ~~State~~ Paralely Amendment

Bill Number SB 64
(if applicable)

Name BONNIE BASHAM

Amendment Barcode _____
(if applicable)

Job Title _____

Address 133 oak st, #15
Street FL
City _____ *State* _____ *Zip* _____

Phone 850 933 7277

E-mail _____

Speaking: For Against Information

Representing BOAT U.S.

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.

Table

THE FLORIDA SENATE APPEARANCE RECORD

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

Meeting Date _____

Topic Parasailing

Bill Number 64
(if applicable)

Name Russ Klenet

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1512 E Broward Blvd

Phone 954 760-7277

Street Ft. Lauderdale FL 3330
City State Zip

E-mail russ@rkna.net

Speaking: For Against Information

Representing City of Pompano Beach

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 248

INTRODUCER: Health Policy Committee and Senator Thrasher

SUBJECT: Treatment Programs for Impaired Licensees and Applicants

DATE: March 26, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davlantes</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

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

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 248 authorizes an entity that employs a registered nurse as an executive director to serve as a consultant. It provides that entities serving as consultants for the impaired practitioner treatment program within the Department of Health (DOH) are not required to be licensed as substance abuse providers or mental health treatment providers for purposes of participating in the program. Consultants are authorized to assist students enrolled in a school or program to become licensed as health care practitioners as defined in ch. 456, F.S., or as veterinarians. The bill releases health care practitioner schools and veterinary schools from liability for referring students to consultants.

The bill states that each board or profession within the Division of Medical Quality Assurance within the DOH has the authority to ask any license applicant to undergo an evaluation for impairment before deciding to certify or not certify the licensure application. If the applicant agrees to undergo such an evaluation, DOH's deadline for certifying or not certifying the application is tolled until the evaluation can be completed and results reported to the appropriate board. The bill provides guidelines concerning the release and custody of records relating to the impaired practitioner. The bill also subjects radiologic technologists to the impaired practitioner provisions in s. 456.076, F.S.

The bill provides an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 456.076, 458.331, and 459.015, F.S. This bill creates section 468.315, Florida Statutes.

II. Present Situation:

Treatment Programs for Impaired Health Care Practitioners

Section 456.076, F.S., provides resources to assist health care practitioners¹ who are impaired as a result of the misuse or abuse of alcohol, drugs, or a mental or physical condition which could affect the practitioners' ability to practice with skill and safety. Whenever the Department of Health (DOH) receives a legally sufficient complaint² alleging that a practitioner is so impaired, and no other complaints exist against the practitioner, the DOH shall forward all information it has concerning him or her to a consultant.³ The consultant, who must be a licensed physician, a licensed nurse, or an entity with a licensed physician or nurse as its medical director, assists the DOH in determining if the practitioner is actually impaired, connects the practitioner to appropriate resources for treatment of the impairment, and monitors progress. Consultants may also work with medical students, physician assistant students, nursing students, or pharmacy students at a school's request. The Department of Health or the consultant is not responsible for any fees incurred throughout this process.⁴

An impaired practitioner will not be disciplined by the DOH as long as he or she:

- Is not the subject of any other complaints to the DOH;
- Has acknowledged the impairment;
- Has voluntarily enrolled in an appropriate, approved treatment program;
- Has voluntarily withdrawn from practice or limited his or her scope of practice, as required by the consultant, until the successful completion of an approved treatment program; and
- Has authorized release of all records of evaluations, diagnoses, and treatment to the consultant.⁵

There are currently two department-approved treatment programs for impaired practitioners in Florida, the Professionals Resource Network and the Intervention Project for Nurses. These

¹ Health care practitioners are defined in s. 456.001(4), F.S., to include licensed acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, athletic trainers, orthotists, prosthetists, practitioners of electrolysis, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among other professions. These practitioners are regulated by the Division of Medical Quality Assurance within the Department of Health.

² Section 456.073(1), F.S., a complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., or any of the practice acts or rules relating to professions regulated by the department. Special requirements apply to complaints filed by state prisoners. The department is statutorily required to investigate all legally sufficient complaints.

³ Section 456.076(3), F.S.

⁴ Section 456.076(2), F.S.

