

1 A bill to be entitled
2 An act relating to the deregulation of professions and
3 occupations; amending s. 20.165, F.S.; deleting provisions
4 establishing the Division of Florida Condominiums,
5 Timeshares, and Mobile Homes of the Department of Business
6 and Professional Regulation; deleting provisions
7 establishing the Florida Board of Auctioneers, the Board
8 of Employee Leasing Companies, the Board of Landscape
9 Architecture, the Board of Professional Geologists, the
10 home inspection services licensing program, and the mold-
11 related services licensing program within the department's
12 Division of Professions; repealing chapter 326, F.S.,
13 relating to the Yacht and Ship Brokers' Act and the
14 licensure of yacht and ship brokers and salespersons;
15 amending ss. 212.06 and 213.053, F.S., to conform;
16 repealing part VI of chapter 468, F.S., relating to the
17 licensure of auctioneers, apprentices, and auction
18 businesses, the Florida Board of Auctioneers, the
19 Auctioneer Recovery Fund, and the conduct of auctions;
20 amending s. 538.03, F.S., to conform; repealing part VII
21 of chapter 468, F.S., relating to the licensure and
22 regulation of talent agencies; repealing part VIII of
23 chapter 468, F.S., relating to the licensure and
24 regulation of community association managers and
25 management firms and the Regulatory Council of Community
26 Association Managers; amending ss. 455.2122, 718.111,
27 718.501, 719.104, and 721.13, F.S., to conform; repealing
28 part IX of chapter 468, F.S., relating to the licensure

29 and regulation of athlete agents; repealing part XI of
 30 chapter 468, F.S., relating to the licensure and
 31 regulation of employee leasing companies and employee
 32 leasing company groups and the Board of Employee Leasing
 33 Companies; amending s. 212.096, 212.097, 212.098, 220.03,
 34 443.036, 443.101, 448.23, 448.26, 472.003, 626.112,
 35 627.192, 627.3121, and 768.098, F.S., to conform;
 36 repealing part XV of chapter 468, F.S., relating to the
 37 home inspection services licensing program, the licensure
 38 of home inspectors, the certification of corporations and
 39 partnerships practicing or offering to practice home
 40 inspection services, and the regulation of home inspection
 41 services; amending s. 627.0629, F.S., to conform; amending
 42 s. 627.711, F.S.; removing licensed home inspectors from
 43 list of persons from whom insurers must accept uniform
 44 mitigation verification inspection forms, to conform;
 45 repealing part XVI of chapter 468, F.S., relating to the
 46 mold-related services licensing program, the licensure of
 47 mold assessors and remediators, the certification of
 48 corporations and partnerships practicing or offering to
 49 practice mold assessment or remediation, and the
 50 regulation of mold-related services; amending s. 455.2123,
 51 F.S., to conform; repealing chapter 472, F.S., relating to
 52 the licensure of professional surveyors and mappers, the
 53 Board of Professional Surveyors and Mappers, and the
 54 practice of land surveying and mapping; amending ss.
 55 161.57, 177.031, 177.36, 177.503, 287.055, 334.044,
 56 348.0008, 373.421, 403.0877, 440.02, 481.329, 492.102,

HB 5005

2011

57 | 497.274, 556.108, 718.104, 725.08, and 810.12, F.S., to
58 | conform; repealing s. 177.508, F.S., relating to the
59 | Florida Public Land Survey Restoration and Perpetuation
60 | Act not affecting the actions or practice of land
61 | surveyors and mappers regulated under chapter 472, to
62 | conform; amending s. 477.0132, F.S.; deleting provisions
63 | requiring the registration of persons whose occupation or
64 | practice is confined solely to hair braiding, hair
65 | wrapping, or body wrapping; providing that the Florida
66 | Cosmetology Act does not apply to such persons; amending
67 | ss. 477.019, 477.026, 477.0265, and 477.029, F.S., to
68 | conform; repealing ss. 481.2131 and 481.2251, F.S.,
69 | relating to the practice of interior design by registered
70 | interior designers and disciplinary proceedings against
71 | registered interior designers; deleting provisions
72 | relating to the registration of interior designers and the
73 | regulation of interior design; amending s. 481.201, F.S.;
74 | deleting legislative findings relating to the practice of
75 | interior design, to conform; amending s. 481.203, F.S.;
76 | revising definitions relating to the practice of
77 | architecture and deleting definitions relating to the
78 | practice of interior design; specifying that the practice
79 | of architecture includes interior design; amending s.
80 | 481.205, F.S.; changing the name of the Board of
81 | Architecture and Interior Design, to conform; revising
82 | membership of the board; conforming provisions; amending
83 | ss. 481.207, 481.209, 481.211, 481.213, 481.215, and
84 | 481.217, F.S., to conform; amending s. 481.219, F.S.;

85 deleting provisions permitting the practice of or offer to
86 practice interior design through certain business
87 organizations; deleting provisions requiring certificates
88 of authorization for certain business organizations
89 offering interior design services to the public;
90 conforming provisions; amending ss. 481.221, 481.222,
91 481.223, 481.229, 481.231, and 553.79, F.S., to conform;
92 amending s. 558.002, F.S.; revising definition of "design
93 professional" for purposes of provisions relating to
94 alternative dispute resolution of construction defects, to
95 conform; repealing part II of chapter 481, F.S., relating
96 to the registration and licensure of landscape architects,
97 the certification of corporations and partnerships
98 practicing or offering to practice landscape architectural
99 services, the Board of Landscape Architecture, and the
100 regulation of landscape architectural services; providing
101 a directive to the Division of Statutory Revision;
102 amending s. 287.055, F.S., to conform; amending s.
103 339.2405, F.S.; revising qualifications of landscape
104 architect member of the Florida Highway Beautification
105 Council, to conform; amending ss. 373.62, 403.0877,
106 403.9329, and 479.106, F.S., to conform; amending s.
107 481.203, F.S.; defining the terms "landscape architect"
108 and "landscape architecture" for purposes of provisions
109 relating to the regulation of architecture and interior
110 design; amending ss. 489.103, 558.002, and 725.08, F.S.,
111 to conform; repealing chapter 492, F.S., relating to the
112 licensure of professional geologists, the Board of

113 Professional Geologists, and the practice of professional
114 geology; amending ss. 373.1175, 376.80, 377.075, 403.087,
115 403.0877, 469.004, 627.706, 627.707, 627.7072, 627.7073,
116 627.7074, and 849.0935, F.S., to conform; repealing
117 chapter 496, F.S., relating to the registration of
118 professional fundraising consultants and professional
119 solicitors and the regulation of solicitation of
120 charitable contributions and charitable sales promotions;
121 amending ss. 110.181, 316.2045, 320.023, 322.081, 413.033,
122 550.0351, 550.1647, 741.0305, 775.0861, 790.166, 843.16,
123 and 849.0935, F.S., to conform; repealing s. 500.459,
124 F.S., relating to the regulation of water vending machines
125 and the permitting of water vending machine operators;
126 amending s. 500.511, F.S.; deleting provisions for the
127 deposit of operator permitting fees, the enforcement of
128 the state's water vending machine regulations, penalties,
129 and the preemption of county and municipal water vending
130 machine regulations, to conform; repealing ss. 501.012-
131 501.019, F.S., relating to the registration of health
132 studios and the regulation of health studio services;
133 amending s. 501.165, F.S., to conform; repealing s.
134 501.143, F.S., relating to the Dance Studio Act, the
135 registration of ballroom dance studios, and the regulation
136 of dance studio lessons and services; repealing s.
137 205.1969, F.S., relating to the issuance by counties and
138 municipalities of business tax receipts to health studios
139 and ballroom dance studios, to conform; repealing part IV
140 of chapter 501, F.S., relating to the Florida

141 | Telemarketing Act, the licensure of commercial telephone
142 | sellers and salespersons and the regulation of commercial
143 | telephone solicitation; repealing s. 205.1973, F.S.,
144 | relating to the issuance by counties and municipalities of
145 | business tax receipts to telemarketing businesses, to
146 | conform; amending ss. 501.165, 648.44, 772.102, and
147 | 895.02, F.S., to conform; repealing chapter 507, F.S.,
148 | relating to the registration of movers and moving brokers
149 | and the regulation of household moving services; repealing
150 | s. 205.1975, F.S., relating to the issuance by counties
151 | and municipalities of business tax receipts to movers and
152 | moving brokers, to conform; amending s. 509.242, F.S.;
153 | revising the license classifications of public lodging
154 | establishments for purposes of provisions regulating such
155 | establishments; amending s. 509.221, F.S.; conforming a
156 | cross-reference; repealing chapter 555, F.S., relating to
157 | the regulation of outdoor theaters in which audiences view
158 | performances from parked vehicles; repealing part VIII of
159 | chapter 559, F.S., relating to the Sale of Business
160 | Opportunities Act and the regulation of certain business
161 | opportunities; repealing part IX of chapter 559, F.S.,
162 | relating to the registration of motor vehicle repair
163 | shops, the Motor Vehicle Repair Advisory Council, and the
164 | regulation of motor vehicle repair; amending ss. 320.27,
165 | 445.025, and 713.585, F.S., to conform; repealing part XI
166 | of chapter 559, F.S., relating to the Florida Sellers of
167 | Travel Act, the registration of sellers of travel,
168 | certification of certain business activities, and the

169 regulation of prearranged travel, tourist-related
 170 services, tour-guide services, and vacation certificates;
 171 repealing s. 205.1971, F.S., relating to the issuance by
 172 counties and municipalities of business tax receipts to
 173 sellers of travel, to conform; amending ss. 501.604,
 174 501.608, 636.044, and 721.11, F.S., to conform; repealing
 175 s. 686.201, F.S., relating to contracts with sales
 176 representatives involving commissions; repealing s.
 177 817.559, F.S., relating to the labeling of television
 178 picture tubes; amending ss. 73.072, 192.037, 213.053,
 179 336.125, 475.011, 558.002, 718.103, 718.1085, 718.111,
 180 718.112, 718.202, 718.301, 718.503, 718.504, 719.103,
 181 719.1035, 719.104, 719.1055, 719.106, 719.202, 719.301,
 182 719.503, 719.504, 719.608, 720.301, 720.303, 720.306,
 183 720.311, 720.407, 721.03, 721.05, 721.06, 721.08, 721.09,
 184 721.10, 721.11, 721.111, 721.13, 721.18, 721.20, 721.55,
 185 721,551, 721.552, 721.56, 721.82, 723.002, 723.003,
 186 723.004, 723.031, 723.033, 723.035, 723.037, 723.042,
 187 723.06115, F.S.; repealing ss. 718.1255, 718.501,
 188 718.5011, 718.5012, 718.5014, 718.50151, 718.50152,
 189 718.50153, 718.50154, 718.50155, 718.502, 718.509,
 190 718.621, 719.1255, 719.501, 719.502, 719.508, 719.621,
 191 721.07, 721.071, 721.075, 721.121, 721.26, 721.265,
 192 721.27, 721.28, 721.29, 721.301, 721.53, 721.58, 721.98,
 193 723.005, 723.007, 723.008, 723.009, 723.011, 723.012,
 194 723.013, 723.016, 723.038, 723.0381, F.S., to delete
 195 powers and duties of the Division of Florida Condominiums,
 196 Timeshares, and Mobile Homes of the Department of Business

HB 5005

2011

197 and Professional Regulation; deleting the division's power
 198 to enforce and ensure compliance of certain provisions
 199 relating to condominiums, cooperatives, vacation plans and
 200 timeshares, and mobile homes; conforming provisions;
 201 providing an effective date.

202

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

204

205 Section 1. Subsections (2) and (4) of section 20.165,
 206 Florida Statutes, are amended to read:

207 20.165 Department of Business and Professional
 208 Regulation.—There is created a Department of Business and
 209 Professional Regulation.

210 (2) The following divisions of the Department of Business
 211 and Professional Regulation are established:

- 212 (a) Division of Administration.
- 213 (b) Division of Alcoholic Beverages and Tobacco.
- 214 (c) Division of Certified Public Accounting.

215 1. The director of the division shall be appointed by the
 216 secretary of the department, subject to approval by a majority
 217 of the Board of Accountancy.

218 2. The offices of the division shall be located in
 219 Gainesville.

220 ~~(d) Division of Florida Condominiums, Timeshares, and~~
 221 ~~Mobile Homes.~~

222 (d) ~~(e)~~ Division of Hotels and Restaurants.

223 (e) ~~(f)~~ Division of Pari-mutuel Wagering.

224 (f) ~~(g)~~ Division of Professions.

225 (g)~~(h)~~ Division of Real Estate.

226 1. The director of the division shall be appointed by the
227 secretary of the department, subject to approval by a majority
228 of the Florida Real Estate Commission.

229 2. The offices of the division shall be located in
230 Orlando.

231 (h)~~(i)~~ Division of Regulation.

232 (i)~~(j)~~ Division of Technology.

233 (j)~~(k)~~ Division of Service Operations.

234 (4) (a) The following boards and programs are established
235 within the Division of Professions:

236 1. Board of Architecture ~~and Interior Design~~, created
237 under part I of chapter 481.

238 ~~2. Florida Board of Auctioneers, created under part VI of~~
239 ~~chapter 468.~~

240 ~~2.3.~~ Barbers' Board, created under chapter 476.

241 ~~3.4.~~ Florida Building Code Administrators and Inspectors
242 Board, created under part XII of chapter 468.

243 ~~4.5.~~ Construction Industry Licensing Board, created under
244 part I of chapter 489.

245 ~~5.6.~~ Board of Cosmetology, created under chapter 477.

246 ~~6.7.~~ Electrical Contractors' Licensing Board, created
247 under part II of chapter 489.

248 ~~8. Board of Employee Leasing Companies, created under part~~
249 ~~XI of chapter 468.~~

250 ~~9. Board of Landscape Architecture, created under part II~~
251 ~~of chapter 481.~~

252 ~~7.10.~~ Board of Pilot Commissioners, created under chapter

253 310.

254 ~~8.11.~~ Board of Professional Engineers, created under
255 chapter 471.

256 ~~12.~~ Board of Professional Geologists, created under
257 chapter ~~492.~~

258 ~~9.13.~~ Board of Veterinary Medicine, created under chapter
259 474.

260 ~~14.~~ Home inspection services licensing program, created
261 under part XV of chapter 468.

262 ~~15.~~ Mold-related services licensing program, created under
263 part XVI of chapter 468.

264 (b) The following board and commission are established
265 within the Division of Real Estate:

266 1. Florida Real Estate Appraisal Board, created under part
267 II of chapter 475.

268 2. Florida Real Estate Commission, created under part I of
269 chapter 475.

270 (c) The following board is established within the Division
271 of Certified Public Accounting: Board of Accountancy, created
272 under chapter 473.

273 Section 2. Chapter 326, Florida Statutes, consisting of
274 sections 326.001, 326.002, 326.003, 326.004, 326.005, and
275 326.006, is repealed.

276 Section 3. Paragraph (e) of subsection (1) of section
277 212.06, Florida Statutes, is amended to read:

278 212.06 Sales, storage, use tax; collectible from dealers;
279 "dealer" defined; dealers to collect from purchasers;
280 legislative intent as to scope of tax.—

HB 5005

2011

281 (1)
282 (e)1. Notwithstanding any other provision of this chapter,
283 tax shall not be imposed on any vessel registered under s.
284 328.52 by a vessel dealer or vessel manufacturer with respect to
285 a vessel used solely for demonstration, sales promotional, or
286 testing purposes. The term "promotional purposes" shall include,
287 but not be limited to, participation in fishing tournaments. For
288 the purposes of this paragraph, "promotional purposes" means the
289 entry of the vessel in a marine-related event where prospective
290 purchasers would be in attendance, where the vessel is entered
291 in the name of the dealer or manufacturer, and where the vessel
292 is clearly marked as for sale, on which vessel the name of the
293 dealer or manufacturer is clearly displayed, and which vessel
294 has never been transferred into the dealer's or manufacturer's
295 accounting books from an inventory item to a capital asset for
296 depreciation purposes.

297 2. The provisions of this paragraph do not apply to any
298 vessel when used for transporting persons or goods for
299 compensation; when offered, let, or rented to another for
300 consideration; when offered for rent or hire as a means of
301 transportation for compensation; or when offered or used to
302 provide transportation for persons solicited through personal
303 contact or through advertisement on a "share expense" basis.

304 3. Notwithstanding any other provision of this chapter,
305 tax may not be imposed on any vessel imported into this state
306 for the sole purpose of being offered for sale at retail by a
307 yacht broker or yacht dealer ~~registered in this state~~ if the
308 vessel remains under the care, custody, and control of the

HB 5005

2011

309 ~~registered~~ broker or dealer and the owner of the vessel does not
 310 make personal use of the vessel during that time. The provisions
 311 of this chapter govern the taxability of any sale or use of the
 312 vessel subsequent to its importation under this provision.

313 Section 4. Paragraph (i) of subsection (8) of section
 314 213.053, Florida Statutes, is amended to read:

315 213.053 Confidentiality and information sharing.—

316 (8) Notwithstanding any other provision of this section,
 317 the department may provide:

318 (i) Information relative to chapter ~~chapters~~ 212 and
 319 former chapter 326 to the Division of Florida Condominiums,
 320 Timeshares, and Mobile Homes of the Department of Business and
 321 Professional Regulation in the conduct of its official duties.

322
 323 Disclosure of information under this subsection shall be
 324 pursuant to a written agreement between the executive director
 325 and the agency. Such agencies, governmental or nongovernmental,
 326 shall be bound by the same requirements of confidentiality as
 327 the Department of Revenue. Breach of confidentiality is a
 328 misdemeanor of the first degree, punishable as provided by s.
 329 775.082 or s. 775.083.

330 Section 5. Part VI of chapter 468, Florida Statutes,
 331 consisting of sections 468.381, 468.382, 468.383, 468.384,
 332 468.385, 468.3851, 468.3852, 468.3855, 468.386, 468.387,
 333 468.388, 468.389, 468.391, 468.392, 468.393, 468.394, 468.395,
 334 468.396, 468.397, 468.398, and 468.399, is repealed.

335 Section 6. Paragraphs (m) through (q) of subsection (2) of
 336 section 538.03, Florida Statutes, are redesignated as paragraphs

HB 5005

2011

337 (l) through (p), respectively, and present paragraph (l) of that
338 subsection is amended to read:

339 538.03 Definitions; applicability.—

340 (2) This chapter does not apply to:

341 ~~(1) Any auction business as defined in s. 468.382(1).~~

342 Section 7. Part VII of chapter 468, Florida Statutes,
343 consisting of sections 468.401, 468.402, 468.403, 468.404,
344 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411,
345 468.412, 468.413, 468.414, and 468.415, is repealed.

346 Section 8. Part VIII of chapter 468, Florida Statutes,
347 consisting of sections 468.431, 468.4315, 468.432, 468.433,
348 468.4336, 468.4337, 468.4338, 468.435, 468.436, 468.4365,
349 468.437, and 468.438, is repealed.

350 Section 9. Section 455.2122, Florida Statutes, is amended
351 to read:

352 455.2122 Education.—A board, or the department where there
353 is no board, shall approve distance learning courses as an
354 alternative to classroom courses to satisfy prelicensure or
355 postlicensure education requirements provided for in ~~part VIII~~
356 ~~of chapter 468 or~~ part I of chapter 475. A board, or the
357 department when there is no board, may not require centralized
358 examinations for completion of prelicensure or postlicensure
359 education requirements for those professions licensed under ~~part~~
360 ~~VIII of chapter 468 or~~ part I of chapter 475.

361 Section 10. Paragraph (e) of subsection (1), subsection
362 (4), and subsection (10) of section 721.13, Florida Statutes,
363 are amended to read:

364 721.13 Management.—

365 (1)

366 ~~(c) Any managing entity performing community association~~

367 ~~management must comply with part VIII of chapter 468.~~

368 (4) The managing entity shall maintain among its records

369 and provide to the division upon request a complete list of the

370 names and addresses of all purchasers and owners of timeshare

371 units in the timeshare plan. The managing entity shall update

372 this list no less frequently than quarterly. Pursuant to

373 paragraph (3) (d), the managing entity may not publish this

374 owner's list or provide a copy of it to any purchaser or to any

375 third party other than the division. However, the managing

376 entity shall to those persons listed on the owner's list

377 materials provided by any purchaser, upon the written request of

378 that purchaser, if the purpose of the mailing is to advance

379 legitimate owners' association business, such as a proxy

380 solicitation for any purpose, including the recall of one or

381 more board members elected by the owners or the discharge of the

382 manager or management firm. The use of any proxies solicited in

383 this manner must comply with the provisions of the timeshare

384 instrument and this chapter. A mailing requested for the purpose

385 of advancing legitimate owners' association business shall occur

386 within 30 days after receipt of a request from a purchaser. The

387 board of administration of the owners' association shall be

388 responsible for determining the appropriateness of any mailing

389 requested pursuant to this subsection. The purchaser who

390 requests the mailing must reimburse the owners' association in

391 advance for the owners' association's actual costs in performing

392 the mailing. It shall be a violation of this chapter ~~and, if~~

HB 5005

2011

393 ~~applicable, of part VIII of chapter 468,~~ for the board of
394 administration or the manager or management firm to refuse to
395 mail any material requested by the purchaser to be mailed,
396 provided the sole purpose of the materials is to advance
397 legitimate owners' association business. If the purpose of the
398 mailing is a proxy solicitation to recall one or more board
399 members elected by the owners or to discharge the manager or
400 management firm and the managing entity does not mail the
401 materials within 30 days after receipt of a request from a
402 purchaser, the circuit court in the county where the timeshare
403 plan is located may, upon application from the requesting
404 purchaser, summarily order the mailing of the materials solely
405 related to the recall of one or more board members elected by
406 the owners or the discharge of the manager or management firm.
407 The court shall dispose of an application on an expedited basis.
408 In the event of such an order, the court may order the managing
409 entity to pay the purchaser's costs, including attorney's fees
410 reasonably incurred to enforce the purchaser's rights, unless
411 the managing entity can prove it refused the mailing in good
412 faith because of a reasonable basis for doubt about the
413 legitimacy of the mailing.

414 (10) Any failure of the managing entity to faithfully
415 discharge the fiduciary duty to purchasers imposed by this
416 section or to otherwise comply with the provisions of this
417 section shall be a violation of this chapter ~~and of part VIII of~~
418 ~~chapter 468.~~

419 Section 11. Subsection (14) of section 718.111, Florida
420 Statutes, is amended to read:

421 718.111 The association.—

422 (14) COMMINGLING.—All funds collected by an association
 423 shall be maintained separately in the association's name. For
 424 investment purposes only, reserve funds may be commingled with
 425 operating funds of the association. Commingled operating and
 426 reserve funds shall be accounted for separately, and a
 427 commingled account shall not, at any time, be less than the
 428 amount identified as reserve funds. This subsection does not
 429 prohibit a multicondominium association from commingling the
 430 operating funds of separate condominiums or the reserve funds of
 431 separate condominiums. Furthermore, for investment purposes
 432 only, a multicondominium association may commingle the operating
 433 funds of separate condominiums with the reserve funds of
 434 separate condominiums. ~~A manager or business entity required to~~
 435 ~~be licensed or registered under s. 468.432, or~~ An agent,
 436 employee, officer, or director of an association, may ~~shall~~ not
 437 commingle any association funds with his or her funds or with
 438 the funds of any other condominium association ~~or the funds of a~~
 439 ~~community association as defined in s. 468.431.~~

440 Section 12. Paragraph (d) of subsection (1) of section
 441 718.501, Florida Statutes, is amended to read:

442 718.501 Authority, responsibility, and duties of Division
 443 of Florida Condominiums, Timeshares, and Mobile Homes.—

444 (1) The division may enforce and ensure compliance with
 445 the provisions of this chapter and rules relating to the
 446 development, construction, sale, lease, ownership, operation,
 447 and management of residential condominium units. In performing
 448 its duties, the division has complete jurisdiction to

449 investigate complaints and enforce compliance with respect to
 450 associations that are still under developer control or the
 451 control of a bulk assignee or bulk buyer pursuant to part VII of
 452 this chapter and complaints against developers, bulk assignees,
 453 or bulk buyers involving improper turnover or failure to
 454 turnover, pursuant to s. 718.301. However, after turnover has
 455 occurred, the division has jurisdiction to investigate
 456 complaints related only to financial issues, elections, and unit
 457 owner access to association records pursuant to s. 718.111(12).

458 (d) Notwithstanding any remedies available to unit owners
 459 and associations, if the division has reasonable cause to
 460 believe that a violation of any provision of this chapter or
 461 related rule has occurred, the division may institute
 462 enforcement proceedings in its own name against any developer,
 463 bulk assignee, bulk buyer, association, officer, or member of
 464 the board of administration, or its assignees or agents, as
 465 follows:

466 1. The division may permit a person whose conduct or
 467 actions may be under investigation to waive formal proceedings
 468 and enter into a consent proceeding whereby orders, rules, or
 469 letters of censure or warning, whether formal or informal, may
 470 be entered against the person.

471 2. The division may issue an order requiring the
 472 developer, bulk assignee, bulk buyer, association, developer-
 473 designated officer, or developer-designated member of the board
 474 of administration, developer-designated assignees or agents,
 475 bulk assignee-designated assignees or agents, or bulk buyer-
 476 designated assignees or agents, ~~community association manager,~~

HB 5005

2011

477 ~~or community association management firm~~ to cease and desist
478 from the unlawful practice and take such affirmative action as
479 in the judgment of the division carry out the purposes of this
480 chapter. If the division finds that a developer, bulk assignee,
481 bulk buyer, association, officer, or member of the board of
482 administration, or its assignees or agents, is violating or is
483 about to violate any provision of this chapter, any rule adopted
484 or order issued by the division, or any written agreement
485 entered into with the division, and presents an immediate danger
486 to the public requiring an immediate final order, it may issue
487 an emergency cease and desist order reciting with particularity
488 the facts underlying such findings. The emergency cease and
489 desist order is effective for 90 days. If the division begins
490 nonemergency cease and desist proceedings, the emergency cease
491 and desist order remains effective until the conclusion of the
492 proceedings under ss. 120.569 and 120.57.

493 3. If a developer, bulk assignee, or bulk buyer, fails to
494 pay any restitution determined by the division to be owed, plus
495 any accrued interest at the highest rate permitted by law,
496 within 30 days after expiration of any appellate time period of
497 a final order requiring payment of restitution or the conclusion
498 of any appeal thereof, whichever is later, the division must
499 bring an action in circuit or county court on behalf of any
500 association, class of unit owners, lessees, or purchasers for
501 restitution, declaratory relief, injunctive relief, or any other
502 available remedy. The division may also temporarily revoke its
503 acceptance of the filing for the developer to which the
504 restitution relates until payment of restitution is made.

HB 5005

2011

505 4. The division may petition the court for appointment of
506 a receiver or conservator. If appointed, the receiver or
507 conservator may take action to implement the court order to
508 ensure the performance of the order and to remedy any breach
509 thereof. In addition to all other means provided by law for the
510 enforcement of an injunction or temporary restraining order, the
511 circuit court may impound or sequester the property of a party
512 defendant, including books, papers, documents, and related
513 records, and allow the examination and use of the property by
514 the division and a court-appointed receiver or conservator.

515 5. The division may apply to the circuit court for an
516 order of restitution whereby the defendant in an action brought
517 pursuant to subparagraph 4. is ordered to make restitution of
518 those sums shown by the division to have been obtained by the
519 defendant in violation of this chapter. At the option of the
520 court, such restitution is payable to the conservator or
521 receiver appointed pursuant to subparagraph 4. or directly to
522 the persons whose funds or assets were obtained in violation of
523 this chapter.

