

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**REGULATED INDUSTRIES**  
**Senator Stargel, Chair**  
**Senator Braynon, Vice Chair**

**MEETING DATE:** Thursday, February 13, 2014

**TIME:** 9:30 —11:00 a.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	<b>SB 286</b> Richter (Similar H 147)	Concrete Masonry Education; Creating the "Concrete Masonry Education Act"; creating the Florida Concrete Masonry Education Council, Inc.; authorizing the council to accept grants, donations, contributions, and gifts under certain circumstances; providing for collection of a voluntary assessment on concrete masonry units; requiring manufacturers who elect to pay the assessment to commit to paying the assessment for a specified period, etc.  CA 01/08/2014 Favorable RI 02/13/2014 Fav/CS GO	Fav/CS Yeas 9 Nays 0
2	<b>SB 440</b> Altman (Compare CS/H 425)	Condominiums; Limiting the application of certain requirements relating to bylaws to residential condominiums and their associations and boards, etc.  RI 02/13/2014 Fav/CS JU	Fav/CS Yeas 9 Nays 0
3	<b>SB 406</b> Latvala (Similar H 283, Compare H 387, S 470)	Malt Beverages; Authorizing containers of malt beverages to be sold or offered for sale by a vendor at retail in any size; providing requirements for malt beverage containers; authorizing malt beverage tastings upon certain licensed premises under certain circumstances, etc.  RI 01/16/2014 Temporarily Postponed RI 02/13/2014 Fav/CS CA AP RC	Fav/CS Yeas 9 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Regulated Industries

Thursday, February 13, 2014, 9:30 —11:00 a.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 320</b> Sachs (Identical H 347)	Commercial Parasailing; Citing this act as the "White-Miskell Act"; requiring the operator of a vessel engaged in commercial parasailing to ensure that specified requirements are met; requiring the owner of a vessel engaged in commercial parasailing to obtain and maintain an insurance policy; requiring the operator to have a current and valid license issued by the United States Coast Guard; prohibiting commercial parasailing unless certain equipment is present on the vessel and certain weather conditions are met; requiring that a weather log be maintained and made available for inspection, etc.  RI 01/09/2014 Temporarily Postponed RI 02/13/2014 Favorable CM CA	Favorable Yeas 9 Nays 0

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Other Related Meeting Documents

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**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.)

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

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BILL: CS/SB 286

INTRODUCER: Regulated Industries Committee and Senator Richter

SUBJECT: Concrete Masonry Education

DATE: February 17, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
3.	_____	_____	<u>GO</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 286 creates the “Concrete Masonry Education Act.” The bill creates the Florida Concrete Masonry Council, Inc., as a non-profit corporation operating as a direct-support organization of the Florida Department of Economic Opportunity. Administrative powers and duties of the council include the power to plan, implement, and conduct educational programs related to the field of concrete masonry, particularly for individuals seeking employment. The bill provides for the appointment of a 15 member governing board.

The bill allows the council to accept grants, donations, contributions, gifts, and to collect self-imposed voluntary assessments on concrete masonry units<sup>1</sup> produced and sold by concrete masonry manufacturers in the state. Manufacturers that choose to pay the assessment must commit to paying the assessment for at least one year. Thereafter, the manufacturer may remit the assessment or recommit for the next year.

**II. Present Situation:**

**Concrete Masonry Education**

Educational programs to train individuals in the field of concrete masonry are currently offered by school districts, colleges and apprenticeship programs throughout Florida.<sup>2</sup> The Florida

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<sup>1</sup> A Concrete Masonry Unit is a building unit or block larger in size than 12 inches by 4 inches by 4 inches (305 mm by 102 mm by 102 mm) made of cement and suitable aggregates. *See* s. 2103.1 Florida Building Code (2010).

<sup>2</sup> 2014 Legislative Bill Analysis for SB 286, Department of Education (Oct. 23, 2013).

Department of Education develops Career and Technical Education programs in ‘Concrete Masonry’ as well as ‘Brick and Block Masonry.’ These programs are provided through a network of service providers, which include District Technical Centers, Adult Education Providers and Florida colleges.<sup>3</sup>

The Florida Department of Education’s (DOE) Career and Technical Education programs are reviewed on a three-year cycle with business and industry as required by s. 1004.92(2)(b)4., F.S. The ‘Brick and Block Masonry’ program was last reviewed in 2011 for the 2012-2013 school year, and will be reviewed again in 2014 for the 2015-2016 school year. According to DOE, the 2012 review of the ‘Concrete Masonry’ program recommended deletion of the program due to low enrollment.<sup>4</sup> The program will be removed from inventory in the 2014-2015 school year.<sup>5</sup> These reviews are conducted by programmatic review committees with at least 50% of the membership from the industry.<sup>6</sup>

The Masonry Association of Florida, Inc. along with the Florida Concrete & Products Association, formed the Florida Masonry Apprentice and Education Foundation, Inc. (foundation) in 2002 to add to and expand masonry apprentice programs.<sup>7</sup> The foundation is a nonprofit organization providing apprenticeship education of the masonry trade.<sup>8</sup>

The Florida Department of Economic Opportunity’s mission is to promote economic opportunities for all Floridians; formulating and implementing a successful workforce, community, and economic development policies and strategies.<sup>9</sup>

### **Demand for Skilled Labor**

According to the foundation, it is estimated that 300-500 new masons per year are needed to support demand and address attrition.<sup>10</sup> There are only 300 apprentices enrolled in the current apprenticeship programs currently available.<sup>11</sup>

According to a recent survey by the trade group Associated General Contractors, twenty-seven percent of Florida construction firms claim to have trouble finding cement masons.<sup>12</sup> The Florida construction industry lost half of its employment during the recession, and with an increase in

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<sup>3</sup> Florida Department of Education, Career and Adult Education, available at <http://www.fldoe.org/workforce/> (Last visited Jan. 21, 2013).

<sup>4</sup> Conversation with Florida Department of Education representative by Community Affairs Committee Staff (Dec. 11, 2013).

<sup>5</sup> *Id.*

<sup>6</sup> The committees may include directors for the Florida Concrete Masonry Education Council, as described in the bill.

<sup>7</sup> Florida Masonry Apprentice and Education Foundation, Inc., *About Us*, available at <http://www.masonryeducation.org/about.html> (Last visited Feb. 16, 2014).

<sup>8</sup> *Id.*

<sup>9</sup> MyFlorida.com, Department of Economic Opportunity, available at <http://www.myflorida.com/agency/50/> (Last visited Feb. 10, 2014).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Marcia Heroux Pounds, *As projects ramp up, skilled construction workers in short supply*, Sun Sentinel, Nov. 24, 2013, available at <http://www.sun-sentinel.com/business/careers/fl-tradesmen-shortage-20131124.0.4371525.story> (Last visited Jan. 21 2014).

building projects the demand for skilled labor is not being met.<sup>13</sup> A growing shortage of labor and rising cost of building materials could affect the completion of some projects.<sup>14</sup>

### **Examples of Industry Assessment Structures**

*The Florida Beef Council*, created by the Beef Market Development Act,<sup>15</sup> is a not-for-profit corporation operating as a direct-support organization of the Department of Agriculture and Consumer Services.<sup>16</sup> According to the Florida Cattlemen’s Association website, this council is a wholly-owned corporation of the Florida Cattlemen’s Association and functions as the promotional and educational arm of the beef industry in Florida, supporting the ability of cattlemen members to produce and market their products.<sup>17</sup> As a direct-support organization of the Department of Agriculture and Consumer Services,<sup>18</sup> this council is authorized to impose an assessment of not more than \$1 on each head of cattle sold to fund the purposes of the council.<sup>19</sup> This follows the federally mandated check-off program, where half of the funds collected in Florida are designated for national promotion, research, consumer information and industry information programs; half the funds are used in Florida to disseminate nutritional and product information to the media, food service and retail industries, school educators, health professionals, consumers and producers.<sup>20</sup>

*The Florida Building Commission*, created under s. 553.74(1), F.S., is within the Department of Business and Professional Regulation. Section 553.721 F.S. creates a surcharge to be assessed at the rate of 1.5% of the permit fees associated with the enforcement of the Florida Building Code (code), which is partly allocated to the Florida Building Commission. The Commission is responsible for adopting and enforcing the code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.<sup>21</sup> The code is required to be updated every three years by the Florida Building Commission.<sup>22</sup> Pursuant to s. 553.73, F.S., the Commission is authorized to adopt administrative rules, impose fees for binding code interpretations, and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the code.

### **III. Effect of Proposed Changes:**

**Section 1** provides for an unnumbered section of the Florida Statutes, entitled the “Concrete Masonry Education Act.” The bill creates the Florida Concrete Masonry Education Council, Inc.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See* s. 570.9135(4), F.S.

<sup>16</sup> *See* s. 570.9135(4)(a), F.S.

<sup>17</sup> Florida Cattlemen’s Associations, About, *Beef Council*, available at <http://www.floridacattlemen.org/fbc.html> (Last visited Feb. 11, 2014).

<sup>18</sup> *See* s. 570.903 F.S., requirements of a Direct Support Organization under the Department of Agriculture and Consumer Services.

<sup>19</sup> *See* s. 570.9135(4) F.S.

<sup>20</sup> Florida Cattlemen’s Associations, About, *Beef Council*, available at <http://www.floridacattlemen.org/fbc.html> (Last visited Feb. 11, 2014).

<sup>21</sup> *See* s. 553.73 and 553.74, F.S.

<sup>22</sup> *See* s. 553.73(7)(a), F.S. *See also* Florida Department of Business & Professional Regulation, Florida Building Commission, available at [http://www.floridabuilding.org/fbc/information/building\\_commission.htm](http://www.floridabuilding.org/fbc/information/building_commission.htm) (Last visited December 9, 2013).

(council) as a nonprofit corporation operating as a direct-support organization of the Florida Department of Economic Opportunity.

The council is required to do the following:

- Plan, implement, and conduct programs of education for the purpose of training individuals in the field of concrete masonry.
- Develop and improve educational access to individuals seeking employment in the field of concrete masonry.
- Develop and implement outreach programs to ensure diversity among those trained in the field of concrete masonry.
- Coordinate educational programs with other state or national programs.
- Inform and educate the public concerning the sustainability and economic benefits of concrete masonry products in order to increase employment opportunities in the field of concrete masonry.
- Develop, implement, and monitor a system for collection of a self-imposed voluntary assessment on each concrete masonry unit produced and sold by concrete masonry manufacturers in this state.
- Do all other acts necessary or expedient for the administration of the affairs and achievement of the purposes of the council.
- Submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by January of each year detailing the revenues it receives, industry participation, use of its funds, number of individuals trained or assisted, its goals and objectives for the year and information of job placement and industry workforce needs.

The council may:

- Upon request, provide governmental bodies with information relating to the concrete masonry industry;
- Sue and be sued as a council;
- Maintain a financial reserve for emergency use, which shall not exceed 10 percent of the council's income;
- Employ subordinate officers and employees;
- Cooperate with other organizations and agencies engaged in activities related to concrete masonry education; and
- Meet with concrete masonry manufacturers in this state to coordinate collection of the self-imposed voluntary assessments on concrete masonry units.

The council is prohibited from:

- Participating in a political campaign, or state or local ballot initiatives;
- Using receipts to benefit directors, officers, or other private persons, not including reasonable compensation for services; and
- Participating in activities prohibited for non-profit corporations under federal tax law.

### **Governing Board**

The Florida Concrete Masonry Education Council, Inc., shall be governed by a board of directors serving without compensation, except for reimbursement for per diem and travel expenses

incurred in carrying out the intent and purposes of this section. Fifteen members will occupy the board, as follows:

- Nine members representing concrete masonry manufacturers:
  - Each must represent a different manufacturer;
  - Each must have been employed by a manufacturer engaging in manufacturing of the concrete masonry products and one member of whom must have at least 5 years of experience prior to starting service on the board; and
  - At least five must be members of the Masonry Association of Florida (MAF);
- One member representing a major building industry association in the state;
- One member having expertise in apprenticeship or workforce education training;
- Two members who are masonry contractors and members of the MAF;
- One member who is not a masonry contractor but who is otherwise a stakeholder in the masonry industry; and
- One member will be the Chancellor of Career and Adult Education or their designee.

The initial board shall be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, each making five appointments after soliciting recommendations from the Masonry Association of Florida, with five members serving 1-year terms, five members serving 2-year terms, and five members serving 3-year terms. Each person who appoints the board has a designated number of appointees allocated per each year-term category. Thereafter, members shall be appointed to serve 3-year terms and may be reappointed to serve one additional consecutive term.

Participation in the voluntary assessment on concrete masonry units is not a requirement of appointment.

In addition to the fifteen voting members, the executive director of the Department of Economic Opportunity or their designee shall serve as an ex officio nonvoting member.

#### **Acceptance of Grants and Gifts**

The bill authorizes the council to receive grants and donations provided that there are no restrictions that the council considers to be inconsistent with the objectives of the program.

#### **Payments to Organizations**

The bill authorizes the council to make payments to other organizations for services rendered through a written agreement which is consistent with the objectives of this section. Before making such payments:

- The council must secure a written agreement that the organization will furnish reports of program activity, including financial data relative to the council's funding of such activities. These must be furnished at annually or, on the request of the council, more frequently; and
- The council may require proof of security on the payments.

#### **Collection of Moneys**

The bill requires manufacturers electing to pay the voluntary assessment to collect money for each masonry unit produced and sold by the manufacturer, and forward these moneys to the

council on a quarterly basis. Participating manufacturers must commit to pay the assessment for at least one year before electing to terminate payment or continue payment for the next year. The council must maintain a separate accounting of all moneys received and provide for an annual financial audit.

### **Bylaws**

The bill requires the council to adopt bylaws by September 30, 2014 to carry out the purposes of this section, which must conform to this section but may also address any matter not in conflict with the general law of this state.

**Section 2** provides for an effective date of July 1, 2014.

## **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:

According to the Department of Education, there may be concern with creating direct support organizations for specific educational programs, with non-binding taxing power, that could be handled by industry on its own.<sup>23</sup> There may be implication that this is a state sponsored assessment/tax.<sup>24</sup>

### B. Private Sector Impact:

Proposed payments by concrete masonry manufacturers to Florida Concrete Masonry Council, Inc., are self-imposed voluntary assessments on concrete masonry units produced and sold in the state. Additionally, the council may accept grants, donations, contributions, or gifts.

The fiscal impact cannot be determined because of the voluntary nature of the anticipated revenue.<sup>25</sup>

<sup>23</sup> 2014 Legislative Bill Analysis for SB 286, Department of Education (Oct. 23, 2013).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

**C. Government Sector Impact:**

The council may provide governmental bodies with requested information relating to subjects of concern to the industry. The council may act jointly or in cooperation with the state or federal government and their agencies in the development or administration of programs that the council considers to be consistent with this act.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The council appointments are initially different term-years creating a staggered board. The Governor, President of the Senate, and Speaker of the House of Representatives all appointing a set share from each year-term position of the initial board. The subsequent appointments shall be filled in accordance with the initial appointment for three-year terms, however, it is not clear if the subsequent appointments will continue to be divided this way. It appears that the first subsequent appointment of five members, one year after the board is created, will consist of two appointments by the Governor, two by the President of the Senate, and one by the Speaker of the House of Representatives.

**VIII. Statutes Affected:**

This bill creates an unnumbered section of the Florida Statutes.

**IX. 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 February 13, 2014:**

- The committee substitute (CS) creates the “Concrete Masonry Council, Inc., a nonprofit corporation operating as a direct-support organization of the Department of Economic Opportunity.
- The council is required to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by January of each year on revenues, participation, use of funds, number of persons trained and other information.
- The funds held in reserve may not exceed 10 percent of the council’s income.
- The initial board of fifteen members shall be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, each making five appointments after soliciting recommendations from the Masonry Association of Florida, and of these five, a designated number of appointees per each year-term category.
- Participation in the voluntary assessment on concrete masonry units is not a requirement of appointment.

- In addition to the fifteen voting members, the executive director of the Department of Economic Opportunity or their designee shall serve as an ex officio nonvoting member.

**B. Amendments:**

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2014	.	
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The Committee on Regulated Industries (Detert) recommended the following:

**Senate Amendment**

Delete everything after the enacting clause  
and insert:

Section 1. Concrete masonry education.-

(1) This section may be cited as the "Concrete Masonry  
Education Act."

(2) (a) There is created the Florida Concrete Masonry  
Education Council, Inc., a nonprofit corporation organized under  
the laws of this state and operating as a direct-support



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11 organization of the Department of Economic Opportunity.  
12 (b) The council shall:  
13 1. Plan, implement, and conduct programs of education for  
14 the purpose of training individuals in the field of concrete  
15 masonry.  
16 2. Develop and improve access to education for individuals  
17 seeking employment in the field of concrete masonry.  
18 3. Develop and implement outreach programs to ensure  
19 diversity among individuals trained in the programs conducted  
20 pursuant to this section.  
21 4. Coordinate educational programs with national programs  
22 or programs of other states.  
23 5. Inform and educate the public about the sustainability  
24 and economic benefits of concrete masonry products in order to  
25 increase employment opportunities for individuals trained in the  
26 programs conducted pursuant to this section.  
27 6. Develop, implement, and monitor a system for the  
28 collection of a self-imposed voluntary assessment on each  
29 concrete masonry unit produced and sold by concrete masonry  
30 manufacturers in this state.  
31 7. Do all other things necessary or expedient for the  
32 administration of the affairs and achievement of the purposes of  
33 the council.  
34 8. By January 15 of each year, provide a report to the  
35 Governor, the President of the Senate, and the Speaker of the  
36 House of Representatives outlining the revenues received by the  
37 council, the percentage of the industry participating in the  
38 program, the use of the funds received, the number of  
39 individuals who have received training or assistance in the



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40 reporting year from the programs supported by the council, the  
41 goals and objectives for the year and methods of achieving those  
42 goals, and information relating to job placement and industry  
43 workforce needs.