⁵ Section 456.076(3)(a), F.S.

programs also serve as consultants to the DOH.⁶ Any information related to treatment of an impaired practitioner is exempt from state public records requirements except when a consultant determines that impairment affects a practitioner's practice and constitutes an immediate, serious danger to the public health, safety, or welfare.⁷

Treatment Programs for Other Impaired Practitioners

The Department of Business and Professional Regulation (DBPR) has no statutory authority under its general provisions in ch. 455, F.S., to create its own impaired practitioner program. However, ch. 455, F.S., does provide for disciplinary action against persons who do not fully participate in the program operated by the DOH. Section 455.227(1)(u), F.S., states that "termination from a treatment program for impaired practitioners as described in s. 456.076, F.S., for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program" is grounds for disciplinary action from the DBPR. Chapter 310, F.S., concerning harbor pilots, and ch. 474, F.S., concerning veterinarians, charge the DBPR with the same duties concerning impaired practitioners as the DOH, but no other profession regulated by the DBPR provides an impaired practitioner program.

Section 468.3101(1)(n), F.S., which provides the disciplinary grounds for radiologic personnel, also subjects the licensee to discipline for failing to comply with the recommendations of the department's impaired practitioner program for treatment, evaluation, or monitoring. However, radiological personnel are not included in the definition of "health care practitioner" in ch. 456, F.S., and are thus not subject to the impaired practitioner program in s. 456.076, F.S.⁸

Currently, the Professionals Resource Network also treats veterinarians, harbor pilots, and certified public accountants.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 456.076(2)(a), F.S., to add an entity that employs an executive director who is a registered nurse to the list of persons eligible to contract with the DOH as an impaired practitioner consultant.

The bill amends s. 456.076(2)(b), F.S., to provide that entities serving as consultants are not required to be licensed as substance abuse providers or mental health treatment providers under chs. 394, 395, or 397, F.S., for purposes of participating in the impaired practitioner treatment program.

The bill amends s. 456.076(2)(c), F.S., to provide that consultants are authorized to contract with schools or programs to assist students enrolled to become licensed as health care practitioners or veterinarians. It deletes the current provision that limits the provision to students enrolled to become medical and osteopathic physicians and their assistants, nurses, and pharmacists.

⁶ See Professionals Resource Network, located at: <http://www.flprn.org/about.html> (Last visited March 26, 2013).

⁷ Section 456.076(3)(e), (5), and (6), F.S.

⁸ See s. 456.001(4), F.S.

⁹ *Supra* note 6.

The bill amends s. 456.076(2)(d), F.S., to provide liability protection for health care practitioner schools and veterinary schools for referring students to consultants.

The bill amends s. 456.076(3), F.S., to provide that each board or profession within the Division of Medical Quality Assurance has the authority to refer any licensure applicant to a consultant to determine if he or she is impaired. This referral may be conducted before the board or profession decides whether to certify the license application. If the applicant agrees to be evaluated by a consultant, the DOH's deadline to approve or deny the licensure application¹⁰ is tolled until the evaluation is completed and the consultant's recommendation has been conveyed to the appropriate board. If the applicant refuses an evaluation, the board may approve or deny the license application.

The bill creates s. 456.076(3), F.S., to provide that the consultant is the official custodian of all records relating to any action between an impaired practitioner or applicant and the consultant. The consultant may disclose to the practitioner, license applicant, or his or her designee any information that has been obtained by the consultant, but only to the extent that it is necessary to carry out the consultant's duties under s. 456.076, F.S. The Department of Health and any other entity that has entered into a contract with the consultant for his or her services has direct administrative control over the consultant so as to receive disclosures required by federal law. If a disciplinary proceeding is pending, the impaired practitioner or license applicant may obtain these records from the DOH following procedures in s. 456.073, F.S.¹¹

Section 2 amends s. 458.331(1)(e), F.S., to require approved treatment providers licensed under the Medical Practice Act to forward information to the DOH or the consultant as the official custodian of records in accordance with the impaired practitioner requirements in s. 456.076, F.S.

Section 3 amends s. 459.015(1)(e), F.S., to also require approved treatment providers licensed under the Osteopathic Medical Practice Act to forward information to the DOH or the consultant as the official custodian of records in accordance with the impaired practitioner requirements in s. 456.076, F.S.

Section 4 creates s. 468.315, F.S., to provide that radiologic personnel are subject to the provisions of the impaired practitioner program under s. 456.076, F.S.

Section 5 provides an effective date of July 1, 2013.

¹⁰ Section 120.60(1), F.S., provides a maximum period of 90 days for an agency to approve a completed application for a license.

¹¹ Section 456.073(10), F.S., states that any complaint and subsequent investigation relating to a complaint is held confidential and exempt from disclosure as a public record under s. 119.07(1), F.S., until ten days after probable cause has been found by the appropriate disciplinary panel or until the subject of the investigation waives his or her right to confidentiality, whichever occurs first. Upon completion of the investigation and finding of probable cause, the subject of the investigation has the right to inspect the investigative file after submission of a written request. The subject may also examine the testimony of expert witnesses or patient if he or she agrees to keep this information confidential until ten days after probable cause has been found. Confidentiality of patient records must also be maintained.