524 6. The division may impose a civil penalty against a
525 developer, bulk assignee, or bulk buyer, or association, or its
526 assignee or agent, for any violation of this chapter or related
527 rule. The division may impose a civil penalty individually
528 against an officer or board member who willfully and knowingly
529 violates a provision of this chapter, adopted rule, or a final
530 order of the division; may order the removal of such individual
531 as an officer or from the board of administration or as an
532 officer of the association; and may prohibit such individual

HB 5005

2011

533 | from serving as an officer or on the board of a community
534 | association for a period of time. The term "willfully and
535 | knowingly" means that the division informed the officer or board
536 | member that his or her action or intended action violates this
537 | chapter, a rule adopted under this chapter, or a final order of
538 | the division and that the officer or board member refused to
539 | comply with the requirements of this chapter, a rule adopted
540 | under this chapter, or a final order of the division. The
541 | division, before initiating formal agency action under chapter
542 | 120, must afford the officer or board member an opportunity to
543 | voluntarily comply, and an officer or board member who complies
544 | within 10 days is not subject to a civil penalty. A penalty may
545 | be imposed on the basis of each day of continuing violation, but
546 | the penalty for any offense may not exceed \$5,000. By January 1,
547 | 1998, the division shall adopt, by rule, penalty guidelines
548 | applicable to possible violations or to categories of violations
549 | of this chapter or rules adopted by the division. The guidelines
550 | must specify a meaningful range of civil penalties for each such
551 | violation of the statute and rules and must be based upon the
552 | harm caused by the violation, the repetition of the violation,
553 | and upon such other factors deemed relevant by the division. For
554 | example, the division may consider whether the violations were
555 | committed by a developer, bulk assignee, or bulk buyer, or
556 | owner-controlled association, the size of the association, and
557 | other factors. The guidelines must designate the possible
558 | mitigating or aggravating circumstances that justify a departure
559 | from the range of penalties provided by the rules. It is the
560 | legislative intent that minor violations be distinguished from

HB 5005

2011

561 those which endanger the health, safety, or welfare of the
562 condominium residents or other persons and that such guidelines
563 provide reasonable and meaningful notice to the public of likely
564 penalties that may be imposed for proscribed conduct. This
565 subsection does not limit the ability of the division to
566 informally dispose of administrative actions or complaints by
567 stipulation, agreed settlement, or consent order. All amounts
568 collected shall be deposited with the Chief Financial Officer to
569 the credit of the Division of Florida Condominiums, Timeshares,
570 and Mobile Homes Trust Fund. If a developer, bulk assignee, or
571 bulk buyer fails to pay the civil penalty and the amount deemed
572 to be owed to the association, the division shall issue an order
573 directing that such developer, bulk assignee, or bulk buyer
574 cease and desist from further operation until such time as the
575 civil penalty is paid or may pursue enforcement of the penalty
576 in a court of competent jurisdiction. If an association fails to
577 pay the civil penalty, the division shall pursue enforcement in
578 a court of competent jurisdiction, and the order imposing the
579 civil penalty or the cease and desist order is not effective
580 until 20 days after the date of such order. Any action commenced
581 by the division shall be brought in the county in which the
582 division has its executive offices or in the county where the
583 violation occurred.

584 7. If a unit owner presents the division with proof that
585 the unit owner has requested access to official records in
586 writing by certified mail, and that after 10 days the unit owner
587 again made the same request for access to official records in
588 writing by certified mail, and that more than 10 days has

589 elapsed since the second request and the association has still
 590 failed or refused to provide access to official records as
 591 required by this chapter, the division shall issue a subpoena
 592 requiring production of the requested records where the records
 593 are kept pursuant to s. 718.112.

594 8. In addition to subparagraph 6., the division may seek
 595 the imposition of a civil penalty through the circuit court for
 596 any violation for which the division may issue a notice to show
 597 cause under paragraph (r). The civil penalty shall be at least
 598 \$500 but no more than \$5,000 for each violation. The court may
 599 also award to the prevailing party court costs and reasonable
 600 attorney's fees and, if the division prevails, may also award
 601 reasonable costs of investigation.

602 Section 13. Subsection (7) of section 719.104, Florida
 603 Statutes, is amended to read:

604 719.104 Cooperatives; access to units; records; financial
 605 reports; assessments; purchase of leases.—

606 (7) COMMINGLING.—All funds shall be maintained separately
 607 in the association's name. Reserve and operating funds of the
 608 association may ~~shall~~ not be commingled unless combined for
 609 investment purposes. This subsection does ~~is not meant to~~
 610 prohibit prudent investment of association funds even if
 611 combined with operating or other reserve funds of the same
 612 association, but such funds must be accounted for separately,
 613 and the combined account balance may not, at any time, be less
 614 than the amount identified as reserve funds in the combined
 615 account. ~~No manager or business entity required to be licensed~~
 616 ~~or registered under s. 468.432, or~~ An agent, employee, officer,

617 or director of a cooperative association may not commingle any
 618 association funds with his or her own funds or with the funds of
 619 any other cooperative association or community association ~~as~~
 620 ~~defined in s. 468.431.~~

621 Section 14. Part IX of chapter 468, Florida Statutes,
 622 consisting of sections 468.451, 468.452, 468.453, 468.4535,
 623 468.4536, 468.454, 468.456, 468.4561, 468.45615, 468.4562,
 624 468.4565, and 468.457, is repealed.

625 Section 15. Part XI of chapter 468, Florida Statutes,
 626 consisting of sections 468.520, 468.521, 468.522, 468.523,
 627 468.524, 468.5245, 468.525, 468.526, 468.527, 468.5275, 468.528,
 628 468.529, 468.530, 468.531, 468.532, 468.533, 468.534, and
 629 468.535, is repealed.

630 Section 16. Paragraph (d) of subsection (1) of section
 631 212.096, Florida Statutes, is amended to read:

632 212.096 Sales, rental, storage, use tax; enterprise zone
 633 jobs credit against sales tax.—

634 (1) For the purposes of the credit provided in this
 635 section:

636 (d) "Job" means a full-time position, as consistent with
 637 terms used by the Agency for Workforce Innovation and the United
 638 States Department of Labor for purposes of unemployment
 639 compensation tax administration and employment estimation
 640 resulting directly from a business operation in this state. This
 641 term may not include a temporary construction job involved with
 642 the construction of facilities or any job that has previously
 643 been included in any application for tax credits under s.
 644 220.181(1). The term also includes employment of an employee

HB 5005

2011

645 leased from an employee leasing company as defined in s.
646 627.192(2)(f) ~~licensed under chapter 468~~ if such employee has
647 been continuously leased to the employer for an average of at
648 least 36 hours per week for more than 6 months.

649
650 A person shall be deemed to be employed if the person performs
651 duties in connection with the operations of the business on a
652 regular, full-time basis, provided the person is performing such
653 duties for an average of at least 36 hours per week each month.
654 The person must be performing such duties at a business site
655 located in the enterprise zone.

656 Section 17. Paragraph (b) of subsection (1) of section
657 212.097, Florida Statutes, is amended to read:

658 212.097 Urban High-Crime Area Job Tax Credit Program.—

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

660 (b) "Qualified employee" means any employee of an eligible
661 business who performs duties in connection with the operations
662 of the business on a regular, full-time basis for an average of
663 at least 36 hours per week for at least 3 months within the
664 qualified high-crime area in which the eligible business is
665 located. An owner or partner of the eligible business is not a
666 qualified employee. The term also includes an employee leased
667 from an employee leasing company as defined in s. 627.192(2)(f)
668 ~~licensed under chapter 468~~, if such employee has been
669 continuously leased to the employer for an average of at least
670 36 hours per week for more than 6 months.

671 Section 18. Paragraph (b) of subsection (1) of section
672 212.098, Florida Statutes, is amended to read:

673 | 212.098 Rural Job Tax Credit Program.—

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

675 | (b) "Qualified employee" means any employee of an eligible
 676 | business who performs duties in connection with the operations
 677 | of the business on a regular, full-time basis for an average of
 678 | at least 36 hours per week for at least 3 months within the
 679 | qualified county in which the eligible business is located. The
 680 | term also includes an employee leased from an employee leasing
 681 | company as defined in s. 627.192(2)(f) ~~licensed under chapter~~
 682 | ~~468~~, if such employee has been continuously leased to the
 683 | employer for an average of at least 36 hours per week for more
 684 | than 6 months. An owner or partner of the eligible business is
 685 | not a qualified employee.

686 | Section 19. Paragraph (ff) of subsection (1) of section
 687 | 220.03, Florida Statutes, is amended to read:

688 | 220.03 Definitions.—

689 | (1) SPECIFIC TERMS.—When used in this code, and when not
 690 | otherwise distinctly expressed or manifestly incompatible with
 691 | the intent thereof, the following terms shall have the following
 692 | meanings:

693 | (ff) "Job" means a full-time position, as consistent with
 694 | terms used by the Agency for Workforce Innovation and the United
 695 | States Department of Labor for purposes of unemployment
 696 | compensation tax administration and employment estimation
 697 | resulting directly from business operations in this state. The
 698 | term may not include a temporary construction job involved with
 699 | the construction of facilities or any job that has previously
 700 | been included in any application for tax credits under s.

HB 5005

2011

701 212.096. The term also includes employment of an employee leased
 702 from an employee leasing company as defined in s. 627.192(2)(f)
 703 ~~licensed under chapter 468~~ if the employee has been continuously
 704 leased to the employer for an average of at least 36 hours per
 705 week for more than 6 months.

706 Section 20. Subsections (18) of section 443.036, Florida
 707 Statutes, is amended, to read:

708 443.036 Definitions.—As used in this chapter, the term:

709 (18) "Employee leasing company" means an employing unit
 710 that is an employee leasing company as defined in s.
 711 627.192(2)(f) which ~~that has a valid and active license under~~
 712 ~~chapter 468 and that~~ maintains the records required by s.
 713 443.171(5) and, in addition, is responsible for producing
 714 quarterly reports concerning the clients of the employee leasing
 715 company and the internal staff of the employee leasing company.
 716 As used in this subsection, the term "client" means a party who
 717 has contracted with an employee leasing company to provide a
 718 worker, or workers, to perform services for the client. Leased
 719 employees include employees subsequently placed on the payroll
 720 of the employee leasing company on behalf of the client. An
 721 employee leasing company must notify the tax collection service
 722 provider within 30 days after the initiation or termination of
 723 the company's relationship with any client company ~~under chapter~~
 724 ~~468~~.

725 Section 21. Paragraph (a) of subsection (10) of section
 726 443.101, Florida Statutes, is amended to read:

727 443.101 Disqualification for benefits.—An individual shall
 728 be disqualified for benefits:

HB 5005

2011

729 (10) Subject to the requirements of this subsection, if
730 the claim is made based on the loss of employment as a leased
731 employee for an employee leasing company or as a temporary
732 employee for a temporary help firm.

733 (a) As used in this subsection, the term:

734 1. "Temporary help firm" means a firm that hires its own
735 employees and assigns them to clients to support or supplement
736 the client's workforce in work situations such as employee
737 absences, temporary skill shortages, seasonal workloads, and
738 special assignments and projects, and includes a labor pool as
739 defined in s. 448.22. The term also includes a firm created by
740 an entity licensed under s. 125.012(6), which hires employees
741 assigned by a union for the purpose of supplementing or
742 supporting the workforce of the temporary help firm's clients.
743 The term does not include an employee leasing company ~~companies~~
744 ~~regulated under part XI of chapter 468.~~

745 2. "Temporary employee" means an employee assigned to work
746 for the clients of a temporary help firm. The term also includes
747 a day laborer performing day labor, as defined in s. 448.22, who
748 is employed by a labor pool as defined in s. 448.22.

749 3. "Leased employee" means an employee assigned to work
750 for the clients of an employee leasing company ~~regulated under~~
751 ~~part XI of chapter 468.~~

752 Section 22. Subsection (2) of 448.23, Florida Statutes, is
753 amended, to read:

754 448.23 Exclusions.—Except as specified in ss. 448.22(1)(c)
755 and 448.26, this part does not apply to:

756 (2) Employee leasing companies, as defined in s.

HB 5005

2011

757 627.192(2)(f) ~~s. 468.520~~;

758 Section 23. Section 448.26, Florida Statutes, is amended
759 to read:

760 448.26 Application. ~~Nothing in This part~~ does not ~~shall~~
761 exempt any client of any labor pool or temporary help
762 arrangement entity as described ~~defined~~ in s. 627.192(2)(f)1. ~~s.~~
763 ~~468.520(4)(a)~~ or any assigned employee from any other license
764 requirements of state, local, or federal law. Any employee
765 assigned to a client who is licensed, registered, or certified
766 pursuant to law shall be deemed an employee of the client for
767 such licensure purposes but shall remain an employee of the
768 labor pool ~~or temporary help arrangement entity~~ for purposes of
769 chapters 440 and 443.

770 Section 24. Paragraph (b) of subsection (5) of section
771 472.003, Florida Statutes, is amended to read:

772 472.003 Persons not affected by ss. 472.001-472.037.—
773 Sections 472.001-472.037 do not apply to:

774 (5)

775 (b) Persons who are employees of any employee leasing
776 company as defined in s. 627.192(2)(f) ~~licensed pursuant to part~~
777 ~~XI of chapter 468~~ and who work as subordinates of a person in
778 responsible charge registered under this chapter.

779 Section 25. Subsection (1) of section 626.112, Florida
780 Statutes, is amended to read:

781 626.112 License and appointment required; agents, customer
782 representatives, adjusters, insurance agencies, service
783 representatives, managing general agents.—

784 (1)(a) A ~~No~~ person may not be, act as, or advertise or

HB 5005

2011

785 hold himself or herself out to be an insurance agent, insurance
786 adjuster, or customer representative unless he or she is
787 currently licensed by the department and appointed by an
788 appropriate appointing entity or person.

789 (b) Except as provided in subsection (6) or in applicable
790 department rules, and in addition to other conduct described in
791 this chapter with respect to particular types of agents, a
792 license as an insurance agent, service representative, customer
793 representative, or limited customer representative is required
794 in order to engage in the solicitation of insurance. For
795 purposes of this requirement, as applicable to any of the
796 license types described in this section, the solicitation of
797 insurance is the attempt to persuade any person to purchase an
798 insurance product by:

799 1. Describing the benefits or terms of insurance coverage,
800 including premiums or rates of return;

801 2. Distributing an invitation to contract to prospective
802 purchasers;

803 3. Making general or specific recommendations as to
804 insurance products;

805 4. Completing orders or applications for insurance
806 products;

807 5. Comparing insurance products, advising as to insurance
808 matters, or interpreting policies or coverages; or

809 6. Offering or attempting to negotiate on behalf of
810 another person a viatical settlement contract as defined in s.
811 626.9911.

812

HB 5005

2011

813 However, an employee leasing company that ~~licensed pursuant to~~
814 ~~chapter 468~~ which is seeking to enter into a contract with an
815 employer that identifies products and services offered to
816 employees may deliver proposals for the purchase of employee
817 leasing services to prospective clients of the employee leasing
818 company setting forth the terms and conditions of doing
819 business; ~~classify employees as permitted by s. 468.529;~~ collect
820 information from prospective clients and other sources as
821 necessary to perform due diligence on the prospective client and
822 to prepare a proposal for services; provide and receive
823 enrollment forms, plans, and other documents; and discuss or
824 explain in general terms the conditions, limitations, options,
825 or exclusions of insurance benefit plans available to the client
826 or employees of the employee leasing company were the client to
827 contract with the employee leasing company. Any advertising
828 materials or other documents describing specific insurance
829 coverages must identify and be from a licensed insurer or its
830 licensed agent or a licensed and appointed agent employed by the
831 employee leasing company. The employee leasing company may not
832 advise or inform the prospective business client or individual
833 employees of specific coverage provisions, exclusions, or
834 limitations of particular plans. An ~~As to clients for which the~~
835 ~~employee leasing company is providing services pursuant to s.~~
836 ~~468.525(4),~~ the employee leasing company may engage in
837 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
838 subject to the restrictions specified in those sections. If a
839 prospective client requests more specific information concerning
840 the insurance provided by the employee leasing company, the

HB 5005

2011

841 employee leasing company must refer the prospective business
842 client to the insurer or its licensed agent or to a licensed and
843 appointed agent employed by the employee leasing company.

844 Section 26. Paragraphs (a) through (f) of subsection (2)
845 of section 627.192, Florida Statutes, are redesignated as
846 paragraphs (b) through (g), respectively, present paragraphs (a)
847 and (e) are amended, and a new paragraph (a) is added to that
848 subsection to read:

849 627.192 Workers' compensation insurance; ~~employee leasing~~
850 ~~arrangements.~~—

851 (2) For purposes of the Florida Insurance Code:

852 (a) "Client company" means a person or entity which
853 contracts with an employee leasing company and is provided
854 employees pursuant to that contract.

855 (b) ~~(a)~~ "Employee leasing" means an arrangement whereby an
856 employee leasing company assigns its employees to a client
857 company and allocates the direction of and control over the
858 leased employees between the employee leasing company and the
859 client company. The term does not include the following:

860 1. A temporary help arrangement, whereby an organization
861 hires its own employees and assigns them to a client to support
862 or supplement the client's workforce in special work situations
863 such as employee absences, temporary skill shortages, seasonal
864 workloads, and special assignments and projects.

865 2. An arrangement in which an organization employs only
866 one category of employees and assigns them to a client to
867 perform a function inherent to that category and which function
868 is separate and divisible from the primary business of the

HB 5005

2011

869 client.

870 3. A facilities staffing arrangement, whereby an
871 organization assigns its employees to staff, in whole or in
872 part, a specific client function or functions, on an ongoing,
873 indefinite basis, provided that the total number of individuals
874 assigned by that organization under such arrangements comprises
875 no more than 50 percent of the workforce at a client's worksite
876 and provided further that no more than 20 percent of the
877 individuals assigned to staff a particular client function were
878 employed by the client immediately preceding the commencement of
879 the arrangement.

880 4. An arrangement in which an organization assigns its
881 employees only to a commonly controlled company or group of
882 companies as defined in s. 414 of the Internal Revenue Code and
883 in which the organization does not hold itself out to the public
884 as an employee leasing company.

885 5. A home health agency licensed under chapter 400, unless
886 otherwise engaged in business as an employee leasing company.

887 6. A health care services pool licensed under s. 400.980,
888 unless otherwise engaged in business as an employee leasing
889 company shall have the same meaning as set forth in s.
890 468.520(4).

891 (f)(e) "Lessor" or "employee leasing company" means a sole
892 proprietorship, partnership, corporation, or other form of
893 business entity an employee leasing company, as set forth in
894 part XI of chapter 468, engaged in the business of or holding
895 itself out as being in the business of employee leasing. A
896 lessor may also be referred to as an employee leasing company.

897 Section 27. Paragraph (i) of subsection (1) of section
 898 627.3121, Florida Statutes, is amended to read:

899 627.3121 Public records and public meetings exemptions.—

900 (1) The following records held by the Florida Workers'
 901 Compensation Joint Underwriting Association, Inc., are
 902 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 903 of the State Constitution:

904 (i) Information received from the Department of Revenue
 905 regarding payroll information and client lists of employee
 906 leasing companies obtained pursuant to s. ~~ss.~~ 440.381 and former
 907 s. 468.529.

908 Section 28. Subsection (1) of section 768.098, Florida
 909 Statutes, is amended to read:

910 768.098 Limitation of liability for employee leasing.—

911 (1) An employer in a joint employment relationship
 912 described in s. 627.192(2)(f) is pursuant to s. 468.520 shall
 913 not be liable for the tortious actions of another employer in
 914 that relationship, or for the tortious actions of any jointly
 915 employed employee under that relationship, if provided that:

916 (a) The employer seeking to avoid liability pursuant to
 917 this section did not authorize or direct the tortious action;

918 (b) The employer seeking to avoid liability pursuant to
 919 this section did not have actual knowledge of the tortious
 920 conduct and fail to take appropriate action;

921 (c) The employer seeking to avoid liability pursuant to
 922 this section did not have actual control over the day-to-day job
 923 duties of the jointly employed employee who has committed a
 924 tortious act nor actual control over the portion of a job site

925 at which or from which the tortious conduct arose or at which
 926 and from which a jointly employed employee worked, and that said
 927 control was assigned to the other employer under the contract;

928 (d) The employer seeking to avoid liability pursuant to
 929 this section is expressly absolved in the written contract
 930 forming the joint employment relationship of control over the
 931 day-to-day job duties of the jointly employed employee who has
 932 committed a tortious act, and actual control over the portion of
 933 the job site at which or from which the tortious conduct arose
 934 or at which and from which the jointly employed employee worked,
 935 and that said control was assigned to the other employer under
 936 the contract; and

937 (e) Complaints, allegations, or incidents of any tortious
 938 misconduct or workplace safety violations, regardless of the
 939 source, are required to be reported to the employer seeking to
 940 avoid liability pursuant to this section by all other joint
 941 employers under the written contract forming the joint
 942 employment relationship, and that the employer seeking to avoid
 943 liability pursuant to this section did not fail to take
 944 appropriate action as a result of receiving any such report
 945 related to a jointly employed employee who has committed a
 946 tortious act.

947 Section 29. Part XV of chapter 468, Florida Statutes,
 948 consisting of sections 468.83, 468.831, 468.8311, 468.8312,
 949 468.8313, 468.8314, 468.8315, 468.8316, 468.8317, 468.8318,
 950 468.8319, 468.832, 468.8321, 468.8322, 468.8323, 468.8324, and
 951 468.8325, is repealed.

952 Section 30. Paragraphs (a) and (b) of subsection (2) of

HB 5005

2011

953 section 627.0629, Florida Statutes, is amended to read:
 954 627.0629 Residential property insurance; rate filings.—
 955 (2) (a) A rate filing for residential property insurance
 956 made on or before the implementation of paragraph (b) may
 957 include rate factors that reflect the manner in which building
 958 code enforcement in a particular jurisdiction addresses the risk
 959 of wind damage; however, such a rate filing must also provide
 960 for variations from such rate factors on an individual basis
 961 based on an inspection of a particular structure by a ~~licensed~~
 962 home inspector, which inspection may be at the cost of the
 963 insured.
 964 (b) A rate filing for residential property insurance made
 965 more than 150 days after approval by the office of a building
 966 code rating factor plan submitted by a statewide rating
 967 organization shall include positive and negative rate factors
 968 that reflect the manner in which building code enforcement in a
 969 particular jurisdiction addresses risk of wind damage. The rate
 970 filing shall include variations from standard rate factors on an
 971 individual basis based on inspection of a particular structure
 972 by a ~~licensed~~ home inspector. If an inspection is requested by
 973 the insured, the insurer may require the insured to pay the
 974 reasonable cost of the inspection. This paragraph applies to
 975 structures constructed or renovated after the implementation of
 976 this paragraph.
 977 Section 31. Paragraph (a) of subsection (2) of section
 978 627.711, Florida Statutes, is amended to read:
 979 627.711 Notice of premium discounts for hurricane loss
 980 mitigation; uniform mitigation verification inspection form.—

981 (2) (a) The Financial Services Commission shall develop by
 982 rule a uniform mitigation verification inspection form that
 983 shall be used by all insurers when submitted by policyholders
 984 for the purpose of factoring discounts for wind insurance. In
 985 developing the form, the commission shall seek input from
 986 insurance, construction, and building code representatives.
 987 Further, the commission shall provide guidance as to the length
 988 of time the inspection results are valid. An insurer shall
 989 accept as valid a uniform mitigation verification form signed by
 990 the following authorized mitigation inspectors:

991 ~~1. A home inspector licensed under s. 468.8314 who has~~
 992 ~~completed at least 3 hours of hurricane mitigation training~~
 993 ~~which includes hurricane mitigation techniques and compliance~~
 994 ~~with the uniform mitigation verification form and completion of~~
 995 ~~a proficiency exam. Thereafter, home inspectors licensed under~~
 996 ~~s. 468.8314 must complete at least 2 hours of continuing~~
 997 ~~education, as part of the existing licensure renewal~~
 998 ~~requirements each year, related to mitigation inspection and the~~
 999 ~~uniform mitigation form;~~

1000 1.2. A building code inspector certified under s. 468.607;

1001 2.3. A general, building, or residential contractor
 1002 licensed under s. 489.111;

1003 3.4. A professional engineer licensed under s. 471.015;

1004 4.5. A professional architect licensed under s. 481.213;

1005 or

1006 5.6. Any other individual or entity recognized by the
 1007 insurer as possessing the necessary qualifications to properly
 1008 complete a uniform mitigation verification form.

HB 5005

2011

1009 Section 32. Part XVI of chapter 468, Florida Statutes,
 1010 consisting of sections 468.84, 468.841, 468.8411, 468.8412,
 1011 468.8413, 468.8414, 468.8415, 468.8416, 468.8417, 468.8418,
 1012 468.8419, 468.842, 468.8421, 468.8422, 468.8423, and 468.8424,
 1013 is repealed.

1014 Section 33. Section 455.2123, Florida Statutes, is amended
 1015 to read:

1016 455.2123 Continuing education.—A board, or the department
 1017 when there is no board, may provide by rule that distance
 1018 learning may be used to satisfy continuing education
 1019 requirements. A board, or the department when there is no board,
 1020 shall approve distance learning courses as an alternative to
 1021 classroom courses to satisfy continuing education requirements
 1022 provided for in ~~part VIII, part XV, or part XVI of chapter 468~~
 1023 ~~or~~ part I or part II of chapter 475 and may not require
 1024 centralized examinations for completion of continuing education
 1025 requirements for the professions licensed under ~~part VIII, part~~
 1026 ~~XV, or part XVI of chapter 468 or~~ part I or part II of chapter
 1027 475.

1028 Section 34. Chapter 472, Florida Statutes, consisting of
 1029 sections 472.001, 472.003, 472.005, 472.006, 472.007, 472.0075,
 1030 472.008, 472.009, 472.0101, 472.011, 472.013, 472.0131,
 1031 472.0132, 472.0135, 472.015, 472.016, 472.0165, 472.017,
 1032 472.018, 472.019, 472.0201, 472.02011, 472.0202, 472.0203,
 1033 472.0204, 472.021, 472.023, 472.025, 472.027, 472.029, 472.031,
 1034 472.0335, 472.034, 472.0345, 472.0351, 472.0355, 472.036,
 1035 472.0365, and 472.037, Florida Statutes, is repealed.

HB 5005

2011

1036 Section 35. Subsection (3) of section 161.57, Florida
 1037 Statutes, is amended to read:

1038 161.57 Coastal properties disclosure statement.—

1039 (3) Unless otherwise waived in writing by the purchaser,
 1040 at or prior to the closing of any transaction where an interest
 1041 in real property located either partially or totally seaward of
 1042 the coastal construction control line as defined in s. 161.053
 1043 is being transferred, the seller shall provide to the purchaser
 1044 an affidavit, ~~or a certified survey meeting the requirements of~~
 1045 ~~chapter 472,~~ delineating the location of the coastal
 1046 construction control line on the property being transferred.

1047 Section 36. Subsections (10) and (21) of section 177.031,
 1048 Florida Statutes, are amended to read:

1049 177.031 Definitions.—As used in this part:

1050 (10) "Professional surveyor and mapper" means a surveyor
 1051 and mapper qualified by education and experience to practice
 1052 surveying and mapping registered under chapter 472 who is in
 1053 ~~good standing with the Board of Professional Surveyors and~~
 1054 ~~Mappers.~~

1055 (21) "Legal entity" means an entity that provides
 1056 professional surveying and mapping services ~~holds a certificate~~
 1057 ~~of authorization issued under chapter 472,~~ whether the entity is
 1058 a corporation, partnership, association, or person practicing
 1059 under a fictitious name.