44 (c) The council may:

45 1. Provide to governmental bodies, upon request,  
46 information relating to subjects of concern to the concrete  
47 masonry industry and act jointly or in cooperation with the  
48 state or Federal Government and their agencies in the  
49 development or administration of programs that the council  
50 considers to be consistent with the objectives of this section.

51 2. Sue and be sued as a council without incurring  
52 individual liability of the members for actions of the council  
53 when acting within the scope of the powers conferred by this  
54 section and in the manner prescribed by the laws of this state.

55 3. Maintain a financial reserve for emergency use, which  
56 may not exceed 10 percent of the council's income.

57 4. Employ subordinate officers and employees of the  
58 council, prescribe their duties, and fix their compensation and  
59 terms of employment.

60 5. Cooperate with any local, state, regional, or nationwide  
61 organization or agency engaged in work or activities consistent  
62 with the objectives of this section.

63 6. Meet with concrete masonry manufacturers in this state  
64 to coordinate the collection of self-imposed voluntary  
65 assessments on concrete masonry units.

66 7. Do all other things necessary to further the intent of  
67 this section which are not prohibited by law.

68 (d)1. The council may not participate or intervene in any



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69 political campaign on behalf of or in opposition to any  
70 candidate for public office or any state or local ballot  
71 initiative, including, but not limited to, the publication or  
72 distribution of any statement.

73 2. The net receipts of the council may not inure to the  
74 benefit of or be distributable to its directors, its officers,  
75 or other private persons; however, the council may pay  
76 reasonable compensation for services rendered by council  
77 officers and employees and may make payments and distributions  
78 in furtherance of the purposes of this section.

79 3. Notwithstanding any other provision of law, the council  
80 may not carry on any other activity not permitted to be carried  
81 on by a corporation:

82 a. That is exempt from federal income taxation under s.  
83 501(c)(3) of the Internal Revenue Code; or

84 b. To which charitable contributions are deductible under  
85 s. 170(c)(2) of the Internal Revenue Code.

86 (3)(a) The Florida Concrete Masonry Education Council,  
87 Inc., shall be governed by a board of directors consisting of 15  
88 members, as follows:

89 1. Nine members representing concrete masonry manufacturers  
90 of various sizes, each of whom must represent a different  
91 manufacturer. Of these members, at least five must be  
92 representatives of manufacturers that are members of the Masonry  
93 Association of Florida.

94 2. One member representing a major building industry  
95 association in the state.

96 3. One member having expertise in apprenticeship or  
97 workforce education training.



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98           4. Two members who are masonry contractors and who are  
99 members of the Masonry Association of Florida.

100           5. One member who is not a masonry contractor or  
101 manufacturer or an employee of a masonry contractor or  
102 manufacturer but who is otherwise a stakeholder in the masonry  
103 industry.

104           6. The Chancellor of Career and Adult Education or his or  
105 her designee.

106           (b) The initial board of directors shall consist of 15  
107 voting members, with the Governor, the President of the Senate,  
108 and the Speaker of the House of Representatives each making five  
109 appointments after soliciting recommendations from the Masonry  
110 Association of Florida. Five of the initial board members shall  
111 be appointed to a 1-year term: two who are appointed by the  
112 Governor, two who are appointed by the President of the Senate,  
113 and one who is appointed by the Speaker of the House of  
114 Representatives. Five of the initial board members shall be  
115 appointed to 2-year terms: two who are appointed by the  
116 Governor, one who is appointed by the President of the Senate,  
117 and two who are appointed by the Speaker of the House of  
118 Representatives. Five of the initial board members shall be  
119 appointed to 3-year terms: one appointed by the Governor, two  
120 appointed by the President of the Senate, and two appointed by  
121 the Speaker of the House of Representatives. Each subsequent  
122 vacancy shall be filled in accordance with the initial  
123 appointment. Participation in the voluntary assessment on  
124 concrete masonry units is not a requirement of appointment.  
125 Thereafter, members shall be appointed to 3-year terms and may  
126 be reappointed to one additional consecutive term. In addition



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127 to the 15 voting members, the executive director of the  
128 Department of Economic Opportunity, or his or her designee,  
129 shall serve as an ex officio nonvoting member. A member  
130 representing a manufacturer must have been employed by a  
131 manufacturer engaging in the trade of manufacture of concrete  
132 masonry products for at least 5 years immediately preceding the  
133 first day of his or her service on the board. All members of the  
134 board shall serve without compensation but are entitled to  
135 reimbursement for per diem and travel expenses incurred in  
136 carrying out the intent and purposes of this section in  
137 accordance with s. 112.061, Florida Statutes.

138 (4) The council may accept grants, donations,  
139 contributions, or gifts from any source if the use of such  
140 resources is not restricted in a manner that the council  
141 considers to be inconsistent with the objectives of this  
142 section.

143 (5) (a) The council may make payments to other organizations  
144 for work or services performed which are consistent with the  
145 objectives of this section.

146 (b) Before making such payments, the council must secure a  
147 written agreement that the organization receiving payment will  
148 furnish at least annually, or more frequently on the request of  
149 the council, printed or written reports of program activities.  
150 The reports must include financial data relative to the  
151 council's funding of such activities.

152 (c) The council may require adequate proof of security  
153 bonding on the payments to any individual, business, or other  
154 organization.

155 (6) (a) The self-imposed voluntary assessment shall be paid



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156 for each masonry unit produced and sold by the manufacturer.

157 (b) Each manufacturer that elects to pay the self-imposed  
158 voluntary assessment must commit to paying the assessment for at  
159 least 1 year. Thereafter, the manufacturer may elect to  
160 terminate payment or continue payment for the next year.

161 (c) The manufacturer shall collect all such moneys and  
162 forward them quarterly to the council.

163 (d) The council shall maintain within its financial records  
164 a separate accounting of all moneys received under this  
165 subsection. The council shall provide for an annual financial  
166 audit of its accounts and records to be conducted by an  
167 independent certified public accountant licensed under chapter  
168 473, Florida Statutes.

169 (7) The council shall, by September 30, 2014, adopt bylaws  
170 to carry out the intent and purposes of this section. These  
171 bylaws may be amended upon 30 days' written notice to board  
172 members at any regular or special meeting called for such  
173 purpose. The bylaws must conform to the requirements of this  
174 section but may also address any matter not in conflict with the  
175 general laws of this state.

176 Section 2. This act shall take effect July 1, 2014.

By Senator Richter

23-00309-14

2014286\_\_

A bill to be entitled

An act relating to concrete masonry education; providing a short title; creating the Florida Concrete Masonry Education Council, Inc.; specifying the powers and duties of the council; providing restrictions; providing for appointment and terms of the governing board of the council; authorizing the council to accept grants, donations, contributions, and gifts under certain circumstances; authorizing the council to make payments to other organizations under certain circumstances; providing for collection of a voluntary assessment on concrete masonry units; requiring manufacturers who elect to pay the assessment to commit to paying the assessment for a specified period; requiring the council to adopt bylaws by a specified date; providing an effective date.

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

Section 1. Concrete masonry education.—

(1) This section may be cited as the "Concrete Masonry Education Act."

(2) (a) There is created the Florida Concrete Masonry Education Council, Inc., a nonprofit corporation organized under the laws of this state and operating as a direct-support organization of the Department of Education.

(b) The council shall:

1. Plan, implement, and conduct programs of education for the purpose of training individuals in the field of concrete

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

23-00309-14

2014286\_\_

masonry.

2. Develop and improve access to education for individuals seeking employment in the field of concrete masonry.

3. Develop and implement outreach programs to ensure diversity among individuals trained in the programs conducted pursuant to this section.

4. Coordinate educational programs with national programs or programs of other states.

5. Inform and educate the public about the sustainability and economic benefits of concrete masonry products in order to increase employment opportunities for individuals trained in the programs conducted pursuant to this section.

6. Develop, implement, and monitor a system for the collection of a self-imposed voluntary assessment on each concrete masonry unit produced and sold by concrete masonry manufacturers in this state.

7. Do all other things necessary or expedient for the administration of the affairs and achievement of the purposes of the council.

(c) The council may:

1. Provide to governmental bodies, upon request, information relating to subjects of concern to the concrete masonry industry and act jointly or in cooperation with the state or Federal Government and their agencies in the development or administration of programs that the council considers to be consistent with the objectives of this section.

2. Sue and be sued as a council without incurring individual liability of the members for actions of the council when acting within the scope of the powers conferred by this

Page 2 of 6

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

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59 section and in the manner prescribed by the laws of this state.

60 3. Maintain a financial reserve for emergency use, which  
61 may not exceed 50 percent of the council's anticipated annual  
62 income.

63 4. Employ subordinate officers and employees of the  
64 council, prescribe their duties, and fix their compensation and  
65 terms of employment.

66 5. Cooperate with any local, state, regional, or nationwide  
67 organization or agency engaged in work or activities consistent  
68 with the objectives of this section.

69 6. Meet with concrete masonry manufacturers in this state  
70 to coordinate the collection of self-imposed voluntary  
71 assessments on concrete masonry units.

72 7. Do all other things necessary to further the intent of  
73 this section which are not prohibited by law.

74 (d)1. The council may not participate or intervene in any  
75 political campaign on behalf of or in opposition to any  
76 candidate for public office or any state or local ballot  
77 initiative, including, but not limited to, the publication or  
78 distribution of any statement.

79 2. The net receipts of the council may not inure to the  
80 benefit of or be distributable to its directors, its officers,  
81 or other private persons; however, the council may pay  
82 reasonable compensation for services rendered by council  
83 officers and employees and may make payments and distributions  
84 in furtherance of the purposes of this section.

85 3. Notwithstanding any other provision of law, the council  
86 may not carry on any other activity not permitted to be carried  
87 on by a corporation:

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88 a. That is exempt from federal income taxation under s.  
89 501(c)(3) of the Internal Revenue Code; or

90 b. To which charitable contributions are deductible under  
91 s. 170(c)(2) of the Internal Revenue Code.

92 (3)(a) The Florida Concrete Masonry Education Council,  
93 Inc., shall be governed by a board of directors consisting of 15  
94 members, as follows:

95 1. Nine members representing concrete masonry manufacturers  
96 of various sizes, each of whom must represent a different  
97 manufacturer. Of these members, at least five must be  
98 representatives of manufacturers that are members of the Masonry  
99 Association of Florida.

100 2. One member representing a major building industry  
101 association in the state.

102 3. One member having expertise in apprenticeship or  
103 workforce education training.

104 4. Two members who are masonry contractors and who are  
105 members of the Masonry Association of Florida.

106 5. One member who is not a masonry contractor or  
107 manufacturer or an employee of a masonry contractor or  
108 manufacturer but who is otherwise a stakeholder in the masonry  
109 industry.

110 6. The Chancellor of Career and Adult Education or his or  
111 her designee.

112 (b) The initial board of directors shall be appointed by  
113 the Governor after soliciting recommendations from the Masonry  
114 Association of Florida. Five of the initial board members shall  
115 be appointed to serve 1-year terms, five shall be appointed to  
116 serve 2-year terms, and the remaining five shall be appointed to

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117 serve 3-year terms. Each subsequent vacancy shall be filled in  
 118 accordance with the bylaws of the council. Thereafter, each  
 119 board member shall be appointed to serve a 3-year term and may  
 120 be reappointed to serve an additional consecutive term. A member  
 121 may not serve more than two consecutive terms. A member  
 122 representing a manufacturer must have been employed by a  
 123 manufacturer engaging in the trade of manufacture of concrete  
 124 masonry products for at least 5 years immediately preceding the  
 125 first day of his or her service on the board. All members of the  
 126 board shall serve without compensation but are entitled to  
 127 reimbursement for per diem and travel expenses incurred in  
 128 carrying out the intent and purposes of this section in  
 129 accordance with s. 112.061, Florida Statutes.

130 (4) The council may accept grants, donations,  
 131 contributions, or gifts from any source if the use of such  
 132 resources is not restricted in a manner that the council  
 133 considers to be inconsistent with the objectives of this  
 134 section.

135 (5) (a) The council may make payments to other organizations  
 136 for work or services performed which are consistent with the  
 137 objectives of this section.

138 (b) Before making such payments, the council must secure a  
 139 written agreement that the organization receiving payment will  
 140 furnish at least annually, or more frequently on the request of  
 141 the council, printed or written reports of program activities.  
 142 The reports must include financial data relative to the  
 143 council's funding of such activities.

144 (c) The council may require adequate proof of security  
 145 bonding on the payments to any individual, business, or other

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146 organization.

147 (6) (a) The self-imposed voluntary assessment shall be paid  
 148 for each masonry unit produced and sold by the manufacturer.

149 (b) Each manufacturer that elects to pay the self-imposed  
 150 voluntary assessment must commit to paying the assessment for at  
 151 least 1 year. Thereafter, the manufacturer may elect to  
 152 terminate payment or continue payment for the next year.

153 (c) The manufacturer shall collect all such moneys and  
 154 forward them quarterly to the council.

155 (d) The council shall maintain within its financial records  
 156 a separate accounting of all moneys received under this  
 157 subsection. The council shall provide for an annual financial  
 158 audit of its accounts and records to be conducted by an  
 159 independent certified public accountant licensed under chapter  
 160 473, Florida Statutes.

161 (7) The council shall, by September 30, 2014, adopt bylaws  
 162 to carry out the intent and purposes of this section. These  
 163 bylaws may be amended upon 30 days' written notice to board  
 164 members at any regular or special meeting called for such  
 165 purpose. The bylaws must conform to the requirements of this  
 166 section but may also address any matter not in conflict with the  
 167 general laws of this state.

168 Section 2. This act shall take effect July 1, 2014.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Gaming, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules  
Transportation

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

## SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

January 9, 2014

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

Dear Chairman Stargel:

Senate Bill 286, the Concrete Masonry Education Act, was successfully heard in the Committee on Community Affairs. I would appreciate the placing of this bill on your committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Patrick Imhoff, Staff Director  
Lynn Koon

**REPLY TO:**

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

Waived in support

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/14  
Meeting Date

Topic Masonry Educator Act

Bill Number 286  
(if applicable)

Name Pat McLaughlin

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Executive Director

Address 398 Camino Gardens Blvd

Phone 561-239-2462

Street  
Boca Raton FL  
City State Zip

E-mail pat@floridaMasonry.com

Speaking:  For  Against  Information

Representing Masonry Association 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.

waived  
in support

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/14

Meeting Date

Topic Concrete masonry Education Act Bill Number SB 286  
(if applicable)

Name Curtis Leonard Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Advocate

Address 645 Riverpark Circle Phone 407-709-9000  
Street

Longwood FL 32779 E-mail cleonard@TitanAmerica  
City State Zip .Com

Speaking:  For  Against  Information

Representing Titan America

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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Walked in support

# THE FLORIDA SENATE APPEARANCE RECORD

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

2-13-14

Meeting Date

Topic SB 286

Bill Number 286  
*(if applicable)*

Name Justin Fleming

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Advocate

Address 10920 Subtle Trail Dr.

Phone 850-499-2460

Street

Riverview FL 33579

City

State

Zip

E-mail j.fleming@titanamerica.com

Speaking:  For  Against  Information

Representing Titan Block

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.**

waited in support

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-13-14

Meeting Date

Topic Concrete Masonry Education Act

Bill Number SB 286  
(if applicable)

Name Rocky Jenkins

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Director

Address 880 Maple Ridge Drive

Phone 321-543-1415

Street  
Merritt Island FL 32952  
City State Zip

E-mail rockys.jenkins@cemex.com

Speaking:  For  Against  Information

Representing CEMEX

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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waived in support

# THE FLORIDA SENATE APPEARANCE RECORD

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

Meeting Date \_\_\_\_\_

Topic MASONRY EDUCATION

Bill Number 286

Name MIKE MURTHA

Amendment Barcode STRIKE-ALL  
(if applicable)  
(if applicable)

Job Title PRESIDENT

Address 6353 LEE USTA BLVD

Phone 407-895-9333

Street  
ORLANDO FL 32822  
City State Zip

E-mail mmurtha@fcpm.org

Speaking:  For  Against  Information

Representing FL CONCRETE AND PRODUCTS ASSOC

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)

2/13/14  
Meeting Date

Topic Concrete Masonry

Bill Number SB 286  
*(if applicable)*

Name Richard Witzan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Counsel

Address P.O. Box 10838

Phone 850 222-0000

*Street*  
Tallahassee, FL 32302  
*City State Zip*

E-mail rich@v.witzanand  
associates.com

Speaking:  For  Against  Information

Representing Associated Builders & Contractors 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.**

# APPEARANCE RECORD

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

2/19/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 286  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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



**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.)

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

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BILL: CS/SB 440

INTRODUCER: Regulated Industries Committee and Senator Altman

SUBJECT: Condominiums

DATE: February 13, 2014

REVISED: \_\_\_\_\_

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

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 440 amends several provisions in s. 718.112, F.S., which specifies the provisions that must be included in the bylaws of condominiums, to distinguish the bylaws requirements for residential condominiums from those for commercial condominiums. The bill limits the following bylaw requirements to residential condominiums:

- The time periods for associations to respond to a unit owner's written inquiries;
- The requirements for the election of board members, the use of staggered terms for members of the board, and the use of limited and general proxies;
- Prohibitions on persons who are not eligible to serve on the board of a condominium association, including co-owners of a unit in certain association, persons who have been suspended, persons who are delinquent in the payment of monetary obligation due to the association, and persons convicted of a felony;
- The pre-election certification requirements for newly elected or appointed board members; and
- The requirement that the bylaws of the association must provide for mandatory nonbinding arbitration of disputes by the Division of Florida Condominiums, Timeshares, and Mobile Homes with the Department of Business and Professional Regulation.