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:

Consultants may see an increase in revenue from the expanded pool of students, veterinary students, and health practitioner licensure applicants. These students and applicants will bear the costs of their own referral and treatment.

C. Government Sector Impact:

The DBPR may experience an increase in cost if it decides to set up its own impaired practitioner referral program. The DOH may experience an increase in cost from a possible increased volume of impaired professionals identified due to the expansion of eligibility for the impaired practitioner program.

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 Health Policy on March 14, 2013:

The CS eliminates the amendment to s. 20.165, F.S., which would have allowed DBPR to require that a licensee or license applicant to comply with impaired practitioner program provisions in s. 456.076, F.S., as if he or she were under the jurisdiction of the DOH. This

amendment also granted DBPR and its professional boards the same powers granted to the DOH and its boards under s. 456.076, F.S.

The CS clarifies that consultants do not need to be licensed as substance abuse providers or mental health treatment providers for the purposes of providing services under the impaired practitioner treatment program. The CS also clarifies that consultants are authorized to assist students enrolled in a school or program to become licensed as health care practitioners as defined in ch. 456, F.S.

The CS eliminates the bill's original expansion of provisions concerning identification, monitoring, and treatment of impaired health care practitioners to include applicants for licensure under the DOH in addition to current licensees. Instead, the CS provides that each board or profession may evaluate licensure applicants for impairment before deciding whether to certify or not certify the application. If the applicant agrees to undergo evaluation by a consultant, the DOH's deadline for certifying or not certifying a licensure application is tolled until the evaluation is concluded and the results have been relayed to the appropriate board.

The CS also removes the bill's expansion of entities who can submit information on a potentially impaired practitioner or license applicant to a consultant; only DOH may submit such information. The CS also makes some technical amendments to numbering of subsections to correspond to changes made in the bill.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Thrasher

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1 A bill to be entitled
 2 An act relating to treatment programs for impaired
 3 licensees and applicants; amending s. 456.076, F.S.;
 4 exempting an entity retained by the Department of
 5 Health as an impaired practitioner consultant from
 6 certain licensure requirements; authorizing impaired
 7 practitioner consultants to contract with schools or
 8 programs to provide services to impaired students who
 9 are enrolled for the purpose of preparing for
 10 licensure as a specified health care practitioner or
 11 as a veterinarian; limiting the liability of those
 12 schools or programs when they refer a student to an
 13 impaired practitioner consultant; authorizing each
 14 board and profession within the division to delegate
 15 to its chair or other designee the authority to
 16 determine that an applicant for licensure under its
 17 jurisdiction may be impaired before certifying or
 18 declining to certify an application for licensure;
 19 authorizing the chair or other designee to refer the
 20 applicant to the consultant for an evaluation before
 21 the board certifies or declines to certify the
 22 applicant's application to the department; tolling the
 23 department's deadline for approving or denying the
 24 application until the evaluation is completed and the
 25 result of the evaluation and recommendation by the
 26 consultant is communicated to the board by the
 27 consultant if the applicant agrees to be evaluated by
 28 the consultant; requiring the board to certify or
 29 decline to certify the applicant's application to the

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30 department notwithstanding the lack of an evaluation
 31 and recommendation by the consultant if the applicant
 32 declines to be evaluated by the consultant; providing
 33 that the impaired practitioner consultant is the
 34 official custodian of records relating to the referral
 35 of the licensee or applicant to the consultant and any
 36 other interaction between them; clarifying the
 37 circumstances under which an impaired practitioner
 38 consultant may disclose certain information concerning
 39 an impaired licensee or applicant; authorizing the
 40 Department of Health and others that contract with an
 41 impaired practitioner consultant to have
 42 administrative control over the consultant to the
 43 extent necessary to receive disclosures allowed under
 44 federal law; authorizing an impaired licensee to
 45 obtain confidential information from the department
 46 regarding a pending disciplinary proceeding; amending
 47 ss. 458.331 and 459.015, F.S.; conforming cross-
 48 references; creating s. 468.315, F.S.; providing that
 49 radiological personnel are subject to a treatment
 50 program for impaired licensees; providing an effective
 51 date.