1060 Section 37. Section 177.36, Florida Statutes, is amended
 1061 to read:

1062 177.36 Work to be performed only by authorized personnel.—
 1063 The establishment of local tidal datums and the determination of

HB 5005

2011

1064 the location of the mean high-water line or the mean low-water
 1065 line must be performed by professional ~~qualified personnel~~
 1066 ~~licensed by the Board of Professional~~ surveyors and mappers or
 1067 by representatives of the United States Government when approved
 1068 by the department.

1069 Section 38. Subsection (1) of section 177.503, Florida
 1070 Statutes, is amended to read:

1071 177.503 Definitions.—As used in ss. 177.501-177.510, the
 1072 following words and terms shall have the meanings indicated
 1073 unless the context clearly indicates a different meaning:

1074 (1) "Professional surveyor and mapper" or "surveyor and
 1075 mapper" means a person qualified by education and experience
 1076 ~~authorized~~ to practice surveying and mapping ~~under the~~
 1077 ~~provisions of chapter 472.~~

1078 Section 39. Section 177.508, Florida Statutes, is
 1079 repealed.

1080 Section 40. Paragraph (a) of subsection (2) and subsection
 1081 (6) of section 287.055, Florida Statutes, are amended to read:

1082 287.055 Acquisition of professional architectural,
 1083 engineering, landscape architectural, or surveying and mapping
 1084 services; definitions; procedures; contingent fees prohibited;
 1085 penalties.—

1086 (2) DEFINITIONS.—For purposes of this section:

1087 (a) "Professional services" means those services within
 1088 the scope of the practice of architecture, professional
 1089 engineering, landscape architecture, or professional ~~registered~~
 1090 surveying and mapping, as defined by the laws of the state, or
 1091 those performed by any architect, professional engineer,

1092 landscape architect, or professional ~~registered~~ surveyor and
 1093 mapper in connection with his or her professional employment or
 1094 practice.

1095 (6) PROHIBITION AGAINST CONTINGENT FEES.—

1096 (a) Each contract entered into by the agency for
 1097 professional services must contain a prohibition against
 1098 contingent fees as follows: "The architect (or professional
 1099 ~~registered~~ surveyor and mapper or professional engineer, as
 1100 applicable) warrants that he or she has not employed or retained
 1101 any company or person, other than a bona fide employee working
 1102 solely for the architect (or professional ~~registered~~ surveyor
 1103 and mapper, or professional engineer, as applicable) to solicit
 1104 or secure this agreement and that he or she has not paid or
 1105 agreed to pay any person, company, corporation, individual, or
 1106 firm, other than a bona fide employee working solely for the
 1107 architect (or professional ~~registered~~ surveyor and mapper or
 1108 professional engineer, as applicable) any fee, commission,
 1109 percentage, gift, or other consideration contingent upon or
 1110 resulting from the award or making of this agreement." For the
 1111 breach or violation of this provision, the agency shall have the
 1112 right to terminate the agreement without liability and, at its
 1113 discretion, to deduct from the contract price, or otherwise
 1114 recover, the full amount of such fee, commission, percentage,
 1115 gift, or consideration.

1116 (b) Any individual, corporation, partnership, firm, or
 1117 company, other than a bona fide employee working solely for an
 1118 architect, professional engineer, or professional ~~registered~~
 1119 land surveyor and mapper, who offers, agrees, or contracts to

HB 5005

2011

1120 solicit or secure agency contracts for professional services for
 1121 any other individual, company, corporation, partnership, or firm
 1122 and to be paid, or is paid, any fee, commission, percentage,
 1123 gift, or other consideration contingent upon, or resulting from,
 1124 the award or the making of a contract for professional services
 1125 shall, upon conviction in a competent court of this state, be
 1126 found guilty of a first degree misdemeanor, punishable as
 1127 provided in s. 775.082 or s. 775.083.

1128 (c) Any architect, professional engineer, or professional
 1129 ~~registered~~ surveyor and mapper, or any group, association,
 1130 company, corporation, firm, or partnership thereof, who offers
 1131 to pay, or pays, any fee, commission, percentage, gift, or other
 1132 consideration contingent upon, or resulting from, the award or
 1133 making of any agency contract for professional services shall,
 1134 upon conviction in a state court of competent authority, be
 1135 found guilty of a first degree misdemeanor, punishable as
 1136 provided in s. 775.082 or s. 775.083.

1137 (d) Any agency official who offers to solicit or secure,
 1138 or solicits or secures, a contract for professional services and
 1139 to be paid, or is paid, any fee, commission, percentage, gift,
 1140 or other consideration contingent upon the award or making of
 1141 such a contract for professional services between the agency and
 1142 any individual person, company, firm, partnership, or
 1143 corporation shall, upon conviction by a court of competent
 1144 authority, be found guilty of a first degree misdemeanor,
 1145 punishable as provided in s. 775.082 or s. 775.083.

1146 Section 41. Subsection (9) of section 334.044, Florida
 1147 Statutes, is amended to read:

HB 5005

2011

1148 334.044 Department; powers and duties.—The department
 1149 shall have the following general powers and duties:

1150 (9) To employ and train staff, and to contract with
 1151 qualified consultants. For the purposes of chapter ~~chapters~~ 471
 1152 and ~~472~~, the department shall be considered a firm.

1153 Section 42. Subsection (2) of section 348.0008, Florida
 1154 Statutes, is amended to read:

1155 348.0008 Acquisition of lands and property.—

1156 (2) An authority and its authorized agents, contractors,
 1157 and employees are authorized to enter upon any lands, waters,
 1158 and premises, upon giving reasonable notice to the landowner,
 1159 for the purpose of making surveys, soundings, drillings,
 1160 appraisals, environmental assessments including phase I and
 1161 phase II environmental surveys, archaeological assessments, and
 1162 such other examinations as are necessary for the acquisition of
 1163 private or public property and property rights, including rights
 1164 of access, air, view, and light, by gift, devise, purchase, or
 1165 condemnation by eminent domain proceedings or as are necessary
 1166 for the authority to perform its duties and functions; and any
 1167 such entry shall not be deemed a trespass or an entry that would
 1168 constitute a taking in an eminent domain proceeding. An
 1169 expressway authority shall make reimbursement for any actual
 1170 damage to such lands, water, and premises as a result of such
 1171 activities. ~~Any entry authorized by this subsection shall be in~~
 1172 ~~compliance with the premises protections and landowner liability~~
 1173 ~~provisions contained in s. 472.029.~~

1174 Section 43. Subsection (6) of section 373.421, Florida
 1175 Statutes, is amended to read:

HB 5005

2011

1176 | 373.421 Delineation methods; formal determinations.-
 1177 | (6) The district or the department may also issue
 1178 | nonbinding informal determinations or otherwise institute
 1179 | determinations on its own initiative as provided by law. A
 1180 | nonbinding informal determination of the extent of surface
 1181 | waters and wetlands issued by the South Florida Water Management
 1182 | District or the Southwest Florida Water Management District,
 1183 | between July 1, 1989, and the effective date of the methodology
 1184 | ratified in s. 373.4211, shall be validated by the district if a
 1185 | petition to validate the nonbinding informal determination is
 1186 | filed with the district on or before October 1, 1994, provided:
 1187 | (a) The petitioner submits the documentation prepared by
 1188 | the agency, and signed by an agency employee in the course of
 1189 | the employee's official duties, at the time the nonbinding
 1190 | informal determination was issued, showing the boundary of the
 1191 | surface waters or wetlands;
 1192 | (b) The request is accompanied by the appropriate fee in
 1193 | accordance with the fee schedule established by district rule;
 1194 | (c) Any supplemental information, such as aerial
 1195 | photographs and soils maps, is provided as necessary to ensure
 1196 | an accurate determination;
 1197 | (d) District staff verify the delineated surface water or
 1198 | wetland boundary through site inspection; and
 1199 | (e) Following district verification, and adjustment if
 1200 | necessary, of the boundary of surface waters or wetlands, the
 1201 | petitioner submits a survey certified pursuant to former chapter
 1202 | 472, which depicts the surface water or wetland boundaries. The
 1203 | certified survey shall contain a legal description of, and the

HB 5005

2011

1204 acreage contained within, the boundaries of the property for
 1205 which the determination is sought. The boundaries must be
 1206 witnessed to the property boundaries and must be capable of
 1207 being mathematically reproduced from the survey.

1208
 1209 Validated informal nonbinding determinations issued by the South
 1210 Florida Water Management District and the Southwest Florida
 1211 Water Management District shall remain valid for a period of 5
 1212 years from the date of validation by the district, as long as
 1213 physical conditions on the property do not change so as to alter
 1214 the boundaries of surface waters or wetlands. A validation
 1215 obtained under this section is final agency action. Sections
 1216 120.569 and 120.57 apply to validations under this section.

1217 Section 44. Subsection (1) of section 403.0877, Florida
 1218 Statutes, is amended to read:

1219 403.0877 Certification by professionals regulated by the
 1220 Department of Business and Professional Regulation.—

1221 (1) ~~Nothing in~~ This section does not authorize ~~shall be~~
 1222 ~~construed as specific authority for~~ a water management district
 1223 or the department to require certification by a professional
 1224 engineer licensed under chapter 471, a professional landscape
 1225 architect licensed under part II of chapter 481, or a
 1226 professional geologist licensed under chapter 492, ~~or a~~
 1227 ~~professional surveyor and mapper licensed under chapter 472,~~ for
 1228 an activity that is not within the definition or scope of
 1229 practice of the regulated profession.

1230 Section 45. Subsection (30) of section 440.02, Florida
 1231 Statutes, is amended to read:

HB 5005

2011

1232 440.02 Definitions.—When used in this chapter, unless the
 1233 context clearly requires otherwise, the following terms shall
 1234 have the following meanings:

1235 (30) "Construction design professional" means an
 1236 architect, professional engineer, or landscape architect, ~~or~~
 1237 ~~surveyor and mapper,~~ or any corporation, professional or
 1238 general, that has a certificate to practice in the construction
 1239 design field from the Department of Business and Professional
 1240 Regulation.

1241 Section 46. Subsection (6) of section 481.329, Florida
 1242 Statutes, is amended to read:

1243 481.329 Exceptions; exemptions from licensure.—

1244 (6) This part shall not be construed to affect part I of
 1245 this chapter or, chapter 471, ~~or chapter 472, respectively,~~
 1246 except that no such person shall use the designation or term
 1247 "landscape architect," "landscape architectural," "landscape
 1248 architecture," "L.A.," "landscape engineering," or any
 1249 description tending to convey the impression that she or he is a
 1250 landscape architect, unless she or he is registered as provided
 1251 in this part.

1252 Section 47. Subsection (7) of section 492.102, Florida
 1253 Statutes, is amended to read:

1254 492.102 Definitions.—For the purposes of this chapter,
 1255 unless the context clearly requires otherwise:

1256 (7) "Practice of professional geology" means the
 1257 performance of, or offer to perform, geological services,
 1258 including, but not limited to, consultation, investigation,
 1259 evaluation, planning, and geologic mapping, ~~but not including~~

HB 5005

2011

1260 ~~mapping as prescribed in chapter 472,~~ relating to geological
 1261 work, except as specifically exempted by this chapter. Any
 1262 person who practices any specialty branch of the profession of
 1263 geology, or who by verbal claim, sign, advertisement,
 1264 letterhead, card, or any other means represents herself or
 1265 himself to be a professional geologist, or who through the use
 1266 of some title implies that she or he is a professional geologist
 1267 or that she or he is licensed under this chapter, or who holds
 1268 herself or himself out as able to perform or does perform any
 1269 geological services or work recognized as professional geology,
 1270 shall be construed to be engaged in the practice of professional
 1271 geology.

1272 Section 48. Paragraph (a) of subsection (2) of section
 1273 497.274, Florida Statutes, is amended to read:

1274 497.274 Standards for grave spaces.—

1275 (2) (a) Prior to the sale of grave spaces in any
 1276 undeveloped areas of a licensed cemetery, the cemetery company
 1277 shall prepare a map documenting the establishment of recoverable
 1278 internal survey reference markers installed by the cemetery
 1279 company no more than 100 feet apart in the areas planned for
 1280 development. The internal reference markers shall be established
 1281 with reference to survey markers that are no more than 200 feet
 1282 apart which have been set by a professional surveyor and mapper
 1283 ~~licensed under chapter 472~~ and documented in a certified land
 1284 survey. Both the map and the certified land survey shall be
 1285 maintained by the cemetery company and shall be made available
 1286 upon request to the department or members of the public.

1287 Section 49. Subsection (4) of section 556.108, Florida

1288 Statutes, is amended to read:
 1289 556.108 Exemptions.—The notification requirements provided
 1290 in s. 556.105(1) do not apply to:
 1291 (4) Any excavation of 18 inches or less for:
 1292 (a) Surveying public or private property by professional
 1293 surveyors or mappers ~~as defined in chapter 472~~ and services
 1294 performed by a pest control licensee under chapter 482,
 1295 excluding marked rights-of-way, marked easements, or permitted
 1296 uses where marked, if mechanized equipment is not used in the
 1297 process of such surveying or pest control services and the
 1298 ~~surveying or~~ pest control services are performed in accordance
 1299 with the practice rules established under ~~s. 472.027~~ or s.
 1300 482.051, respectively;
 1301 (b) Maintenance activities performed by a state agency and
 1302 its employees when such activities are within the right-of-way
 1303 of a public road; however, if a member operator has permanently
 1304 marked facilities on such right-of-way, mechanized equipment may
 1305 not be used without first providing notification; or
 1306 (c) Locating, repairing, connecting, adjusting, or routine
 1307 maintenance of a private or public underground utility facility
 1308 by an excavator, if the excavator is performing such work for
 1309 the current owner or future owner of the underground facility
 1310 and if mechanized equipment is not used.
 1311 Section 50. Paragraph (e) of subsection (4) of section
 1312 718.104, Florida Statutes, is amended to read:
 1313 718.104 Creation of condominiums; contents of
 1314 declaration.—Every condominium created in this state shall be
 1315 created pursuant to this chapter.

HB 5005

2011

1316 (4) The declaration must contain or provide for the
1317 following matters:

1318 (e) A certified survey of the land ~~which meets the minimum~~
1319 ~~technical standards set forth by the Board of Professional~~
1320 ~~Surveyors and Mappers, pursuant to s. 472.027,~~ and a graphic
1321 description of the improvements in which units are located and a
1322 plot plan thereof that, together with the declaration, are in
1323 sufficient detail to identify the common elements and each unit
1324 and their relative locations and approximate dimensions. Failure
1325 of the survey to meet minimum technical standards shall not
1326 invalidate an otherwise validly created condominium. The survey,
1327 graphic description, and plot plan may be in the form of
1328 exhibits consisting of building plans, floor plans, maps,
1329 surveys, or sketches. If the construction of the condominium is
1330 not substantially completed, there shall be a statement to that
1331 effect, and, upon substantial completion of construction, the
1332 developer or the association shall amend the declaration to
1333 include the certificate described below. The amendment may be
1334 accomplished by referring to the recording data of a survey of
1335 the condominium that complies with the certificate. A
1336 certificate of a professional surveyor and mapper ~~authorized to~~
1337 ~~practice in this state~~ shall be included in or attached to the
1338 declaration or the survey or graphic description as recorded
1339 under s. 718.105 that the construction of the improvements is
1340 substantially complete so that the material, together with the
1341 provisions of the declaration describing the condominium
1342 property, is an accurate representation of the location and
1343 dimensions of the improvements and so that the identification,

HB 5005

2011

1344 location, and dimensions of the common elements and of each unit
 1345 can be determined from these materials. Completed units within
 1346 each substantially completed building in a condominium
 1347 development may be conveyed to purchasers, notwithstanding that
 1348 other buildings in the condominium are not substantially
 1349 completed, provided that all planned improvements, including,
 1350 but not limited to, landscaping, utility services and access to
 1351 the unit, and common-element facilities serving such building,
 1352 as set forth in the declaration, are first completed and the
 1353 declaration of condominium is first recorded and provided that
 1354 as to the units being conveyed there is a certificate of a
 1355 professional surveyor and mapper ~~as required above~~, including
 1356 certification that all planned improvements, including, but not
 1357 limited to, landscaping, utility services and access to the
 1358 unit, and common-element facilities serving the building in
 1359 which the units to be conveyed are located have been
 1360 substantially completed, and such certificate is recorded with
 1361 the original declaration or as an amendment to such declaration.
 1362 This section shall not, however, operate to require development
 1363 of improvements and amenities declared to be included in future
 1364 phases pursuant to s. 718.403 prior to conveying a unit as
 1365 provided herein. For the purposes of this section, a
 1366 "certificate of a professional surveyor and mapper" means
 1367 certification by a professional surveyor and mapper in the form
 1368 provided herein and may include, along with certification by a
 1369 professional surveyor and mapper, when appropriate,
 1370 certification by an architect or engineer authorized to practice
 1371 in this state. Notwithstanding the requirements of substantial

HB 5005

2011

1372 completion provided in this section, nothing contained herein
 1373 shall prohibit or impair the validity of a mortgage encumbering
 1374 units together with an undivided interest in the common elements
 1375 as described in a declaration of condominium recorded prior to
 1376 the recording of a certificate of a surveyor and mapper as
 1377 provided herein.

1378 Section 51. Subsection (4) of section 725.08, Florida
 1379 Statutes, is amended to read:

1380 725.08 Design professional contracts; limitation in
 1381 indemnification.—

1382 (4) "Design professional" means an architect, ~~individual~~
 1383 ~~or entity licensed by the state who holds a current certificate~~
 1384 ~~of registration under chapter 481 to practice architecture or~~
 1385 ~~landscape~~ architect, professional surveyor and mapper, or
 1386 engineer architecture, ~~under chapter 472 to practice land~~
 1387 ~~surveying and mapping, or under chapter 471 to practice~~
 1388 ~~engineering, and who enters into a professional services~~
 1389 contract.

1390 Section 52. Subsection (5) of section 810.12, Florida
 1391 Statutes, is amended to read:

1392 810.12 Unauthorized entry on land; prima facie evidence of
 1393 trespass.—

1394 (5) However, this section shall not apply to any official
 1395 or employee of the state or a county, municipality, or other
 1396 governmental agency now authorized by law to enter upon lands or
 1397 to registered engineers and professional surveyors and mappers
 1398 authorized to enter lands pursuant to s. ss. 471.027 ~~and~~
 1399 ~~472.029~~. The provisions of this section shall not apply to the

HB 5005

2011

1400 trimming or cutting of trees or timber by municipal or private
 1401 public utilities, or their employees, contractors, or
 1402 subcontractors, when such trimming is required for the
 1403 establishment or maintenance of the service furnished by any
 1404 such utility.

1405 Section 53. Section 477.0132, Florida Statutes, is amended
 1406 to read:

1407 (Substantial rewording of section. See
 1408 s. 477.0132, F.S., for present text.)
 1409 477.0132 Hair braiding, hair wrapping, and body wrapping
 1410 registration; application of chapter.—This chapter does not
 1411 apply to a person whose occupation or practice is confined
 1412 solely to hair braiding, hair wrapping, or body wrapping.

1413 Section 54. Subsection (7) of section 477.019, Florida
 1414 Statutes, is amended to read:

1415 477.019 Cosmetologists; qualifications; licensure;
 1416 supervised practice; license renewal; endorsement; continuing
 1417 education.—

1418 (7) (a) The board shall prescribe by rule continuing
 1419 education requirements intended to ensure protection of the
 1420 public through updated training of licensees and registered
 1421 specialists, not to exceed 16 hours biennially, as a condition
 1422 for renewal of a license or registration as a specialist under
 1423 this chapter. Continuing education courses shall include, but
 1424 not be limited to, the following subjects as they relate to the
 1425 practice of cosmetology: human immunodeficiency virus and
 1426 acquired immune deficiency syndrome; Occupational Safety and
 1427 Health Administration regulations; workers' compensation issues;

HB 5005

2011

1428 state and federal laws and rules as they pertain to
 1429 cosmetologists, cosmetology, salons, specialists, specialty
 1430 salons, and booth renters; chemical makeup as it pertains to
 1431 hair, skin, and nails; and environmental issues. Courses given
 1432 at cosmetology conferences may be counted toward the number of
 1433 continuing education hours required if approved by the board.

1434 ~~(b) Any person whose occupation or practice is confined~~
 1435 ~~solely to hair braiding, hair wrapping, or body wrapping is~~
 1436 ~~exempt from the continuing education requirements of this~~
 1437 ~~subsection.~~

1438 (b) ~~(e)~~ The board may, by rule, require any licensee in
 1439 violation of a continuing education requirement to take a
 1440 refresher course or refresher course and examination in addition
 1441 to any other penalty. The number of hours for the refresher
 1442 course may not exceed 48 hours.

1443 Section 55. Paragraph (f) of subsection (1) of section
 1444 477.026, Florida Statutes, is amended to read:

1445 477.026 Fees; disposition.—

1446 (1) The board shall set fees according to the following
 1447 schedule:

1448 ~~(f) For hair braiders, hair wrappers, and body wrappers,~~
 1449 ~~fees for registration shall not exceed \$25.~~

1450 Section 56. Paragraph (g) of subsection (1) of section
 1451 477.0265, Florida Statutes, is amended to read:

1452 477.0265 Prohibited acts.—

1453 (1) It is unlawful for any person to:

1454 (g) Advertise or imply that skin care services ~~or body~~
 1455 ~~wrapping~~, as performed under this chapter, have any relationship

HB 5005

2011

1456 to the practice of massage therapy as defined in s. 480.033(3),
 1457 except those practices or activities defined in s. 477.013.

1458 Section 57. Paragraphs (a) of subsection (1) of section
 1459 477.029, Florida Statutes, is amended to read:

1460 477.029 Penalty.—

1461 (1) It is unlawful for any person to:

1462 (a) Hold himself or herself out as a cosmetologist or
 1463 specialist, ~~hair wrapper, hair braider, or body wrapper~~ unless
 1464 duly licensed, ~~or~~ registered, or otherwise authorized, as
 1465 provided in this chapter.

1466 Section 58. Sections 481.2131 and 481.2251, Florida
 1467 Statutes, are repealed.

1468 Section 59. Section 481.201, Florida Statutes, is amended
 1469 to read:

1470 481.201 Purpose.—The primary legislative purpose for
 1471 enacting this part is to ensure that every architect practicing
 1472 in this state meets minimum requirements for safe practice. It
 1473 is the legislative intent that architects who fall below minimum
 1474 competency or who otherwise present a danger to the public shall
 1475 be prohibited from practicing in this state. ~~The Legislature~~
 1476 ~~further finds that it is in the interest of the public to limit~~
 1477 ~~the practice of interior design to interior designers or~~
 1478 ~~architects who have the design education and training required~~
 1479 ~~by this part or to persons who are exempted from the provisions~~
 1480 ~~of this part.~~

1481 Section 60. Section 481.203, Florida Statutes, is amended
 1482 to read:

1483 481.203 Definitions.—As used in this part, the term:

1484 (1)~~(3)~~ "Architect" or "registered architect" means a
 1485 natural person who is licensed under this part to engage in the
 1486 practice of architecture.

1487 (2)~~(6)~~ "Architecture" means the rendering or offering to
 1488 render services in connection with the design and construction
 1489 of a structure or group of structures which have as their
 1490 principal purpose human habitation or use, ~~and~~ the utilization
 1491 of space within and surrounding such structures, and interior
 1492 design. These services include planning, providing preliminary
 1493 study designs, drawings and specifications, job-site inspection,
 1494 and administration of construction contracts.

1495 (3)~~(1)~~ "Board" means the Board of Architecture ~~and~~
 1496 ~~Interior Design~~.

1497 (4)~~(5)~~ "Certificate of authorization" means a certificate
 1498 issued by the department to a corporation or partnership to
 1499 practice architecture ~~or interior design~~.

1500 (5)~~(4)~~ "Certificate of registration" means a license
 1501 issued by the department to a natural person to engage in the
 1502 practice of architecture ~~or interior design~~.

1503 (6)~~(2)~~ "Department" means the Department of Business and
 1504 Professional Regulation.

1505 (7)~~(15)~~ "Interior decorator services" includes the
 1506 selection or assistance in selection of surface materials,
 1507 window treatments, wallcoverings, paint, floor coverings,
 1508 surface-mounted lighting, surface-mounted fixtures, and loose
 1509 furnishings not subject to regulation under applicable building
 1510 codes.

1511 ~~(8) "Interior design" means designs, consultations,~~

HB 5005

2011

1512 ~~studies, drawings, specifications, and administration of design~~
1513 ~~construction contracts relating to nonstructural interior~~
1514 ~~elements of a building or structure. "Interior design" includes,~~
1515 ~~but is not limited to, reflected ceiling plans, space planning,~~
1516 ~~furnishings, and the fabrication of nonstructural elements~~
1517 ~~within and surrounding interior spaces of buildings. "Interior~~
1518 ~~design" specifically excludes the design of or the~~
1519 ~~responsibility for architectural and engineering work, except~~
1520 ~~for specification of fixtures and their location within interior~~
1521 ~~spaces. As used in this subsection, "architectural and~~
1522 ~~engineering interior construction relating to the building~~
1523 ~~systems" includes, but is not limited to, construction of~~
1524 ~~structural, mechanical, plumbing, heating, air-conditioning,~~
1525 ~~ventilating, electrical, or vertical transportation systems, or~~
1526 ~~construction which materially affects lifesafety systems~~
1527 ~~pertaining to firesafety protection such as fire-rated~~
1528 ~~separations between interior spaces, fire-rated vertical shafts~~
1529 ~~in multistory structures, fire-rated protection of structural~~
1530 ~~elements, smoke evacuation and compartmentalization, emergency~~
1531 ~~ingress or egress systems, and emergency alarm systems.~~

1532 ~~(9) "Registered interior designer" or "interior designer"~~
1533 ~~means a natural person who is licensed under this part.~~

1534 ~~(10) "Nonstructural element" means an element which does~~
1535 ~~not require structural bracing and which is something other than~~
1536 ~~a load-bearing wall, load-bearing column, or other load-bearing~~
1537 ~~element of a building or structure which is essential to the~~
1538 ~~structural integrity of the building.~~

1539 ~~(11) "Reflected ceiling plan" means a ceiling design plan~~

1540 ~~which is laid out as if it were projected downward and which may~~
 1541 ~~include lighting and other elements.~~

1542 ~~(12) "Space planning" means the analysis, programming, or~~
 1543 ~~design of spatial requirements, including preliminary space~~
 1544 ~~layouts and final planning.~~

1545 ~~(13) "Common area" means an area that is held out for use~~
 1546 ~~by all tenants or owners in a multiple unit dwelling, including,~~
 1547 ~~but not limited to, a lobby, elevator, hallway, laundry room,~~
 1548 ~~clubhouse, or swimming pool.~~

1549 ~~(14) "Diversified interior design experience" means~~
 1550 ~~experience which substantially encompasses the various elements~~
 1551 ~~of interior design services set forth under the definition of~~
 1552 ~~"interior design" in subsection (8).~~

1553 ~~(8)~~(16) "Responsible supervising control" means the
 1554 exercise of direct personal supervision and control throughout
 1555 the preparation of documents, instruments of service, or any
 1556 other work requiring the seal and signature of a licensee under
 1557 this part.

1558 ~~(9)~~(12) "Space planning" means the analysis, programming,
 1559 or design of spatial requirements, including preliminary space
 1560 layouts and final planning.