The bill also limits the requirement that associations must initiate an application for a building permit for the required installation of a sprinkler system by the specified date to residential condominiums. The bill also extends the specified date by which residential condominium

associations must make the application for a building permit from the end of 2019 to January 1, 2020.

The bill also limits the following requirements to residential condominiums:

- That condominium boards must adopt shutter specifications for each building within each condominium operated by the association;
- That condominium boards cannot refuse to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.
- That the alternative dispute resolution provisions in in s. 718.1255, F.S., which provide for the mediation and voluntary non-binding arbitration n of certain disputes, do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium;
- Limitations on the ability of the developer to modify the plot plan for phase condominiums;
- The information related to the development of a phase condominium that must be described in the original declaration of condominium or approved amendment to residential condominiums.

The bill provides that only residential condominiums are residential property for insurance purposes.

The bill also to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

## II. Present Situation:

### Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>2</sup> A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>3</sup>

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”<sup>4</sup> A declaration of condominium may be amended as provided in the declaration.<sup>5</sup> If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

<sup>3</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>4</sup> Section 718.104(5), F.S.

<sup>5</sup> See s. 718.110(1)(a), F.S.

less than the owners of two-thirds of the units.<sup>6</sup> Condominiums are administered by a board of directors referred to as a “board of administration.”<sup>7</sup>

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

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

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

Section 718.103(23), F.S., defines the term “residential condominium” to mean:

a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404.

### **Division of Florida Condominiums, Timeshares, and Mobile Homes**

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

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with chapter 718, F.S. with respect to associations that are still under developer control.<sup>8</sup> 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

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<sup>6</sup> Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

<sup>7</sup> Section 718.103(4), F.S.

<sup>8</sup> Section 718.501(1), F.S.

investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.<sup>9</sup>

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

### **Condominium Bylaws**

Section 718.112(2), F.S., specifies the provisions that must be included in the bylaws of condominium associations. In relevant part, the association's bylaws must provide that:

- The board of an associations must respond to a unit owner's written inquiry within 30 days of receipt of the inquiry;<sup>10</sup> and
- If the board has sought advice from the division in order to respond to an inquiry from a unit owner, the board must provide a written response to the unit owner within 10 days of receipt of the advice.<sup>11</sup>

Section 718.112(2)(b)2., F.S., provides for the election of members of the condominium association's board. It provides that:

- Unit owners may vote by limited or general proxy;<sup>12</sup>
- Unless the bylaws provide otherwise, or the staggered term of a board member does not expire at the annual meeting, the terms of board members shall at the annual meeting, and such board members may stand for re-election, unless prohibited by the bylaws;<sup>13</sup>
- Co-owners of a unit in associations of more than 10 units or in associations that do not include timeshare units or interests may not serve on the board at the same time;<sup>14</sup>
- A candidate for election to the board must complete the information sheet required under s. 718.112(2)(d)4.a., F.S.;
- Persons who have been suspended by the division or who are delinquent in the payment of monetary obligation due to the association are not eligible for board membership;<sup>15</sup>
- Persons convicted of a felony are not eligible for board membership until their civil rights have been restored;<sup>16</sup>
- Members of the board must be elected by written ballot or voting machine;<sup>17</sup> and
- Within 90 days after being elected or appointed, a newly elected or appointed 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. Alternatively, newly elected or appointed board

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<sup>9</sup> 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.

<sup>10</sup> Section 718.112(2)(a)2., F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 718.112(2)(b)2., F.S.

<sup>13</sup> Section 718.112(2)(d)2., F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 718.112(2)(d)4., F.S.

member 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.<sup>18</sup>

Section 718.112(2)(d)10., F.S., provides that ch. 718, F.S., does not limit the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association.

Section 718.112(2)(d), F.S., also permits associations of 10 or fewer units to, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in their bylaws, which may be proxy specifically delineating the different voting and election procedures.

Section 718.112(2)(k), F.S., requires that the bylaws of the association must provide for mandatory nonbinding arbitration of disputes, as provided in s. 718.1255, F.S. The following types of disputes are excluded from arbitration under s. 718.1255, F.S.:

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.<sup>19</sup>

Section 718.112(2)(l), F.S., provides that the local authority having jurisdiction over the property may not require completion of retrofitting with a fire sprinkler system before the end of 2019. By December 31, 2016, an association that is not in compliance with the requirements for a fire sprinkler system and which has not voted to forego retrofitting of such a system is required to initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019.

Section 718.112(2)(l)1., F.S., permits condominium associations to vote to forego retrofitting at a duly called membership meeting. Members may vote to forego retrofitting by limited proxy or by a vote personally cast. Section 718.112(2)(l)3., F.S., requires that associations report to the division the membership vote and the recording of a certificate from a licensed electrical contractor that the association is in compliance with the applicable life and safety code, as provided in s. 718.112(2)(l), F.S.

### **Vertical Accessibility**

Section 553.509(1), F.S., provides that part II of ch. 553, F.S., the Florida Americans with Disabilities Accessibility Implementation Act, and the Americans with Disabilities Act Standards for Accessible Design do not relieve the owner of any building, structure, or facility governed by this part from the duty to provide vertical accessibility to all levels above and below

<sup>18</sup> Section 718.112(2)(d)4.b., F.S.

<sup>19</sup> Section 718.1255(1), F.S.

the occupiable grade level. Section 553.509(2), F.S., provides that buildings, structures, and facilities must, as a minimum, comply with the Americans with Disabilities Act Standards for Accessible Design.

Section 718.112(2)(l)4., F.S., permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.

### **Maintenance-Hurricane Protections**

Section 718.113(5), F.S., requires that condominium boards adopt shutter specifications for each building within each condominium operated by the association. The shutter specifications must include color, style, and other factors deemed relevant by the board. All of the specifications adopted by the board must comply with the applicable building code. Section 718.113(5)(a), F.S., authorizes condominium boards to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. Such installations by the board must be by a contract for products or services in accordance with s. 718.3026, F.S., and be approved by a majority of voting interests of the condominium.

### **Phase Condominiums**

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration which has been approved by all the unit owners and unit mortgagees.

The description must include the land which may become part of the condominium and the land on which each phase is to be built, including the metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. The plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium.

The developer may modify the plot plan as to unit or building types to the extent that such changes are described in the declaration. The developer may also make nonmaterial changes in the legal description of a phase if authorized by the declaration.<sup>20</sup>

Section 718.403(2)(b)-(f), F.S., provides the additional information that must be described in the original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer. Section 718.403(2)(b)-(f), F.S., provides:

- (b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

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<sup>20</sup> Section 718.403(2)(a), F.S.

(c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of ownership in the common elements and manner of sharing common expenses and owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.

(d) The recreational areas and facilities which will be owned as common elements by all unit owners and all personal property to be provided as each phase is added to the condominium and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the condominium. The developer may reserve the right to add additional common-element recreational facilities if the original declaration contains a description of each type of facility and its proposed location. The declaration shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not timeshare estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.<sup>21</sup>

### **Distressed Condominium Relief Act**

The "Distressed Condominium Relief Act" in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704, F.S., provides for the assignment and assumption of developer rights.

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<sup>21</sup> Section 718.403(1), F.S.

Section 718.704, F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2015. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

### **III. Effect of Proposed Changes:**

#### **Condominium Bylaws**

The bill amends several provisions in s. 718.112, F.S., to distinguish the bylaws requirements for residential condominiums from those for commercial condominiums.

The bill limits the following bylaw requirements to residential condominiums:

- The requirement that the board must give a substantive response to a unit owner's written inquiry within 30 days of receipt of the inquiry or within 10 days of receipt of the advice from the division in s. 718.112(2)(a)2., F.S.;
- The requirements for the election of board members and the use of limited and general proxies in s. 718.112(2)(b)2., F.S.;
- The requirements for the election of board members the use of staggered terms s. 718.112(2)(d)2., F.S.;
- The prohibition in s. 718.112(2)(d)2., F.S., against co-owners serving on the board at the same time;
- The prohibitions on persons who are not eligible to serve on the board in s. 718.112(2)(d)2., F.S., including persons who have been suspended by the division, persons who are delinquent in the payment of monetary obligation due to the association, and persons convicted of a felony;
- The requirement that members of the board must be elected by written ballot or voting machine in s. 718.112(2)(d)4., F.S.;
- The pre-election notice and information requirements in s. 718.112(2)(d)4.a., F.S.;
- The requirement that a newly elected or appointed director must certify in writing that he or she has read the association's documents within 90 days of being elected or appointed in s. 718.(2)(d)4.b., F.S.;
- The provision in s. 718.112(2)(d)10., F.S., that ch. 718, F.S., does not limit the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association; and
- The requirement in s. 718.112(2)(k), F.S., that the bylaws of the association must provide for mandatory nonbinding arbitration of disputes, as provided in s. 718.1255, F.S.

The bill amends s. 718.112(2)(l), F.S., to limit the provision that requires associations to initiate an application for a building permit for the required installation of a sprinkler system by the specified date to residential condominiums. The bill also clarifies the specified date by which residential condominium associations must make the application for a building permit from the end of 2019 to January 1, 2020.

The bill amends s. 718.112(2)(l)4., F.S., to limit, to residential condominiums, the provision that permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.<sup>22</sup>

#### **Maintenance-Hurricane Protections**

The bill amends s. 718.113(5), F.S., to limit the requirement that condominium boards adopt shutter specifications for each building within each condominium operated by the association to residential condominiums. The bill amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the board's authority to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code (hurricane protections). The bill also amends s. 718.113(5)(d), F.S., to limit, to residential condominiums, the provision that prohibits condominium boards, notwithstanding the any other provision in the condominium documents, from refusing to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.

#### **Alternative Dispute Resolution**

The bill creates s. 718.1255(6), F.S., to provide that the alternative dispute resolution provisions in this section do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium.

#### **Condominiums as Residential Property**

The bill amends s. 718.1256, F.S., to provide that residential condominiums are classified as residential property for property and casualty insurance risk classification.

#### **Phase Condominiums**

The bill amends s. 718.403(2)(a), F.S., to limit the ability of the developer to modify the plot plan as to unit or building types only to the extent that such changes are described in the declaration to residential condominiums.

The bill creates s. 718.403(9), F.S., to limit the information that must be described, as specified in ss. 718.403(2)(b)-(f), F.S., in the original declaration of condominium or approved amendment to residential condominiums.

#### **Distressed Condominium Relief Act**

The bill amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>22</sup> Section 552.509, F.S., relates to applicability of the requirements and exceptions of the Florida Americans with Disabilities Accessibility Implementation Act (ss. 553.501-553.513, F.S.) and the Americans with Disabilities Act Standards for Accessible Design to provide for vertical accessibility.

**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 representatives for condominium associations and the Real Property Probate and Trust Law Section of The Florida Bar, commercial condominiums may incur fewer expenses by not having to comply with bylaws requirements in ch. 718, F.S., that are more relevant to residential condominiums.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.112, 718.113, 718.1255, 718.1256, 718.403, and 718.707.

**IX. 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 February 13, 2014:**

The committee substitute (CS) s. 718.112(2)(a)2., F.S., to limit, to residential condominiums, the requirement that the board must respond to a unit owner's written inquiry within 30 days of receipt of the inquiry. The CS does not reference the limitation to residential condominiums in the provision that requires the board to give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division.

The CS amends s. 718.112(2)(d), F.S., to limit, to residential condominiums, the provision that permits associations of 10 or fewer units to amend their bylaws to provide different voting and election procedures than is provided in ch. 718, F.S.

The CS amends s. s. 718.112(2)(1)4., F.S., to limit, to residential condominiums, the provision that permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.

The CS amends s. 718.113(5), F.S., to limit the requirement that condominium boards adopt shutter specifications for each building within each condominium operated by the association to residential condominiums. The CS also amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the board's authority to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. The bill also amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the provision that prohibits condominium boards from refusing to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.

The CS creates s. 718.1255(6), F.S., to provide that the alternative dispute resolution provisions in this section do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium.

The CS amends s. 718.1256, F.S., to provide that residential condominiums are classified as residential property for property and casualty insurance risk classification.

The CS amends s. 718.403(2)(a), F.S., to limit the ability of the developer to modify the plot plan as to unit or building types only to the extent that such changes are described in the declaration to residential condominiums. The bill creates s. 718.403(9), F.S., to limit the information that must be described, as specified in ss. 718.403(2)(b)-(f), F.S., in the original declaration of condominium or approved amendment to residential condominiums.

The CS amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2014	.	
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	.	

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

**Senate Amendment**

Delete lines 37 - 44

and insert:

2. When a unit owner of a residential condominium files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days after ~~of~~ receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been



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11 requested, or notify the inquirer that advice has been requested  
12 from the division. If the board



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2014	.	
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The Committee on Regulated Industries (Thrasher) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 340 - 412

and insert:

association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may



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10 provide for elections to be conducted by limited or general  
11 proxy.

12 (k) Arbitration.—There shall be a provision for mandatory  
13 nonbinding arbitration as provided for in s. 718.1255 for any  
14 residential condominium.

15 (l) Certificate of compliance.—A provision that a  
16 certificate of compliance from a licensed electrical contractor  
17 or electrician may be accepted by the association's board as  
18 evidence of compliance of the condominium units with the  
19 applicable fire and life safety code must be included.  
20 Notwithstanding chapter 633 or of any other code, statute,  
21 ordinance, administrative rule, or regulation, or any  
22 interpretation of the foregoing, an association, residential  
23 condominium, or unit owner is not obligated to retrofit the  
24 common elements, association property, or units of a residential  
25 condominium with a fire sprinkler system in a building that has  
26 been certified for occupancy by the applicable governmental  
27 entity if the unit owners have voted to forego such retrofitting  
28 by the affirmative vote of a majority of all voting interests in  
29 the affected condominium. The local authority having  
30 jurisdiction may not require completion of retrofitting with a  
31 fire sprinkler system before January 1, 2020 ~~the end of 2019~~. By  
32 December 31, 2016, a residential condominium ~~an~~ association that  
33 is not in compliance with the requirements for a fire sprinkler  
34 system and has not voted to forego retrofitting of such a system  
35 must initiate an application for a building permit for the  
36 required installation with the local government having  
37 jurisdiction demonstrating that the association will become  
38 compliant by December 31, 2019.



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39           1. A vote to forego retrofitting may be obtained by limited  
40 proxy or by a ballot personally cast at a duly called membership  
41 meeting, or by execution of a written consent by the member, and  
42 is effective upon recording a certificate attesting to such vote  
43 in the public records of the county where the condominium is  
44 located. The association shall mail or hand deliver to each unit  
45 owner written notice at least 14 days before the membership  
46 meeting in which the vote to forego retrofitting of the required  
47 fire sprinkler system is to take place. Within 30 days after the  
48 association's opt-out vote, notice of the results of the opt-out  
49 vote must be mailed or hand delivered to all unit owners.

50 Evidence of compliance with this notice requirement must be made  
51 by affidavit executed by the person providing the notice and  
52 filed among the official records of the association. After  
53 notice is provided to each owner, a copy must be provided by the  
54 current owner to a new owner before closing and by a unit owner  
55 to a renter before signing a lease.

56           2. If there has been a previous vote to forego  
57 retrofitting, a vote to require retrofitting may be obtained at  
58 a special meeting of the unit owners called by a petition of at  
59 least 10 percent of the voting interests. Such a vote may only  
60 be called once every 3 years. Notice shall be provided as  
61 required for any regularly called meeting of the unit owners,  
62 and must state the purpose of the meeting. Electronic  
63 transmission may not be used to provide notice of a meeting  
64 called in whole or in part for this purpose.

65           3. As part of the information collected annually from  
66 condominiums, the division shall require condominium  
67 associations to report the membership vote and recording of a



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68 certificate under this subsection and, if retrofitting has been  
69 undertaken, the per-unit cost of such work. The division shall  
70 annually report to the Division of State Fire Marshal of the  
71 Department of Financial Services the number of condominiums that  
72 have elected to forego retrofitting.

73 4. Notwithstanding s. 553.509, a residential ~~an~~ association  
74 may not be obligated to, and may forego the retrofitting of, any  
75 improvements required by s. 553.509(2) upon an affirmative vote  
76 of a majority of the voting interests in the affected  
77 condominium.

78 Section 2. Subsection (5) of section 718.113, Florida  
79 Statutes, is amended to read:

80 718.113 Maintenance; limitation upon improvement; display  
81 of flag; hurricane shutters and protection; display of religious  
82 decorations.—

83 (5) Each board of administration of a residential  
84 condominium shall adopt hurricane shutter specifications for  
85 each building within each condominium operated by the  
86 association which shall include color, style, and other factors  
87 deemed relevant by the board. All specifications adopted by the  
88 board must comply with the applicable building code.

89 (a) The board may, subject to s. 718.3026 and the approval  
90 of a majority of voting interests of the residential  
91 condominium, install hurricane shutters, impact glass, code-  
92 compliant windows or doors, or other types of code-compliant  
93 hurricane protection that comply with or exceed the applicable  
94 building code. However, a vote of the owners is not required if  
95 the maintenance, repair, and replacement of hurricane shutters,  
96 impact glass, code-compliant windows or doors, or other types of



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97 code-compliant hurricane protection are the responsibility of  
98 the association pursuant to the declaration of condominium. If  
99 hurricane protection or laminated glass or window film  
100 architecturally designed to function as hurricane protection  
101 that complies with or exceeds the current applicable building  
102 code has been previously installed, the board may not install  
103 hurricane shutters, impact glass, code-compliant windows or  
104 doors, or other types of code-compliant hurricane protection  
105 except upon approval by a majority vote of the voting interests.