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

54
 55 Section 1. Section 456.076, Florida Statutes, is amended to
 56 read:
 57 456.076 Treatment programs for impaired practitioners.-
 58 (1) For professions that do not have impaired practitioner

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59 programs provided for in their practice acts, the department
 60 shall, by rule, designate approved impaired practitioner
 61 programs under this section. The department may adopt rules
 62 setting forth appropriate criteria for approval of treatment
 63 providers. The rules may specify the manner in which the
 64 consultant, retained as set forth in subsection (2), works with
 65 the department in intervention, requirements for evaluating and
 66 treating a professional, requirements for continued care of
 67 impaired professionals by approved treatment providers,
 68 continued monitoring by the consultant of the care provided by
 69 approved treatment providers regarding the professionals under
 70 their care, and requirements related to the consultant's
 71 expulsion of professionals from the program.

72 (2) (a) The department shall retain one or more impaired
 73 practitioner consultants who are each licensees. ~~The consultant~~
 74 ~~shall be a licensee~~ under the jurisdiction of the Division of
 75 Medical Quality Assurance within the department and who must be:

76 1. A practitioner or recovered practitioner licensed under
 77 chapter 458, chapter 459, or part I of chapter 464;~~r~~ or

78 2. An entity that employs: ~~employing~~

79 a. A medical director who must be a practitioner or
 80 recovered practitioner licensed under chapter 458 ~~or~~ chapter
 81 459;~~r~~ or

82 b. An executive director who must be a registered nurse or
 83 a recovered registered nurse licensed under part I of chapter
 84 464.

85 (b) An entity retained as an impaired practitioner
 86 consultant under this section which employs a medical director
 87 or an executive director is not required to be licensed as a

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88 substance abuse provider or mental health treatment provider
 89 under chapter 394, chapter 395, or chapter 397 for purposes of
 90 providing services under this program.

91 (c)1. The consultant shall assist the probable cause panel
 92 and ~~the~~ department in carrying out the responsibilities of this
 93 section. This includes ~~shall include~~ working with department
 94 investigators to determine whether a practitioner is, in fact,
 95 impaired.

96 2. The consultant may contract with a school or program to
 97 provide for services to a student be provided, for appropriate
 98 compensation, if requested by the school, for students enrolled
 99 for the purpose of preparing ~~in schools~~ for licensure as a
 100 health care practitioner as defined in this chapter or as a
 101 veterinarian under chapter 474 if the student is allegedly
 102 allopathic physicians or physician assistants under chapter 458,
 103 osteopathic physicians or physician assistants under chapter
 104 459, nurses under chapter 464, or pharmacists under chapter 465
 105 who are alleged to be impaired as a result of the misuse or
 106 abuse of alcohol or drugs, or both, or due to a mental or
 107 physical condition. The department is not responsible ~~under any~~
 108 circumstances for paying for the ~~costs of~~ care provided by
 109 approved treatment providers ~~or a consultant,~~ and the department
 110 is not responsible for paying the costs of consultants' services
 111 provided for students.

112 (d) A medical school accredited by the Liaison Committee on
 113 Medical Education or ~~of~~ the Commission on Osteopathic College
 114 Accreditation, or another ~~other~~ school providing for the
 115 education of students enrolled in preparation for licensure as a
 116 health care practitioner as defined in this chapter or a

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117 ~~veterinarian under chapter 474 allopathic physicians under~~
 118 ~~chapter 458 or osteopathic physicians under chapter 459,~~ which
 119 is governed by accreditation standards requiring notice and the
 120 provision of due process procedures to students, is not liable
 121 in any civil action for referring a student to the consultant
 122 retained by the department or for disciplinary actions that
 123 adversely affect the status of a student when the disciplinary
 124 actions are instituted in reasonable reliance on the
 125 recommendations, reports, or conclusions provided by such
 126 consultant, if the school, in referring the student or taking
 127 disciplinary action, adheres to the due process procedures
 128 adopted by the applicable accreditation entities and if the
 129 school committed no intentional fraud in carrying out the
 130 provisions of this section.

131 (3) Each board and profession within the Division of
 132 Medical Quality Assurance may delegate to its chair or other
 133 designee its authority to determine, before certifying or
 134 declining to certify an application for licensure to the
 135 department, that an applicant for licensure under its
 136 jurisdiction may be impaired as a result of the misuse or abuse
 137 of alcohol or drugs, or both, or due to a mental or physical
 138 condition that could affect the applicant's ability to practice
 139 with skill and safety. Upon such determination, the chair or
 140 other designee may refer the applicant to the consultant for an
 141 evaluation before the board certifies or declines to certify his
 142 or her application to the department. If the applicant agrees to
 143 be evaluated by the consultant, the department's deadline for
 144 approving or denying the application pursuant to s. 120.60(1) is
 145 tolled until the evaluation is completed and the result of the

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146 evaluation and recommendation by the consultant is communicated
 147 to the board by the consultant. If the applicant declines to be
 148 evaluated by the consultant, the board shall certify or decline
 149 to certify the applicant's application to the department
 150 notwithstanding the lack of an evaluation and recommendation by
 151 the consultant.