1561 ~~(10)~~(7) "Townhouse" is a single-family dwelling unit not
 1562 exceeding three stories in height which is constructed in a
 1563 series or group of attached units with property lines separating
 1564 such units. Each townhouse shall be considered a separate
 1565 building and shall be separated from adjoining townhouses by the
 1566 use of separate exterior walls meeting the requirements for zero
 1567 clearance from property lines as required by the type of

HB 5005

2011

1568 construction and fire protection requirements; or shall be
 1569 separated by a party wall; or may be separated by a single wall
 1570 meeting the following requirements:

1571 (a) Such wall shall provide not less than 2 hours of fire
 1572 resistance. Plumbing, piping, ducts, or electrical or other
 1573 building services shall not be installed within or through the
 1574 2-hour wall unless such materials and methods of penetration
 1575 have been tested in accordance with the Standard Building Code.

1576 (b) Such wall shall extend from the foundation to the
 1577 underside of the roof sheathing, and the underside of the roof
 1578 shall have at least 1 hour of fire resistance for a width not
 1579 less than 4 feet on each side of the wall.

1580 (c) Each dwelling unit sharing such wall shall be designed
 1581 and constructed to maintain its structural integrity independent
 1582 of the unit on the opposite side of the wall.

1583 Section 61. Subsection (1) and paragraph (a) of subsection
 1584 (3) of section 481.205, Florida Statutes, are amended to read:

1585 481.205 Board of Architecture ~~and Interior Design.~~

1586 (1) The Board of Architecture ~~and Interior Design~~ is
 1587 created within the Department of Business and Professional
 1588 Regulation. The board shall consist of seven ~~11~~ members. Five
 1589 members must be registered architects who have been engaged in
 1590 the practice of architecture for at least 5 years; ~~three members~~
 1591 ~~must be registered interior designers who have been offering~~
 1592 ~~interior design services for at least 5 years and who are not~~
 1593 ~~also registered architects;~~ and two ~~three~~ members must be
 1594 laypersons who are not, and have never been, architects,
 1595 ~~interior designers,~~ or members of any closely related profession

HB 5005

2011

1596 or occupation. At least one member of the board must be 60 years
 1597 of age or older.

1598 (3) (a) Notwithstanding the provisions of ss. 455.225,
 1599 455.228, and 455.32, the duties and authority of the department
 1600 to receive complaints and investigate and discipline persons
 1601 licensed under this part, including the ability to determine
 1602 legal sufficiency and probable cause; to initiate proceedings
 1603 and issue final orders for summary suspension or restriction of
 1604 a license pursuant to s. 120.60(6); to issue notices of
 1605 noncompliance, notices to cease and desist, subpoenas, and
 1606 citations; to retain legal counsel, investigators, or
 1607 prosecutorial staff in connection with the licensed practice of
 1608 architecture ~~and interior design~~; and to investigate and deter
 1609 the unlicensed practice of architecture ~~and interior design~~ as
 1610 provided in s. 455.228 are delegated to the board. All
 1611 complaints and any information obtained pursuant to an
 1612 investigation authorized by the board are confidential and
 1613 exempt from s. 119.07(1) as provided in s. 455.225(2) and (10).

1614 Section 62. Section 481.207, Florida Statutes, is amended
 1615 to read:

1616 481.207 Fees.—The board, by rule, may establish separate
 1617 fees for architects ~~and interior designers~~, to be paid for
 1618 applications, examination, reexamination, licensing and renewal,
 1619 delinquency, reinstatement, and recordmaking and recordkeeping.
 1620 The examination fee shall be in an amount that covers the cost
 1621 of obtaining and administering the examination and shall be
 1622 refunded if the applicant is found ineligible to sit for the
 1623 examination. The application fee is nonrefundable. The fee for

HB 5005

2011

1624 initial application and examination for architects ~~and interior~~
 1625 ~~designers~~ may not exceed \$775 plus the actual per applicant cost
 1626 to the department for purchase of the examination from the
 1627 National Council of Architectural Registration Boards ~~or the~~
 1628 ~~National Council of Interior Design Qualifications,~~
 1629 ~~respectively,~~ or similar national organizations. The biennial
 1630 renewal fee for architects may not exceed \$200. ~~The biennial~~
 1631 ~~renewal fee for interior designers may not exceed \$500.~~ The
 1632 delinquency fee may not exceed the biennial renewal fee
 1633 established by the board for an active license. The board shall
 1634 establish fees that are adequate to ensure the continued
 1635 operation of the board and to fund the proportionate expenses
 1636 incurred by the department which are allocated to the regulation
 1637 of architects ~~and interior designers~~. Fees shall be based on
 1638 department estimates of the revenue required to implement this
 1639 part and the provisions of law with respect to the regulation of
 1640 architects ~~and interior designers~~.

1641 Section 63. Section 481.209, Florida Statutes, is amended
 1642 to read:

1643 481.209 Examinations.—

1644 ~~(1)~~ A person desiring to be licensed as a registered
 1645 architect shall apply to the department to take the licensure
 1646 examination. The department shall administer the licensure
 1647 examination for architects to each applicant who the board
 1648 certifies:

1649 (1) ~~(a)~~ Has completed the application form and remitted a
 1650 nonrefundable application fee and an examination fee which is
 1651 refundable if the applicant is found to be ineligible to take

1652 the examination;

1653 (2) (a) ~~(b) 1.~~ Is a graduate of a school or college of
 1654 architecture accredited by the National Architectural
 1655 Accreditation Board; or

1656 (b) 2. Is a graduate of an approved architectural
 1657 curriculum, evidenced by a degree from an unaccredited school or
 1658 college of architecture approved by the board. The board shall
 1659 adopt rules providing for the review and approval of
 1660 unaccredited schools and colleges of architecture and courses of
 1661 architectural study based on a review and inspection by the
 1662 board of the curriculum of accredited schools and colleges of
 1663 architecture in the United States; and

1664 (3) (e) Has completed, prior to examination, 1 year of the
 1665 internship experience required by s. 481.211(1).

1666 ~~(2) A person desiring to be licensed as a registered
 1667 interior designer shall apply to the department for licensure.
 1668 The department shall administer the licensure examination for
 1669 interior designers to each applicant who has completed the
 1670 application form and remitted the application and examination
 1671 fees specified in s. 481.207 and who the board certifies:~~

1672 ~~(a) Is a graduate from an interior design program of 5
 1673 years or more and has completed 1 year of diversified interior
 1674 design experience;~~

1675 ~~(b) Is a graduate from an interior design program of 4
 1676 years or more and has completed 2 years of diversified interior
 1677 design experience;~~

1678 ~~(c) Has completed at least 3 years in an interior design
 1679 curriculum and has completed 3 years of diversified interior~~

HB 5005

2011

1680 ~~design experience; or~~

1681 ~~(d) Is a graduate from an interior design program of at~~
1682 ~~least 2 years and has completed 4 years of diversified interior~~
1683 ~~design experience.~~

1684
1685 ~~Subsequent to October 1, 2000, for the purpose of having the~~
1686 ~~educational qualification required under this subsection~~
1687 ~~accepted by the board, the applicant must complete his or her~~
1688 ~~education at a program, school, or college of interior design~~
1689 ~~whose curriculum has been approved by the board as of the time~~
1690 ~~of completion. Subsequent to October 1, 2003, all of the~~
1691 ~~required amount of educational credits shall have been obtained~~
1692 ~~in a program, school, or college of interior design whose~~
1693 ~~curriculum has been approved by the board, as of the time each~~
1694 ~~educational credit is gained. The board shall adopt rules~~
1695 ~~providing for the review and approval of programs, schools, and~~
1696 ~~colleges of interior design and courses of interior design study~~
1697 ~~based on a review and inspection by the board of the curriculum~~
1698 ~~of programs, schools, and colleges of interior design in the~~
1699 ~~United States, including those programs, schools, and colleges~~
1700 ~~accredited by the Foundation for Interior Design Education~~
1701 ~~Research. The board shall adopt rules providing for the review~~
1702 ~~and approval of diversified interior design experience required~~
1703 ~~by this subsection.~~

1704 Section 64. Subsection (2) of section 481.211, Florida
1705 Statutes, is amended to read:

1706 481.211 Architecture internship required.—

1707 (2) Each applicant for licensure shall complete 1 year of

HB 5005

2011

1708 the internship experience required by this section subsequent to
 1709 graduation from a school or college of architecture as defined
 1710 in s. 481.209~~(1)~~.

1711 Section 65. Subsections (1) through (4) of section
 1712 481.213, Florida Statutes, are amended to read:

1713 481.213 Licensure.—

1714 (1) The department shall license any applicant who the
 1715 board certifies is qualified for licensure and who has paid the
 1716 initial licensure fee. ~~Licensure as an architect under this~~
 1717 ~~section shall be deemed to include all the rights and privileges~~
 1718 ~~of licensure as an interior designer under this section.~~

1719 (2) The board shall certify for licensure by examination
 1720 any applicant who passes the prescribed licensure examination
 1721 and satisfies the requirements of ss. 481.209 and 481.211, for
 1722 architects, ~~or the requirements of s. 481.209, for interior~~
 1723 ~~designers.~~

1724 (3) The board shall certify as qualified for a license by
 1725 endorsement as an architect ~~or as an interior designer~~ an
 1726 applicant who:

1727 (a) Qualifies to take the prescribed licensure
 1728 examination, and has passed the prescribed licensure examination
 1729 or a substantially equivalent examination in another
 1730 jurisdiction, as set forth in s. 481.209 for architects ~~or~~
 1731 ~~interior designers, as applicable,~~ and has satisfied the
 1732 internship requirements set forth in s. 481.211 for architects;

1733 (b) Holds a valid license to practice architecture ~~or~~
 1734 ~~interior design~~ issued by another jurisdiction of the United
 1735 States, if the criteria for issuance of such license were

HB 5005

2011

1736 substantially equivalent to the licensure criteria that existed
 1737 in this state at the time the license was issued; ~~provided,~~
 1738 ~~however, that an applicant who has been licensed for use of the~~
 1739 ~~title "interior design" rather than licensed to practice~~
 1740 ~~interior design shall not qualify hereunder; or~~

1741 (c) Has passed the prescribed licensure examination and
 1742 holds a valid certificate issued by the National Council of
 1743 Architectural Registration Boards, and holds a valid license to
 1744 practice architecture issued by another state or jurisdiction of
 1745 the United States. For the purposes of this paragraph, any
 1746 applicant licensed in another state or jurisdiction after June
 1747 30, 1984, must also hold a degree in architecture and such
 1748 degree must be equivalent to that required in s.

1749 ~~481.209(2)(1)(b)~~. Also for the purposes of this paragraph, any
 1750 applicant licensed in another state or jurisdiction after June
 1751 30, 1985, must have completed an internship equivalent to that
 1752 required by s. 481.211 and any rules adopted with respect
 1753 thereto.

1754 (4) The board may refuse to certify any applicant who has
 1755 violated any of the provisions of s. 481.223, or s. 481.225, ~~or~~
 1756 ~~s. 481.2251~~, as applicable.

1757 Section 66. Subsections (3) and (5) of section 481.215,
 1758 Florida Statutes, are amended to read:

1759 481.215 Renewal of license.—

1760 (3) A ~~No~~ license renewal may not ~~shall~~ be issued to an
 1761 architect ~~or an interior designer~~ by the department until the
 1762 licensee submits proof satisfactory to the department that,
 1763 during the 2 years before ~~prior to~~ application for renewal, the

HB 5005

2011

1764 licensee participated per biennium in not less than 20 hours of
 1765 at least 50 minutes each per biennium of continuing education
 1766 approved by the board. The board shall approve only continuing
 1767 education that builds upon the basic knowledge of architecture
 1768 ~~or interior design~~. The board may make exception from the
 1769 requirements of continuing education in emergency or hardship
 1770 cases.

1771 (5) The board shall require, by rule adopted pursuant to
 1772 ss. 120.536(1) and 120.54, a specified number of hours in
 1773 specialized or advanced courses, approved by the Florida
 1774 Building Commission, on any portion of the Florida Building
 1775 Code, adopted pursuant to part IV of chapter 553, relating to
 1776 the licensee's ~~respective~~ area of practice.

1777 Section 67. Subsection (1) of section 481.217, Florida
 1778 Statutes, is amended to read:

1779 481.217 Inactive status.—

1780 (1) The board may prescribe by rule continuing education
 1781 requirements as a condition of reactivating a license. The
 1782 continuing education requirements for reactivating a license for
 1783 a registered architect may not exceed 12 contact hours for each
 1784 year the license was inactive. ~~The minimum continuing education
 1785 requirement for reactivating a license for a registered interior
 1786 designer shall be those of the most recent biennium plus one
 1787 half of the requirements in s. 481.215 for each year or part
 1788 thereof during which the license was inactive. The board shall
 1789 only approve continuing education that builds upon the basic
 1790 knowledge of interior design.~~

1791 Section 68. Section 481.219, Florida Statutes, is amended

HB 5005

2011

1792 to read:

1793 481.219 Certification of partnerships, limited liability
1794 companies, and corporations.—

1795 (1) The practice of or the offer to practice architecture
1796 ~~or interior design~~ by licensees through a corporation, limited
1797 liability company, or partnership offering architectural ~~or~~
1798 ~~interior design~~ services to the public, or by a corporation,
1799 limited liability company, or partnership offering architectural
1800 ~~or interior design~~ services to the public through licensees
1801 under this part as agents, employees, officers, or partners, is
1802 permitted, subject to ~~the provisions of~~ this section.

1803 (2) For the purposes of this section, a certificate of
1804 authorization is ~~shall be~~ required for a corporation, limited
1805 liability company, partnership, or person practicing under a
1806 fictitious name, offering architectural services to the public
1807 jointly or separately. However, when an individual is practicing
1808 architecture in her or his own name, she or he is ~~shall not be~~
1809 required to be certified under this section. ~~Certification under~~
1810 ~~this subsection to offer architectural services shall include~~
1811 ~~all the rights and privileges of certification under subsection~~
1812 ~~(3) to offer interior design services.~~

1813 ~~(3) For the purposes of this section, a certificate of~~
1814 ~~authorization shall be required for a corporation, limited~~
1815 ~~liability company, partnership, or person operating under a~~
1816 ~~fictitious name, offering interior design services to the public~~
1817 ~~jointly or separately. However, when an individual is practicing~~
1818 ~~interior design in her or his own name, she or he shall not be~~
1819 ~~required to be certified under this section.~~

HB 5005

2011

1820 (3)~~(4)~~ All final construction documents and instruments of
 1821 service which include drawings, specifications, plans, reports,
 1822 or other papers or documents involving the practice of
 1823 architecture which are prepared or approved for the use of the
 1824 corporation, limited liability company, or partnership and filed
 1825 for public record within the state shall bear the signature and
 1826 seal of the licensee who prepared or approved them and the date
 1827 on which they were sealed.

1828 ~~(5) All drawings, specifications, plans, reports, or other
 1829 papers or documents prepared or approved for the use of the
 1830 corporation, limited liability company, or partnership by an
 1831 interior designer in her or his professional capacity and filed
 1832 for public record within the state shall bear the signature and
 1833 seal of the licensee who prepared or approved them and the date
 1834 on which they were sealed.~~

1835 (4)~~(6)~~ The department shall issue a certificate of
 1836 authorization to any applicant who the board certifies as
 1837 qualified for a certificate of authorization and who has paid
 1838 the fee set in s. 481.207.

1839 (5)~~(7)~~ The board shall certify an applicant as qualified
 1840 for a certificate of authorization to offer architectural ~~or~~
 1841 interior design services, provided that:

1842 ~~(a)~~ one or more of the principal officers of the
 1843 corporation or limited liability company, or one or more
 1844 partners of the partnership, and all personnel of the
 1845 corporation, limited liability company, or partnership who act
 1846 in its behalf in this state as architects, are registered as
 1847 provided by this part;~~or~~

1848 ~~(b) One or more of the principal officers of the~~
 1849 ~~corporation or one or more partners of the partnership, and all~~
 1850 ~~personnel of the corporation, limited liability company, or~~
 1851 ~~partnership who act in its behalf in this state as interior~~
 1852 ~~designers, are registered as provided by this part.~~

1853 (6)~~(8)~~ The department shall adopt rules establishing a
 1854 procedure for the biennial renewal of certificates of
 1855 authorization.

1856 (7)~~(9)~~ The department shall renew a certificate of
 1857 authorization upon receipt of the renewal application and
 1858 biennial renewal fee.

1859 (8)~~(10)~~ Each partnership, limited liability company, and
 1860 corporation certified under this section shall notify the
 1861 department within 30 days of any change in the information
 1862 contained in the application upon which the certification is
 1863 based. Any registered architect ~~or interior designer~~ who
 1864 qualifies the corporation, limited liability company, or
 1865 partnership as provided in subsection (6) ~~(7)~~ shall be
 1866 responsible for ensuring responsible supervising control of
 1867 projects of the entity and upon termination of her or his
 1868 employment with a partnership, limited liability company, or
 1869 corporation certified under this section shall notify the
 1870 department of the termination within 30 days.

1871 (9)~~(11)~~ A ~~No~~ corporation, limited liability company, or
 1872 partnership may not ~~shall~~ be relieved of responsibility for the
 1873 conduct or acts of its agents, employees, or officers by reason
 1874 of its compliance with this section. However, the architect who
 1875 signs and seals the construction documents and instruments of

1876 service is ~~shall be~~ liable for the professional services
 1877 performed, ~~and the interior designer who signs and seals the~~
 1878 ~~interior design drawings, plans, or specifications shall be~~
 1879 ~~liable for the professional services performed.~~

1880 (10) ~~(12)~~ Disciplinary action against a corporation,
 1881 limited liability company, or partnership shall be administered
 1882 in the same manner and on the same grounds as disciplinary
 1883 action against a registered architect ~~or interior designer,~~
 1884 ~~respectively.~~

1885 (11) ~~(13)~~ Nothing in This section does not ~~shall be~~
 1886 ~~construed to~~ mean that a certificate of registration to practice
 1887 architecture ~~or interior design~~ shall be held by a corporation,
 1888 limited liability company, or partnership. ~~Nothing in~~ This
 1889 section does not prohibit ~~prohibits~~ corporations, limited
 1890 liability companies, and partnerships from joining together to
 1891 offer architectural, engineering, ~~interior design,~~ surveying and
 1892 mapping, and landscape architectural services, or any
 1893 combination of such services, to the public, provided that each
 1894 corporation, limited liability company, or partnership otherwise
 1895 meets the requirements of law.

1896 ~~(14)~~ ~~Corporations, limited liability companies, or~~
 1897 ~~partnerships holding a valid certificate of authorization to~~
 1898 ~~practice architecture shall be permitted to use in their title~~
 1899 ~~the term "interior designer" or "registered interior designer."~~

1900 Section 69. Section 481.221, Florida Statutes, is amended
 1901 to read:

1902 481.221 Seals; display of certificate number.—

1903 (1) The board shall prescribe, by rule, one or more forms

1904 of seals to be used by registered architects holding valid
 1905 certificates of registration.

1906 (2) Each registered architect shall obtain one seal in a
 1907 form approved by rule of the board and may, in addition,
 1908 register her or his seal electronically in accordance with ss.
 1909 668.001-668.006. All final construction documents and
 1910 instruments of service which include drawings, plans,
 1911 specifications, or reports prepared or issued by the registered
 1912 architect and being filed for public record shall bear the
 1913 signature and seal of the registered architect who prepared or
 1914 approved the document and the date on which they were sealed.
 1915 The signature, date, and seal shall be evidence of the
 1916 authenticity of that to which they are affixed. Final plans,
 1917 specifications, or reports prepared or issued by a registered
 1918 architect may be transmitted electronically and may be signed by
 1919 the registered architect, dated, and sealed electronically with
 1920 the seal in accordance with ss. 668.001-668.006.

1921 ~~(3) The board shall adopt a rule prescribing the~~
 1922 ~~distinctly different seals to be used by registered interior~~
 1923 ~~designers holding valid certificates of registration. Each~~
 1924 ~~registered interior designer shall obtain a seal as prescribed~~
 1925 ~~by the board, and all drawings, plans, specifications, or~~
 1926 ~~reports prepared or issued by the registered interior designer~~
 1927 ~~and being filed for public record shall bear the signature and~~
 1928 ~~seal of the registered interior designer who prepared or~~
 1929 ~~approved the document and the date on which they were sealed.~~
 1930 ~~The signature, date, and seal shall be evidence of the~~
 1931 ~~authenticity of that to which they are affixed. Final plans,~~

HB 5005

2011

1932 ~~specifications, or reports prepared or issued by a registered~~
 1933 ~~interior designer may be transmitted electronically and may be~~
 1934 ~~signed by the registered interior designer, dated, and sealed~~
 1935 ~~electronically with the seal in accordance with ss. 668.001-~~
 1936 ~~668.006.~~

1937 (3)~~(4)~~ No registered architect shall affix, or permit to
 1938 be affixed, her or his seal or signature to any final
 1939 construction document or instrument of service which includes
 1940 any plan, specification, drawing, or other document which
 1941 depicts work which she or he is not competent to perform.

1942 ~~(5) No registered interior designer shall affix, or permit~~
 1943 ~~to be affixed, her or his seal or signature to any plan,~~
 1944 ~~specification, drawing, or other document which depicts work~~
 1945 ~~which she or he is not competent or licensed to perform.~~

1946 ~~(7) No registered interior designer shall affix her or his~~
 1947 ~~signature or seal to any plans, specifications, or other~~
 1948 ~~documents which were not prepared by her or him or under her or~~
 1949 ~~his responsible supervising control or by another registered~~
 1950 ~~interior designer and reviewed, approved, or modified and~~
 1951 ~~adopted by her or him as her or his own work according to rules~~
 1952 ~~adopted by the board.~~

1953 ~~(9) Studies, drawings, specifications, and other related~~
 1954 ~~documents prepared by a registered interior designer in~~
 1955 ~~providing interior design services shall be of a sufficiently~~
 1956 ~~high standard to clearly and accurately indicate all essential~~
 1957 ~~parts of the work to which they refer.~~

1958 (4)~~(10)~~ Each registered architect and each ~~or interior~~
 1959 ~~designer, and each corporation, limited liability company, or~~

HB 5005

2011

1960 partnership holding a certificate of authorization, shall
 1961 include its certificate number in any newspaper, telephone
 1962 directory, or other advertising medium used by the registered
 1963 architect, ~~interior designer~~, corporation, limited liability
 1964 company, or partnership. A corporation, limited liability
 1965 company, or partnership is not required to display the
 1966 certificate number of individual registered architects ~~or~~
 1967 ~~interior designers~~ employed by or working within the
 1968 corporation, limited liability company, or partnership.

1969 (5)~~(11)~~ When the certificate of registration of a
 1970 registered architect ~~or interior designer~~ has been revoked or
 1971 suspended by the board, the registered architect ~~or interior~~
 1972 ~~designer~~ shall surrender her or his seal to the secretary of the
 1973 board within a period of 30 days after the revocation or
 1974 suspension has become effective. If the certificate of the
 1975 registered architect ~~or interior designer~~ has been suspended for
 1976 a period of time, her or his seal shall be returned to her or
 1977 him upon expiration of the suspension period.

1978 (6)~~(12)~~ A person may not sign and seal by any means any
 1979 final plan, specification, or report after her or his
 1980 certificate of registration has expired or is suspended or
 1981 revoked. A registered architect ~~or interior designer~~ whose
 1982 certificate of registration is suspended or revoked shall,
 1983 within 30 days after the effective date of the suspension or
 1984 revocation, surrender her or his seal to the executive director
 1985 of the board and confirm in writing to the executive director
 1986 the cancellation of the registered architect's ~~or interior~~
 1987 ~~designer's~~ electronic signature in accordance with ss. 668.001-

HB 5005

2011

1988 668.006. When a registered architect's ~~or interior designer's~~
 1989 certificate of registration is suspended for a period of time,
 1990 her or his seal shall be returned upon expiration of the period
 1991 of suspension.

1992 Section 70. Section 481.222, Florida Statutes, is amended
 1993 to read:

1994 481.222 Architects performing building code inspection
 1995 services.—Notwithstanding any other provision of law, a person
 1996 who is currently licensed to practice as an architect under this
 1997 part may provide building code inspection services described in
 1998 s. 468.603(6) and (7) to a local government or state agency upon
 1999 its request, without being certified by the Florida Building
 2000 Code Administrators and Inspectors Board under part XII of
 2001 chapter 468. With respect to the performance of such building
 2002 code inspection services, the architect is subject to the
 2003 disciplinary guidelines of this part and s. 468.621(1)(c)-(h).
 2004 Any complaint processing, investigation, and discipline that
 2005 arise out of an architect's performance of building code
 2006 inspection services shall be conducted by the Board of
 2007 Architecture ~~and Interior Design~~ rather than the Florida
 2008 Building Code Administrators and Inspectors Board. An architect
 2009 may not perform plans review as an employee of a local
 2010 government upon any job that the architect or the architect's
 2011 company designed.

2012 Section 71. Section 481.223, Florida Statutes, are amended
 2013 to read:

2014 481.223 Prohibitions; penalties; injunctive relief.—
 2015 (1) A person may not knowingly:

HB 5005

2011

2016 (a) Practice architecture unless the person is an
2017 architect or a registered architect; however, a licensed
2018 architect who has been licensed by the board and who chooses to
2019 relinquish or not to renew his or her license may use the title
2020 "Architect, Retired" but may not otherwise render any
2021 architectural services.

2022 ~~(b) Practice interior design unless the person is a~~
2023 ~~registered interior designer unless otherwise exempted herein;~~
2024 ~~however, an interior designer who has been licensed by the board~~
2025 ~~and who chooses to relinquish or not to renew his or her license~~
2026 ~~may use the title "Interior Designer, Retired" but may not~~
2027 ~~otherwise render any interior design services.~~

2028 (b)(e) Use the name or title "architect" or "registered
2029 architect," ~~or "interior designer" or "registered interior~~
2030 ~~designer,"~~ or words to that effect, when the person is not then
2031 the holder of a valid license issued pursuant to this part.

2032 (c)(d) Present as his or her own the license of another.

2033 (d)(e) Give false or forged evidence to the board or a
2034 member thereof.

2035 (e)(f) Use or attempt to use an architect ~~or interior~~
2036 ~~designer~~ license that has been suspended, revoked, or placed on
2037 inactive or delinquent status.

2038 (f)(g) Employ unlicensed persons to practice architecture
2039 ~~or interior design.~~

2040 (g)(h) Conceal information relative to violations of this
2041 part.

2042 (2) Any person who violates any provision of subsection
2043 (1) commits a misdemeanor of the first degree, punishable as

HB 5005

2011

2044 provided in s. 775.082 or s. 775.083.

2045 (3) (a) Notwithstanding chapter 455 or any other law to the
 2046 contrary, an affected person may maintain an action for
 2047 injunctive relief to restrain or prevent a person from violating
 2048 paragraph (1) (a), ~~paragraph (1) (b)~~, or paragraph (1) (b) (e). The
 2049 prevailing party is entitled to actual costs and attorney's
 2050 fees.

2051 (b) For purposes of this subsection, the term "affected
 2052 person" means a person directly affected by the actions of a
 2053 person suspected of violating paragraph (1) (a), ~~paragraph~~
 2054 ~~(1) (b)~~, or paragraph (1) (b) (e) and includes, but is not limited
 2055 to, the department, any person who received services from the
 2056 alleged violator, or any private association composed primarily
 2057 of members of the profession the alleged violator is practicing
 2058 or offering to practice or holding himself or herself out as
 2059 qualified to practice.