106 (b) The association is responsible for the maintenance,  
107 repair, and replacement of the hurricane shutters, impact glass,  
108 code-compliant windows or doors, or other types of code-  
109 compliant hurricane protection authorized by this subsection if  
110 such property is the responsibility of the association pursuant  
111 to the declaration of condominium. If the hurricane shutters,  
112 impact glass, code-compliant windows or doors, or other types of  
113 code-compliant hurricane protection are the responsibility of  
114 the unit owners pursuant to the declaration of condominium, the  
115 maintenance, repair, and replacement of such items are the  
116 responsibility of the unit owner.

117 (c) The board may operate shutters, impact glass, code-  
118 compliant windows or doors, or other types of code-compliant  
119 hurricane protection installed pursuant to this subsection  
120 without permission of the unit owners only if such operation is  
121 necessary to preserve and protect the condominium property and  
122 association property. The installation, replacement, operation,  
123 repair, and maintenance of such shutters, impact glass, code-  
124 compliant windows or doors, or other types of code-compliant  
125 hurricane protection in accordance with the procedures set forth



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126 in this paragraph are not a material alteration to the common  
127 elements or association property within the meaning of this  
128 section.

129 (d) Notwithstanding any other provision in the residential  
130 condominium documents, if approval is required by the documents,  
131 a board may not refuse to approve the installation or  
132 replacement of hurricane shutters, impact glass, code-compliant  
133 windows or doors, or other types of code-compliant hurricane  
134 protection by a unit owner conforming to the specifications  
135 adopted by the board.

136 Section 3. Subsection (6) is added to section 718.1255,  
137 Florida Statutes, to read:

138 718.1255 Alternative dispute resolution; voluntary  
139 mediation; mandatory nonbinding arbitration; legislative  
140 findings.—

141 (6) APPLICABILITY.—This section does not apply to a  
142 nonresidential condominium unless otherwise specifically  
143 provided for in the declaration of the nonresidential  
144 condominium.

145 Section 4. Section 718.1256, Florida Statutes, is amended  
146 to read:

147 718.1256 Condominiums as residential property.—For the  
148 purpose of property and casualty insurance risk classification,  
149 residential condominiums shall be classed as residential  
150 property.

151 Section 5. Paragraph (a) of subsection (2) of section  
152 718.403, Florida Statutes, is amended and subsection (9) is  
153 added to that section, to read:

154 718.403 Phase condominiums.—



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155 (2) The original declaration of condominium, or an  
156 amendment to the declaration, which amendment has been approved  
157 by all unit owners and unit mortgagees and the developer, shall  
158 describe:

159 (a) The land which may become part of the condominium and  
160 the land on which each phase is to be built. The descriptions  
161 shall include metes and bounds or other legal descriptions of  
162 the land for each phase, plot plans, and surveys. Plot plans,  
163 attached as an exhibit, must show the approximate location of  
164 all existing and proposed buildings and improvements that may  
165 ultimately be contained within the condominium. The plot plan  
166 may be modified by the developer as to unit or building types  
167 but, in a residential condominium, only to the extent that such  
168 changes are described in the declaration. If provided in the  
169 declaration, the developer may make nonmaterial changes in the  
170 legal description of a phase.

171 (9) Paragraphs (2)(b)-(f) and subsection (8) do not apply  
172 to nonresidential condominiums.

173 Section 6. Section 718.707, Florida Statutes, is amended to  
174 read:

175 718.707 Time limitation for classification as bulk assignee or  
176 bulk buyer.—A person acquiring condominium parcels may not be  
177 classified as a bulk assignee or bulk buyer unless the  
178 condominium parcels were acquired on or after July 1, 2010, but  
179 before July 1, 2016 ~~2015~~. The date of such acquisition shall be  
180 determined by the date of recording a deed or other instrument  
181 of conveyance for such parcels in the public records of the  
182 county in which the condominium is located, or by the date of  
183 issuing a certificate of title in a foreclosure proceeding with



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184 respect to such condominium parcels.

185

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

187 And the title is amended as follows:

188 Delete line 5

189 and insert:

190 their associations and boards; amending s. 718.113,  
191 F.S.; limiting the application of certain requirements  
192 relating to the maintenance of residential  
193 condominiums and their associations and boards;  
194 amending s. 718.1255, F.S.; exempting nonresidential  
195 condominiums from mandatory arbitration unless  
196 specifically provided for in their declarations;  
197 amending s. 718.1256, F.S.; specifying that  
198 residential condominiums are classified as residential  
199 property; amending s. 718.403, F.S.; authorizing the  
200 developer to modify the plot plan as to unit or  
201 building types; limiting the circumstances under which  
202 a plot plan may be modified as to a residential  
203 condominium; specifying the provisions relating to  
204 phase condominiums that are inapplicable to  
205 nonresidential condominiums; amending s. 718.707,  
206 F.S.; extending by 1 year the time limitation for  
207 classification as a bulk assignee or bulk buyer;  
208 providing an effective

By Senator Altman

16-00483-14

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A bill to be entitled

An act relating to condominiums; amending s. 718.112, F.S.; limiting the application of certain requirements relating to bylaws to residential condominiums and their associations and boards; providing an effective date.

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

Section 1. Paragraphs (a), (b), (d), (k), and (l) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

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

(a) *Administration.*—

1. The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of a condominium which has five or fewer units, in which case in a not-for-profit corporation the board shall consist of not fewer than three members. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by

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officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days after ~~of~~ receipt of the inquiry. If the condominium is a residential condominium, the board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board in a residential condominium requests advice from the division, the board shall, within 10 days after ~~of~~ its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The failure to provide a substantive response to the inquiry as provided herein precludes the board from recovering ~~attorney~~ attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may through its board of administration adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries, one of which may be that the association is only obligated to respond to one written inquiry per unit in any given 30-day period. In such a

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59 case, any additional inquiry or inquiries must be responded to  
60 in the subsequent 30-day period, or periods, as applicable.

61 (b) *Quorum; voting requirements; proxies.*—

62 1. Unless a lower number is provided in the bylaws, the  
63 percentage of voting interests required to constitute a quorum  
64 at a meeting of the members is a majority of the voting  
65 interests. Unless otherwise provided in this chapter or in the  
66 declaration, articles of incorporation, or bylaws, and except as  
67 provided in subparagraph (d)4., decisions shall be made by a  
68 majority of the voting interests represented at a meeting at  
69 which a quorum is present.

70 2. Except as specifically otherwise provided herein, unit  
71 owners in a residential condominium may not vote by general  
72 proxy, but may vote by limited proxies substantially conforming  
73 to a limited proxy form adopted by the division. A voting  
74 interest or consent right allocated to a unit owned by the  
75 association may not be exercised or considered for any purpose,  
76 whether for a quorum, an election, or otherwise. Limited proxies  
77 and general proxies may be used to establish a quorum. Limited  
78 proxies shall be used for votes taken to waive or reduce  
79 reserves in accordance with subparagraph (f)2.; for votes taken  
80 to waive the financial reporting requirements of s. 718.111(13);  
81 for votes taken to amend the declaration pursuant to s. 718.110;  
82 for votes taken to amend the articles of incorporation or bylaws  
83 pursuant to this section; and for any other matter for which  
84 this chapter requires or permits a vote of the unit owners.  
85 Except as provided in paragraph (d), a proxy, limited or  
86 general, may not be used in the election of board members in a  
87 residential condominium. General proxies may be used for other

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88 matters for which limited proxies are not required, and may be  
89 used in voting for nonsubstantive changes to items for which a  
90 limited proxy is required and given. Notwithstanding this  
91 subparagraph, unit owners may vote in person at unit owner  
92 meetings. This subparagraph does not limit the use of general  
93 proxies or require the use of limited proxies for any agenda  
94 item or election at any meeting of a timeshare condominium  
95 association or a nonresidential condominium association.

96 3. A ~~Any~~ proxy given is effective only for the specific  
97 meeting for which originally given and any lawfully adjourned  
98 meetings thereof. A proxy is not valid longer than 90 days after  
99 the date of the first meeting for which it was given. Each ~~Every~~  
100 proxy is revocable at any time at the pleasure of the unit owner  
101 executing it.

102 4. A member of the board of administration or a committee  
103 may submit in writing his or her agreement or disagreement with  
104 any action taken at a meeting that the member did not attend.  
105 This agreement or disagreement may not be used as a vote for or  
106 against the action taken or to create a quorum.

107 5. If any of the board or committee members meet by  
108 telephone conference, those board or committee members may be  
109 counted toward obtaining a quorum and may vote by telephone. A  
110 telephone speaker must be used so that the conversation of those  
111 members may be heard by the board or committee members attending  
112 in person as well as by any unit owners present at a meeting.

113 (d) *Unit owner meetings.*—

114 1. An annual meeting of the unit owners shall be held at  
115 the location provided in the association bylaws and, if the  
116 bylaws are silent as to the location, the meeting shall be held

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117 within 45 miles of the condominium property. However, such  
 118 distance requirement does not apply to an association governing  
 119 a timeshare condominium.

120 2. Unless the bylaws provide otherwise, a vacancy on the  
 121 board caused by the expiration of a director's term shall be  
 122 filled by electing a new board member, and the election must be  
 123 by secret ballot. An election is not required if the number of  
 124 vacancies equals or exceeds the number of candidates. For  
 125 purposes of this paragraph, the term "candidate" means an  
 126 eligible person who has timely submitted the written notice, as  
 127 described in sub-subparagraph 4.a., of his or her intention to  
 128 become a candidate. Except in a timeshare or nonresidential  
 129 condominium, or if the staggered term of a board member does not  
 130 expire until a later annual meeting, or if all members' terms  
 131 would otherwise expire but there are no candidates, the terms of  
 132 all board members expire at the annual meeting, and such members  
 133 may stand for reelection unless prohibited by the bylaws. If the  
 134 bylaws or articles of incorporation permit terms of no more than  
 135 2 years, the association board members may serve 2-year terms.  
 136 If the number of board members whose terms expire at the annual  
 137 meeting equals or exceeds the number of candidates, the  
 138 candidates become members of the board effective upon the  
 139 adjournment of the annual meeting. Unless the bylaws provide  
 140 otherwise, any remaining vacancies shall be filled by the  
 141 affirmative vote of the majority of the directors making up the  
 142 newly constituted board even if the directors constitute less  
 143 than a quorum or there is only one director. In a residential  
 144 condominium association of more than 10 units or in a  
 145 residential condominium association that does not include

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146 timeshare units or timeshare interests, coowners of a unit may  
 147 not serve as members of the board of directors at the same time  
 148 unless they own more than one unit or unless there are not  
 149 enough eligible candidates to fill the vacancies on the board at  
 150 the time of the vacancy. ~~A~~ Any unit owner in a residential  
 151 condominium desiring to be a candidate for board membership must  
 152 comply with sub-subparagraph 4.a. and must be eligible to be a  
 153 candidate to serve on the board of directors at the time of the  
 154 deadline for submitting a notice of intent to run in order to  
 155 have his or her name listed as a proper candidate on the ballot  
 156 or to serve on the board. A person who has been suspended or  
 157 removed by the division under this chapter, or who is delinquent  
 158 in the payment of any monetary obligation due to the  
 159 association, is not eligible to be a candidate for board  
 160 membership and may not be listed on the ballot. A person who has  
 161 been convicted of any felony in this state or in a United States  
 162 District or Territorial Court, or who has been convicted of any  
 163 offense in another jurisdiction which would be considered a  
 164 felony if committed in this state, is not eligible for board  
 165 membership unless such felon's civil rights have been restored  
 166 for at least 5 years as of the date such person seeks election  
 167 to the board. The validity of an action by the board is not  
 168 affected if it is later determined that a board member is  
 169 ineligible for board membership due to having been convicted of  
 170 a felony. This subparagraph does not limit the term of a member  
 171 of the board of a nonresidential condominium.

172 3. The bylaws must provide the method of calling meetings  
 173 of unit owners, including annual meetings. Written notice must  
 174 include an agenda, must be mailed, hand delivered, or

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175 electronically transmitted to each unit owner at least 14 days  
 176 before the annual meeting, and must be posted in a conspicuous  
 177 place on the condominium property at least 14 continuous days  
 178 before the annual meeting. Upon notice to the unit owners, the  
 179 board shall, by duly adopted rule, designate a specific location  
 180 on the condominium property or association property where all  
 181 notices of unit owner meetings shall be posted. This requirement  
 182 does not apply if there is no condominium property or  
 183 association property for posting notices. In lieu of, or in  
 184 addition to, the physical posting of meeting notices, the  
 185 association may, by reasonable rule, adopt a procedure for  
 186 conspicuously posting and repeatedly broadcasting the notice and  
 187 the agenda on a closed-circuit cable television system serving  
 188 the condominium association. However, if broadcast notice is  
 189 used in lieu of a notice posted physically on the condominium  
 190 property, the notice and agenda must be broadcast at least four  
 191 times every broadcast hour of each day that a posted notice is  
 192 otherwise required under this section. If broadcast notice is  
 193 provided, the notice and agenda must be broadcast in a manner  
 194 and for a sufficient continuous length of time so as to allow an  
 195 average reader to observe the notice and read and comprehend the  
 196 entire content of the notice and the agenda. Unless a unit owner  
 197 waives in writing the right to receive notice of the annual  
 198 meeting, such notice must be hand delivered, mailed, or  
 199 electronically transmitted to each unit owner. Notice for  
 200 meetings and notice for all other purposes must be mailed to  
 201 each unit owner at the address last furnished to the association  
 202 by the unit owner, or hand delivered to each unit owner.  
 203 However, if a unit is owned by more than one person, the

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204 association must provide notice to the address that the  
 205 developer identifies for that purpose and thereafter as one or  
 206 more of the owners of the unit advise the association in  
 207 writing, or if no address is given or the owners of the unit do  
 208 not agree, to the address provided on the deed of record. An  
 209 officer of the association, or the manager or other person  
 210 providing notice of the association meeting, must provide an  
 211 affidavit or United States Postal Service certificate of  
 212 mailing, to be included in the official records of the  
 213 association affirming that the notice was mailed or hand  
 214 delivered in accordance with this provision.

215 4. The members of the board of a residential condominium  
 216 shall be elected by written ballot or voting machine. Proxies  
 217 may not be used in electing the board in general elections or  
 218 elections to fill vacancies caused by recall, resignation, or  
 219 otherwise, unless otherwise provided in this chapter. This  
 220 subparagraph does not apply to an association governing a  
 221 timeshare condominium.

222 a. At least 60 days before a scheduled election, the  
 223 association shall mail, deliver, or electronically transmit, by  
 224 separate association mailing or included in another association  
 225 mailing, delivery, or transmission, including regularly  
 226 published newsletters, to each unit owner entitled to a vote, a  
 227 first notice of the date of the election. ~~A Any~~ unit owner or  
 228 other eligible person desiring to be a candidate for the board  
 229 must give written notice of his or her intent to be a candidate  
 230 to the association at least 40 days before a scheduled election.  
 231 Together with the written notice and agenda as set forth in  
 232 subparagraph 3., the association shall mail, deliver, or

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233 electronically transmit a second notice of the election to all  
 234 unit owners entitled to vote, together with a ballot that lists  
 235 all candidates. Upon request of a candidate, an information  
 236 sheet, no larger than 8 1/2 inches by 11 inches, which must be  
 237 furnished by the candidate at least 35 days before the election,  
 238 must be included with the mailing, delivery, or transmission of  
 239 the ballot, with the costs of mailing, delivery, or electronic  
 240 transmission and copying to be borne by the association. The  
 241 association is not liable for the contents of the information  
 242 sheets prepared by the candidates. In order to reduce costs, the  
 243 association may print or duplicate the information sheets on  
 244 both sides of the paper. The division shall by rule establish  
 245 voting procedures consistent with this sub-subparagraph,  
 246 including rules establishing procedures for giving notice by  
 247 electronic transmission and rules providing for the secrecy of  
 248 ballots. Elections shall be decided by a plurality of ballots  
 249 cast. There is no quorum requirement; however, at least 20  
 250 percent of the eligible voters must cast a ballot in order to  
 251 have a valid election. A unit owner may not permit any other  
 252 person to vote his or her ballot, and any ballots improperly  
 253 cast are invalid. A unit owner who violates this provision may  
 254 be fined by the association in accordance with s. 718.303. A  
 255 unit owner who needs assistance in casting the ballot for the  
 256 reasons stated in s. 101.051 may obtain such assistance. The  
 257 regular election must occur on the date of the annual meeting.  
 258 Notwithstanding this sub-subparagraph, an election is not  
 259 required unless more candidates file notices of intent to run or  
 260 are nominated than board vacancies exist.