152 ~~(4)(3)~~(a) Whenever the department receives a written or
 153 oral legally sufficient complaint alleging that a licensee under
 154 the jurisdiction of the Division of Medical Quality Assurance
 155 within the department is impaired as a result of the misuse or
 156 abuse of alcohol or drugs, or both, or due to a mental or
 157 physical condition which could affect the licensee's ability to
 158 practice with skill and safety, and no complaint against the
 159 licensee other than impairment exists, the reporting of such
 160 information shall not constitute grounds for discipline pursuant
 161 to s. 456.072 or the corresponding grounds for discipline within
 162 the applicable practice act if the probable cause panel of the
 163 appropriate board, or the department when there is no board,
 164 finds:

- 165 1. The licensee has acknowledged the impairment problem.
- 166 2. The licensee has voluntarily enrolled in an appropriate,
 167 approved treatment program.
- 168 3. The licensee has voluntarily withdrawn from practice or
 169 limited the scope of practice as required by the consultant, in
 170 each case, until such time as the panel, or the department when
 171 there is no board, is satisfied the licensee has successfully
 172 completed an approved treatment program.
- 173 4. The licensee has executed releases for medical records,
 174 authorizing the release of all records of evaluations,

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175 diagnoses, and treatment of the licensee, including records of
 176 treatment for emotional or mental conditions, to the consultant.
 177 The consultant shall make no copies or reports of records that
 178 do not regard the issue of the licensee's impairment and his or
 179 her participation in a treatment program.

180 (b) If, however, the department has not received a legally
 181 sufficient complaint and the licensee agrees to withdraw from
 182 practice until such time as the consultant determines the
 183 licensee has satisfactorily completed an approved treatment
 184 program or evaluation, the probable cause panel, or the
 185 department when there is no board, shall not become involved in
 186 the licensee's case.

187 (c) Inquiries related to impairment treatment programs
 188 designed to provide information to the licensee and others and
 189 which do not indicate that the licensee presents a danger to the
 190 public shall not constitute a complaint within the meaning of s.
 191 456.073 and shall be exempt from the provisions of this
 192 subsection.

193 (d) Whenever the department receives a legally sufficient
 194 complaint alleging that a licensee is impaired as described in
 195 paragraph (a) and no complaint against the licensee other than
 196 impairment exists, the department shall forward all information
 197 in its possession regarding the impaired licensee to the
 198 consultant. For the purposes of this section, a suspension from
 199 hospital staff privileges due to the impairment does not
 200 constitute a complaint.

201 (e) The probable cause panel, or the department when there
 202 is no board, shall work directly with the consultant, and all
 203 information concerning a practitioner obtained from the

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204 consultant by the panel, or the department when there is no
 205 board, shall remain confidential and exempt from the provisions
 206 of s. 119.07(1), subject to the provisions of subsections ~~(5)~~
 207 ~~and~~ (6) and (7).

208 (f) A finding of probable cause shall not be made as long
 209 as the panel, or the department when there is no board, is
 210 satisfied, based upon information it receives from the
 211 consultant and the department, that the licensee is progressing
 212 satisfactorily in an approved impaired practitioner program and
 213 no other complaint against the licensee exists.

214 (5) ~~(4)~~ In any disciplinary action for a violation other
 215 than impairment in which a licensee establishes the violation
 216 for which the licensee is being prosecuted was due to or
 217 connected with impairment and further establishes the licensee
 218 is satisfactorily progressing through or has successfully
 219 completed an approved treatment program pursuant to this
 220 section, such information may be considered by the board, or the
 221 department when there is no board, as a mitigating factor in
 222 determining the appropriate penalty. This subsection does not
 223 limit mitigating factors the board may consider.

224 (6) ~~(5)~~ (a) An approved treatment provider shall, upon
 225 request, disclose to the consultant all information in its
 226 possession regarding the issue of a licensee's impairment and
 227 participation in the treatment program. All information obtained
 228 by the consultant and department pursuant to this section is
 229 confidential and exempt from the provisions of s. 119.07(1),
 230 subject to the provisions of this subsection and subsection
 231 (7) ~~(6)~~. Failure to provide such information to the consultant is
 232 grounds for withdrawal of approval of such program or provider.