2060 Section 72. Subsections (5) through (8) of section
 2061 481.229, Florida Statutes, are amended to read:

2062 481.229 Exceptions; exemptions from licensure.-

2063 ~~(5) (a) Nothing contained in this part shall prevent a~~
 2064 ~~registered architect or a partnership, limited liability~~
 2065 ~~company, or corporation holding a valid certificate of~~
 2066 ~~authorization to provide architectural services from performing~~
 2067 ~~any interior design service or from using the title "interior~~
 2068 ~~designer" or "registered interior designer."~~

2069 ~~(b) Notwithstanding any other provision of this part, all~~
 2070 ~~persons licensed as architects under this part shall be~~
 2071 ~~qualified for interior design licensure upon submission of a~~

2072 ~~completed application for such license and a fee not to exceed~~
 2073 ~~\$30. Such persons shall be exempt from the requirements of s.~~
 2074 ~~481.209(2). For architects licensed as interior designers,~~
 2075 ~~satisfaction of the requirements for renewal of licensure as an~~
 2076 ~~architect under s. 481.215 shall be deemed to satisfy the~~
 2077 ~~requirements for renewal of licensure as an interior designer~~
 2078 ~~under that section. Complaint processing, investigation, or~~
 2079 ~~other discipline-related legal costs related to persons licensed~~
 2080 ~~as interior designers under this paragraph shall be assessed~~
 2081 ~~against the architects' account of the Regulatory Trust Fund.~~

2082 ~~(c) Notwithstanding any other provision of this part, any~~
 2083 ~~corporation, partnership, or person operating under a fictitious~~
 2084 ~~name which holds a certificate of authorization to provide~~
 2085 ~~architectural services shall be qualified, without fee, for a~~
 2086 ~~certificate of authorization to provide interior design services~~
 2087 ~~upon submission of a completed application therefor. For~~
 2088 ~~corporations, partnerships, and persons operating under a~~
 2089 ~~fictitious name which hold a certificate of authorization to~~
 2090 ~~provide interior design services, satisfaction of the~~
 2091 ~~requirements for renewal of the certificate of authorization to~~
 2092 ~~provide architectural services under s. 481.219 shall be deemed~~
 2093 ~~to satisfy the requirements for renewal of the certificate of~~
 2094 ~~authorization to provide interior design services under that~~
 2095 ~~section.~~

2096 ~~(6) This part shall not apply to:~~

2097 ~~(a) A person who performs interior design services or~~
 2098 ~~interior decorator services for any residential application,~~
 2099 ~~provided that such person does not advertise as, or represent~~

2100 ~~himself or herself as, an interior designer. For purposes of~~
 2101 ~~this paragraph, "residential applications" includes all types of~~
 2102 ~~residences, including, but not limited to, residence buildings,~~
 2103 ~~single-family homes, multifamily homes, townhouses, apartments,~~
 2104 ~~condominiums, and domestic outbuildings appurtenant to one-~~
 2105 ~~family or two-family residences. However, "residential~~
 2106 ~~applications" does not include common areas associated with~~
 2107 ~~instances of multiple-unit dwelling applications.~~

2108 ~~(b) An employee of a retail establishment providing~~
 2109 ~~"interior decorator services" on the premises of the retail~~
 2110 ~~establishment or in the furtherance of a retail sale or~~
 2111 ~~prospective retail sale, provided that such employee does not~~
 2112 ~~advertise as, or represent himself or herself as, an interior~~
 2113 ~~designer.~~

2114 ~~(7) Nothing in this part shall be construed as authorizing~~
 2115 ~~or permitting an interior designer to engage in the business of,~~
 2116 ~~or to act as, a contractor within the meaning of chapter 489,~~
 2117 ~~unless registered or certified as a contractor pursuant to~~
 2118 ~~chapter 489.~~

2119 (5)~~(8)~~ A manufacturer of commercial food service equipment
 2120 or the manufacturer's representative, distributor, or dealer or
 2121 an employee thereof, who prepares designs, specifications, or
 2122 layouts for the sale or installation of such equipment is exempt
 2123 from licensure as an architect ~~or interior designer~~, if:

2124 (a) The designs, specifications, or layouts are not used
 2125 for construction or installation that may affect structural,
 2126 mechanical, plumbing, heating, air conditioning, ventilating,
 2127 electrical, or vertical transportation systems.

HB 5005

2011

2128 (b) The designs, specifications, or layouts do not
 2129 materially affect lifesafety systems pertaining to firesafety
 2130 protection, smoke evacuation and compartmentalization, and
 2131 emergency ingress or egress systems.

2132 (c) Each design, specification, or layout document
 2133 prepared by a person or entity exempt under this subsection
 2134 contains a statement on each page of the document that the
 2135 designs, specifications, or layouts are not architectural,
 2136 ~~interior design,~~ or engineering designs, specifications, or
 2137 layouts and not used for construction unless reviewed and
 2138 approved by a licensed architect or engineer.

2139 Section 73. Subsection (1) of section 481.231, Florida
 2140 Statutes, is amended to read:

2141 481.231 Effect of part locally.-

2142 (1) ~~Nothing in~~ This part does not ~~shall be construed to~~
 2143 ~~repeal, amend, limit, or otherwise affect any specific provision~~
 2144 ~~of any local building code or zoning law or ordinance that has~~
 2145 ~~been duly adopted, now or hereafter enacted, which is more~~
 2146 ~~restrictive, with respect to the services of registered~~
 2147 ~~architects or registered interior designers, than the provisions~~
 2148 ~~of this part; provided, however, that a licensed architect shall~~
 2149 ~~be deemed licensed as an interior designer for purposes of~~
 2150 ~~offering or rendering interior design services to a county,~~
 2151 ~~municipality, or other local government or political~~
 2152 ~~subdivision.~~

2153 Section 74. Paragraph (c) of subsection (5) of section
 2154 553.79, Florida Statutes, is amended to read:

2155 553.79 Permits; applications; issuance; inspections.-

2156 (5)
 2157 (c) The architect or engineer of record may act as the
 2158 special inspector provided she or he is on the Board of
 2159 Professional Engineers' or the Board of Architecture's
 2160 ~~Architecture and Interior Design's~~ list of persons qualified to
 2161 be special inspectors. School boards may utilize employees as
 2162 special inspectors provided such employees are on one of the
 2163 professional licensing board's list of persons qualified to be
 2164 special inspectors.

2165 Section 75. Subsection (7) of section 558.002, Florida
 2166 Statutes, is amended to read:

2167 558.002 Definitions.—As used in this chapter, the term:

2168 (7) "Design professional" means a person, as defined in s.
 2169 1.01, who is licensed in this state as an architect, interior
 2170 designer, landscape architect, engineer, or surveyor.

2171 Section 76. (1) Part II of chapter 481, Florida Statutes,
 2172 consisting of sections 481.301, 481.303, 481.305, 481.306,
 2173 481.307, 481.309, 481.310, 481.311, 481.313, 481.315, 481.317,
 2174 481.319, 481.321, 481.323, 481.325, and 481.329, is repealed.

2175 (2) The Division of Statutory Revision of the Office of
 2176 Legislative Services is directed to prepare a reviser's bill for
 2177 introduction at a subsequent session of the Legislature to
 2178 redesignate part I of chapter 481, Florida Statutes, as chapter
 2179 481, Florida Statutes, to change references to that "part" as
 2180 references to that "chapter," and conform any corresponding
 2181 cross-references.

2182 Section 77. Paragraphs (h) and (k) of subsection (2) of
 2183 section 287.055, Florida Statutes, are amended to read:

HB 5005

2011

2184 287.055 Acquisition of professional architectural,
 2185 engineering, landscape architectural, or surveying and mapping
 2186 services; definitions; procedures; contingent fees prohibited;
 2187 penalties.—

2188 (2) DEFINITIONS.—For purposes of this section:

2189 (h) A "design-build firm" means a partnership,
 2190 corporation, or other legal entity that:

2191 1. Is certified under s. 489.119 to engage in contracting
 2192 through a certified or registered general contractor or a
 2193 certified or registered building contractor as the qualifying
 2194 agent; or

2195 2. Is certified under s. 471.023 to practice or to offer
 2196 to practice engineering; certified under s. 481.219 to practice
 2197 or to offer to practice architecture; or practices certified
 2198 ~~under s. 481.319 to practice or to offer to practice~~ landscape
 2199 architecture.

2200 (k) A "design criteria professional" means a firm who
 2201 holds a current certificate of registration under chapter 481 to
 2202 practice architecture, ~~or landscape architecture~~ or a firm who
 2203 holds a current certificate as a registered engineer under
 2204 chapter 471 to practice engineering, or a firm who practices
 2205 landscape architecture and who is employed by or under contract
 2206 to the agency for the providing of professional architect
 2207 services, landscape architect services, or engineering services
 2208 in connection with the preparation of the design criteria
 2209 package.

2210 Section 78. Subsection (1) of section 339.2405, Florida
 2211 Statutes, is amended to read:

HB 5005

2011

2212 339.2405 Florida Highway Beautification Council.—
 2213 (1) There is created within the Department of
 2214 Transportation the Florida Highway Beautification Council. It
 2215 shall consist of seven members appointed by the Governor. All
 2216 appointed members must be residents of this state. One member
 2217 must be a ~~licensed~~ landscape architect, one member must be a
 2218 representative of the Florida Federation of Garden Clubs, Inc.,
 2219 one member must be a representative of the Florida Nurserymen
 2220 and Growers Association, one member must be a representative of
 2221 the department as designated by the head of the department, one
 2222 member must be a representative of the Department of Agriculture
 2223 and Consumer Services, and two members must be private citizens.
 2224 The members of the council shall serve at the pleasure of the
 2225 Governor.

2226 Section 79. Paragraph (d) of subsection (7) of section
 2227 373.62, Florida Statutes, is amended to read:

2228 373.62 Water conservation; automatic sprinkler systems.—

2229 (7)

2230 (d) Upon installation of a soil moisture sensor control
 2231 system, the licensed contractor shall certify to the monitoring
 2232 entity that subparagraphs (c)1. and (c)2. have been met.

2233 1. The monitoring entity shall post the notice required by
 2234 subparagraph (c)5. on the user's property and update the
 2235 Internet listing of users of active soil moisture sensor control
 2236 systems to include the new user.

2237 2. On an annual basis a professional engineer licensed
 2238 under chapter 471 or a ~~professional~~ landscape architect ~~licensed~~
 2239 ~~under chapter 481~~ shall perform an annual maintenance review of

HB 5005

2011

2240 all soil moisture sensor control systems within the monitoring
 2241 entity's jurisdiction and certify to the monitoring entity which
 2242 systems are properly operating and in compliance with paragraph
 2243 (c). The monitoring entity shall update its Internet listing of
 2244 users of active soil moisture sensor control systems based on
 2245 the certification.

2246 Section 80. Subsection (1) of section 403.0877, Florida
 2247 Statutes, is amended to read:

2248 403.0877 Certification by professionals regulated by the
 2249 Department of Business and Professional Regulation.—

2250 (1) ~~Nothing in~~ This section does not authorize ~~shall be~~
 2251 ~~construed as specific authority for~~ a water management district
 2252 or the department to require certification by a professional
 2253 engineer licensed under chapter 471, ~~a professional landscape~~
 2254 ~~architect licensed under part II of chapter 481,~~ a professional
 2255 geologist licensed under chapter 492, or a professional surveyor
 2256 and mapper licensed under chapter 472, for an activity that is
 2257 not within the definition or scope of practice of the regulated
 2258 profession.

2259 Section 81. Paragraphs (f) and (g) of subsection (1) of
 2260 section 403.9329, Florida Statutes, are redesignated as
 2261 paragraphs (e) and (f), respectively, and paragraph (e) of
 2262 subsection (1) and paragraph (d) of subsection (7) of that
 2263 section are amended, to read:

2264 403.9329 Professional mangrove trimmers.—

2265 (1) For purposes of ss. 403.9321-403.9333, the following
 2266 persons are considered professional mangrove trimmers:

2267 ~~(e) Persons licensed under part II of chapter 481. The~~

HB 5005

2011

2268 ~~Board of Landscape Architecture shall establish appropriate~~
 2269 ~~standards and continuing legal education requirements to assure~~
 2270 ~~the competence of licensees to conduct the activities authorized~~
 2271 ~~under ss. 403.9321-403.9333. Trimming by landscape architects as~~
 2272 ~~professional mangrove trimmers is not allowed until the~~
 2273 ~~establishment of standards by the board. The board shall also~~
 2274 ~~establish penalties for violating ss. 403.9321-403.9333. Only~~
 2275 ~~those landscape architects who are certified in the state may~~
 2276 ~~qualify as professional mangrove trimmers under ss. 403.9321-~~
 2277 ~~403.9333, notwithstanding any reciprocity agreements that may~~
 2278 ~~exist between this state and other states;~~

2279 (7)

2280 (d) Any person who qualifies as a professional mangrove
 2281 trimmer under this subsection may conduct trimming activities
 2282 within the jurisdiction of a delegated local government if the
 2283 person registers and pays any appropriate fee required by a
 2284 delegated local government. A delegated local government that
 2285 wishes to discipline persons ~~licensed under part II of chapter~~
 2286 ~~481~~ for mangrove-trimming or alteration activities ~~may file a~~
 2287 ~~complaint against the licensee as provided for by chapter 481~~
 2288 ~~and~~ may take appropriate local disciplinary action. Any local
 2289 disciplinary action imposed against a licensee is subject to
 2290 administrative and judicial review.

2291 Section 82. Paragraph (c) of subsection (6) of section
 2292 479.106, Florida Statutes, is amended to read:

2293 479.106 Vegetation management.—

2294 (6) Beautification projects, trees, or other vegetation
 2295 shall not be planted or located in the view zone of legally

HB 5005

2011

2296 erected and permitted outdoor advertising signs which have been
 2297 permitted prior to the date of the beautification project or
 2298 other planting, where such planting will, at the time of
 2299 planting or after future growth, screen such sign from view.

2300 (c) If a sign owner alleges any governmental entity or
 2301 other party has violated this subsection, the sign owner must
 2302 provide 90 days' written notice to the governmental entity or
 2303 other party allegedly violating this subsection. If the alleged
 2304 violation is not cured by the governmental entity or other party
 2305 within the 90-day period, the sign owner may file a claim in the
 2306 circuit court where the sign is located. A copy of such
 2307 complaint shall be served contemporaneously upon the
 2308 governmental entity or other party. If the circuit court
 2309 determines a violation of this subsection has occurred, the
 2310 court shall award a claim for compensation equal to the lesser
 2311 of the revenue from the sign lost during the time of screening
 2312 or the fair market value of the sign, and the governmental
 2313 entity or other party shall pay the award of compensation
 2314 subject to available appeal. Any modification or removal of
 2315 material within a beautification project or other planting by
 2316 the governmental entity or other party to cure an alleged
 2317 violation shall not require the issuance of a permit from the
 2318 Department of Transportation provided not less than 48 hours'
 2319 notice is provided to the department of the modification or
 2320 removal of the material. A natural person, private corporation,
 2321 or private partnership ~~licensed under part II of chapter 481~~
 2322 providing design services for beautification or other
 2323 projects is ~~shall~~ not be subject to a claim of compensation

HB 5005

2011

2324 | under this section when the initial project design meets the
 2325 | requirements of this section.

2326 | Section 83. Section 481.203, Florida Statutes, is amended
 2327 | to read:

2328 | 481.203 Definitions.—As used in this part, the term:

2329 | (1)~~(3)~~ "Architect" or "registered architect" means a
 2330 | natural person who is licensed under this part to engage in the
 2331 | practice of architecture.

2332 | (2)~~(6)~~ "Architecture" means the rendering or offering to
 2333 | render services in connection with the design and construction
 2334 | of a structure or group of structures which have as their
 2335 | principal purpose human habitation or use, and the utilization
 2336 | of space within and surrounding such structures. These services
 2337 | include planning, providing preliminary study designs, drawings
 2338 | and specifications, job-site inspection, and administration of
 2339 | construction contracts.

2340 | (3)~~(1)~~ "Board" means the Board of Architecture and
 2341 | Interior Design.

2342 | (4)~~(5)~~ "Certificate of authorization" means a certificate
 2343 | issued by the department to a corporation or partnership to
 2344 | practice architecture or interior design.

2345 | (5)~~(4)~~ "Certificate of registration" means a license
 2346 | issued by the department to a natural person to engage in the
 2347 | practice of architecture or interior design.

2348 | (6)~~(13)~~ "Common area" means an area that is held out for
 2349 | use by all tenants or owners in a multiple-unit dwelling,
 2350 | including, but not limited to, a lobby, elevator, hallway,
 2351 | laundry room, clubhouse, or swimming pool.

HB 5005

2011

2352 (7)~~(2)~~ "Department" means the Department of Business and
 2353 Professional Regulation.

2354 (8)~~(14)~~ "Diversified interior design experience" means
 2355 experience which substantially encompasses the various elements
 2356 of interior design services set forth under the definition of
 2357 "interior design" in subsection (10) ~~(8)~~.

2358 (9)~~(15)~~ "Interior decorator services" includes the
 2359 selection or assistance in selection of surface materials,
 2360 window treatments, wallcoverings, paint, floor coverings,
 2361 surface-mounted lighting, surface-mounted fixtures, and loose
 2362 furnishings not subject to regulation under applicable building
 2363 codes.

2364 (10)~~(8)~~ "Interior design" means designs, consultations,
 2365 studies, drawings, specifications, and administration of design
 2366 construction contracts relating to nonstructural interior
 2367 elements of a building or structure. "Interior design" includes,
 2368 but is not limited to, reflected ceiling plans, space planning,
 2369 furnishings, and the fabrication of nonstructural elements
 2370 within and surrounding interior spaces of buildings. "Interior
 2371 design" specifically excludes the design of or the
 2372 responsibility for architectural and engineering work, except
 2373 for specification of fixtures and their location within interior
 2374 spaces. As used in this subsection, "architectural and
 2375 engineering interior construction relating to the building
 2376 systems" includes, but is not limited to, construction of
 2377 structural, mechanical, plumbing, heating, air-conditioning,
 2378 ventilating, electrical, or vertical transportation systems, or
 2379 construction which materially affects lifesafety systems

HB 5005

2011

2380 pertaining to firesafety protection such as fire-rated
2381 separations between interior spaces, fire-rated vertical shafts
2382 in multistory structures, fire-rated protection of structural
2383 elements, smoke evacuation and compartmentalization, emergency
2384 ingress or egress systems, and emergency alarm systems.

2385 (11) "Landscape architect" means a person qualified by
2386 education and experience to practice landscape architecture.

2387 (12) "Landscape architecture" means professional services,
2388 including, but not limited to, the following:

2389 (a) Consultation, investigation, research, planning,
2390 design, preparation of drawings, specifications, contract
2391 documents and reports, responsible construction supervision, or
2392 landscape management in connection with the planning and
2393 development of land and incidental water areas, including the
2394 use of Florida-friendly landscaping as defined in s. 373.185,
2395 where, and to the extent that, the dominant purpose of such
2396 services or creative works is the preservation, conservation,
2397 enhancement, or determination of proper land uses, natural land
2398 features, ground cover and plantings, or naturalistic and
2399 aesthetic values;

2400 (b) The determination of settings, grounds, and approaches
2401 for and the siting of buildings and structures, outdoor areas,
2402 or other improvements;

2403 (c) The setting of grades, shaping and contouring of land
2404 and water forms, determination of drainage, and provision for
2405 storm drainage and irrigation systems where such systems are
2406 necessary to the purposes described in this subsection; and

2407 (d) The design of such tangible objects and features as
 2408 are necessary to the purposes described in this subsection.

2409 (13)~~(10)~~ "Nonstructural element" means an element which
 2410 does not require structural bracing and which is something other
 2411 than a load-bearing wall, load-bearing column, or other load-
 2412 bearing element of a building or structure which is essential to
 2413 the structural integrity of the building.

2414 (14)~~(11)~~ "Reflected ceiling plan" means a ceiling design
 2415 plan which is laid out as if it were projected downward and
 2416 which may include lighting and other elements.

2417 (15)~~(9)~~ "Registered interior designer" or "interior
 2418 designer" means a natural person who is licensed under this
 2419 part.

2420 (16) "Responsible supervising control" means the exercise
 2421 of direct personal supervision and control throughout the
 2422 preparation of documents, instruments of service, or any other
 2423 work requiring the seal and signature of a licensee under this
 2424 part.

2425 (17)~~(12)~~ "Space planning" means the analysis, programming,
 2426 or design of spatial requirements, including preliminary space
 2427 layouts and final planning.

2428 (18)~~(7)~~ "Townhouse" is a single-family dwelling unit not
 2429 exceeding three stories in height which is constructed in a
 2430 series or group of attached units with property lines separating
 2431 such units. Each townhouse shall be considered a separate
 2432 building and shall be separated from adjoining townhouses by the
 2433 use of separate exterior walls meeting the requirements for zero
 2434 clearance from property lines as required by the type of

HB 5005

2011

2435 construction and fire protection requirements; or shall be
 2436 separated by a party wall; or may be separated by a single wall
 2437 meeting the following requirements:

2438 (a) Such wall shall provide not less than 2 hours of fire
 2439 resistance. Plumbing, piping, ducts, or electrical or other
 2440 building services shall not be installed within or through the
 2441 2-hour wall unless such materials and methods of penetration
 2442 have been tested in accordance with the Standard Building Code.

2443 (b) Such wall shall extend from the foundation to the
 2444 underside of the roof sheathing, and the underside of the roof
 2445 shall have at least 1 hour of fire resistance for a width not
 2446 less than 4 feet on each side of the wall.

2447 (c) Each dwelling unit sharing such wall shall be designed
 2448 and constructed to maintain its structural integrity independent
 2449 of the unit on the opposite side of the wall.

2450 Section 84. Subsection (16) of section 489.103, Florida
 2451 Statutes, is amended to read:

2452 489.103 Exemptions.—This part does not apply to:

2453 (16) An architect ~~or landscape architect~~ licensed pursuant
 2454 to chapter 481 or an engineer licensed pursuant to chapter 471
 2455 who offers or renders design-build services which may require
 2456 the services of a contractor certified or registered pursuant to
 2457 the provisions of this chapter, as long as the contractor
 2458 services to be performed under the terms of the design-build
 2459 contract are offered and rendered by a certified or registered
 2460 general contractor in accordance with this chapter.

2461 Section 85. Subsection (7) of section 558.002, Florida
 2462 Statutes, is amended to read:

HB 5005

2011

2463 558.002 Definitions.—As used in this chapter, the term:
 2464 (7) "Design professional" means a person, as defined in s.
 2465 1.01, who is licensed in this state as an architect, interior
 2466 designer, landscape architect, engineer, or surveyor.

2467 Section 86. Subsection (4) of section 725.08, Florida
 2468 Statutes, is amended to read:

2469 725.08 Design professional contracts; limitation in
 2470 indemnification.—

2471 (4) "Design professional" means an ~~individual or entity~~
 2472 ~~licensed by the state who holds a current certificate of~~
 2473 ~~registration under chapter 481 to practice architecture or~~
 2474 ~~landscape architecture,~~ architect, landscape architect,
 2475 professional surveyor and mapper, or engineer under chapter 472
 2476 ~~to practice land surveying and mapping, or under chapter 471 to~~
 2477 ~~practice engineering,~~ and who enters into a professional
 2478 services contract.

2479 Section 87. Chapter 492, Florida Statutes, consisting of
 2480 sections 492.101, 492.102, 492.103, 492.104, 492.105, 492.106,
 2481 492.107, 492.108, 492.109, 492.1101, 492.111, 492.112, 492.113,
 2482 492.114, 492.115, 492.116, and 492.1165, is repealed.

2483 Section 88. Section 373.1175, Florida Statutes, is amended
 2484 to read:

2485 373.1175 Signing and sealing by ~~professional~~ geologists.—

2486 (1) If an application for a permit or license, or the
 2487 performance of an activity regulated under this chapter,
 2488 requires the services of a ~~professional~~ geologist ~~as provided~~
 2489 ~~for in chapter 492,~~ the department or governing board of a water
 2490 management district may require that a ~~professional~~ geologist

HB 5005

2011

2491 ~~licensed under chapter 492~~ sign and seal any documents and
 2492 reports submitted in connection with the permit application or
 2493 regulated activity.

2494 (2) The cost of such signing and sealing by a ~~professional~~
 2495 geologist shall be borne by the permit applicant or permittee.

2496 (3) ~~Nothing in~~ This section does not ~~shall be construed to~~
 2497 prevent or prohibit the practice by professional engineers
 2498 pursuant to chapter 471.

2499 Section 89. Paragraph (b) of subsection (5) of section
 2500 376.80, Florida Statutes, is amended to read:

2501 376.80 Brownfield program administration process.—

2502 (5) The person responsible for brownfield site
 2503 rehabilitation must enter into a brownfield site rehabilitation
 2504 agreement with the department or an approved local pollution
 2505 control program if actual contamination exists at the brownfield
 2506 site. The brownfield site rehabilitation agreement must include:

2507 (b) A commitment to conduct site rehabilitation activities
 2508 under the observation of professional engineers ~~or geologists~~
 2509 who are registered in accordance with the requirements of
 2510 chapter 471 or geologists ~~chapter 492, respectively~~. Submittals
 2511 provided by the person responsible for brownfield site
 2512 rehabilitation must be signed and sealed by a professional
 2513 engineer registered under chapter 471, or a ~~professional~~
 2514 geologist ~~registered under chapter 492~~, certifying that the
 2515 submittal and associated work comply with the law and rules of
 2516 the department and those governing the profession. In addition,
 2517 upon completion of the approved remedial action, the department
 2518 shall require a professional engineer registered under chapter

HB 5005

2011

2519 | 471 or a ~~professional~~ geologist ~~registered under chapter 492~~ to
 2520 | certify that the corrective action was, to the best of his or
 2521 | her knowledge, completed in substantial conformance with the
 2522 | plans and specifications approved by the department.

2523 | Section 90. Subsection (3) of section 377.075, Florida
 2524 | Statutes, is amended to read:

2525 | 377.075 Division of Technical Services; geological
 2526 | functions.—

2527 | (3) STATE GEOLOGIST.—The geological functions of the
 2528 | division shall be under the direction of a full-time
 2529 | ~~professional geologist who is registered in this state,~~ who
 2530 | shall be of established reputation, and who shall be known as
 2531 | the State Geologist.

2532 | Section 91. Paragraph (a) of subsection (6) of section
 2533 | 403.087, Florida Statutes, is amended to read:

2534 | 403.087 Permits; general issuance; denial; revocation;
 2535 | prohibition; penalty.—

2536 | (6) (a) The department shall require a processing fee in an
 2537 | amount sufficient, to the greatest extent possible, to cover the
 2538 | costs of reviewing and acting upon any application for a permit
 2539 | or request for site-specific alternative criteria or for an
 2540 | exemption from water quality criteria and to cover the costs of
 2541 | surveillance and other field services and related support
 2542 | activities associated with any permit or plan approval issued
 2543 | pursuant to this chapter. The department shall review the fees
 2544 | authorized under this chapter at least once every 5 years and
 2545 | shall adjust the fees upward, as necessary, within the fee caps
 2546 | established in this paragraph to reflect changes in the Consumer

HB 5005

2011

2547 Price Index or similar inflation indicator. The department shall
2548 establish by rule the inflation index to be used for this
2549 purpose. In the event of deflation, the department shall consult
2550 with the Executive Office of the Governor and the Legislature to
2551 determine whether downward fee adjustments are appropriate based
2552 on the current budget and appropriation considerations. However,
2553 when an application is received without the required fee, the
2554 department shall acknowledge receipt of the application and
2555 shall immediately return the unprocessed application to the
2556 applicant and shall take no further action until the application
2557 is received with the appropriate fee. The department shall adopt
2558 a schedule of fees by rule, subject to the following
2559 limitations:

2560 1. The fee for any of the following may not exceed
2561 \$32,500:

2562 a. Hazardous waste, construction permit.