261 b. Within 90 days after being elected or appointed to the

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262 board of an association of a residential condominium, each newly  
 263 elected or appointed director shall certify in writing to the  
 264 secretary of the association that he or she has read the  
 265 association's declaration of condominium, articles of  
 266 incorporation, bylaws, and current written policies; that he or  
 267 she will work to uphold such documents and policies to the best  
 268 of his or her ability; and that he or she will faithfully  
 269 discharge his or her fiduciary responsibility to the  
 270 association's members. In lieu of this written certification,  
 271 within 90 days after being elected or appointed to the board,  
 272 the newly elected or appointed director may submit a certificate  
 273 of having satisfactorily completed the educational curriculum  
 274 administered by a division-approved condominium education  
 275 provider within 1 year before or 90 days after the date of  
 276 election or appointment. The written certification or  
 277 educational certificate is valid and does not have to be  
 278 resubmitted as long as the director serves on the board without  
 279 interruption. A director of an association of a residential  
 280 condominium who fails to timely file the written certification  
 281 or educational certificate is suspended from service on the  
 282 board until he or she complies with this sub-subparagraph. The  
 283 board may temporarily fill the vacancy during the period of  
 284 suspension. The secretary shall cause the association to retain  
 285 a director's written certification or educational certificate  
 286 for inspection by the members for 5 years after a director's  
 287 election or the duration of the director's uninterrupted tenure,  
 288 whichever is longer. Failure to have such written certification  
 289 or educational certificate on file does not affect the validity  
 290 of any board action.

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

293 5. Any approval by unit owners called for by this chapter  
294 or the applicable declaration or bylaws, including, but not  
295 limited to, the approval requirement in s. 718.111(8), must be  
296 made at a duly noticed meeting of unit owners and is subject to  
297 all requirements of this chapter or the applicable condominium  
298 documents relating to unit owner decisionmaking, except that  
299 unit owners may take action by written agreement, without  
300 meetings, on matters for which action by written agreement  
301 without meetings is expressly allowed by the applicable bylaws  
302 or declaration or any law that provides for such action.

303 6. Unit owners may waive notice of specific meetings if  
304 allowed by the applicable bylaws or declaration or any law. If  
305 authorized by the bylaws, notice of meetings of the board of  
306 administration, unit owner meetings, except unit owner meetings  
307 called to recall board members under paragraph (j), and  
308 committee meetings may be given by electronic transmission to  
309 unit owners who consent to receive notice by electronic  
310 transmission.

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

315 8. A unit owner may tape record or videotape a meeting of  
316 the unit owners subject to reasonable rules adopted by the  
317 division.

318 9. Unless otherwise provided in the bylaws, any vacancy  
319 occurring on the board before the expiration of a term may be

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320 filled by the affirmative vote of the majority of the remaining  
321 directors, even if the remaining directors constitute less than  
322 a quorum, or by the sole remaining director. In the alternative,  
323 a board may hold an election to fill the vacancy, in which case  
324 the election procedures must conform to sub-subparagraph 4.a.  
325 unless the association governs 10 units or fewer and has opted  
326 out of the statutory election process, in which case the bylaws  
327 of the association control. Unless otherwise provided in the  
328 bylaws, a board member appointed or elected under this section  
329 shall fill the vacancy for the unexpired term of the seat being  
330 filled. Filling vacancies created by recall is governed by  
331 paragraph (j) and rules adopted by the division.

332 10. This chapter does not limit the use of general or  
333 limited proxies, require the use of general or limited proxies,  
334 or require the use of a written ballot or voting machine for any  
335 agenda item or election at any meeting of a timeshare  
336 condominium association or nonresidential condominium  
337 association.

338  
339 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an  
340 association of 10 or fewer residential units may, by affirmative  
341 vote of a majority of the total voting interests, provide for  
342 different voting and election procedures in its bylaws, which  
343 may be by a proxy specifically delineating the different voting  
344 and election procedures. The different voting and election  
345 procedures may provide for elections to be conducted by limited  
346 or general proxy.

347 (k) Arbitration.—There shall be a provision for mandatory  
348 nonbinding arbitration as provided for in s. 718.1255 for any

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349 residential condominium.

350 (1) *Certificate of compliance.*— A provision that a  
 351 certificate of compliance from a licensed electrical contractor  
 352 or electrician may be accepted by the association's board as  
 353 evidence of compliance of the condominium units with the  
 354 applicable fire and life safety code must be included.  
 355 Notwithstanding chapter 633 or of any other code, statute,  
 356 ordinance, administrative rule, or regulation, or any  
 357 interpretation of the foregoing, an association, condominium, or  
 358 unit owner is not obligated to retrofit the common elements,  
 359 association property, or units of a residential condominium with  
 360 a fire sprinkler system in a building that has been certified  
 361 for occupancy by the applicable governmental entity if the unit  
 362 owners have voted to forego such retrofitting by the affirmative  
 363 vote of a majority of all voting interests in the affected  
 364 condominium. The local authority having jurisdiction may not  
 365 require completion of retrofitting with a fire sprinkler system  
 366 before January 1, 2020 ~~the end of 2019~~. By December 31, 2016, a  
 367 residential condominium ~~an~~ association that is not in compliance  
 368 with the requirements for a fire sprinkler system and has not  
 369 voted to forego retrofitting of such a system must initiate an  
 370 application for a building permit for the required installation  
 371 with the local government having jurisdiction demonstrating that  
 372 the association will become compliant by December 31, 2019.

373 1. A vote to forego retrofitting in a residential  
 374 condominium may be obtained by limited proxy or by a ballot  
 375 personally cast at a duly called membership meeting, or by  
 376 execution of a written consent by the member, and is effective  
 377 upon recording a certificate attesting to such vote in the

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378 public records of the county where the condominium is located.  
 379 The association shall mail or hand deliver to each unit owner  
 380 written notice at least 14 days before the membership meeting in  
 381 which the vote to forego retrofitting of the required fire  
 382 sprinkler system is to take place. Within 30 days after the  
 383 association's opt-out vote, notice of the results of the opt-out  
 384 vote must be mailed or hand delivered to all unit owners.  
 385 Evidence of compliance with this notice requirement must be made  
 386 by affidavit executed by the person providing the notice and  
 387 filed among the official records of the association. After  
 388 notice is provided to each owner, a copy must be provided by the  
 389 current owner to a new owner before closing and by a unit owner  
 390 to a renter before signing a lease.

391 2. If there has been a previous vote to forego  
 392 retrofitting, a vote to require retrofitting may be obtained at  
 393 a special meeting of the unit owners called by a petition of at  
 394 least 10 percent of the voting interests. Such a vote may only  
 395 be called once every 3 years. Notice shall be provided as  
 396 required for any regularly called meeting of the unit owners,  
 397 and must state the purpose of the meeting. Electronic  
 398 transmission may not be used to provide notice of a meeting  
 399 called in whole or in part for this purpose.

400 3. As part of the information collected annually from  
 401 condominiums, the division shall require condominium  
 402 associations to report the membership vote and recording of a  
 403 certificate under this subsection and, if retrofitting has been  
 404 undertaken, the per-unit cost of such work. The division shall  
 405 annually report to the Division of State Fire Marshal of the  
 406 Department of Financial Services the number of condominiums that

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407 have elected to forego retrofitting.

408 4. Notwithstanding s. 553.509, an association may not be  
409 obligated to, and may forego the retrofitting of, any  
410 improvements required by s. 553.509(2) upon an affirmative vote  
411 of a majority of the voting interests in the affected  
412 condominium.

413 Section 2. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR THAD ALTMAN**

16th District

**COMMITTEES:**

Military Affairs, Space, and Domestic Security, *Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
Criminal Justice  
Environmental Preservation and Conservation

**SELECT COMMITTEE**

Indian River Lagoon and Lake Okeechobee

**JOINT COMMITTEE:**

Joint Administrative Procedures Committee

January 15, 2014

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

Dear Chairwoman Stargel:

I respectfully request that SB 0440, related to *Condominiums*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman

CC: Patrick Imhof, Staff Director, 330 Knott Building  
Lynn Koon, Committee Administrative Assistant

TA/svb

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

waited in support

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.13.14

Meeting Date

Topic Support the Bill - SB440 Condo

Bill Number SB 440  
(if applicable)

Name Martha Edenfield

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Attorney - Dean Mead

Address 215 So Monroe Street # 815

Phone 850-999-4100

Street

Tallahassee, FL

State

32301

Zip

E-mail medenfield@deanmead.com

Speaking:  For  Against  Information Support the bill

Representing The Real Property, Probate + Trust Law Section of the Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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 406

**INTRODUCER:** Regulated Industries Committee and Senator Latvala

**SUBJECT:** Malt Beverages

**DATE:** February 13, 2014      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.			CA	
3.			AP	
4.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 406 authorizes the sale of individual containers of malt beverages in containers of 64 ounces or a lesser size containing no more than 32 ounces of malt beverages. Current law requires that all malt beverages sold by retail vendors of alcoholic beverages must be packaged in individual containers containing no more than 32 ounces. The bill requires that malt beverage containers must include information specifying the manufacturer, brand, and the percentage alcohol by volume. The bill also requires that the malt beverage container must have an unbroken seal or be incapable of being immediately consumed. Current law also permits malt beverages to be packaged in bulk, kegs, barrels, or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

The bill permits malt beverage containers to be filled at the point of sale by a licensed manufacturer, a vendor licensed beer, wine, or liquor under ss. 561.20(1) and 565.02(1)(a)-(f), F.S., or a vendor licensed for consumption on the premises, provided the license permits off-premises sales. The bill provides that the containers may not be filled at the point of sale with alcoholic beverages purchased by a licensed manufacturer from a licensed distributor.

The bill repeals the prohibition against beer tastings and permits licensed malt beverage distributors and vendors to conduct malt beverage tastings at licensed premises that are

authorized to sell malt beverage by package or for consumption on premises, provided that the malt beverage tasting is limited to and directed toward the general public of the age of legal consumption. Current law permits wine and spirituous beverage distributors and vendors to conduct wine and spirituous beverage tastings at licensed premises that are authorized to sell such beverages.

The bill provides an effective date of July 1, 2014.

## II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.<sup>3</sup>

### 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. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. 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.<sup>4</sup>

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.<sup>5</sup> Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>6</sup> Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturer, or bottler.<sup>7</sup>

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,<sup>8</sup> allowing individuals to

---

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

<sup>2</sup> *See s. 561.14, F.S.*

<sup>3</sup> Section 561.02, F.S.

<sup>4</sup> 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/pricee\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf) (Last visited January 13, 2014).

<sup>5</sup> Section 561.14(2), F.S.

<sup>6</sup> Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

<sup>7</sup> 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.

<sup>8</sup> *See s. 561.221(2), F.S.*, which permits the limited manufacture of beer by vendors (brew pubs).

bring small quantities of alcohol back from trips out-of-state,<sup>9</sup> and allowing in-state wineries to manufacture and sell directly to consumers.<sup>10</sup>

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 be a manufacturer of 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.

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.<sup>11</sup> 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."

Section 561.20, F.S., limits, per county, the number of alcoholic beverage licenses that may be issued that permit the sale of liquor along with beer and wine. Section 561.20, F.S., limits the number of licenses in a county to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as quota licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

Section 565.02(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content. This includes licensees who are authored to sell:

- Any alcoholic beverages where the sale is limited to consumption on the premises;
- Any alcoholic beverages for consumption on premises where off-premises sales are permitted, and
- Any alcoholic beverage where the beverages are sold only in sealed containers for consumption off the premises.

### **On-Premises or Off-Premises Consumption-Malt Beverages**

Section 564.02, F.S., distinguishes between places of business where a vendor is licensed to only sell malt beverages for on-premises consumption<sup>12</sup> and places of business where such on-

---

<sup>9</sup> 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.

<sup>10</sup> See s. 561.221, F.S.

<sup>11</sup> Section 561.221(3)(a)1., F.S., defines the term "keg" as 15.5 gallons.

<sup>12</sup> See s. 565.02(1)(a), F.S.

premises consumption is permitted.<sup>13</sup> According to the department, vendors licensed to sell malt beverages for on-premises consumption may sell alcoholic beverages for the customer to take it away from the licensed premises for consumption elsewhere. The license for a place of business where consumption on the premises is permitted does not prohibit the sale to a consumer for consumption away from the licensed premises. The license fee for consumption only off the licensed premises is 50 percent less than for a license in which on-premises consumption is permitted.<sup>14</sup>

According to alcoholic beverage industry representatives and a representative for the division, vendors with on-premises licenses routinely fill containers with a malt beverage and seal them for customers to take off-premises for later consumption. They note that current law does not prohibit this practice. The vendors typically seal the beverage container before the consumer leaves the premises so that the consumer will not violate any local ordinances that prohibit the carrying in public of open containers of alcoholic beverages or the state-law prohibition against the possession of open containers of alcoholic beverages in vehicles.<sup>15</sup> The beverage law does not define the term “sealed container.”

In 1995, the department repealed a rule which explicitly stated that an on-premises malt beverage licensee could sell malt beverages, for consumption off-premises, in “sealed containers” and could also sell wine and distilled spirits in the “original sealed containers as received from the distributor.”<sup>16</sup>

### **Malt Beverage Containers**

Section 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors must be packaged in individual containers containing no more than 32 ounces (one quart). However, malt beverages may be packaged in bulk, kegs, barrels, or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

Prior to 2001, s. 563.06(6), F.S., provided that malt beverages could be sold by vendors only in 8, 12, 16, or 32 ounce individual containers. Chapter 2001-78, L.O.F., amended that section to allow vendors to sell malt beverages in individual containers of “no more than 32 ounces.” The current provision that allows containers of one gallon or more was unaffected by that amendment.

### **Growlers**

Some states permit vendors to sell malt beverages in containers known as “growlers,”<sup>17</sup> which typically are reusable containers of between 32 ounces and one gallon that the consumer can fill with the vendor’s malt beverage for consumption off the licensed premises. According to a

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<sup>13</sup> See ss. 565.02(1)(b)-(f) and 565.045, F.S.

<sup>14</sup> See s. 565.02(1)(a), F.S.

<sup>15</sup> Section 316.1936, F.S.

<sup>16</sup> Rule 7A-1.008, F.A.C., as amended on March 10, 1985. This rule was subsequently transferred to rule 61A-1.008, F.A.C., and then repealed on July 5, 1995.

<sup>17</sup> The term “growlers” is derived from the late 1800s and early 1900s practice in which fresh beer was carried from the local pub to one’s home by means of a small-galvanized pail. When the beer sloshed around the pail, it created a rumbling sound as the carbon dioxide escaped through the lid. See “The Growler: Beer-to-Go!,” *Beer Advocate* (July 31, 2002). A copy of the article is available at: <http://beeradvocate.com/articles/384> (Last visited January 13, 2014).

representative for several vendors who manufacture malt beverages,<sup>18</sup> the national standard size for a growler is 64 ounces. Florida law does not permit the use of a 64 ounce growler.

### **Tied House Evil Prohibitions**

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in part:

No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. (Emphasis supplied.)

Section 561.42(8), F.S., authorizes the division to establish rules and require reports to enforce limitation on credits and other forms of assistance. This rulemaking authority does not extend to cash deposits on beer sales, as provided in s. 563.08, F.S.

Section 561.42, F.S., defines the types of items or services that may be provided to vendors. For example, s. 561.42(10), F.S., prohibits manufacturers, distributors, importers, primary American sources of supply,<sup>19</sup> or brand owners or registrants, or their brokers, sales agents or sales persons, from directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise.

### **Alcoholic Beverage Tastings**

Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

---

<sup>18</sup> According to several representatives for vendors who manufacture malt beverages and sell 32-ounce growlers, the vendors are typically licensed under s. 561.221(2), F.S.

<sup>19</sup> Section 564.045(1), F.S., defines the term "primary American source of supply" as the:

manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., permits licensed distributor of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

### **III. Effect of Proposed Changes:**

#### **Malt Beverage Containers**

The bill amends s. 563.06(6), F.S., to authorize the sale of individual containers of malt beverages in containers of 64 ounces or a lessor size containing no more than 32 ounces of malt beverages.

The bill requires that malt beverage containers must:

- Include information specifying the manufacturer and brand of malt beverage, and specify the percentage alcohol by volume; and
- Have an unbroken seal or be incapable of being immediately consumed.

The bill permits the following types of alcoholic beverage licensees to fill malt beverage containers at the point of sale:

- A licensed manufacturer;
- A vendor licensed under ss. 561.20(1) and 565.02(1)(a)-(f), F.S.; or
- A vendor licensed for consumption on the premises, provided the license permits off-premises sales.

The containers may not be filled at the point of sale with alcoholic beverages purchased by a licensed manufacturer from a licensed distributor. This provision would prohibit manufacturers who are also licensed as a vendor under s. 561.221(2), F.S., to fill growlers at the point of sale with malt beverages that they did not produce on-site and which were obtained from another manufacturer through a distributor.

#### **Malt Beverage Tastings**

The bill creates s. 563.09, F.S., to permit licensed malt beverage distributors and vendors to conduct malt beverage tastings at license premises that are authorized to sell malt beverage by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the malt beverage tasting is limited to and directed toward the general public of the age of legal consumption.

The bill repeals s. 561.42(14)(e), F.S., which prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only, by manufacturers,

distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

**Effective Date**

The effective date of the bill is July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

Although the bill creates s. 563.09, F.S., to authorize manufactures and vendors to beer tastings, the bill does not repeal the prohibition against beer tastings in s. 561.42(14)(e), F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 563.06, Florida Statutes.  
This bill creates section 563.09, Florida Statutes.

**IX. 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 February 13, 2014:**

The committee substitute (CS) amends s. 563.06(6), F.S., to authorize the sale of individual containers of malt beverages in containers of 64 ounces or a lesser size containing no more than 32 ounces of malt beverages. The CS does not authorize the sale of malt beverages in containers of any size.

The CS also provides the following additional requirements for the sale of containers of malt beverages:

- The containers must specify the percentage alcohol by volume;
- The containers may be filled at the point of sale by either a licensed manufacturer, a vendor licensed under ss. 561.20(1) and 565.02(1)(a)-(f), or a vendor licensed for consumption on the premises, provided the license permits off-premises sales.; and
- The containers may not be filled at the point of sale with alcoholic beverages purchased by a licensed manufacturer from a licensed distributor.