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233 (b) If in the opinion of the consultant, after consultation
 234 with the treatment provider, an impaired licensee has not
 235 progressed satisfactorily in a treatment program, all
 236 information regarding the issue of a licensee's impairment and
 237 participation in a treatment program in the consultant's
 238 possession shall be disclosed to the department. Such disclosure
 239 shall constitute a complaint pursuant to the general provisions
 240 of s. 456.073. Whenever the consultant concludes that impairment
 241 affects a licensee's practice and constitutes an immediate,
 242 serious danger to the public health, safety, or welfare, that
 243 conclusion shall be communicated to the State Surgeon General.

244 (7)~~(6)~~ A consultant, licensee, or approved treatment
 245 provider who makes a disclosure pursuant to this section is not
 246 subject to civil liability for such disclosure or its
 247 consequences. The provisions of s. 766.101 apply to any officer,
 248 employee, or agent of the department or the board and to any
 249 officer, employee, or agent of any entity with which the
 250 department has contracted pursuant to this section.

251 (8)~~(7)~~(a) A consultant retained pursuant to subsection (2),
 252 a consultant's officers and employees, and those acting at the
 253 direction of the consultant for the limited purpose of an
 254 emergency intervention on behalf of a licensee or student as
 255 described in subsection (2) when the consultant is unable to
 256 perform such intervention shall be considered agents of the
 257 department for purposes of s. 768.28 while acting within the
 258 scope of the consultant's duties under the contract with the
 259 department if the contract complies with the requirements of
 260 this section. The contract must require that:

261 1. The consultant indemnify the state for any liabilities

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262 incurred up to the limits set out in chapter 768.

263 2. The consultant establish a quality assurance program to
 264 monitor services delivered under the contract.

265 3. The consultant's quality assurance program, treatment,
 266 and monitoring records be evaluated quarterly.

267 4. The consultant's quality assurance program be subject to
 268 review and approval by the department.

269 5. The consultant operate under policies and procedures
 270 approved by the department.

271 6. The consultant provide to the department for approval a
 272 policy and procedure manual that comports with all statutes,
 273 rules, and contract provisions approved by the department.

274 7. The department be entitled to review the records
 275 relating to the consultant's performance under the contract for
 276 the purpose of management audits, financial audits, or program
 277 evaluation.

278 8. All performance measures and standards be subject to
 279 verification and approval by the department.

280 9. The department be entitled to terminate the contract
 281 with the consultant for noncompliance with the contract.

282 (b) In accordance with s. 284.385, the Department of
 283 Financial Services shall defend any claim, suit, action, or
 284 proceeding against the consultant, the consultant's officers or
 285 employees, or those acting at the direction of the consultant
 286 for the limited purpose of an emergency intervention on behalf
 287 of a licensee or student as described in subsection (2) when the
 288 consultant is unable to perform such intervention which is
 289 brought as a result of any act or omission by any of the
 290 consultant's officers and employees and those acting under the

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291 direction of the consultant for the limited purpose of an
 292 emergency intervention on behalf of a licensee or student as
 293 described in subsection (2) when the consultant is unable to
 294 perform such intervention when such act or omission arises out
 295 of and in the scope of the consultant's duties under its
 296 contract with the department.

297 (c) If the consultant retained pursuant to subsection (2)
 298 is retained by any other state agency, and if the contract
 299 between such state agency and the consultant complies with the
 300 requirements of this section, the consultant, the consultant's
 301 officers and employees, and those acting under the direction of
 302 the consultant for the limited purpose of an emergency
 303 intervention on behalf of a licensee or student as described in
 304 subsection (2) when the consultant is unable to perform such
 305 intervention shall be considered agents of the state for the
 306 purposes of this section while acting within the scope of and
 307 pursuant to guidelines established in the contract between such
 308 state agency and the consultant.

309 (9) An impaired practitioner consultant is the official
 310 custodian of records relating to the referral of an impaired
 311 licensee or applicant to that consultant and any other
 312 interaction between the licensee or applicant and the
 313 consultant. The consultant may disclose to the impaired licensee
 314 or applicant or his or her designee any information that is
 315 disclosed to or obtained by the consultant or that is
 316 confidential under paragraph (6) (a), but only to the extent that
 317 it is necessary to do so to carry out the consultant's duties
 318 under this section. The department, and any other entity that
 319 enters into a contract with the consultant to receive the

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320 services of the consultant, has direct administrative control
 321 over the consultant to the extent necessary to receive
 322 disclosures from the consultant as allowed by federal law. If a
 323 disciplinary proceeding is pending, an impaired licensee may
 324 obtain such information from the department under s. 456.073.