2563 b. Hazardous waste, operation permit.

2564 c. Hazardous waste, postclosure permit, or clean closure
2565 plan approval.

2566 d. Hazardous waste, corrective action permit.

2567 2. The permit fee for a drinking water construction or
2568 operation permit, not including the operation license fee
2569 required under s. 403.861(7), shall be at least \$500 and may not
2570 exceed \$15,000.

2571 3. The permit fee for a Class I injection well
2572 construction permit may not exceed \$12,500.

2573 4. The permit fee for any of the following permits may not
2574 exceed \$10,000:

HB 5005

2011

- 2575 | a. Solid waste, construction permit.
- 2576 | b. Solid waste, operation permit.
- 2577 | c. Class I injection well, operation permit.
- 2578 | 5. The permit fee for any of the following permits may not
- 2579 | exceed \$7,500:
- 2580 | a. Air pollution, construction permit.
- 2581 | b. Solid waste, closure permit.
- 2582 | c. Domestic waste residuals, construction or operation
- 2583 | permit.
- 2584 | d. Industrial waste, operation permit.
- 2585 | e. Industrial waste, construction permit.
- 2586 | 6. The permit fee for any of the following permits may not
- 2587 | exceed \$5,000:
- 2588 | a. Domestic waste, operation permit.
- 2589 | b. Domestic waste, construction permit.
- 2590 | 7. The permit fee for any of the following permits may not
- 2591 | exceed \$4,000:
- 2592 | a. Wetlands resource management—(dredge and fill and
- 2593 | mangrove alteration).
- 2594 | b. Hazardous waste, research and development permit.
- 2595 | c. Air pollution, operation permit, for sources not
- 2596 | subject to s. 403.0872.
- 2597 | d. Class III injection well, construction, operation, or
- 2598 | abandonment permits.
- 2599 | 8. The permit fee for a drinking water distribution system
- 2600 | permit, including a general permit, shall be at least \$500 and
- 2601 | may not exceed \$1,000.
- 2602 | 9. The permit fee for Class V injection wells,

HB 5005

2011

2603 construction, operation, and abandonment permits may not exceed
 2604 \$750.

2605 10. The permit fee for domestic waste collection system
 2606 permits may not exceed \$500.

2607 11. The permit fee for stormwater operation permits may
 2608 not exceed \$100.

2609 12. Except as provided in subparagraph 8., the general
 2610 permit fees for permits that require certification by a
 2611 registered professional engineer or a ~~professional~~ geologist may
 2612 not exceed \$500, and the general permit fee for other permit
 2613 types may not exceed \$100.

2614 13. The fee for a permit issued pursuant to s. 403.816 is
 2615 \$5,000, and the fee for any modification of such permit
 2616 requested by the applicant is \$1,000.

2617 14. The regulatory program and surveillance fees for
 2618 facilities permitted pursuant to s. 403.088 or s. 403.0885, or
 2619 for facilities permitted pursuant to s. 402 of the Clean Water
 2620 Act, as amended, 33 U.S.C. ss. 1251 et seq., and for which the
 2621 department has been granted administrative authority, shall be
 2622 limited as follows:

2623 a. The fees for domestic wastewater facilities shall not
 2624 exceed \$7,500 annually. The department shall establish a sliding
 2625 scale of fees based on the permitted capacity and shall ensure
 2626 smaller domestic waste dischargers do not bear an inordinate
 2627 share of costs of the program.

2628 b. The annual fees for industrial waste facilities shall
 2629 not exceed \$11,500. The department shall establish a sliding
 2630 scale of fees based upon the volume, concentration, or nature of

HB 5005

2011

2631 the industrial waste discharge and shall ensure smaller
 2632 industrial waste dischargers do not bear an inordinate share of
 2633 costs of the program.

2634 c. The department may establish a fee, not to exceed the
 2635 amounts in subparagraphs 5. and 6., to cover additional costs of
 2636 review required for permit modification or construction
 2637 engineering plans.

2638 Section 92. Subsection (1) of section 403.0877, Florida
 2639 Statutes, is amended to read:

2640 403.0877 Certification by professionals regulated by the
 2641 Department of Business and Professional Regulation.—

2642 (1) ~~Nothing in This section does not authorize shall be~~
 2643 ~~construed as specific authority for~~ a water management district
 2644 or the department to require certification by a professional
 2645 engineer licensed under chapter 471, a professional landscape
 2646 architect licensed under part II of chapter 481, ~~a professional~~
 2647 ~~geologist licensed under chapter 492,~~ or a professional surveyor
 2648 and mapper licensed under chapter 472, for an activity that is
 2649 not within the definition or scope of practice of the regulated
 2650 profession.

2651 Section 93. Subsection (1) of section 469.004, Florida
 2652 Statutes, is amended to read:

2653 469.004 License; asbestos consultant; asbestos
 2654 contractor.—

2655 (1) All asbestos consultants must be licensed by the
 2656 department. An asbestos consultant's license may be issued only
 2657 to an applicant who holds a current, valid, active license as an
 2658 architect issued under chapter 481; holds a current, valid,

HB 5005

2011

2659 active license as a professional engineer issued under chapter
 2660 471; ~~holds a current, valid, active license as a professional~~
 2661 ~~geologist issued under chapter 492;~~ is a diplomat of the
 2662 American Board of Industrial Hygiene; or has been awarded
 2663 designation as a Certified Safety Professional by the Board of
 2664 Certified Safety Professionals.

2665 Section 94. Subsection (2) of section 627.706, Florida
 2666 Statutes, is amended to read:

2667 627.706 Sinkhole insurance; catastrophic ground cover
 2668 collapse; definitions.—

2669 (2) As used in ss. 627.706-627.7074, and as used in
 2670 connection with any policy providing coverage for a catastrophic
 2671 ground cover collapse or for sinkhole losses:

2672 (a) "Catastrophic ground cover collapse" means geological
 2673 activity that results in all the following:

- 2674 1. The abrupt collapse of the ground cover;
- 2675 2. A depression in the ground cover clearly visible to the
 2676 naked eye;
- 2677 3. Structural damage to the building, including the
 2678 foundation; and
- 2679 4. The insured structure being condemned and ordered to be
 2680 vacated by the governmental agency authorized by law to issue
 2681 such an order for that structure.

2682
 2683 Contents coverage applies if there is a loss resulting from a
 2684 catastrophic ground cover collapse. Structural damage consisting
 2685 merely of the settling or cracking of a foundation, structure,
 2686 or building does not constitute a loss resulting from a

HB 5005

2011

2687 catastrophic ground cover collapse.

2688 (b) ~~(f)~~ "Professional Geologist" means a person, ~~as defined~~
 2689 ~~by s. 492.102,~~ who has a bachelor's degree or higher in geology
 2690 or related earth science with expertise in the geology of
 2691 Florida. A ~~professional~~ geologist must have geological
 2692 experience and expertise in the identification of sinkhole
 2693 activity as well as other potential geologic causes of damage to
 2694 the structure.

2695 (c) ~~(e)~~ "Professional engineer" means a person, as defined
 2696 in s. 471.005, who has a bachelor's degree or higher in
 2697 engineering with a specialty in the geotechnical engineering
 2698 field. A professional engineer must have geotechnical experience
 2699 and expertise in the identification of sinkhole activity as well
 2700 as other potential causes of damage to the structure.

2701 (d) ~~(b)~~ "Sinkhole" means a landform created by subsidence
 2702 of soil, sediment, or rock as underlying strata are dissolved by
 2703 groundwater. A sinkhole may form by collapse into subterranean
 2704 voids created by dissolution of limestone or dolostone or by
 2705 subsidence as these strata are dissolved.

2706 (e) ~~(d)~~ "Sinkhole activity" means settlement or systematic
 2707 weakening of the earth supporting such property only when such
 2708 settlement or systematic weakening results from movement or
 2709 raveling of soils, sediments, or rock materials into
 2710 subterranean voids created by the effect of water on a limestone
 2711 or similar rock formation.

2712 (f) ~~(e)~~ "Sinkhole loss" means structural damage to the
 2713 building, including the foundation, caused by sinkhole activity.
 2714 Contents coverage shall apply only if there is structural damage

2715 to the building caused by sinkhole activity.

2716 Section 95. Subsections (2), (3), and (6) of section
 2717 627.707, Florida Statutes, are amended to read:

2718 627.707 Standards for investigation of sinkhole claims by
 2719 insurers; nonrenewals.—Upon receipt of a claim for a sinkhole
 2720 loss, an insurer must meet the following standards in
 2721 investigating a claim:

2722 (2) Following the insurer's initial inspection, the
 2723 insurer shall engage a professional engineer or a ~~professional~~
 2724 geologist to conduct testing as provided in s. 627.7072 to
 2725 determine the cause of the loss within a reasonable professional
 2726 probability and issue a report as provided in s. 627.7073, if:

2727 (a) The insurer is unable to identify a valid cause of the
 2728 damage or discovers damage to the structure which is consistent
 2729 with sinkhole loss; or

2730 (b) The policyholder demands testing in accordance with
 2731 this section or s. 627.7072.

2732 (3) Following the initial inspection of the insured
 2733 premises, the insurer shall provide written notice to the
 2734 policyholder disclosing the following information:

2735 (a) What the insurer has determined to be the cause of
 2736 damage, if the insurer has made such a determination.

2737 (b) A statement of the circumstances under which the
 2738 insurer is required to engage a professional engineer or a
 2739 ~~professional~~ geologist to verify or eliminate sinkhole loss and
 2740 to engage a professional engineer to make recommendations
 2741 regarding land and building stabilization and foundation repair.

2742 (c) A statement regarding the right of the policyholder to

2743 request testing by a professional engineer or a ~~professional~~
 2744 geologist and the circumstances under which the policyholder may
 2745 demand certain testing.

2746 (6) Except as provided in subsection (7), the fees and
 2747 costs of the professional engineer or the ~~professional~~ geologist
 2748 shall be paid by the insurer.

2749 Section 96. Section 627.7072, Florida Statutes, is amended
 2750 to read:

2751 627.7072 Testing standards for sinkholes.—The professional
 2752 engineer and the ~~professional~~ geologist shall perform such tests
 2753 as sufficient, in their professional opinion, to determine the
 2754 presence or absence of sinkhole loss or other cause of damage
 2755 within reasonable professional probability and for the
 2756 professional engineer to make recommendations regarding
 2757 necessary building stabilization and foundation repair.

2758 Section 97. Subsection (1) of section 627.7073, Florida
 2759 Statutes, is amended to read:

2760 627.7073 Sinkhole reports.—

2761 (1) Upon completion of testing as provided in s. 627.7072,
 2762 the professional engineer or the ~~professional~~ geologist shall
 2763 issue a report and certification to the insurer and the
 2764 policyholder as provided in this section.

2765 (a) Sinkhole loss is verified if, based upon tests
 2766 performed in accordance with s. 627.7072, a professional
 2767 engineer or a ~~professional~~ geologist issues a written report and
 2768 certification stating:

2769 1. That the cause of the actual physical and structural
 2770 damage is sinkhole activity within a reasonable professional

2771 probability.

2772 2. That the analyses conducted were of sufficient scope to
 2773 identify sinkhole activity as the cause of damage within a
 2774 reasonable professional probability.

2775 3. A description of the tests performed.

2776 4. A recommendation by the professional engineer of
 2777 methods for stabilizing the land and building and for making
 2778 repairs to the foundation.

2779 (b) If sinkhole activity is eliminated as the cause of
 2780 damage to the structure, the professional engineer or the
 2781 ~~professional~~ geologist shall issue a written report and
 2782 certification to the policyholder and the insurer stating:

2783 1. That the cause of the damage is not sinkhole activity
 2784 within a reasonable professional probability.

2785 2. That the analyses and tests conducted were of
 2786 sufficient scope to eliminate sinkhole activity as the cause of
 2787 damage within a reasonable professional probability.

2788 3. A statement of the cause of the damage within a
 2789 reasonable professional probability.

2790 4. A description of the tests performed.

2791 (c) The respective findings, opinions, and recommendations
 2792 of the professional engineer or the ~~professional~~ geologist as to
 2793 the cause of distress to the property and the findings,
 2794 opinions, and recommendations of the professional engineer as to
 2795 land and building stabilization and foundation repair shall be
 2796 presumed correct.

2797 Section 98. Paragraph (b) of subsection (1) of section
 2798 627.7074, Florida Statutes, is amended to read:

HB 5005

2011

2799 627.7074 Alternative procedure for resolution of disputed
2800 sinkhole insurance claims.—

2801 (1) As used in this section, the term:

2802 (b) "Neutral evaluator" means a professional engineer or a
2803 ~~professional~~ geologist who has completed a course of study in
2804 alternative dispute resolution designed or approved by the
2805 department for use in the neutral evaluation process, who is
2806 determined to be fair and impartial.

2807 Section 99. Subsection (2) of section 849.0935, Florida
2808 Statutes, is amended to read:

2809 849.0935 Charitable, nonprofit organizations; drawings by
2810 chance; required disclosures; unlawful acts and practices;
2811 penalties.—

2812 (2) Section ~~The provisions of s.~~ 849.09 does ~~shall~~ not be
2813 ~~construed to~~ prohibit an organization qualified under 26 U.S.C.
2814 s. 501(c) (3), (4), (7), (8), (10), or (19) from conducting
2815 drawings by chance pursuant to the authority granted by this
2816 section, ~~provided the organization has complied with all~~
2817 ~~applicable provisions of chapter 496.~~

2818 Section 100. Chapter 496, Florida Statutes, consisting of
2819 sections 496.401, 496.402, 496.403, 496.404, 496.405, 496.406,
2820 496.407, 496.409, 496.410, 496.411, 496.412, 496.413, 496.414,
2821 496.415, 496.416, 496.417, 496.418, 496.419, 496.420, 496.421,
2822 496.422, 496.423, 496.424, 496.425, 496.4255, and 496.426, is
2823 repealed.

2824 Section 101. Paragraph (b) of subsection (3) of section
2825 110.181, Florida Statutes, is amended to read:

2826 110.181 Florida State Employees' Charitable Campaign.—

HB 5005

2011

2827 (3) RULEMAKING AUTHORITY; ADMINISTRATIVE REVIEW.—
 2828 (b) Department action which adversely affects the
 2829 substantial interests of a party may be subject to a hearing.
 2830 The proceeding shall be conducted in accordance with chapter
 2831 120, ~~except that the time limits set forth in s. 496.405(7)~~
 2832 ~~shall prevail to the extent of any conflict.~~
 2833 Section 102. Subsections (2) and (3) of section 316.2045,
 2834 Florida Statutes, are amended to read:
 2835 316.2045 Obstruction of public streets, highways, and
 2836 roads.—
 2837 (2) It is unlawful, without proper authorization or a
 2838 lawful permit, for any person or persons willfully to obstruct
 2839 the free, convenient, and normal use of any public street,
 2840 highway, or road by any of the means specified in subsection (1)
 2841 in order to solicit. Any person who violates the provisions of
 2842 this subsection is guilty of a misdemeanor of the second degree,
 2843 punishable as provided in s. 775.082 or s. 775.083.
 2844 Organizations qualified under s. 501(c)(3) of the Internal
 2845 Revenue Code ~~and registered pursuant to chapter 496~~, or persons
 2846 or organizations acting on their behalf are exempted from the
 2847 provisions of this subsection for activities on streets or roads
 2848 not maintained by the state. Permits for the use of any portion
 2849 of a state-maintained road or right-of-way shall be required
 2850 only for those purposes and in the manner set out in s. 337.406.
 2851 (3) Permits for the use of any street, road, or right-of-
 2852 way not maintained by the state may be issued by the appropriate
 2853 local government. An organization that is qualified under s.
 2854 501(c)(3) of the Internal Revenue Code ~~and registered under~~

HB 5005

2011

2855 ~~chapter 496~~, or a person or organization acting on behalf of
2856 that organization, is exempt from local requirements for a
2857 permit issued under this subsection for charitable solicitation
2858 activities on or along streets or roads that are not maintained
2859 by the state under the following conditions:

2860 (a) The organization, or the person or organization acting
2861 on behalf of the organization, must provide all of the following
2862 to the local government:

2863 1. No fewer than 14 calendar days prior to the proposed
2864 solicitation, the name and address of the person or organization
2865 that will perform the solicitation and the name and address of
2866 the organization that will receive funds from the solicitation.

2867 2. For review and comment, a plan for the safety of all
2868 persons participating in the solicitation, as well as the
2869 motoring public, at the locations where the solicitation will
2870 take place.

2871 3. Specific details of the location or locations of the
2872 proposed solicitation and the hours during which the
2873 solicitation activities will occur.

2874 4. Proof of commercial general liability insurance against
2875 claims for bodily injury and property damage occurring on
2876 streets, roads, or rights-of-way or arising from the solicitor's
2877 activities or use of the streets, roads, or rights-of-way by the
2878 solicitor or the solicitor's agents, contractors, or employees.
2879 The insurance shall have a limit of not less than \$1 million per
2880 occurrence for the general aggregate. The certificate of
2881 insurance shall name the local government as an additional
2882 insured and shall be filed with the local government no later

HB 5005

2011

2883 | than 72 hours before the date of the solicitation.

2884 | ~~5. Proof of registration with the Department of~~
 2885 | ~~Agriculture and Consumer Services pursuant to s. 496.405 or~~
 2886 | ~~proof that the soliciting organization is exempt from the~~
 2887 | ~~registration requirement.~~

2888 | (b) Organizations or persons meeting the requirements of
 2889 | subparagraphs (a)1.-5. may solicit for a period not to exceed 10
 2890 | cumulative days within 1 calendar year.

2891 | (c) All solicitation shall occur during daylight hours
 2892 | only.

2893 | (d) Solicitation activities shall not interfere with the
 2894 | safe and efficient movement of traffic and shall not cause
 2895 | danger to the participants or the public.

2896 | (e) No person engaging in solicitation activities shall
 2897 | persist after solicitation has been denied, act in a demanding
 2898 | or harassing manner, or use any sound or voice-amplifying
 2899 | apparatus or device.

2900 | (f) All persons participating in the solicitation shall be
 2901 | at least 18 years of age and shall possess picture
 2902 | identification.

2903 | (g) Signage providing notice of the solicitation shall be
 2904 | posted at least 500 feet before the site of the solicitation.

2905 | (h) The local government may stop solicitation activities
 2906 | if any conditions or requirements of this subsection are not
 2907 | met.

2908 | Section 103. Subsection (8) of section 320.023, Florida
 2909 | Statutes, is amended to read:

2910 | 320.023 Requests to establish voluntary checkoff on motor

HB 5005

2011

2911 vehicle registration application.—

2912 ~~(8) All organizations seeking to establish a voluntary~~
 2913 ~~contribution on a motor vehicle registration application that~~
 2914 ~~are required to operate under the Solicitation of Contributions~~
 2915 ~~Act, as provided in chapter 496, must do so before funds may be~~
 2916 ~~distributed.~~

2917 Section 104. Subsection (8) of section 322.081, Florida
 2918 Statutes, is amended to read:

2919 322.081 Requests to establish voluntary checkoff on
 2920 driver's license application.—

2921 ~~(8) All organizations seeking to establish a voluntary~~
 2922 ~~contribution on a driver's license application that are required~~
 2923 ~~to operate under the Solicitation of Contributions Act, as~~
 2924 ~~provided in chapter 496, must do so before funds may be~~
 2925 ~~distributed.~~

2926 Section 105. Paragraph (d) of subsection (3) and paragraph
 2927 (d) of subsection (4) of section 413.033, Florida Statutes, are
 2928 amended to read:

2929 413.033 Definitions.—As used in ss. 413.032-413.037:

2930 (3) "Qualified nonprofit agency for the blind" means an
 2931 agency:

2932 (d) Which meets the criteria for determining nonprofit
 2933 status under the provisions of s. 196.195 ~~and is registered and~~
 2934 ~~in good standing as a charitable organization with the~~
 2935 ~~Department of Agriculture and Consumer Services under the~~
 2936 ~~provisions of chapter 496.~~

2937 (4) "Qualified nonprofit agency for other severely
 2938 handicapped" means an agency:

HB 5005

2011

2939 (d) Which meets the criteria for determining nonprofit
 2940 status under the provisions of s. 196.195 ~~and is registered and~~
 2941 ~~in good standing as a charitable organization with the~~
 2942 ~~Department of Agriculture and Consumer Services under the~~
 2943 ~~provisions of chapter 496.~~

2944 Section 106. Subsection (2) of section 550.0351, Florida
 2945 Statutes, is amended to read:

2946 550.0351 Charity racing days.—

2947 (2) The proceeds of charity performances shall be paid to
 2948 qualified beneficiaries selected by the permitholders from an
 2949 authorized list of charities on file with the division. Eligible
 2950 charities include any charity that provides ~~evidence of~~
 2951 ~~compliance with the provisions of chapter 496 and~~ evidence of
 2952 possession of a valid exemption from federal taxation issued by
 2953 the Internal Revenue Service. In addition, the authorized list
 2954 must include the Racing Scholarship Trust Fund, the Historical
 2955 Resources Operating Trust Fund, major state and private
 2956 institutions of higher learning, and Florida community colleges.

2957 Section 107. Section 550.1647, Florida Statutes, is
 2958 amended to read:

2959 550.1647 Greyhound permitholders; unclaimed tickets;
 2960 breaks.—All money or other property represented by any
 2961 unclaimed, uncashed, or abandoned pari-mutuel ticket which has
 2962 remained in the custody of or under the control of any
 2963 permitholder authorized to conduct greyhound racing pari-mutuel
 2964 pools in this state for a period of 1 year after the date the
 2965 pari-mutuel ticket was issued, if the rightful owner or owners
 2966 thereof have made no claim or demand for such money or other

HB 5005

2011

2967 | property within that period of time, shall, with respect to live
 2968 | races conducted by the permitholder, be remitted to the state
 2969 | pursuant to s. 550.1645; however, such permitholder shall be
 2970 | entitled to a credit in each state fiscal year in an amount
 2971 | equal to the actual amount remitted in the prior state fiscal
 2972 | year which may be applied against any taxes imposed pursuant to
 2973 | this chapter. In addition, each permitholder shall pay, from any
 2974 | source, including the proceeds from performances conducted
 2975 | pursuant to s. 550.0351, an amount not less than 10 percent of
 2976 | the amount of the credit provided by this section to any bona
 2977 | fide organization that promotes or encourages the adoption of
 2978 | greyhounds. As used in this chapter, the term "bona fide
 2979 | organization that promotes or encourages the adoption of
 2980 | greyhounds" means any organization that ~~provides evidence of~~
 2981 | ~~compliance with chapter 496~~ and possesses a valid exemption from
 2982 | federal taxation issued by the Internal Revenue Service. Such
 2983 | bona fide organization, as a condition of adoption, must provide
 2984 | sterilization of greyhounds by a licensed veterinarian before
 2985 | relinquishing custody of the greyhound to the adopter. The fee
 2986 | for sterilization may be included in the cost of adoption.

2987 | Section 108. Paragraph (a) of subsection (3) of section
 2988 | 741.0305, Florida Statutes, is amended to read:

2989 | 741.0305 Marriage fee reduction for completion of
 2990 | premarital preparation course.—

2991 | (3)(a) All individuals electing to participate in a
 2992 | premarital preparation course shall choose from the following
 2993 | list of qualified instructors:

2994 | 1. A psychologist licensed under chapter 490.

HB 5005

2011

- 2995 2. A clinical social worker licensed under chapter 491.
 2996 3. A marriage and family therapist licensed under chapter
 2997 491.
 2998 4. A mental health counselor licensed under chapter 491.
 2999 5. An official representative of a religious institution
 3000 ~~which is recognized under s. 496.404(19)~~, if the representative
 3001 has relevant training.

3002 6. Any other provider designated by a judicial circuit,
 3003 including, but not limited to, school counselors who are
 3004 certified to offer such courses. Each judicial circuit may
 3005 establish a roster of area course providers, including those who
 3006 offer the course on a sliding fee scale or for free.

3007 Section 109. Paragraph (a) of subsection (1) of section
 3008 775.0861, Florida Statutes, is amended to read:

3009 775.0861 Offenses against persons on the grounds of
 3010 religious institutions; reclassification.-

3011 (1) For purposes of this section, the term:

3012 (a) "Religious institution" means any church,
 3013 ecclesiastical or denominational organization, or established
 3014 physical place for worship in this state at which nonprofit
 3015 religious services and activities are regularly conducted and
 3016 carried on, and includes those bona fide religious groups which
 3017 do not maintain specific places of worship. The term includes
 3018 any separate group or corporation which forms an integral part
 3019 of a religious institution which is exempt from federal income
 3020 tax under the provisions of s. 501(c) (3) of the Internal Revenue
 3021 Code, and which is not primarily supported by funds solicited
 3022 outside its own membership or congregation ~~is as defined in s.~~

HB 5005

2011

3023 ~~496.404.~~

3024 Section 110. Paragraph (a) of subsection (8) of section
3025 790.166, Florida Statutes, is amended to read:

3026 790.166 Manufacture, possession, sale, delivery, display,
3027 use, or attempted or threatened use of a weapon of mass
3028 destruction or hoax weapon of mass destruction prohibited;
3029 definitions; penalties.—

3030 (8) For purposes of this section, the term "weapon of mass
3031 destruction" does not include:

3032 (a) A device or instrument that emits or discharges smoke
3033 or an offensive, noxious, or irritant liquid, powder, gas, or
3034 chemical for the purpose of immobilizing, incapacitating, or
3035 thwarting an attack by a person or animal and that is lawfully
3036 possessed or used by a person for the purpose of self-protection
3037 or, as provided in subsection (7), is lawfully possessed or used
3038 by any member or employee of the Armed Forces of the United
3039 States, a federal or state governmental agency, or a private
3040 entity. A member or employee of a federal or state governmental
3041 agency includes, but is not limited to, a law enforcement
3042 officer, as defined in s. 784.07; a federal law enforcement
3043 officer, as defined in s. 901.1505; a firefighter, as defined in
3044 s. 633.30; and an ambulance driver, emergency medical
3045 technician, or paramedic, as defined in s. 401.23 ~~emergency~~
3046 ~~service employee, as defined in s. 496.404.~~

3047 Section 111. Paragraph (d) of subsection (3) of section
3048 843.16, Florida Statutes, is amended to read:

3049 843.16 Unlawful to install or transport radio equipment
3050 using assigned frequency of state or law enforcement officers;

HB 5005

2011

3051 definitions; exceptions; penalties.—

3052 (3) This section does not apply to the following:

3053 (d) Any sworn law enforcement officer as defined in s.
 3054 943.10; a firefighter, as defined in s. 633.30; or an ambulance
 3055 driver, emergency medical technician, or paramedic, as defined
 3056 in s. 401.23 ~~or emergency service employee as defined in s.~~
 3057 ~~496.404~~ while using personal transportation to and from work.