The CS creates s. 563.09, F.S., but does not provide that its provisions are notwithstanding any other provision of the beverage law. The CS also does not authorize malt beverage tastings by licensed manufacturers.

The bill repeals s. 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only by manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

- B. **Amendments:**

None.



279010

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/17/2014	.	
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The Committee on Regulated Industries (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsection (7) of section 563.06,  
Florida Statutes, is redesignated as subsection (8), a new  
subsection (7) is added to that section, and present subsection  
(6) is amended to read:

563.06 Malt beverages; imprint on individual container;  
size of containers; exemptions.—



279010

11 (6) All malt beverages packaged in individual containers  
12 sold or offered for sale by vendors at retail in this state  
13 shall be in individual containers containing 64 ounces, or a  
14 lesser size containing no more than 32 ounces, of such malt  
15 beverages. The containers shall include information specifying  
16 the manufacturer, the brand, and the percentage alcohol by  
17 volume of the malt beverage, and may be filled at the point of  
18 sale by either a licensed manufacturer or a vendor licensed for  
19 consumption on the premises. The containers must have an  
20 unbroken seal or be incapable of being immediately consumed. The  
21 containers may not be filled at the point of sale with alcoholic  
22 beverages purchased by a licensed manufacturer from a licensed  
23 distributor. ; provided, however, that nothing contained in

24 (7) This section does not shall affect malt beverages  
25 packaged in bulk, ~~or~~ in kegs, or in barrels or in an any  
26 individual container containing 1 gallon or more of such malt  
27 beverage regardless of individual container type.

28 ~~(8)(7)~~ Any person, firm, or corporation, its agents,  
29 officers or employees, violating any of the provisions of this  
30 section, shall be guilty of a misdemeanor of the first degree,  
31 punishable as provided in s. 775.082 or s. 775.083; and the  
32 license, if any, shall be subject to revocation or suspension by  
33 the division.

34 Section 2. Section 563.09, Florida Statutes, is created to  
35 read:

36 563.09 Malt beverage tastings.—A licensed distributor of  
37 malt beverages, or any vendor, may conduct malt beverage  
38 tastings upon any licensed premises authorized to sell malt  
39 beverages by package or for consumption on premises without



279010

40 being in violation of s. 561.42 if the conduct of the malt  
41 beverage tasting is limited to and directed toward the general  
42 public of the age of legal consumption.

43 Section 3. Paragraph (e) of subsection (14) of section  
44 561.42, Florida Statutes, is amended to read:

45 561.42 Tied house evil; financial aid and assistance to  
46 vendor by manufacturer, distributor, importer, primary American  
47 source of supply, brand owner or registrant, or any broker,  
48 sales agent, or sales person thereof, prohibited; procedure for  
49 enforcement; exception.—

50 (14) The division shall adopt reasonable rules governing  
51 promotional displays and advertising, which rules shall not  
52 conflict with or be more stringent than the federal regulations  
53 pertaining to such promotional displays and advertising  
54 furnished to vendors by distributors, manufacturers, importers,  
55 primary American sources of supply, or brand owners or  
56 registrants, or any broker, sales agent, or sales person  
57 thereof; however:

58 ~~(e) Manufacturers, distributors, importers, brand owners,~~  
59 ~~or brand registrants of beer, and any broker, sales agent, or~~  
60 ~~sales person thereof, shall not conduct any sampling activities~~  
61 ~~that include tasting of their product at a vendor's premises~~  
62 ~~licensed for off-premises sales only.~~

63 Section 4. This act shall take effect upon becoming a law.

64  
65

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

67 And the title is amended as follows:

68 Delete everything before the enacting clause



279010

69 and insert:

70                                   A bill to be entitled  
71           An act relating to malt beverages; amending s. 563.06,  
72           F.S.; providing for container sizes; providing for  
73           labeling; providing for filling containers at the  
74           point of sale by a manufacturer or vendor; providing  
75           for sealing containers; prohibiting filling containers  
76           at the point of sale with alcoholic beverages  
77           purchased from a distributor; creating s. 563.09,  
78           F.S.; authorizing malt beverage tastings upon certain  
79           licensed premises; amending s. 561.42, F.S.; removing  
80           the prohibition on beer samplings at the premises of  
81           certain vendors; providing an effective date.



271554

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2014	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsection (7) of section 563.06,  
Florida Statutes, is redesignated as subsection (8), a new  
subsection (7) is added to that section, and present subsection  
(6) is amended to read:

563.06 Malt beverages; imprint on individual container;  
size of containers; exemptions.—



271554

11 (6) All malt beverages packaged in individual containers  
12 sold or offered for sale by vendors at retail in this state  
13 shall be in individual containers containing 64 ounces, or a  
14 lesser size containing no more than 32 ounces, of such malt  
15 beverages. The containers shall include information specifying  
16 the manufacturer, the brand, and the percentage alcohol by  
17 volume of the malt beverage, and may be filled at the point of  
18 sale by either a licensed manufacturer, a vendor licensed under  
19 ss. 561.20(1) and 565.01(1)(a)-(f), or a vendor licensed for  
20 consumption on the premises, provided the license permits off-  
21 premises sales. The containers must have an unbroken seal or be  
22 incapable of being immediately consumed. The containers may not  
23 be filled at the point of sale with alcoholic beverages  
24 purchased from a licensed distributor by a licensed  
25 manufacturer. ; provided, however, that nothing contained in

26 (7) This section does not shall affect malt beverages  
27 packaged in bulk, ~~or~~ in kegs, or in barrels or in an any  
28 individual container containing 1 gallon or more of such malt  
29 beverage regardless of individual container type.

30 (8) ~~(7)~~ Any person, firm, or corporation, its agents,  
31 officers or employees, violating any of the provisions of this  
32 section, shall be guilty of a misdemeanor of the first degree,  
33 punishable as provided in s. 775.082 or s. 775.083; and the  
34 license, if any, shall be subject to revocation or suspension by  
35 the division.

36 Section 2. Section 563.09, Florida Statutes, is created to  
37 read:

38 563.09 Malt beverage tastings.—A licensed distributor of  
39 malt beverages, or any vendor, may conduct malt beverage



271554

40 tastings upon any licensed premises authorized to sell malt  
41 beverages by package or for consumption on premises without  
42 being in violation of s. 561.42 if the conduct of the malt  
43 beverage tasting is limited to and directed toward the general  
44 public of the age of legal consumption.

45 Section 3. Paragraph (e) of subsection (14) of section  
46 561.42, Florida Statutes, is amended to read:

47 561.42 Tied house evil; financial aid and assistance to  
48 vendor by manufacturer, distributor, importer, primary American  
49 source of supply, brand owner or registrant, or any broker,  
50 sales agent, or sales person thereof, prohibited; procedure for  
51 enforcement; exception.—

52 (14) The division shall adopt reasonable rules governing  
53 promotional displays and advertising, which rules shall not  
54 conflict with or be more stringent than the federal regulations  
55 pertaining to such promotional displays and advertising  
56 furnished to vendors by distributors, manufacturers, importers,  
57 primary American sources of supply, or brand owners or  
58 registrants, or any broker, sales agent, or sales person  
59 thereof; however:

60 ~~(c) Manufacturers, distributors, importers, brand owners,~~  
61 ~~or brand registrants of beer, and any broker, sales agent, or~~  
62 ~~sales person thereof, shall not conduct any sampling activities~~  
63 ~~that include tasting of their product at a vendor's premises~~  
64 ~~licensed for off-premises sales only.~~

65 Section 4. This act shall take effect upon becoming a law.  
66  
67

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



271554

69 And the title is amended as follows:

70 Delete everything before the enacting clause  
71 and insert:

72 A bill to be entitled

73 An act relating to malt beverages; amending s. 563.06,  
74 F.S.; providing for container sizes; providing for  
75 labeling; providing for filling containers at the  
76 point of sale by a manufacturer or vendor; providing  
77 for sealing containers; prohibiting filling containers  
78 at the point of sale with alcoholic beverages  
79 purchased from a distributor; creating s. 563.09,  
80 F.S.; authorizing malt beverage tastings upon certain  
81 licensed premises; amending s. 561.42, F.S.; removing  
82 the prohibition on beer samplings at the premises of  
83 certain vendors; providing an effective date.

By Senator Latvala

20-00002A-14

2014406\_\_

1 A bill to be entitled  
 2 An act relating to malt beverages; amending s. 563.06,  
 3 F.S.; authorizing containers of malt beverages to be  
 4 sold or offered for sale by a vendor at retail in any  
 5 size; providing requirements for malt beverage  
 6 containers; creating s. 563.09, F.S.; authorizing malt  
 7 beverage tastings upon certain licensed premises under  
 8 certain circumstances; providing an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Subsection (6) of section 563.06, Florida  
 13 Statutes, is amended to read:  
 14 563.06 Malt beverages; imprint on individual container;  
 15 size of containers; exemptions.—  
 16 (6) All malt beverages packaged in individual containers  
 17 that are sold or offered for sale by a vendor ~~vendors~~ at retail  
 18 in this state may ~~shall~~ be in individual containers of any size.  
 19 Such containers must include information specifying the  
 20 manufacturer and brand of the malt beverage and must have an  
 21 unbroken seal or be incapable of being immediately consumed.  
 22 ~~containing no more than 32 ounces of such malt beverages;~~  
 23 ~~provided, however, that nothing contained in This section does~~  
 24 ~~not shall~~ affect malt beverages packaged in bulk, ~~or~~ in kegs, or  
 25 in barrels ~~or in any individual container containing 1 gallon or~~  
 26 ~~more of such malt beverage regardless of individual container~~  
 27 ~~type.~~  
 28 Section 2. Section 563.09, Florida Statutes, is created to  
 29 read:

Page 1 of 2

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

20-00002A-14

2014406\_\_

30 563.09 Malt beverage tastings by manufacturers and  
 31 vendors.—Notwithstanding any other provision of the Beverage  
 32 Law, a licensed manufacturer or distributor of malt beverages or  
 33 a vendor may conduct a malt beverage tasting upon a licensed  
 34 premises authorized to sell alcoholic beverages by package or  
 35 for consumption on the premises. Such manufacturer, distributor,  
 36 or vendor does not violate s. 561.42 if the conduct of the malt  
 37 beverage tasting is limited to and directed toward members of  
 38 the general public who are of the age of legal consumption.  
 39 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR JACK LATVALA  
20th District

December 16<sup>th</sup>, 2013

The Honorable Senator Kelli Stargel, Chair  
Senate Committee on Regulated Industries  
330 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I respectfully request consideration of Senate Bill 406 regarding Malt Beverages. I would greatly appreciate the opportunity to present this legislation to the Committee on Regulated Industries as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala  
State Senator  
District 20

Cc: Patrick Imhof, Staff Director; Lynn Koon, Administrative Assistant

REPLY TO:

- 28133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

Don Gaetz  
President of the Senate

Garrett Richter  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic Growlers

Bill Number SB 406  
*(if applicable)*

Name Eric Criss

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title President

Address 7804 McClure Drive

Phone \_\_\_\_\_

*Street*  
Tallahassee FL 32312  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Beer Industry 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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02-13-14

Meeting Date

Topic Malt beverage CRAFT BEER

Bill Number 406  
(if applicable)

Name Scott Dick

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title lobbyist

Address 210 S. Monroe St.

Phone 850 421-9100

Street  
Tallahassee, FL 32301  
City State Zip

E-mail scott@skdgrp.com

Speaking:  For  Against  Information

Representing ABC Fine Wine & Spirits AND Fla. Independent Spirits Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/13/14

Meeting Date

Topic Malt Beverages

Bill Number 406  
*(if applicable)*

Name Joe Mobley

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lobbyist

Address 200 W. College St

Phone 850-222-1959

Street

Jallahasse FL

City

State

Zip

E-mail joe@thefioravino group.com

Speaking:  For  Against  Information

Representing Intuition Ale Works

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)

2/13/14  
Meeting Date

Topic Malt Bev

Bill Number SB406  
*(if applicable)*

Name Brewster Bevis

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Senior Vice President

Address 516 N. Adams St  
Street

Phone 224-7173

Tallahassee FL 32301  
City State Zip

E-mail bbevis@afl.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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/13/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 406

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

February 13, 2014  
Meeting Date

Topic alcoholic beverages - grounds

Bill Number 706  
(if applicable)

Name Josh Aubuchon

Amendment Barcode 271554  
(if applicable)

Job Title Executive Director, Attorney

Address 315 S. Calhoun Street, Suite 600  
Street

Phone \_\_\_\_\_

Tallahassee FL 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Brewers 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.**

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)

2/13/14

Meeting Date

Topic BREWERS

Bill Number 406  
*(if applicable)*

Name BYRON BURGESS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title OWNER

Address 1717 W TENNESSEE ST

Phone 850-443-6757

Street

TALLAHASSEE FL 32304

City

State

Zip

E-mail BYRON@PACER

BIRTHING CO. COM

Speaking:  For  Against  Information

Representing PACER BREWING CO.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/10/14

Meeting Date

Topic Beer

Bill Number 406  
*(if applicable)*

Name Justin Clark

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Vice President

Address 3904 Spruce St W.

Phone 813-541-5747

Street

Tampa

City

FL

State

33607

Zip

E-mail justin@cigarcitybrewing.com

Speaking:  For  Against  Information

Representing Cigar City Brewing & The Florida Brewers 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.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic Detert Strike Amendment - Beer containers Bill Number 406  
(if applicable)

Name Mitchell Rubin Amendment Barcode 271554  
(if applicable)

Job Title Executive Director

Address 215 S Monroe St #340 Phone (850) 224-2337  
Street

Tallahassee, FL 32301 E-mail MRubin2505@901.com  
City State Zip

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.*

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**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.)

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

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BILL: SB 320

INTRODUCER: Senators Sachs and Margolis

SUBJECT: Commercial Parasailing

DATE: January 7, 2014

REVISED: 2/11/2014

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u></u>	<u></u>	<u>CM</u>	<u></u>
3.	<u></u>	<u></u>	<u>CA</u>	<u></u>

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**I. Summary:**

SB 320 amends ch. 327, F.S., relating to Commercial Parasailing. The bill defines commercial parasailing. The bill establishes minimum requirements for liability insurance, including liability coverage in the amounts of at least one million dollars per occurrence and a two million dollar annual aggregate. The bill requires safety briefings for parasailing participants and maintenance of a weather log by parasailing operators.

The bill requires that the operator of the vessel engaged in commercial parasailing evaluate weather conditions and wind speeds as defined in the bill. The bill prohibits commercial parasailing during wind speeds that exceed twenty miles per hour, wind gusts fifteen miles per hour greater than the present wind speed, wind speed during gusts that exceeds twenty-five miles per hour, or when a lightning storm comes within seven miles of the parasailing area. 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, 2014.

**II. Present Situation:**

*Parasailing Activity*

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.<sup>1</sup> One exception is at Walt Disney World where parasailing takes place on Bay Lake, in Orange County.<sup>2</sup>

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<sup>1</sup>2014 Legislative Analysis for SB 320, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission, December 4, 2013.

<sup>2</sup> *Id.*

Data compiled by the FWC indicates that:<sup>3</sup>

- From January 1, 2001, through October 30, 2013, 21 accidents involving parasail vessels have occurred in Florida, resulting in 23 injuries and 6 fatalities;
- In 10 of the accidents, high winds or sudden wind gusts were a contributing factor;
- In 6 of the 10 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 11 accidents were caused by a variety of factors, including equipment failure and operator error; and
- Equipment failure was also a contributing factor in one fatal accident from 2012. The investigation revealed the personal harness was in poor condition and was unable to sustain the stress of supporting an individual under a parasail.

#### *July 1, 2013 Incident*

The most recent incident occurred in Panama City Beach on July 1, 2013.<sup>4</sup> Two Indiana teenage girls were parasailing when weather conditions caused the vessel to lose connection and control of the parasail.<sup>5</sup> The teenagers were critically injured after they were detached from the boat then hit a building, power line and several parked car.<sup>6</sup> As of August 6, 2013 both teens were released from the hospital but may require additional surgeries.<sup>7</sup>

The United States Coast Guard's report of the July 1, 2013 incident identifies the vessel involved as "Why Knot" and the owner as Aquatic Adventures.<sup>8</sup> Aquatic Adventures owns ten parasailing vessels in Panama City Florida and, while not a member of a parasail organization, it uses the Water Sports Industry Association (WSIA) Parasail Training Manual as part of its captain training program.<sup>9</sup> The USCG report found that facts contributing to this accident included:

- The vessel operators' failure to become aware of and respond appropriately to weather conditions;
- Using equipment in a way that deviated from product instructions and the Water Sports Industry Association (WSIA) Parasail Training manual; and
- Failure to adhere to WSIA proximity to shore guidelines.<sup>10</sup>

The captain and employees of Aquatic Adventures failed to consult all available data, including weather radar data that would have warned of an approaching severe weather system.<sup>11</sup> Although

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<sup>3</sup> *Id.*

<sup>4</sup> United States Coast Guard, *UPDATE: Coast Guard investigates parasail accident near the Commodore Condominiums in Panama City Beach* (July 18 2013), available at <http://www.uscgnews.com/go/doc/4007/1855061/UPDATE-Coast-Guard-investigates-parasail-accident-near-the-Commodore-Condominiums-in-Panama-City-Beach> (Last visited Jan. 3, 2014).

<sup>5</sup> *Id.*

<sup>6</sup> Dennis Pillion, *Second girl injured in Panama City Beach parasailing accident released from Indiana hospital*, AL.com, [http://blog.al.com/gulf-coast/2013/08/second\\_girl\\_injured\\_in\\_parasail.html](http://blog.al.com/gulf-coast/2013/08/second_girl_injured_in_parasail.html) (Last visited January 3, 2014).