325 Section 2. Paragraph (e) of subsection (1) of section
 326 458.331, Florida Statutes, is amended to read:

327 458.331 Grounds for disciplinary action; action by the
 328 board and department.-

329 (1) The following acts constitute grounds for denial of a
 330 license or disciplinary action, as specified in s. 456.072(2):

331 (e) Failing to report to the department any person who the
 332 licensee knows is in violation of this chapter or of the rules
 333 of the department or the board. A treatment provider approved
 334 pursuant to s. 456.076 shall provide the department or
 335 consultant with information in accordance with the requirements
 336 of s. 456.076(4), (5), (6), (7), and (9) ~~e. 456.076(3), (4),~~
 337 ~~(5), and (6).~~

338 Section 3. Paragraph (e) of subsection (1) of section
 339 459.015, Florida Statutes, is amended to read:

340 459.015 Grounds for disciplinary action; action by the
 341 board and department.-

342 (1) The following acts constitute grounds for denial of a
 343 license or disciplinary action, as specified in s. 456.072(2):

344 (e) Failing to report to the department or the department's
 345 impaired professional consultant any person who the licensee or
 346 certificateholder knows is in violation of this chapter or of
 347 the rules of the department or the board. A treatment provider,
 348 approved pursuant to s. 456.076, shall provide the department or

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349 consultant with information in accordance with the requirements
350 of s. 456.076(4), (5), (6), (7), and (9) ~~s. 456.076(3), (4),~~
351 ~~(5), and (6)~~.

352 Section 4. Section 468.315, Florida Statutes, is created to
353 read:

354 468.315 Treatment program for impaired radiological
355 personnel.-Radiological personnel who are subject to
356 certification under this part are governed by s. 456.076 as if
357 they were under the jurisdiction of the Division of Medical
358 Quality Assurance.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Community Affairs
Ethics and Elections
Gaming
Judiciary
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR JOHN THRASHER

6th District

March 19, 2013

To: Senator Kelli Stargel, Chair
Senate Committee on Regulated Industries

Fm: Senator John Thrasher

Re: CS/Senate Bill 248; Impaired Practitioners Treatment Program

Please agenda my CS/Senate Bill 248 for a hearing by the Regulated Industries Committee at your earliest convenience.

Thank you for your favorable consideration.

REPLY TO:

- 113 Nature Walk Parkway, Suite 106, St. Augustine, Florida 32092 (904) 287-4222 FAX: 1-888-263-3475
- 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

Tab 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-2-13

Meeting Date

Topic Impaired Licensees

Bill Number 248
(if applicable)

Name Michelle Jacquis

Amendment Barcode _____
(if applicable)

Job Title Director of legislative Advocacy

Address PO Box 10269

Phone 251-2288

Street

Tallahassee, FL 32302

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FL Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

Tab 7

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 248

Bill Number 248
(if applicable)

Name Judy RIVENBARK

Amendment Barcode _____
(if applicable)

Job Title Medical Director

Address P.O. Box 1020

Phone 800-888-8776

Street
FERNANDINA BEACH, FL
City *State* *Zip* 32031

E-mail DRIVENBARK@FLPN.ORG

Speaking: For Against Information

Representing PRN OF Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic Treatment Programs for Impaired Lic. Bill Number 248
(if applicable)

Name Matthew Farrar Amendment Barcode _____
(if applicable)

Job Title _____

Address 2910 Kerry Forest Pkwy #4-368 Phone 850-832-1763
Street

Tallahassee FL 32309
City State Zip

E-mail matt@timminsconsulting.com

Speaking: For Against Information

Representing Intervention Project for Nurses

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.

301 SOB
4:00 PM

THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE IN SUPPORT

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

4-2-2013

Meeting Date

Topic TREATMENT PROGRAMS FOR IMPAIRED PRACTITIONERS

Bill Number SB 248
(if applicable)

Name STEPHEN R. WION

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

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Speaking: For Against Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: SB 301
Caption: Senate Committee on Regulated Industries

Case:

Type:
Judge:

Started: 4/2/2013 4:02:04 PM
Ends: 4/2/2013 5:26:27 PM **Length:** 01:24:24

4:02:15 PM Meeting called to order
4:02:20 PM Roll call
4:03:07 PM SB 1174 - Senator Ring
4:03:22 PM Senator Ring to explain the bill
4:03:55 PM Amendment - Senator Gibson
4:05:09 PM Senator Sobel to explain the amendment
4:05:30 PM Senator Braynon questioning
4:06:21 PM Jeanette Yeager, FL Self-Storage Association
4:06:31 PM Senator Sachs questioning
4:09:28 PM Senator Detert questioning
4:10:38 PM Senator Gibson speaking on the amendment
4:11:32 PM Senator Braynon questioning
4:13:07 PM Senator Gibson responding
4:13:58 PM Senator Ring commenting
4:15:00 PM Senator Flores questioning
4:15:14 PM Senator Ring responding
4:15:40 PM Jeanette Yeager responding
4:16:41 PM Senator Detert questioning
4:17:02 PM Senator Gibson responding
4:17:44 PM Senator Ring responding
4:18:59 PM Senator Sachs questioning
4:20:21 PM Senator Ring responding
4:21:16 PM Senator Galvano questioning
4:21:36 PM Senator Gibson responding
4:22:46 PM Dean Ridings, Florida Press Association
4:23:42 PM SB 1174 - TP
4:23:55 PM
4:24:08 PM CS/SB 378 - by Senator Bean
4:24:20 PM Senator Bean to explain the bill
4:24:49 PM Senator Detert questioning
4:27:33 PM Christine Ashburn, Citizens Property Corp
4:27:59 PM Senator Detert questioning
4:28:47 PM Senator Legg questioning
4:29:06 PM Ms. Ashburn responding
4:31:36 PM Senator Sobel commenting
4:32:16 PM Senator Bean responding
4:32:58 PM Senator Legg commenting
4:34:05 PM Senator Bean to close on the bill
4:34:48 PM CS/SB 378 - Passes
4:35:19 PM CS/SB 248 - Senator Thrasher
4:35:30 PM Senator Thrasher to explain the bill
4:37:43 PM CS/SB 248 - Passes
4:38:06 PM SB 64 - Senator Sachs
4:38:45 PM Amendment #949474
4:38:56 PM Senator Sachs to explain the amendment
4:39:55 PM Amendment - Adopted
4:40:18 PM Senator Sachs to close on the bill
4:40:33 PM Move to make the bill a CS
4:40:51 PM CS/SB 64 - Passes
4:41:20 PM SB 1048 - Senator Gardiner
4:41:51 PM Ms. Vancamp-Garcia to explain the bill
4:42:04 PM Amendment # 607400

4:42:18 PM Amendment - Adopted
4:42:47 PM Senator Sachs questioning
4:43:10 PM Moved as a CS
4:43:35 PM CS/SB 1048 - Passes
4:44:15 PM SB 642 - Senator Hays
4:44:35 PM Ms. Nanci Cornwell to present the bill
4:45:17 PM Delete Everything Amendment #141414
4:45:44 PM Amendment to the Amendment #578628
4:46:01 PM Amentment to the Amendment - Adopted
4:46:11 PM Amendment - Adopted
4:46:59 PM Phil Mc Daniel, FL Craft Distillers Guild Member
4:48:41 PM Senator Sachs commenting
4:49:02 PM SB 642 Moved as a CS
4:49:19 PM CS/SB 642 - Passes
4:49:37 PM Recording Paused
4:56:59 PM Recording Resumed
4:57:45 PM PCS/SB 580 - Senator Hays Barcode 524072
4:57:57 PM Jessica Crawford, Legislative Aide to Senator Hays to explain the bill
5:01:18 PM Senator Gibson questioning
5:02:01 PM Miguel Oxamendi, Staff Attorney, responding
5:05:10 PM Senator Detert questioning
5:06:21 PM Senator Stargel responding
5:06:43 PM Legislative Aide responding
5:08:42 PM Senator Stargel commenting
5:08:55 PM Senator Gibson commenting
5:09:19 PM Miguel Oxamendi responding
5:10:34 PM Senator Sobel questioning
5:11:10 PM Legislative Aide responding
5:11:34 PM Senator Stargel reesponding
5:11:56 PM Miguel Oxamendi explaining
5:12:59 PM Travis Moore, Community Associations Institute - Florida
5:17:06 PM Yeline Goin, Community Association Leadership Lobby
5:17:56 PM Eric Glazer, Attorney
5:21:17 PM Pete Dunbar, Real Property Section of Florida Bar
5:25:15 PM Senator Hays to close on the bill
5:25:54 PM PCS/SB 580 moved as a CS
5:26:10 PM CS/SB 580 - Passes
5:26:20 PM Meeting adjourned