3058 Section 112. Section 500.459, Florida Statutes, is
 3059 repealed.

3060 Section 113. Section 500.511, Florida Statutes, is amended
 3061 to read:

3062 500.511 Bottled water plants; packed ice plants; Fees;
 3063 enforcement; ~~preemption.—~~

3064 ~~(1) FEES.—All fees collected under s. 500.459 shall be~~
 3065 ~~deposited into the General Inspection Trust Fund and shall be~~
 3066 ~~accounted for separately and used for the sole purpose of~~
 3067 ~~administering the provisions of such section.~~

3068 ~~(2) ENFORCEMENT AND PENALTIES.—In addition to the~~
 3069 ~~provisions contained in s. 500.459, the department may enforce~~
 3070 ~~s. 500.459 in the manner provided in s. 500.121. Any person who~~
 3071 ~~violates a provision of s. 500.459 or any rule adopted under~~
 3072 ~~such section shall be punished as provided in such section.~~
 3073 ~~However, criminal penalties may not be imposed against any~~
 3074 ~~person who violates a rule.~~

3075 ~~(3) PREEMPTION OF AUTHORITY TO REGULATE.—Regulation of~~
 3076 ~~bottled water plants, water vending machines, water vending~~
 3077 ~~machine operators, and packaged ice plants is preempted by the~~
 3078 ~~state. No county or municipality may adopt or enforce any~~

HB 5005

2011

3079 ordinance that regulates the licensure or operation of bottled
 3080 water plants, ~~water vending machines,~~ or packaged ice plants,
 3081 unless it is determined that unique conditions exist within the
 3082 county which require the county to regulate such entities in
 3083 order to protect the public health. This subsection does not
 3084 prohibit a county or municipality from requiring a business tax
 3085 pursuant to chapter 205.

3086 Section 114. Sections 501.012, 501.0125, 501.013, 501.014,
 3087 501.015, 501.016, 501.017, 501.018, and 501.019, Florida
 3088 Statutes, are repealed.

3089 Section 115. Paragraph (d) of subsection (2) of section
 3090 501.165, Florida Statutes, is amended to read:

3091 501.165 Automatic renewal of service contracts.—

3092 (2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

3093 (d) This subsection does not apply to:

3094 1. A financial institution as defined in s. 655.005(1)(h)
 3095 or any depository institution as defined in 12 U.S.C. s.
 3096 1813(c)(2).

3097 2. A foreign bank maintaining a branch or agency licensed
 3098 under the laws of any state of the United States.

3099 3. Any subsidiary or affiliate of an entity described in
 3100 subparagraph 1. or subparagraph 2.

3101 ~~4. A health studio as defined in s. 501.0125(1).~~

3102 4.5. Any entity licensed under chapter 624, chapter 627,
 3103 chapter 634, chapter 636, or chapter 641.

3104 5.6. Any electric utility as defined in s. 366.02(2).

3105 6.7. Any private company as defined in s. 180.05 providing
 3106 services described in chapter 180 that is competing against a

HB 5005

2011

3107 governmental entity or has a governmental entity providing
 3108 billing services on its behalf.

3109 Section 116. Section 501.143, Florida Statutes, is
 3110 repealed.

3111 Section 117. Section 205.1969, Florida Statutes, is
 3112 repealed.

3113 Section 118. Part IV of chapter 501, Florida Statutes,
 3114 consisting of sections 501.601, 501.602, 501.603, 501.604,
 3115 501.605, 501.606, 501.607, 501.608, 501.609, 501.611, 501.612,
 3116 501.613, 501.614, 501.615, 501.616, 501.617, 501.618, 501.619,
 3117 501.621, 501.622, 501.623, 501.624, 501.625, and 501.626, is
 3118 repealed.

3119 Section 119. Section 205.1973, Florida Statutes, is
 3120 repealed.

3121 Section 120. Paragraph (b) of subsection (1) of section
 3122 501.165, Florida Statutes, is amended to read:

3123 501.165 Automatic renewal of service contracts.—

3124 (1) DEFINITIONS.—As used in this section:

3125 (b) "Consumer" means a natural person ~~an individual, as~~
 3126 ~~defined in s. 501.603,~~ receiving service, maintenance, or repair
 3127 under a service contract. The term does not include an
 3128 individual engaged in business or employed by or otherwise
 3129 acting on behalf of a governmental entity if the individual
 3130 enters into the service contract as part of or ancillary to the
 3131 individual's business activities or on behalf of the business or
 3132 governmental entity.

3133 Section 121. Paragraph (c) of subsection (1) of section
 3134 648.44, Florida Statutes, is amended to read:

HB 5005

2011

3135 648.44 Prohibitions; penalty.—

3136 (1) A bail bond agent or temporary bail bond agent may
3137 not:

3138 (c) Initiate in-person or telephone solicitation after
3139 9:00 p.m. or before 8:00 a.m., in the case of domestic violence
3140 cases, at the residence of the detainee or the detainee's
3141 family. Any solicitation not prohibited by this chapter must
3142 comply with the telephone solicitation requirements in s. ss.
3143 501.059(2) and (4), ~~501.613~~, and ~~501.616(6)~~.

3144 Section 122. Paragraph (a) of subsection (1) of section
3145 772.102, Florida Statutes, is amended to read:

3146 772.102 Definitions.—As used in this chapter, the term:

3147 (1) "Criminal activity" means to commit, to attempt to
3148 commit, to conspire to commit, or to solicit, coerce, or
3149 intimidate another person to commit:

3150 (a) Any crime that is chargeable by indictment or
3151 information under the following provisions:

3152 1. Section 210.18, relating to evasion of payment of
3153 cigarette taxes.

3154 2. Section 414.39, relating to public assistance fraud.

3155 3. Section 440.105 or s. 440.106, relating to workers'
3156 compensation.

3157 ~~4. Part IV of chapter 501, relating to telemarketing.~~

3158 ~~4.5.~~ Chapter 517, relating to securities transactions.

3159 ~~5.6.~~ Section 550.235 or s. 550.3551, relating to dogracing
3160 and horseracing.

3161 6.7. Chapter 550, relating to jai alai frontons.

3162 ~~7.8.~~ Chapter 552, relating to the manufacture,

HB 5005

2011

3163 distribution, and use of explosives.

3164 ~~8.9.~~ Chapter 562, relating to beverage law enforcement.

3165 ~~9.10.~~ Section 624.401, relating to transacting insurance

3166 without a certificate of authority, s. 624.437(4)(c)1., relating

3167 to operating an unauthorized multiple-employer welfare

3168 arrangement, or s. 626.902(1)(b), relating to representing or

3169 aiding an unauthorized insurer.

3170 ~~10.11.~~ Chapter 687, relating to interest and usurious

3171 practices.

3172 ~~11.12.~~ Section 721.08, s. 721.09, or s. 721.13, relating

3173 to real estate timeshare plans.

3174 ~~12.13.~~ Chapter 782, relating to homicide.

3175 ~~13.14.~~ Chapter 784, relating to assault and battery.

3176 ~~14.15.~~ Chapter 787, relating to kidnapping or human

3177 trafficking.

3178 ~~15.16.~~ Chapter 790, relating to weapons and firearms.

3179 ~~16.17.~~ Section 796.03, s. 796.04, s. 796.045, s. 796.05,

3180 or s. 796.07, relating to prostitution.

3181 ~~17.18.~~ Chapter 806, relating to arson.

3182 ~~18.19.~~ Section 810.02(2)(c), relating to specified

3183 burglary of a dwelling or structure.

3184 ~~19.20.~~ Chapter 812, relating to theft, robbery, and

3185 related crimes.

3186 ~~20.21.~~ Chapter 815, relating to computer-related crimes.

3187 ~~21.22.~~ Chapter 817, relating to fraudulent practices,

3188 false pretenses, fraud generally, and credit card crimes.

3189 ~~22.23.~~ Section 827.071, relating to commercial sexual

3190 exploitation of children.

HB 5005

2011

3191 ~~23.24.~~ Chapter 831, relating to forgery and
 3192 counterfeiting.

3193 ~~24.25.~~ Chapter 832, relating to issuance of worthless
 3194 checks and drafts.

3195 ~~25.26.~~ Section 836.05, relating to extortion.

3196 ~~26.27.~~ Chapter 837, relating to perjury.

3197 ~~27.28.~~ Chapter 838, relating to bribery and misuse of
 3198 public office.

3199 ~~28.29.~~ Chapter 843, relating to obstruction of justice.

3200 ~~29.30.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
 3201 or s. 847.07, relating to obscene literature and profanity.

3202 ~~30.31.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
 3203 s. 849.25, relating to gambling.

3204 ~~31.32.~~ Chapter 893, relating to drug abuse prevention and
 3205 control.

3206 ~~32.33.~~ Section 914.22 or s. 914.23, relating to witnesses,
 3207 victims, or informants.

3208 ~~33.34.~~ Section 918.12 or s. 918.13, relating to tampering
 3209 with jurors and evidence.

3210 Section 123. Paragraph (a) of subsection (1) of section
 3211 895.02, Florida Statutes, is amended to read:

3212 895.02 Definitions.—As used in ss. 895.01-895.08, the
 3213 term:

3214 (1) "Racketeering activity" means to commit, to attempt to
 3215 commit, to conspire to commit, or to solicit, coerce, or
 3216 intimidate another person to commit:

3217 (a) Any crime that is chargeable by petition, indictment,
 3218 or information under the following provisions of the Florida

HB 5005

2011

- 3219 Statutes:
- 3220 1. Section 210.18, relating to evasion of payment of
- 3221 cigarette taxes.
- 3222 2. Section 316.1935, relating to fleeing or attempting to
- 3223 elude a law enforcement officer and aggravated fleeing or
- 3224 eluding.
- 3225 3. Section 403.727(3)(b), relating to environmental
- 3226 control.
- 3227 4. Section 409.920 or s. 409.9201, relating to Medicaid
- 3228 fraud.
- 3229 5. Section 414.39, relating to public assistance fraud.
- 3230 6. Section 440.105 or s. 440.106, relating to workers'
- 3231 compensation.
- 3232 7. Section 443.071(4), relating to creation of a
- 3233 fictitious employer scheme to commit unemployment compensation
- 3234 fraud.
- 3235 8. Section 465.0161, relating to distribution of medicinal
- 3236 drugs without a permit as an Internet pharmacy.
- 3237 9. Section 499.0051, relating to crimes involving
- 3238 contraband and adulterated drugs.
- 3239 ~~10. Part IV of chapter 501, relating to telemarketing.~~
- 3240 10.11. Chapter 517, relating to sale of securities and
- 3241 investor protection.
- 3242 ~~11.12.~~ Section 550.235 or s. 550.3551, relating to
- 3243 dogracing and horseracing.
- 3244 12.13. Chapter 550, relating to jai alai frontons.
- 3245 13.14. Section 551.109, relating to slot machine gaming.
- 3246 14.15. Chapter 552, relating to the manufacture,

3247 distribution, and use of explosives.

3248 ~~15.16.~~ Chapter 560, relating to money transmitters, if the

3249 violation is punishable as a felony.

3250 ~~16.17.~~ Chapter 562, relating to beverage law enforcement.

3251 ~~17.18.~~ Section 624.401, relating to transacting insurance

3252 without a certificate of authority, s. 624.437(4)(c)1., relating

3253 to operating an unauthorized multiple-employer welfare

3254 arrangement, or s. 626.902(1)(b), relating to representing or

3255 aiding an unauthorized insurer.

3256 ~~18.19.~~ Section 655.50, relating to reports of currency

3257 transactions, when such violation is punishable as a felony.

3258 ~~19.20.~~ Chapter 687, relating to interest and usurious

3259 practices.

3260 ~~20.21.~~ Section 721.08, s. 721.09, or s. 721.13, relating

3261 to real estate timeshare plans.

3262 ~~21.22.~~ Section 775.13(5)(b), relating to registration of

3263 persons found to have committed any offense for the purpose of

3264 benefiting, promoting, or furthering the interests of a criminal

3265 gang.

3266 ~~22.23.~~ Section 777.03, relating to commission of crimes by

3267 accessories after the fact.

3268 ~~23.24.~~ Chapter 782, relating to homicide.

3269 ~~24.25.~~ Chapter 784, relating to assault and battery.

3270 ~~25.26.~~ Chapter 787, relating to kidnapping or human

3271 trafficking.

3272 ~~26.27.~~ Chapter 790, relating to weapons and firearms.

3273 ~~27.28.~~ Chapter 794, relating to sexual battery, but only

3274 if such crime was committed with the intent to benefit, promote,

HB 5005

2011

3275 or further the interests of a criminal gang, or for the purpose
 3276 of increasing a criminal gang member's own standing or position
 3277 within a criminal gang.

3278 ~~28.29.~~ Section 796.03, s. 796.035, s. 796.04, s. 796.045,
 3279 s. 796.05, or s. 796.07, relating to prostitution and sex
 3280 trafficking.

3281 ~~29.30.~~ Chapter 806, relating to arson and criminal
 3282 mischief.

3283 ~~30.31.~~ Chapter 810, relating to burglary and trespass.

3284 ~~31.32.~~ Chapter 812, relating to theft, robbery, and
 3285 related crimes.

3286 ~~32.33.~~ Chapter 815, relating to computer-related crimes.

3287 ~~33.34.~~ Chapter 817, relating to fraudulent practices,
 3288 false pretenses, fraud generally, and credit card crimes.

3289 ~~34.35.~~ Chapter 825, relating to abuse, neglect, or
 3290 exploitation of an elderly person or disabled adult.

3291 ~~35.36.~~ Section 827.071, relating to commercial sexual
 3292 exploitation of children.

3293 ~~36.37.~~ Chapter 831, relating to forgery and
 3294 counterfeiting.

3295 ~~37.38.~~ Chapter 832, relating to issuance of worthless
 3296 checks and drafts.

3297 ~~38.39.~~ Section 836.05, relating to extortion.

3298 ~~39.40.~~ Chapter 837, relating to perjury.

3299 ~~40.41.~~ Chapter 838, relating to bribery and misuse of
 3300 public office.

3301 ~~41.42.~~ Chapter 843, relating to obstruction of justice.

3302 ~~42.43.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,

HB 5005

2011

3303 or s. 847.07, relating to obscene literature and profanity.
 3304 ~~43.44.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
 3305 s. 849.25, relating to gambling.
 3306 ~~44.45.~~ Chapter 874, relating to criminal gangs.
 3307 ~~45.46.~~ Chapter 893, relating to drug abuse prevention and
 3308 control.
 3309 ~~46.47.~~ Chapter 896, relating to offenses related to
 3310 financial transactions.
 3311 ~~47.48.~~ Sections 914.22 and 914.23, relating to tampering
 3312 with or harassing a witness, victim, or informant, and
 3313 retaliation against a witness, victim, or informant.
 3314 ~~48.49.~~ Sections 918.12 and 918.13, relating to tampering
 3315 with jurors and evidence.
 3316 Section 124. Chapter 507, Florida Statutes, consisting of
 3317 sections 507.01, 507.02, 507.03, 507.04, 507.05, 507.06, 507.07,
 3318 507.08, 507.09, 507.10, 507.11, 507.12, and 507.13, is repealed.
 3319 Section 125. Section 205.1975, Florida Statutes, is
 3320 repealed.
 3321 Section 126. Subsection (1) of section 509.242, Florida
 3322 Statutes, is amended to read:
 3323 509.242 Public lodging establishments; classifications.—
 3324 (1) A public lodging establishment shall be classified as
 3325 a hotel, motel, resort condominium, nontransient apartment,
 3326 transient apartment, ~~roominghouse,~~ bed and breakfast inn, or
 3327 resort dwelling if the establishment satisfies the following
 3328 criteria:
 3329 (a) Hotel.—A hotel is any public lodging establishment
 3330 containing sleeping room accommodations for 25 or more guests

3331 and providing the services generally provided by a hotel and
 3332 recognized as a hotel in the community in which it is situated
 3333 or by the industry.

3334 (b) Motel.—A motel is any public lodging establishment
 3335 which offers rental units with an exit to the outside of each
 3336 rental unit, daily or weekly rates, offstreet parking for each
 3337 unit, a central office on the property with specified hours of
 3338 operation, a bathroom or connecting bathroom for each rental
 3339 unit, and at least six rental units, and which is recognized as
 3340 a motel in the community in which it is situated or by the
 3341 industry.

3342 (c) Resort condominium.—A resort condominium is any unit
 3343 or group of units in a condominium, cooperative, or timeshare
 3344 plan which is rented more than three times in a calendar year
 3345 for periods of less than 30 days or 1 calendar month, whichever
 3346 is less, or which is advertised or held out to the public as a
 3347 place regularly rented for periods of less than 30 days or 1
 3348 calendar month, whichever is less.

3349 (d) Nontransient apartment ~~or roominghouse~~.—A nontransient
 3350 apartment ~~or roominghouse~~ is a building or complex of buildings
 3351 in which 75 percent or more of the units are available for rent
 3352 to nontransient tenants.

3353 (e) Transient apartment ~~or roominghouse~~.—A transient
 3354 apartment ~~or roominghouse~~ is a building or complex of buildings
 3355 in which more than 25 percent of the units are advertised or
 3356 held out to the public as available for transient occupancy.

3357 ~~(f) Roominghouse. A roominghouse is any public lodging~~
 3358 ~~establishment that may not be classified as a hotel, motel,~~

HB 5005

2011

3359 ~~resort condominium, nontransient apartment, bed and breakfast~~
 3360 ~~inn, or transient apartment under this section. A roominghouse~~
 3361 ~~includes, but is not limited to, a boardinghouse.~~

3362 (f)~~(g)~~ Resort dwelling.—A resort dwelling is any
 3363 individually or collectively owned one-family, two-family,
 3364 three-family, or four-family dwelling house or dwelling unit
 3365 which is rented more than three times in a calendar year for
 3366 periods of less than 30 days or 1 calendar month, whichever is
 3367 less, or which is advertised or held out to the public as a
 3368 place regularly rented for periods of less than 30 days or 1
 3369 calendar month, whichever is less.

3370 (g)~~(h)~~ Bed and breakfast inn.—A bed and breakfast inn is a
 3371 family home structure, with no more than 15 sleeping rooms,
 3372 which has been modified to serve as a transient public lodging
 3373 establishment, which provides the accommodation and meal
 3374 services generally offered by a bed and breakfast inn, and which
 3375 is recognized as a bed and breakfast inn in the community in
 3376 which it is situated or by the hospitality industry.

3377 Section 127. Subsection (9) of section 509.221, Florida
 3378 Statutes, is amended to read:

3379 509.221 Sanitary regulations.—

3380 (9) Subsections (2), (5), and (6) do not apply to any
 3381 facility or unit classified as a resort condominium,
 3382 nontransient apartment, or resort dwelling as described in s.
 3383 509.242(1)(c), (d), and (f)~~(g)~~.

3384 Section 128. Chapter 555, Florida Statutes, consisting of
 3385 sections 555.01, 555.02, 555.03, 555.04, 555.05, 555.07, and
 3386 555.08, is repealed.

3387 Section 129. Part VIII of chapter 559, Florida Statutes,
 3388 consisting of sections 559.80, 559.801, 559.802, 559.803,
 3389 559.805, 559.807, 559.809, 559.811, 559.813, and 559.815, is
 3390 repealed.

3391 Section 130. Part IX of chapter 559, Florida Statutes,
 3392 consisting of sections 559.901, 559.902, 559.903, 559.904,
 3393 559.905, 559.907, 559.909, 559.911, 559.915, 559.916, 559.917,
 3394 559.919, 559.920, 559.921, 559.9215, 559.922, 559.92201, and
 3395 559.9221, is repealed.

3396 Section 131. Paragraph (a) of subsection (9) of section
 3397 320.27, Florida Statutes, is amended to read:

3398 320.27 Motor vehicle dealers.—

3399 (9) DENIAL, SUSPENSION, OR REVOCATION.—

3400 (a) The department may deny, suspend, or revoke any
 3401 license issued hereunder or under the provisions of s. 320.77 or
 3402 s. 320.771 upon proof that an applicant or a licensee has:

3403 1. Committed fraud or willful misrepresentation in
 3404 application for or in obtaining a license.

3405 2. Been convicted of a felony.

3406 3. Failed to honor a bank draft or check given to a motor
 3407 vehicle dealer for the purchase of a motor vehicle by another
 3408 motor vehicle dealer within 10 days after notification that the
 3409 bank draft or check has been dishonored. ~~If the transaction is~~
 3410 ~~disputed, the maker of the bank draft or check shall post a bond~~
 3411 ~~in accordance with the provisions of s. 559.917, and no~~
 3412 ~~proceeding for revocation or suspension shall be commenced until~~
 3413 ~~the dispute is resolved.~~

3414 4.a. Failed to provide payment within 10 business days to

HB 5005

2011

3415 the department for a check payable to the department that was
3416 dishonored due to insufficient funds in the amount due plus any
3417 statutorily authorized fee for uttering a worthless check. The
3418 department shall notify an applicant or licensee when the
3419 applicant or licensee makes payment to the department by a check
3420 that is subsequently dishonored by the bank due to insufficient
3421 funds. The applicant or licensee shall, within 10 business days
3422 after receiving the notice, provide payment to the department in
3423 the form of cash in the amount due plus any statutorily
3424 authorized fee. If the applicant or licensee fails to make such
3425 payment within 10 business days, the department may deny,
3426 suspend, or revoke the applicant's or licensee's motor vehicle
3427 dealer license.

3428 b. Stopped payment on a check payable to the department,
3429 issued a check payable to the department from an account that
3430 has been closed, or charged back a credit card transaction to
3431 the department. If an applicant or licensee commits any such
3432 act, the department may deny, suspend, or revoke the applicant's
3433 or licensee's motor vehicle dealer license.

3434 Section 132. Paragraph (a) of subsection (1) of section
3435 445.025, Florida Statutes, is amended to read:

3436 445.025 Other support services.—Support services shall be
3437 provided, if resources permit, to assist participants in
3438 complying with work activity requirements outlined in s.
3439 445.024. If resources do not permit the provision of needed
3440 support services, the regional workforce board may prioritize or
3441 otherwise limit provision of support services. This section does
3442 not constitute an entitlement to support services. Lack of

HB 5005

2011

3443 provision of support services may be considered as a factor in
3444 determining whether good cause exists for failing to comply with
3445 work activity requirements but does not automatically constitute
3446 good cause for failing to comply with work activity
3447 requirements, and does not affect any applicable time limit on
3448 the receipt of temporary cash assistance or the provision of
3449 services under chapter 414. Support services shall include, but
3450 need not be limited to:

3451 (1) TRANSPORTATION.—Transportation expenses may be
3452 provided to any participant when the assistance is needed to
3453 comply with work activity requirements or employment
3454 requirements, including transportation to and from a child care
3455 provider. Payment may be made in cash or tokens in advance or
3456 through reimbursement paid against receipts or invoices.
3457 Transportation services may include, but are not limited to,
3458 cooperative arrangements with the following: public transit
3459 providers; community transportation coordinators designated
3460 under chapter 427; school districts; churches and community
3461 centers; donated motor vehicle programs, van pools, and
3462 ridesharing programs; small enterprise developments and
3463 entrepreneurial programs that encourage participants to become
3464 transportation providers; public and private transportation
3465 partnerships; and other innovative strategies to expand
3466 transportation options available to program participants.

3467 (a) Regional workforce boards may provide payment for
3468 vehicle operational and repair expenses, including repair
3469 expenditures necessary to make a vehicle functional; vehicle
3470 registration fees; driver's license fees; and liability

HB 5005

2011

3471 insurance for the vehicle for a period of up to 6 months.
 3472 Request for vehicle repairs must be accompanied by an estimate
 3473 of the cost prepared by a repair facility ~~registered under s.~~
 3474 ~~559.904.~~

3475 Section 133. Paragraph (i) of subsection (1) of section
 3476 713.585, Florida Statutes, is redesignated as paragraph (h),
 3477 subsections (12) and (13) of that section are renumbered as
 3478 subsections (11) and (12), respectively, and present paragraph
 3479 (h) of subsection (1) and present subsection (11) of that
 3480 section is amended, to read:

3481 713.585 Enforcement of lien by sale of motor vehicle.—A
 3482 person claiming a lien under s. 713.58 for performing labor or
 3483 services on a motor vehicle may enforce such lien by sale of the
 3484 vehicle in accordance with the following procedures:

3485 (1) The lienor must give notice, by certified mail, return
 3486 receipt requested, within 15 business days, excluding Saturday
 3487 and Sunday, from the beginning date of the assessment of storage
 3488 charges on said motor vehicle, to the registered owner of the
 3489 vehicle, to the customer as indicated on the order for repair,
 3490 and to all other persons claiming an interest in or lien
 3491 thereon, as disclosed by the records of the Department of
 3492 Highway Safety and Motor Vehicles or of a corresponding agency
 3493 of any other state in which the vehicle appears registered. Such
 3494 notice must contain:

3495 ~~(h) Notice that the owner of the vehicle has a right to~~
 3496 ~~recover possession of the vehicle without instituting judicial~~
 3497 ~~proceedings by posting bond in accordance with the provisions of~~
 3498 ~~s. 559.917.~~

HB 5005

2011

3499 ~~(11) Nothing in this section shall operate in derogation~~
 3500 ~~of the rights and remedies established by s. 559.917.~~

3501 Section 134. Part XI of chapter 559, Florida Statutes,
 3502 consisting of sections 559.926, 559.927, 559.928, 559.9285,
 3503 559.929, 559.9295, 559.931, 559.932, 559.933, 559.9335, 559.934,
 3504 559.935, 559.9355, 559.936, 559.937, 559.938, and 559.939, is
 3505 repealed.

3506 Section 135. Section 205.1971, Florida Statutes, is
 3507 repealed.

3508 Section 136. Subsections (21) through (28) of section
 3509 501.604, Florida Statutes, are renumbered as subsections (20)
 3510 through (28), respectively, and present subsection (20) of that
 3511 section is amended to read:

3512 501.604 Exemptions.—The provisions of this part, except
 3513 ss. 501.608 and 501.616(6) and (7), do not apply to:

3514 ~~(20) A person who is registered pursuant to part XI of~~
 3515 ~~chapter 559 and who is soliciting within the scope of the~~
 3516 ~~registration.~~

3517 Section 137. Paragraph (b) of subsection (1) of section
 3518 501.608, Florida Statutes, is amended to read:

3519 501.608 License or affidavit of exemption; occupational
 3520 license.—

3521 (1)

3522 (b) Any commercial telephone seller claiming to be exempt
 3523 from the act under s. 501.604(2), (3), (5), (6), (9), (10),
 3524 (11), (12), (17), (20) ~~(21)~~, (21) ~~(22)~~, (23) ~~(24)~~, or (25) ~~(26)~~
 3525 must file with the department a notarized affidavit of
 3526 exemption. The affidavit of exemption must be on forms

HB 5005

2011

3527 | prescribed by the department and must require the name of the
 3528 | commercial telephone seller, the name of the business, and the
 3529 | business address. Any commercial telephone seller maintaining
 3530 | more than one business may file a single notarized affidavit of
 3531 | exemption that clearly indicates the location of each place of
 3532 | business. If a change of ownership occurs, the commercial
 3533 | telephone seller must notify the department.

3534 | Section 138. Subsection (5) of section 636.044, Florida
 3535 | Statutes, is amended to read:

3536 | 636.044 Agent licensing.—

3537 | ~~(5) A person registered as a seller of travel under s.~~
 3538 | ~~559.928 is not required to be licensed under this section in~~
 3539 | ~~order to sell prepaid limited health service contracts that~~
 3540 | ~~cover the cost of transportation provided by an air ambulance~~
 3541 | ~~service licensed pursuant to s. 401.251. The prepaid limited~~
 3542 | ~~health service contract for such coverage is, however, subject~~
 3543 | ~~to all applicable provisions of this chapter.~~

3544 | Section 139. Paragraph (d) of subsection (3) of section
 3545 | 721.11, Florida Statutes, is amended to read:

3546 | 721.11 Advertising materials; oral statements.—

3547 | (3) The term "advertising material" does not include:

3548 | (d) Any audio, written, or visual publication or material
 3549 | relating to the promotion of the availability of any
 3550 | accommodations or facilities, or both, for transient rental,
 3551 | ~~including any arrangement governed by part XI of chapter 559, so~~
 3552 | long as a mandatory tour of a timeshare plan or attendance at a
 3553 | mandatory sales presentation is not a term or condition of the
 3554 | availability of such accommodations or facilities, or both, and

HB 5005

2011

3555 | so long as the failure of any transient renter to take a tour of
 3556 | a timeshare plan or attend a sales presentation does not result
 3557 | in the transient renter receiving less than what was promised to
 3558 | the transient renter in such materials.