<sup>7</sup> *Id.*

<sup>8</sup> United States Coast Guard, *Report of Investigation into the Circumstances Surrounding the Incident Involving M/V "Why Know" Personal Injury on 07/01/3013*, No. 4 (Dec. 16, 2013).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 30.

<sup>11</sup> *Id.* at 12 and 31.

“Why Knot” was equipped with an operational VHF Marine Band Radio, Aquatic Adventures employees relied only on handheld radios to collaborate on conditions.<sup>12</sup>

The parasail used during the incident is described as a 39 foot parasail canopy<sup>13</sup> manufactured in 2012 designed to operate in winds not greater than 12 to 14 m.p.h.<sup>14</sup> “Why Knot” was built in 1998 when parasail sizes were typically smaller and carried less wind resistance. The winch mechanism used to pull in the parasail did not include a hydraulic break, a feature included in new winch systems.<sup>15</sup> According to the USCG, the combination of parasail size and wind conditions may have exceeded the capabilities of the winch.<sup>16</sup>

The WSIA Parasail Training Manual indicates appropriate distance from the shoreline to conduct parasailing operations, given wind speed and towline length in order to provide time and space for reactive measures.<sup>17</sup> According to the USCG, due to the inappropriate proximity of the vessel to the shoreline, the captain was not able to maneuver the vessel in a way to prevent the towline from disconnecting.<sup>18</sup>

The USCG issued a Marine Safety Alert regarding parasailing operations on July 22, 2013, noting that a series of parasail incidents involving weather conditions and equipment maintenance since 2006 have resulted in 11 deaths and 52 injuries.<sup>19</sup> The alert referenced the “Standard Guide for Monitoring Weather Conditions for Safe Parasail Operation,”<sup>20</sup> that was adopted by the industry.<sup>21</sup> The industry is currently working on standards for crew requirements, equipment specifications, and owner/operator operational guidelines for parasailing operations.<sup>22</sup> However, these standards are voluntary recommendations and there is no enforcement authority in place.

#### *Licensing and Endorsement Suggestion by United States Coast Guard*

According to the USCG, there are currently no regulations specifically pertaining to parasail equipment, and operators/owners choose equipment based on industry standards that vary by location and vessel type. There are also no regulations providing appropriate weather conditions to conduct parasail operations nor regulations requiring operators to monitor the prevailing or forecasted weather conditions.<sup>23</sup> Currently, the USCG promotes parasail safety by reactive rather than proactive measures, for example, taking action against the license of an operator for acts of

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<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.* at 21. Larger parasails, such as 39-42 foot sized, have become more popular due to their ability to carry more weight in lighter wind conditions.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 21.

<sup>16</sup> *Id.* at 18 and 21.

<sup>17</sup> *Id.* at 30.

<sup>18</sup> *Id.* at 23.

<sup>19</sup> United States Coast Guard, *Marine Safety Alert, Assistant Commandment for Prevention Policy: Parasailing Operations* (July 22, 2013) available at <http://www.uscg.mil/d7/sectmiami/pdf/KYRSafetyAlert.pdf> (Last visited Feb. 3, 2014).

<sup>20</sup> Developed by ASTM International, formerly known as the American Society for Testing and Materials (ASTM).

<sup>21</sup> See ASTM Standard F2993-13 published on April 1, 2013 at <http://www.astm.org/Standards/F2993.htm> (Last visited December 23, 2013).

<sup>22</sup> See ASTM Subcommittee F24.65 on Parasailing at <http://www.astm.org/COMMIT/SUBCOMMIT/F2465.htm> (Last visited December 23, 2013).

<sup>23</sup> United States Coast Guard, *Report of Investigation into the Circumstances Surrounding the Incident Involving M/V “Why Know” Personal Injury on 07/01/3013*, at 31 (Dec. 16, 2013).

misconduct or negligence or pursuing civil or criminal penalties when appropriate for negligent operations.<sup>24</sup> The USCG suggests that proactive initiatives to require vessels to hold a parasailing endorsement could aid in preventing future parasailing accidents.<sup>25</sup>

Under 46 U.S.C. s. 7101, USCG has the authority and discretion to issue licenses to inspected<sup>26</sup> and uninspected vessels based on the applicant's ability to operate a vessel for particular service. In issuing a license, the Coast Guard can consider qualifications that are necessary, reasonable and related to a profession, which may include suitable career patterns and other qualifying requirements appropriate to the particular industry of operation.<sup>27</sup>

Parasailing requires operators to perform functions beyond the level of a traditional passenger vessel. Therefore, as noted above, 46 U.S.C s. 7101, the USCG may consider necessary, reasonable and related qualifications to the parasailing industry during the licensing process, affectively addressing known or latent unsafe conditions prior to a harmful occurrence.<sup>28</sup> According to USCG, this parasail endorsement might provide a means of determining and verifying professional qualifications necessary to serve on a particular vessel, as well as require actions on the part of parasail operators instead of solely relying on their ability to implement voluntary industry standards.<sup>29</sup>

#### *Current Regulation*

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.

Relevant 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):<sup>30</sup>

- A person may not operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person, in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed;
- 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. Use of a wide angle mirror does not satisfy this requirement;
- Water skiing, parasailing, aquaplaning, or any similar activity (water sports) may not be conducted from one-half hour after sunset to one-half hour before sunrise;

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<sup>24</sup> *Id.* at 34. *See* 46 U.S.C s. 7701 and 46 U.S.C. s. 2304.

<sup>25</sup> *Id.* at 32.

<sup>26</sup> The Coast Guard inspects commercial passenger vessels carrying six or more passengers for hire under 46 C.F.R. Subchapter T-Small Passenger Vessels.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *See* s. 327.48, F.S.

- 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.<sup>31</sup> 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. The FAA regulates kites only to the extent that they are objects in airspace. The regulations provide that no person may operate a moored balloon or kite:<sup>32</sup>

- 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 three miles; or
- Within five miles of the boundary of any airport.

The moored balloon or kite's must have colored pennants at 50 foot intervals or less, starting at 150 feet above the surface of the earth that are visible for at least 1 mile.

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.<sup>33</sup> According to the FWC, common special provisions imposed by the FAA are:<sup>34</sup>

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<sup>31</sup> See *supra* note 1.

<sup>32</sup> See Title 14 C.F.R. Part 101.

<sup>33</sup> Title 14 C.F.R. s. 101.3.

<sup>34</sup> 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. The bill is named for two women who died from parasailing accidents in Pompano Beach. Amber White, 15, died in 2007 after windy conditions caused the line connecting the parasail she and her sister were riding to break free of its vessel and they collided with a hotel roof. Kathleen Miskell, 28, died in 2012 after a harness malfunction caused her to drop 200 feet into the water where she drowned.

**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 that:

- Minimum bodily injury liability insurance coverage of at least \$1 million per occurrence and \$2 million annual aggregate obtained and maintained by the owner or operator of a vessel;
- Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration;

- 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;
- A parasailing vessel must be equipped with a functional VHF marine transceiver and a separate electronic device capable of providing access to National Weather forecasts and current weather conditions;
- An operator must use all available means to determine weather conditions and record this information in a weather log each time passengers are to be taken out on the water; and
- Recorded weather information should be available for inspection at all times at the operator's place of business.

A person or operator who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.<sup>35</sup>

#### **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 may 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.<sup>36</sup>

<sup>35</sup> Sections 775.082, and 775.083, F.S., provide that a misdemeanor of the second degree are punishable by up to 60 days in jail, a fine of up to \$500, or both at the discretion of the Court.

<sup>36</sup> 2014 Legislative Analysis for SB 320, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission undated.

According to an industry representative that offers this type of insurance, operators generally do carry some type of insurance for their operations. Many times, they are tenants of a hotel, marina or local government that requires them to carry insurance as a condition of their lease or agreement.

**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.<sup>37</sup> The impact is estimated to be nominal and can likely be absorbed within existing resources.<sup>38</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.02, 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07.

This bill creates section 327.375 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

By Senator Sachs

34-00477-14

2014320\_\_

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 operator of a  
 5 vessel engaged in commercial parasailing to ensure  
 6 that specified requirements are met; requiring the  
 7 owner of a vessel engaged in commercial parasailing to  
 8 obtain and maintain an insurance policy; providing  
 9 minimum coverage requirements for the insurance  
 10 policy; providing requirements for proof of insurance;  
 11 specifying the insurance information that must be  
 12 provided upon request; requiring the operator to have  
 13 a current and valid license issued by the United  
 14 States Coast Guard; prohibiting commercial parasailing  
 15 unless certain equipment is present on the vessel and  
 16 certain weather conditions are met; requiring that a  
 17 weather log be maintained and made available for  
 18 inspection; providing a criminal penalty; amending ss.  
 19 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07,  
 20 F.S.; conforming cross-references; providing an  
 21 effective date.

22  
 23 Be It Enacted by the Legislature of the State of Florida:

24  
 25 Section 1. This act may be cited as the "White-Miskell  
 26 Act."

27 Section 2. Section 327.02, Florida Statutes, is amended to  
 28 read:

29 327.02 Definitions.—As used in this chapter and in chapter

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

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2014320\_\_

30 328, unless the context clearly requires a different meaning,  
 31 the term:  
 32 (1) "Airboat" means a vessel that is primarily designed for  
 33 use in shallow waters and powered by an internal combustion  
 34 engine with an airplane-type propeller mounted above the stern  
 35 and used to push air across a set of rudders.  
 36 (2) "Alien" means a person who is not a citizen of the  
 37 United States.  
 38 (3) "Boating accident" means a collision, accident, or  
 39 casualty involving a vessel in or upon, or entering into or  
 40 exiting from, the water, including capsizing, collision with  
 41 another vessel or object, sinking, personal injury, death,  
 42 disappearance of a any person from on board under circumstances  
 43 that which indicate the possibility of death or injury, or  
 44 property damage to any vessel or dock.  
 45 (4) "Canoe" means a light, narrow vessel with curved sides  
 46 and with both ends pointed. A canoe-like vessel with a transom  
 47 may not be excluded from the definition of a canoe if the width  
 48 of its transom is less than 45 percent of the width of its beam  
 49 or it has been designated as a canoe by the United States Coast  
 50 Guard.  
 51 (5) "Commercial parasailing" means providing or offering to  
 52 provide, for consideration, any activity involving the towing of  
 53 a person by a motorboat if:  
 54 (a) One or more persons are tethered to the towing vessel;  
 55 (b) The person or persons ascend above the water; and  
 56 (c) The person or persons remain suspended under a canopy,  
 57 chute, or parasail above the water while the vessel is underway.  
 58

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

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59 The term does not include ultralight glider towing conducted  
 60 under rules of the Federal Aviation Administration governing  
 61 ultralight vehicles as defined in 14 C.F.R. part 103.

62 ~~(6)(5)~~ "Commercial vessel" means:

63 (a) ~~A~~ any vessel primarily engaged in the taking or landing  
 64 of saltwater fish or saltwater products or freshwater fish or  
 65 freshwater products, or ~~a~~ any vessel licensed pursuant to s.  
 66 379.361 from which commercial quantities of saltwater products  
 67 are harvested, from within and without the waters of this state  
 68 for sale ~~either~~ to the consumer or to a ~~retail dealer,~~ or  
 69 wholesale dealer.

70 (b) Any other vessel, except a recreational vessel as  
 71 defined in this section.

72 ~~(7)(6)~~ "Commission" means the Fish and Wildlife  
 73 Conservation Commission.

74 ~~(8)(7)~~ "Dealer" means ~~a~~ any person authorized by the  
 75 Department of Revenue to buy, sell, resell, or otherwise  
 76 distribute vessels. Such person ~~must~~ shall have a valid sales  
 77 tax certificate of registration issued by the Department of  
 78 Revenue and a valid commercial or occupational license required  
 79 by any county, municipality, or political subdivision of the  
 80 state in which the person operates.

81 ~~(9)(8)~~ "Division" means the Division of Law Enforcement of  
 82 the Fish and Wildlife Conservation Commission.

83 ~~(10)(9)~~ "Documented vessel" means a vessel for which a  
 84 valid certificate of documentation is outstanding pursuant to 46  
 85 C.F.R. part 67.

86 ~~(11)(10)~~ "Floating structure" means a floating entity, with  
 87 or without accommodations built thereon, which is not primarily

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2014320\_\_

88 used as a means of transportation on water but which serves  
 89 purposes or provides services typically associated with a  
 90 structure or other improvement to real property. The term  
 91 ~~"floating structure"~~ includes, but is not limited to, an each  
 92 entity used as a residence, place of business or office with  
 93 public access; ~~a~~ hotel or motel; ~~a~~ restaurant or lounge; ~~a~~  
 94 clubhouse; ~~a~~ meeting facility; ~~a~~ storage or parking facility;  
 95 or a ~~mining platform, dredge, dragline, or similar facility or~~  
 96 entity represented as such. Floating structures are expressly  
 97 excluded from the definition of the term "vessel" provided in  
 98 this section. Incidental movement upon water or resting  
 99 partially or entirely on the bottom does ~~shall~~ not, in and of  
 100 itself, preclude an entity from classification as a floating  
 101 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 the 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 ~~a~~ 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 a any vessel constructed or assembled before  
 118 prior to November 1, 1972, by an entity other than a licensed  
 119 manufacturer for its his or her own use or the use of a specific  
 120 person. A vessel assembled from a manufacturer's kit or  
 121 constructed from an unfinished manufactured hull is shall be  
 122 considered to be a homemade vessel if such a vessel is not  
 123 required to have a hull identification number assigned by the  
 124 United States Coast Guard. A rebuilt or reconstructed vessel may  
 125 not shall in no event be construed to be a homemade vessel.

126 (14)(13) "Houseboat" means a any vessel that which is used  
 127 primarily as a residence for at least a minimum of 21 days  
 128 during any 30-day period, in a county of this state if such, and  
 129 this residential use of the vessel is to the preclusion of its  
 130 the use of the vessel as a 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) A Any vessel used solely as a residence and not for  
 144 navigation;

145 (b) A Any vessel represented as a place of business or a

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146 professional or other commercial enterprise; or

147 (c) A Any vessel for which a declaration of domicile has  
 148 been 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 a any vessel leased, rented,  
 153 or chartered to another for consideration.

154 (20)(19) "Manufactured vessel" means a any vessel built  
 155 after October 31, 1972, for which a federal hull identification  
 156 number is required pursuant to federal law, or a any vessel  
 157 constructed or assembled before prior to November 1, 1972, by a  
 158 duly licensed 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 is 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 a any channel mark or other aid to  
 171 navigation, an information or regulatory mark, an isolated  
 172 danger mark, a safe water mark, a special mark, an inland waters  
 173 obstruction mark, or mooring buoy in, on, or over the waters of  
 174 the state or the shores thereof, and includes, but is not

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175 limited to, a sign, beacon, buoy, or light.

176 (24)-(23) "Motorboat" means a ~~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, for vessels on:

185 (a) ~~For vessels on~~ Waters outside ~~of~~ established  
186 navigational lines of demarcation as specified in 33 C.F.R. part  
187 80, the International Navigational Rules Act of 1977, 33 U.S.C.  
188 s. 1602, as amended, including the appendix and annexes thereto,  
189 through October 1, 2012.

190 (b) ~~For vessels on~~ All waters not outside of such  
191 established lines of demarcation, the Inland Navigational Rules  
192 Act of 1980, 33 C.F.R. parts 83-90, as amended, through October  
193 1, 2012.

194 (27)-(26) "Nonresident" means a citizen of the United States  
195 who has not established residence in this state and has not  
196 continuously resided in this state for 1 year and in one county  
197 for the 6 months immediately preceding the initiation of a  
198 vessel titling or registration action.

199 (28)-(27) "Operate" means to be in charge of, ~~or~~ in command  
200 of, ~~or~~ in actual physical control of a vessel upon the waters of  
201 this state, ~~or~~ to exercise control over or to have  
202 responsibility for a vessel's navigation or safety while the  
203 vessel is underway upon the waters of this state, or to control

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204 or steer a vessel being towed by another vessel upon the waters  
205 of the state.

206 (29)-(28) "Owner" means a person, other than a lienholder,  
207 having the property in or title to a vessel. The term includes a  
208 person entitled to the use or possession of a vessel subject to  
209 an interest in another person which is, reserved or created by  
210 agreement and securing payment of performance of an obligation, ~~r~~  
211 ~~but~~ The term does not include ~~excludes~~ a lessee under a lease  
212 not intended as security.

213 (30)-(29) "Person" means an individual, partnership, firm,  
214 corporation, association, or other entity.

215 (31)-(30) "Personal watercraft" means a vessel less than 16  
216 feet in length which uses an inboard motor powering a water jet  
217 pump, as its primary source of motive power and which is  
218 designed to be operated by a person sitting, standing, or  
219 kneeling on the vessel, rather than in the conventional manner  
220 of sitting or standing inside the vessel.

221 (32)-(31) "Portable toilet" means a device consisting of a  
222 lid, seat, containment vessel, and support structure which that  
223 is specifically designed to receive, retain, and discharge human  
224 waste and which that is capable of being removed from a vessel  
225 by hand.

226 (33)-(32) "Prohibited activity" means ~~such~~ activity that as  
227 will impede or disturb navigation or creates a safety hazard on  
228 waterways of this state.

229 (34)-(33) "Racing shell," "rowing scull," or "racing kayak"  
230 means a manually propelled vessel that which is recognized by  
231 national or international racing associations for use in  
232 competitive racing and in which all occupants, with the

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233 exception of a coxswain, if one is provided, row, scull, or  
 234 paddle and ~~that which~~ is not designed to carry and does not  
 235 carry any equipment not solely for competitive racing.  
 236 ~~(35)-(34)~~ "Recreational vessel" means a any vessel:  
 237 (a) Manufactured and used primarily for noncommercial  
 238 purposes; or  
 239 (b) Leased, rented, or chartered to a person for his or her  
 240 ~~the person's~~ noncommercial use.  
 241 ~~(36)-(35)~~ "Registration" means a state operating license on  
 242 a vessel which is issued with an identifying number, an annual  
 243 certificate of registration, and a decal designating the year  
 244 for which a registration fee is paid.  
 245 ~~(37)-(36)~~ "Resident" means a citizen of the United States  
 246 who has established residence in this state and has continuously  
 247 resided in this state for 1 year and in one county for the 6  
 248 months immediately preceding the initiation of a vessel titling  
 249 or registration action.  
 250 ~~(38)-(37)~~ "Sailboat" means a any vessel whose sole source of  
 251 propulsion is the wind.  
 252 ~~(39)~~ "Sustained wind speed" means a wind speed determined  
 253 by averaging the observed wind speed rounded up to the nearest  
 254 mile per hour over a 2-minute period.  
 255 ~~(40)-(38)~~ "Unclaimed vessel" means an any undocumented  
 256 vessel, including its machinery, rigging, and accessories, which  
 257 is in the physical possession of a any marina, garage, or repair  
 258 shop for repairs, improvements, or other work with the knowledge  
 259 of the vessel owner and for which the costs of such services  
 260 have been unpaid for more than a period in excess of 90 days  
 261 after from the date written notice of the completed work is

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262 given by the marina, garage, or repair shop to the vessel owner.  
 263 ~~(41)-(39)~~ "Vessel" is synonymous with boat as referenced in  
 264 s. 1(b), Art. VII of the State Constitution and includes every  
 265 description of watercraft, barge, and airboat, other than a  
 266 seaplane on the water, used or capable of being used as a means  
 267 of transportation on water.  
 268 ~~(42)-(40)~~ "Waters of this state" means any navigable waters  
 269 of the United States within the territorial limits of this  
 270 state, ~~and~~ the marginal sea adjacent to this state and the high  
 271 seas when navigated as a part of a journey or ride to or from  
 272 the shore of this state, and all the inland lakes, rivers, and  
 273 canals under the jurisdiction of this state.  
 274 Section 3. Section 327.375, Florida Statutes, is created to  
 275 read:  
 276 327.375 Commercial parasailing.—  
 277 (1) The operator of a vessel engaged in commercial  
 278 parasailing shall ensure that the provisions of this section and  
 279 s. 327.37 are met.  
 280 (2) The owner or operator of a vessel engaged in commercial  
 281 parasailing may not offer or provide for consideration any  
 282 parasailing activity unless the owner or operator first obtains  
 283 and maintains in full force and effect a liability insurance  
 284 policy from an insurance carrier licensed in this state or  
 285 approved by the Office of Insurance Regulation or an eligible  
 286 surplus lines insurer. Such policy must provide bodily injury  
 287 liability coverage in the amounts of at least \$1 million per  
 288 occurrence and \$2 million annual aggregate. Proof of insurance  
 289 must be available for inspection at the location where  
 290 commercial parasailing is offered or provided for consideration,

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291 and each customer who requests such proof shall be provided with  
 292 the insurance carrier's name and address and the insurance  
 293 policy number.

294 (3) The operator of a vessel engaged in commercial  
 295 parasailing must have a current and valid license issued by the  
 296 United States Coast Guard authorizing the operator to carry  
 297 passengers for hire. The license must be appropriate for the  
 298 number of passengers carried and the displacement of the vessel.  
 299 The license must be carried on the vessel and be available for  
 300 inspection while engaging in commercial parasailing activities.

301 (4) A vessel engaged in commercial parasailing must be  
 302 equipped with a functional VHF marine transceiver and a separate  
 303 electronic device capable of providing access to National  
 304 Weather Service forecasts and current weather conditions.

305 (5) (a) Commercial parasailing is prohibited if the current  
 306 observed wind conditions in the area of operation include a  
 307 sustained wind speed of more than 20 miles per hour; if wind  
 308 gusts are 15 miles per hour higher than the sustained wind  
 309 speed; if the wind speed during gusts exceeds 25 miles per hour;  
 310 if rain or heavy fog results in reduced visibility of less than  
 311 0.5 mile; or if a known lightning storm comes within 7 miles of  
 312 the parasailing area.

313 (b) The operator of the vessel engaged in commercial  
 314 parasailing shall use all available means to determine  
 315 prevailing and forecasted weather conditions and record this  
 316 information in a weather log each time passengers are to be  
 317 taken out on the water. The weather log must be available for  
 318 inspection at all times at the operator's place of business.

319 (6) A person or operator who violates this section commits

Page 11 of 15

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

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320 a misdemeanor of the second degree, punishable as provided in s.  
 321 775.082 or s. 775.083.

322 Section 4. Paragraph (d) of subsection (5) of section  
 323 320.08, Florida Statutes, is amended to read:

324 320.08 License taxes.—Except as otherwise provided herein,  
 325 there are hereby levied and imposed annual license taxes for the  
 326 operation of motor vehicles, mopeds, motorized bicycles as  
 327 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,  
 328 and mobile homes, as defined in s. 320.01, which shall be paid  
 329 to and collected by the department or its agent upon the  
 330 registration or renewal of registration of the following:

331 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;  
 332 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

333 (d) A wrecker, as defined in s. 320.01, which is used to  
 334 tow a vessel as defined in s. 327.02~~(39)~~, a disabled, abandoned,  
 335 stolen-recovered, or impounded motor vehicle as defined in s.  
 336 320.01, or a replacement motor vehicle as defined in s. 320.01:  
 337 \$41 flat, of which \$11 shall be deposited into the General  
 338 Revenue Fund.

339 Section 5. Subsection (1) of section 327.391, Florida  
 340 Statutes, is amended to read:

341 327.391 Airboats regulated.—

342 (1) The exhaust of every internal combustion engine used on  
 343 any airboat operated on the waters of this state shall be  
 344 provided with an automotive-style factory muffler, underwater  
 345 exhaust, or other manufactured device capable of adequately  
 346 muffling the sound of the exhaust of the engine as described in  
 347 s. 327.02(25) ~~s. 327.02(24)~~. The use of cutouts or flex pipe as  
 348 the sole source of muffling is prohibited, except as provided in

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349 subsection (4). Any person who violates this subsection commits  
 350 a noncriminal infraction punishable as provided in s. 327.73(1).  
 351 Section 6. Subsection (4) of section 328.17, Florida  
 352 Statutes, is amended to read:  
 353 328.17 Nonjudicial sale of vessels.—  
 354 (4) A marina, as defined in s. 327.02(20), shall have:  
 355 (a) A possessory lien upon any vessel for storage fees,  
 356 dockage fees, repairs, improvements, or other work-related  
 357 storage charges, and for expenses necessary for preservation of  
 358 the vessel or expenses reasonably incurred in the sale or other  
 359 disposition of the vessel. The possessory lien attaches ~~shall~~  
 360 ~~attach~~ as of the date the vessel is brought to the marina or as  
 361 of the date the vessel first occupies rental space at the marina  
 362 facility.  
 363 (b) A possessory lien upon any vessel in a wrecked, junked,  
 364 or substantially dismantled condition, which has been left  
 365 abandoned at a marina, for expenses reasonably incurred in the  
 366 removal and disposal of the vessel. The possessory lien attaches  
 367 ~~shall attach~~ as of the date the vessel arrives at the marina or  
 368 as of the date the vessel first occupies rental space at the  
 369 marina facility. If the funds recovered from the sale of ~~the~~  
 370 ~~vessel~~, or from the scrap or salvage value of the vessel, are  
 371 insufficient to cover the expenses reasonably incurred by the  
 372 marina in removing and disposing of the vessel, all costs in  
 373 excess of recovery shall be recoverable against the owner of the  
 374 vessel. For a vessel damaged as a result of a named storm, the  
 375 provisions of this paragraph shall be suspended for 60 days  
 376 after following the date the vessel is damaged in the named  
 377 storm. The operation of the provisions specified in this

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378 paragraph run concurrently with, and do not extend, the 60-day  
 379 notice periods provided in subsections (5) and (7).  
 380 Section 7. Subsection (2) of section 342.07, Florida  
 381 Statutes, is amended to read:  
 382 342.07 Recreational and commercial working waterfronts;  
 383 legislative findings; definitions.—  
 384 (2) As used in this section, the term “recreational and  
 385 commercial working waterfront” means a parcel or parcels of real  
 386 property which ~~that~~ provide access for water-dependent  
 387 commercial activities, including hotels and motels as defined in  
 388 s. 509.242(1), or provide access for the public to the navigable  
 389 waters of the state. Recreational and commercial working  
 390 waterfronts require direct access to or a location on, over, or  
 391 adjacent to a navigable body of water. The term includes water-  
 392 dependent facilities that are open to the public and offer  
 393 public access by vessels to the waters of the state or that are  
 394 support facilities for recreational, commercial, research, or  
 395 governmental vessels. These facilities include public lodging  
 396 establishments, docks, wharfs, lifts, wet and dry marinas, boat  
 397 ramps, boat hauling and repair facilities, commercial fishing  
 398 facilities, boat construction facilities, and other support  
 399 structures over the water. As used in this section, the term  
 400 “vessel” has the same meaning as in s. 327.02(39). Seaports are  
 401 excluded from the definition.  
 402 Section 8. Paragraph (b) of subsection (1) of section  
 403 713.78, Florida Statutes, is amended to read:  
 404 713.78 Liens for recovering, towing, or storing vehicles  
 405 and vessels.—  
 406 (1) For the purposes of this section, the term:

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407 (b) "Vessel" means every description of watercraft, barge,  
408 and airboat used or capable of being used as a means of  
409 transportation on water, other than a seaplane or a "documented  
410 vessel" as defined in s. 327.02~~(9)~~.

411 Section 9. Paragraph (b) of subsection (1) of section  
412 715.07, Florida Statutes, is amended to read:

413 715.07 Vehicles or vessels parked on private property;  
414 towing.-

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

416 (b) "Vessel" means every description of watercraft, barge,  
417 and airboat used or capable of being used as a means of  
418 transportation on water, other than a seaplane or a "documented  
419 vessel" as defined in s. 327.02~~(9)~~.

420 Section 10. This act shall take effect October 1, 2014.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Regulated Industries

**Subject:** Committee Agenda Request

**Date:** November 12, 2013

---

I respectfully request that **Senate Bill # 320**, relating to Commercial Parasailing, be placed on the:

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

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

---

Senator Maria Sachs  
Florida Senate, District 43

THE FLORIDA SENATE  
**APPEARANCE RECORD**

waived  
in  
support

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

2-13-14  
Meeting Date

Topic Parasailing

Bill Number 320  
*(if applicable)*

Name Dave Ericks

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title President, Ericks Consultants

Address 205 S Adams St  
*Street*

Phone 850-591-7550

Tallahassee FL 32301  
*City State Zip*

E-mail dave@ericksconsultants.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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Feb 13  
Meeting Date

Topic Parasailing Bill

Bill Number 320  
*(if applicable)*

Name Angelica Fairchild

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 1329 Riverside Dr  
*Street*

Phone 260-358-9458

Huntington Indiana 46750  
*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.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Feb 13

Meeting Date

Topic Parasailing

Bill Number 320  
*(if applicable)*

Name Alexis Fairchild

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 1329 Riverside Drive  
*Street*

Phone 260-358-9489

Huntington Indiana 46750  
*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.**

waived in support

# THE FLORIDA SENATE APPEARANCE RECORD

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

2/13/14  
Meeting Date

Topic Parasailing

Bill Number SB 320  
(if applicable)

Name YOLANDA CASH JACKSON

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Attorney / Lobbyist

Address 1 East Broward Blvd

Phone 954-985-4132

Street  
Pt Lend FL  
City State Zip

E-mail YJACKSON@BPLEGAL.COM

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.**

waited in support

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/13/11

Meeting Date

Topic Parasailing

Bill Number 320  
*(if applicable)*

Name Mario Bailey

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lobbyist

Address 2700 N. Miami Ave Apt 211

Phone (205) 246-3932

Miami FL 33127  
City State Zip

E-mail mbailey@bplga.com

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.*

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THE FLORIDA SENATE  
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Feb 13

Meeting Date

Topic Parasailing Bill

Bill Number 320  
*(if applicable)*

Name Shannon Hively

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 10256 SE 136<sup>th</sup> Lane  
*Street*

Phone 352-288-0848

Belleview FL 34420  
*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.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Feb 13

Meeting Date

Topic Parasailing Bill

Bill Number 320  
*(if applicable)*

Name Crystal White

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 10220 SE 42nd Court

Phone 352-553-6528

Street

Belleview FL 34420

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/13/2014

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 320  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR JOHN LEGG**  
17th District

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

February 12, 2014

Chair Stargel,

Please excuse my absence for the Regulated Industries Committee scheduled for February 13, 2014. I will be tending to a personal matter. If there is an issue where you need to speak with me directly, please contact me on my personal cell phone at 727-514-3313. Thank you for your kind consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg", with a long horizontal line extending to the right.

John Legg  
State Senate, District 17

cc: Patrick L. Imhof  
Staff Director

A handwritten signature in black ink, appearing to read "Kelli Stargel", with a long horizontal line extending to the right.

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017
- 262 Crystal Grove Boulevard, Lutz, Florida 33548

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: SB 301

Case:

Type:

Caption: Regulated Industries Committee

Judge:

Started: 2/13/2014 9:30:45 AM

Ends: 2/13/2014 10:17:00 AM

Length: 00:46:16

9:30:45 AM  
9:31:04 AM Roll Call  
9:31:28 AM Quorum present Senator Legg is excused  
9:31:42 AM SB 286-Concrete Masonary  
9:32:16 AM Senator Richter to explain amendment 413454  
9:33:26 AM Senator Sobel question  
9:33:56 AM w/o show the amendment adopted  
9:34:07 AM Senator Gibson for a question on the bill  
9:37:06 AM Appearance Cards  
9:37:08 AM Pat McLaughlin  
9:37:16 AM Curtis Leonard waives in support  
9:37:20 AM Justin Fleming waives  
9:37:26 AM Rocky Jenkins Waives  
9:37:32 AM Mike Bertha waives in support  
9:37:37 AM Richard Watson waives  
9:37:46 AM Brian Pitts Justice to Jesus  
9:41:44 AM Senator Detert moves a CS  
9:41:49 AM Senator Richter waives close  
9:41:51 AM Roll call  
9:42:14 AM CS/SB 286 is favorable  
9:42:31 AM SB 406 by Senator Latvala  
9:42:54 AM Barcode 27155 explanation by Senator Latvala  
9:43:34 AM Questions  
9:43:37 AM Senator Gibson  
9:44:22 AM Senator Detert to explain a question  
9:46:02 AM Senator Latvala for further explanation  
9:46:49 AM Questions?  
9:46:57 AM W/O amendment is adopted  
9:47:05 AM Appearance Cards  
9:47:11 AM Brewster Bevis waives in support  
9:47:23 AM Josh Aubuchon  
9:48:04 AM Brian Burroughs waives in support  
9:48:10 AM Justin Clark waives in support  
9:48:19 AM Joe Mobley waives in support  
9:48:31 AM Eric Chris Beer Industry of Florida  
9:49:54 AM Scott Dick waives in support  
9:49:59 AM Brian Pitts waives in support  
9:50:11 AM Mitch Rubin FI Beer Wholesalers  
9:51:37 AM Questions  
9:51:40 AM Debate  
9:51:50 AM Senator Gibson for a question  
9:52:44 AM Senator Detert  
9:53:18 AM Senator Thrasher  
9:54:13 AM Senator Latvala to close on CS/SB 406  
9:54:30 AM Roll Call  
9:54:48 AM Bill passes  
9:55:00 AM Tab 4 - SB 320 Parasailing  
9:55:08 AM Senator Sachs for explanation  
9:58:13 AM Senator Galvano for a question  
9:58:24 AM Senator Detert for a question  
9:59:26 AM Senator Sachs for a response  
10:01:30 AM Appearance Cards

**10:01:36 AM** Dave Eric's waives in support  
**10:01:55 AM** Ms. Angelia Fairchild (Alexis' mother)  
**10:04:14 AM** Alexis Fairchild - victim of parasailing accident  
**10:05:59 AM** Yolonda Jackson - Pompano Beach  
**10:06:22 AM** Mario Bailey - waives in support  
**10:06:39 AM** Shannon Hively  
**10:10:17 AM** Brian Pitts Justice to Jesus  
**10:11:33 AM** Crystal White supports the bill  
**10:11:56 AM** Debate?  
**10:12:03 AM** Senator Sobel  
**10:12:56 AM** Senator Sachs to close on the bill  
**10:13:56 AM** Roll Call  
**10:14:19 AM** Bill passes Favorably  
**10:14:28 AM** Tab 2 - SB 440 by Senator Altman  
**10:14:35 AM** Rick Kendust to explain the bill  
**10:14:57 AM** SB 440- Condominiums  
**10:15:04 AM** Two amendments  
**10:15:16 AM** Barcode 613562 by Senator Thrasher  
**10:15:23 AM** Amendment adopted  
**10:15:36 AM** Amendment #414642  
**10:15:56 AM** Amendment adopted  
**10:16:01 AM** On the bill as amended  
**10:16:10 AM** Waives close  
**10:16:17 AM** CS by Senator Thrasher  
**10:16:31 AM** Roll Call  
**10:16:46 AM** Bill Passes  
**10:16:51 AM** Senator Flores moves we rise