3559 | Section 140. Section 686.201, Florida Statutes, is
 3560 | repealed.

3561 | Section 141. Section 817.559, Florida Statutes, is
 3562 | repealed.

3563 | Section 142. Subsection (1) of section 73.072, Florida
 3564 | Statutes, is amended to read:

3565 | 73.072 Mobile home parks; compensation for permanent
 3566 | improvements by mobile home owners.—

3567 | (1) When all or a portion of a mobile home park as defined
 3568 | in s. 723.003~~(6)~~ is appropriated under this chapter, the
 3569 | condemning authority shall separately determine the compensation
 3570 | for any permanent improvements made to each site. This
 3571 | compensation shall be awarded to the mobile home owner leasing
 3572 | the site if:

3573 | (a) The effect of the taking includes a requirement that
 3574 | the mobile home owner remove or relocate his or her mobile home
 3575 | from the site;

3576 | (b) The mobile home owner currently leasing the site has
 3577 | paid for the permanent improvements to the site; and

3578 | (c) The value of the permanent improvements on the site
 3579 | exceeds \$1,000 as of the date of taking.

3580 | Section 143. Paragraph (e) of subsection (6) of section
 3581 | 192.037, Florida Statutes, is amended to read:

3582 | 192.037 Fee timeshare real property; taxes and

HB 5005

2011

3583 assessments; escrow.—

3584 (6)

3585 (e) On or before May 1 of each year, a statement of
 3586 receipts and disbursements of the escrow account must be filed
 3587 with ~~the Division of Florida Condominiums, Timeshares, and~~
 3588 ~~Mobile Homes~~ of the Department of Business and Professional
 3589 Regulation, ~~which may enforce this paragraph pursuant to s.~~
 3590 ~~721.26~~. This statement must appropriately show the amount of
 3591 principal and interest in such account.

3592 Section 144. Paragraph (i) of subsection (8) of section
 3593 213.053, Florida Statutes, is amended to read:

3594 213.053 Confidentiality and information sharing.—

3595 (8) Notwithstanding any other provision of this section,
 3596 the department may provide:

3597 (i) Information relative to chapters 212 and 326 to ~~the~~
 3598 ~~Division of Florida Condominiums, Timeshares, and Mobile Homes~~
 3599 ~~of~~ the Department of Business and Professional Regulation in the
 3600 conduct of its official duties.

3601
 3602 Disclosure of information under this subsection shall be
 3603 pursuant to a written agreement between the executive director
 3604 and the agency. Such agencies, governmental or nongovernmental,
 3605 shall be bound by the same requirements of confidentiality as
 3606 the Department of Revenue. Breach of confidentiality is a
 3607 misdemeanor of the first degree, punishable as provided by s.
 3608 775.082 or s. 775.083.

3609 Section 145. Paragraph (a) of subsection (1) of section
 3610 336.125, Florida Statutes, is amended to read:

HB 5005

2011

3611 336.125 Closing and abandonment of roads; optional
 3612 conveyance to homeowners' association; traffic control
 3613 jurisdiction.—

3614 (1) (a) In addition to the authority provided in s. 336.12,
 3615 the governing body of the county may abandon the roads and
 3616 rights-of-way dedicated in a recorded residential subdivision
 3617 plat and simultaneously convey the county's interest in such
 3618 roads, rights-of-way, and appurtenant drainage facilities to a
 3619 homeowners' association for the subdivision, if the following
 3620 conditions have been met:

3621 1. The homeowners' association has requested the
 3622 abandonment and conveyance in writing for the purpose of
 3623 converting the subdivision to a gated neighborhood with
 3624 restricted public access.

3625 2. No fewer than four-fifths of the owners of record of
 3626 property located in the subdivision have consented in writing to
 3627 the abandonment and simultaneous conveyance to the homeowners'
 3628 association.

3629 3. The homeowners' association is both a corporation not
 3630 for profit organized and in good standing under chapter 617, and
 3631 a "homeowners' association" as defined in s. 720.301~~(9)~~ with the
 3632 power to levy and collect assessments for routine and periodic
 3633 major maintenance and operation of street lighting, drainage,
 3634 sidewalks, and pavement in the subdivision.

3635 4. The homeowners' association has entered into and
 3636 executed such agreements, covenants, warranties, and other
 3637 instruments; has provided, or has provided assurance of, such
 3638 funds, reserve funds, and funding sources; and has satisfied

HB 5005

2011

3639 such other requirements and conditions as may be established or
 3640 imposed by the county with respect to the ongoing operation,
 3641 maintenance, and repair and the periodic reconstruction or
 3642 replacement of the roads, drainage, street lighting, and
 3643 sidewalks in the subdivision after the abandonment by the
 3644 county.

3645 Section 146. Paragraph (b) of subsection (8) of section
 3646 475.011, Florida Statutes, is amended to read:

3647 475.011 Exemptions.—This part does not apply to:

3648 (8)

3649 (b) An exchange company, as that term is defined by s.
 3650 721.05 (14) ~~(15)~~, but only to the extent that the exchange company
 3651 is engaged in exchange program activities as described in and is
 3652 in compliance with s. 721.18.

3653 Section 147. Subsection (2) of section 558.002, Florida
 3654 Statutes, is amended to read:

3655 558.002 Definitions.—As used in this chapter, the term:

3656 (2) "Association" has the same meaning as in s.

3657 718.103(2), s. 719.103(2), s. 720.301~~(9)~~, or s. 723.075.

3658 Section 148. Subsections (18) through (30) of section
 3659 718.103, Florida Statutes, are renumbered as subsections (17)
 3660 through (29), respectively, and subsection (17) of that section
 3661 is amended to read:

3662 718.103 Definitions.—As used in this chapter, the term:

3663 ~~(17) "Division" means the Division of Florida~~

3664 ~~Condominiums, Timeshares, and Mobile Homes of the Department of~~
 3665 ~~Business and Professional Regulation.~~

HB 5005

2011

3666 Section 149. Subsection (2) of section 718.1085, Florida
 3667 Statutes, is amended to read:

3668 718.1085 Certain regulations not to be retroactively
 3669 applied.—Notwithstanding the provisions of chapter 633 or of any
 3670 other code, statute, ordinance, administrative rule, or
 3671 regulation, or any interpretation thereof, an association,
 3672 condominium, or unit owner is not obligated to retrofit the
 3673 common elements or units of a residential condominium that meets
 3674 the definition of "housing for older persons" in s.
 3675 760.29(4)(b)3. to comply with requirements relating to handrails
 3676 and guardrails if the unit owners have voted to forego such
 3677 retrofitting by the affirmative vote of two-thirds of all voting
 3678 interests in the affected condominium. However, a condominium
 3679 association may not vote to forego the retrofitting in common
 3680 areas in a high-rise building. For the purposes of this section,
 3681 the term "high-rise building" means a building that is greater
 3682 than 75 feet in height where the building height is measured
 3683 from the lowest level of fire department access to the floor of
 3684 the highest occupiable level. For the purposes of this section,
 3685 the term "common areas" means stairwells and exposed, outdoor
 3686 walkways and corridors. In no event shall the local authority
 3687 having jurisdiction require retrofitting of common areas with
 3688 handrails and guardrails before the end of 2014.

3689 (2) As part of the information collected annually from
 3690 condominiums, ~~the division shall require~~ condominium
 3691 associations must ~~to~~ report the membership vote and recording of
 3692 a certificate under this subsection and, if retrofitting has
 3693 been undertaken, the per-unit cost of such work. ~~The division~~

3694 ~~shall annually report~~ to the Division of State Fire Marshal of
 3695 the Department of Financial Services ~~the number of condominiums~~
 3696 ~~that have elected to forego retrofitting.~~

3697 Section 150. Paragraph (a) of subsection (1), paragraph
 3698 (b) of subsection (7), paragraphs (a) and (c) of subsection
 3699 (12), and subsection (13) of section 718.111, Florida Statutes,
 3700 are amended to read:

3701 718.111 The association.—

3702 (1) CORPORATE ENTITY.—

3703 (a) The operation of the condominium shall be by the
 3704 association, which must be a Florida corporation for profit or a
 3705 Florida corporation not for profit. However, any association
 3706 which was in existence on January 1, 1977, need not be
 3707 incorporated. The owners of units shall be shareholders or
 3708 members of the association. The officers and directors of the
 3709 association have a fiduciary relationship to the unit owners. It
 3710 is the intent of the Legislature that nothing in this paragraph
 3711 shall be construed as providing for or removing a requirement of
 3712 a fiduciary relationship between any manager employed by the
 3713 association and the unit owners. An officer, director, or
 3714 manager may not solicit, offer to accept, or accept any thing or
 3715 service of value for which consideration has not been provided
 3716 for his or her own benefit or that of his or her immediate
 3717 family, from any person providing or proposing to provide goods
 3718 or services to the association. ~~Any such officer, director, or~~
 3719 ~~manager who knowingly so solicits, offers to accept, or accepts~~
 3720 ~~any thing or service of value is subject to a civil penalty~~
 3721 ~~pursuant to s. 718.501(1)(d).~~ However, this paragraph does not

HB 5005

2011

3722 prohibit an officer, director, or manager from accepting
 3723 services or items received in connection with trade fairs or
 3724 education programs. An association may operate more than one
 3725 condominium.

3726 (7) TITLE TO PROPERTY.—

3727 (b) Subject to the provisions of s. 718.112(2) (1) ~~(m)~~, the
 3728 association, through its board, has the limited power to convey
 3729 a portion of the common elements to a condemning authority for
 3730 the purposes of providing utility easements, right-of-way
 3731 expansion, or other public purposes, whether negotiated or as a
 3732 result of eminent domain proceedings.

3733 (12) OFFICIAL RECORDS.—

3734 (a) From the inception of the association, the association
 3735 shall maintain each of the following items, if applicable, which
 3736 shall constitute the official records of the association:

3737 1. A copy of the plans, permits, warranties, and other
 3738 items provided by the developer pursuant to s. 718.301(4).

3739 2. A photocopy of the recorded declaration of condominium
 3740 of each condominium operated by the association and of each
 3741 amendment to each declaration.

3742 3. A photocopy of the recorded bylaws of the association
 3743 and of each amendment to the bylaws.

3744 4. A certified copy of the articles of incorporation of
 3745 the association, or other documents creating the association,
 3746 and of each amendment thereto.

3747 5. A copy of the current rules of the association.

3748 6. A book or books which contain the minutes of all
 3749 meetings of the association, of the board of administration, and

3750 of unit owners, which minutes must be retained for at least 7
 3751 years.

3752 7. A current roster of all unit owners and their mailing
 3753 addresses, unit identifications, voting certifications, and, if
 3754 known, telephone numbers. The association shall also maintain
 3755 the electronic mailing addresses and the numbers designated by
 3756 unit owners for receiving notice sent by electronic transmission
 3757 of those unit owners consenting to receive notice by electronic
 3758 transmission. The electronic mailing addresses and telephone
 3759 numbers must be removed from association records if consent to
 3760 receive notice by electronic transmission is revoked. However,
 3761 the association is not liable for an erroneous disclosure of the
 3762 electronic mail address or the number for receiving electronic
 3763 transmission of notices.

3764 8. All current insurance policies of the association and
 3765 condominiums operated by the association.

3766 9. A current copy of any management agreement, lease, or
 3767 other contract to which the association is a party or under
 3768 which the association or the unit owners have an obligation or
 3769 responsibility.

3770 10. Bills of sale or transfer for all property owned by
 3771 the association.

3772 11. Accounting records for the association and separate
 3773 accounting records for each condominium which the association
 3774 operates. All accounting records shall be maintained for at
 3775 least 7 years. ~~Any person who knowingly or intentionally defaces~~
 3776 ~~or destroys accounting records required to be created and~~
 3777 ~~maintained by this chapter during the period for which such~~

HB 5005

2011

3778 ~~records are required to be maintained, or who knowingly or~~
 3779 ~~intentionally fails to create or maintain such records, with the~~
 3780 ~~intent of causing harm to the association or one or more of its~~
 3781 ~~members, is personally subject to a civil penalty pursuant to s.~~
 3782 ~~718.501(1)(d).~~ The accounting records must include, but are not
 3783 limited to:

3784 a. Accurate, itemized, and detailed records of all
 3785 receipts and expenditures.

3786 b. A current account and a monthly, bimonthly, or
 3787 quarterly statement of the account for each unit designating the
 3788 name of the unit owner, the due date and amount of each
 3789 assessment, the amount paid upon the account, and the balance
 3790 due.

3791 c. All audits, reviews, accounting statements, and
 3792 financial reports of the association or condominium.

3793 d. All contracts for work to be performed. Bids for work
 3794 to be performed are also considered official records and must be
 3795 maintained by the association.

3796 12. Ballots, sign-in sheets, voting proxies, and all other
 3797 papers relating to voting by unit owners, which must be
 3798 maintained for 1 year from the date of the election, vote, or
 3799 meeting to which the document relates, notwithstanding paragraph
 3800 (b).

3801 13. All rental records if the association is acting as
 3802 agent for the rental of condominium units.

3803 14. A copy of the current question and answer sheet as
 3804 described in s. 718.504.

3805 15. All other records of the association not specifically

HB 5005

2011

3806 included in the foregoing which are related to the operation of
 3807 the association.

3808 16. A copy of the inspection report as provided in s.
 3809 718.301(4)(p).

3810 (c) The official records of the association are open to
 3811 inspection by any association member or the authorized
 3812 representative of such member at all reasonable times. The right
 3813 to inspect the records includes the right to make or obtain
 3814 copies, at the reasonable expense, if any, of the member. The
 3815 association may adopt reasonable rules regarding the frequency,
 3816 time, location, notice, and manner of record inspections and
 3817 copying. The failure of an association to provide the records
 3818 within 10 working days after receipt of a written request
 3819 creates a rebuttable presumption that the association willfully
 3820 failed to comply with this paragraph. A unit owner who is denied
 3821 access to official records is entitled to the actual damages or
 3822 minimum damages for the association's willful failure to comply.
 3823 Minimum damages shall be \$50 per calendar day up to 10 days, the
 3824 calculation to begin on the 11th working day after receipt of
 3825 the written request. The failure to permit inspection of the
 3826 association records as provided herein entitles any person
 3827 prevailing in an enforcement action to recover reasonable
 3828 attorney's fees from the person in control of the records who,
 3829 directly or indirectly, knowingly denied access to the records.
 3830 ~~Any person who knowingly or intentionally defaces or destroys~~
 3831 ~~accounting records that are required by this chapter to be~~
 3832 ~~maintained during the period for which such records are required~~
 3833 ~~to be maintained, or who knowingly or intentionally fails to~~

HB 5005

2011

3834 ~~create or maintain accounting records that are required to be~~
 3835 ~~created or maintained, with the intent of causing harm to the~~
 3836 ~~association or one or more of its members, is personally subject~~
 3837 ~~to a civil penalty pursuant to s. 718.501(1)(d).~~ The association
 3838 shall maintain an adequate number of copies of the declaration,
 3839 articles of incorporation, bylaws, and rules, and all amendments
 3840 to each of the foregoing, as well as the question and answer
 3841 sheet provided for in s. 718.504 and year-end financial
 3842 information required in this section, on the condominium
 3843 property to ensure their availability to unit owners and
 3844 prospective purchasers, and may charge its actual costs for
 3845 preparing and furnishing these documents to those requesting the
 3846 documents. Notwithstanding the provisions of this paragraph, the
 3847 following records are not accessible to unit owners:

3848 1. Any record protected by the lawyer-client privilege as
 3849 described in s. 90.502; and any record protected by the work-
 3850 product privilege, including any record prepared by an
 3851 association attorney or prepared at the attorney's express
 3852 direction; which reflects a mental impression, conclusion,
 3853 litigation strategy, or legal theory of the attorney or the
 3854 association, and which was prepared exclusively for civil or
 3855 criminal litigation or for adversarial administrative
 3856 proceedings, or which was prepared in anticipation of imminent
 3857 civil or criminal litigation or imminent adversarial
 3858 administrative proceedings until the conclusion of the
 3859 litigation or adversarial administrative proceedings.

3860 2. Information obtained by an association in connection
 3861 with the approval of the lease, sale, or other transfer of a

3862 unit.

3863 3. Personnel records of association employees, including,
 3864 but not limited to, disciplinary, payroll, health, and insurance
 3865 records.

3866 4. Medical records of unit owners.

3867 5. Social security numbers, driver's license numbers,
 3868 credit card numbers, e-mail addresses, telephone numbers,
 3869 emergency contact information, any addresses of a unit owner
 3870 other than as provided to fulfill the association's notice
 3871 requirements, and other personal identifying information of any
 3872 person, excluding the person's name, unit designation, mailing
 3873 address, and property address.

3874 6. Any electronic security measure that is used by the
 3875 association to safeguard data, including passwords.

3876 7. The software and operating system used by the
 3877 association which allows manipulation of data, even if the owner
 3878 owns a copy of the same software used by the association. The
 3879 data is part of the official records of the association.

3880 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 3881 the fiscal year, or annually on a date provided in the bylaws,
 3882 the association shall prepare and complete, or contract for the
 3883 preparation and completion of, a financial report for the
 3884 preceding fiscal year. Within 21 days after the final financial
 3885 report is completed by the association or received from the
 3886 third party, but not later than 120 days after the end of the
 3887 fiscal year or other date as provided in the bylaws, the
 3888 association shall mail to each unit owner at the address last
 3889 furnished to the association by the unit owner, or hand deliver

HB 5005

2011

3890 to each unit owner, a copy of the financial report or a notice
3891 that a copy of the financial report will be mailed or hand
3892 delivered to the unit owner, without charge, upon receipt of a
3893 written request from the unit owner. ~~The division shall adopt~~
3894 ~~rules setting forth uniform accounting principles and standards~~
3895 ~~to be used by all associations and addressing the financial~~
3896 ~~reporting requirements for multicondominium associations. The~~
3897 ~~rules must include, but not be limited to, standards for~~
3898 ~~presenting a summary of association reserves, including a good~~
3899 ~~faith estimate disclosing the annual amount of reserve funds~~
3900 ~~that would be necessary for the association to fully fund~~
3901 ~~reserves for each reserve item based on the straight-line~~
3902 ~~accounting method. This disclosure is not applicable to reserves~~
3903 ~~funded via the pooling method. In adopting such rules, the~~
3904 ~~division shall consider the number of members and annual~~
3905 ~~revenues of an association.~~ Financial reports shall be prepared
3906 as follows:

3907 (a) An association that meets the criteria of this
3908 paragraph shall prepare a complete set of financial statements
3909 in accordance with generally accepted accounting principles. The
3910 financial statements must be based upon the association's total
3911 annual revenues, as follows:

3912 1. An association with total annual revenues of \$100,000
3913 or more, but less than \$200,000, shall prepare compiled
3914 financial statements.

3915 2. An association with total annual revenues of at least
3916 \$200,000, but less than \$400,000, shall prepare reviewed
3917 financial statements.

3918 | 3. An association with total annual revenues of \$400,000
3919 | or more shall prepare audited financial statements.

3920 | (b)1. An association with total annual revenues of less
3921 | than \$100,000 shall prepare a report of cash receipts and
3922 | expenditures.

3923 | 2. An association that operates fewer than 75 units,
3924 | regardless of the association's annual revenues, shall prepare a
3925 | report of cash receipts and expenditures in lieu of financial
3926 | statements required by paragraph (a).

3927 | 3. A report of cash receipts and disbursements must
3928 | disclose the amount of receipts by accounts and receipt
3929 | classifications and the amount of expenses by accounts and
3930 | expense classifications, including, but not limited to, the
3931 | following, as applicable: costs for security, professional and
3932 | management fees and expenses, taxes, costs for recreation
3933 | facilities, expenses for refuse collection and utility services,
3934 | expenses for lawn care, costs for building maintenance and
3935 | repair, insurance costs, administration and salary expenses, and
3936 | reserves accumulated and expended for capital expenditures,
3937 | deferred maintenance, and any other category for which the
3938 | association maintains reserves.

3939 | (c) An association may prepare, without a meeting of or
3940 | approval by the unit owners:

3941 | 1. Compiled, reviewed, or audited financial statements, if
3942 | the association is required to prepare a report of cash receipts
3943 | and expenditures;

3944 | 2. Reviewed or audited financial statements, if the
3945 | association is required to prepare compiled financial

HB 5005

2011

3946 statements; or
 3947 3. Audited financial statements if the association is
 3948 required to prepare reviewed financial statements.
 3949 (d) If approved by a majority of the voting interests
 3950 present at a properly called meeting of the association, an
 3951 association may prepare:
 3952 1. A report of cash receipts and expenditures in lieu of a
 3953 compiled, reviewed, or audited financial statement;
 3954 2. A report of cash receipts and expenditures or a
 3955 compiled financial statement in lieu of a reviewed or audited
 3956 financial statement; or
 3957 3. A report of cash receipts and expenditures, a compiled
 3958 financial statement, or a reviewed financial statement in lieu
 3959 of an audited financial statement.
 3960
 3961 Such meeting and approval must occur before the end of the
 3962 fiscal year and is effective only for the fiscal year in which
 3963 the vote is taken, except that the approval may also be
 3964 effective for the following fiscal year. With respect to an
 3965 association to which the developer has not turned over control
 3966 of the association, all unit owners, including the developer,
 3967 may vote on issues related to the preparation of financial
 3968 reports for the first 2 fiscal years of the association's
 3969 operation, beginning with the fiscal year in which the
 3970 declaration is recorded. Thereafter, all unit owners except the
 3971 developer may vote on such issues until control is turned over
 3972 to the association by the developer. Any audit or review
 3973 prepared under this section shall be paid for by the developer

3974 | if done before turnover of control of the association. An
 3975 | association may not waive the financial reporting requirements
 3976 | of this section for more than 3 consecutive years.

3977 | Section 151. Paragraphs (l) through (o) of subsection (2)
 3978 | of section 718.112, Florida Statutes, are redesignated as
 3979 | paragraphs (k) through (n), respectively, and paragraphs (a)
 3980 | through (d), (j), and (k) of that subsection are amended to
 3981 | read:

3982 | 718.112 Bylaws.—

3983 | (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 3984 | following and, if they do not do so, shall be deemed to include
 3985 | the following:

3986 | (a) Administration.—

3987 | 1. The form of administration of the association shall be
 3988 | described indicating the title of the officers and board of
 3989 | administration and specifying the powers, duties, manner of
 3990 | selection and removal, and compensation, if any, of officers and
 3991 | boards. In the absence of such a provision, the board of
 3992 | administration shall be composed of five members, except in the
 3993 | case of a condominium which has five or fewer units, in which
 3994 | case in a not-for-profit corporation the board shall consist of
 3995 | not fewer than three members. In the absence of provisions to
 3996 | the contrary in the bylaws, the board of administration shall
 3997 | have a president, a secretary, and a treasurer, who shall
 3998 | perform the duties of such officers customarily performed by
 3999 | officers of corporations. Unless prohibited in the bylaws, the
 4000 | board of administration may appoint other officers and grant
 4001 | them the duties it deems appropriate. Unless otherwise provided

HB 5005

2011

4002 in the bylaws, the officers shall serve without compensation and
4003 at the pleasure of the board of administration. Unless otherwise
4004 provided in the bylaws, the members of the board shall serve
4005 without compensation.

4006 2. When a unit owner files a written inquiry by certified
4007 mail with the board of administration, the board shall respond
4008 in writing to the unit owner within 30 days after ~~of~~ receipt of
4009 the inquiry. The board's response shall either give a
4010 substantive response to the inquirer or, ~~notify the inquirer~~
4011 ~~that a legal opinion has been requested, or notify the inquirer~~
4012 ~~that advice has been requested from the division. If the board~~
4013 ~~requests advice from the division, the board shall, within 10~~
4014 ~~days of its receipt of the advice, provide in writing a~~
4015 ~~substantive response to the inquirer.~~ If a legal opinion is
4016 requested, the board shall, within 60 days after the receipt of
4017 the inquiry, provide in writing a substantive response to the
4018 inquiry. The failure to provide a substantive response to the
4019 inquiry as provided herein precludes the board from recovering
4020 attorney's fees and costs in any subsequent litigation,
4021 administrative proceeding, or arbitration arising out of the
4022 inquiry. The association may through its board of administration
4023 adopt reasonable rules and regulations regarding the frequency
4024 and manner of responding to unit owner inquiries, one of which
4025 may be that the association is only obligated to respond to one
4026 written inquiry per unit in any given 30-day period. In such a
4027 case, any additional inquiry or inquiries must be responded to
4028 in the subsequent 30-day period, or periods, as applicable.

4029 (b) Quorum; voting requirements; proxies.-

HB 5005

2011

4030 1. Unless a lower number is provided in the bylaws, the
4031 percentage of voting interests required to constitute a quorum
4032 at a meeting of the members shall be a majority of the voting
4033 interests. Unless otherwise provided in this chapter or in the
4034 declaration, articles of incorporation, or bylaws, and except as
4035 provided in subparagraph (d)3., decisions shall be made by
4036 owners of a majority of the voting interests represented at a
4037 meeting at which a quorum is present.

4038 2. Except as specifically otherwise provided herein, after
4039 January 1, 1992, unit owners may not vote by general proxy, but
4040 may vote by limited proxies ~~substantially conforming to a~~
4041 ~~limited proxy form adopted by the division~~. No voting interest
4042 or consent right allocated to a unit owned by the association
4043 shall be exercised or considered for any purpose, whether for a
4044 quorum, an election, or otherwise. Limited proxies and general
4045 proxies may be used to establish a quorum. Limited proxies shall
4046 be used for votes taken to waive or reduce reserves in
4047 accordance with subparagraph (f)2.; for votes taken to waive the
4048 financial reporting requirements of s. 718.111(13); for votes
4049 taken to amend the declaration pursuant to s. 718.110; for votes
4050 taken to amend the articles of incorporation or bylaws pursuant
4051 to this section; and for any other matter for which this chapter
4052 requires or permits a vote of the unit owners. Except as
4053 provided in paragraph (d), after January 1, 1992, no proxy,
4054 limited or general, shall be used in the election of board
4055 members. General proxies may be used for other matters for which
4056 limited proxies are not required, and may also be used in voting
4057 for nonsubstantive changes to items for which a limited proxy is

HB 5005

2011

4058 required and given. Notwithstanding the provisions of this
4059 subparagraph, unit owners may vote in person at unit owner
4060 meetings. Nothing contained herein shall limit the use of
4061 general proxies or require the use of limited proxies for any
4062 agenda item or election at any meeting of a timeshare
4063 condominium association.

4064 3. Any proxy given shall be effective only for the
4065 specific meeting for which originally given and any lawfully
4066 adjourned meetings thereof. In no event shall any proxy be valid
4067 for a period longer than 90 days after the date of the first
4068 meeting for which it was given. Every proxy is revocable at any
4069 time at the pleasure of the unit owner executing it.

4070 4. A member of the board of administration or a committee
4071 may submit in writing his or her agreement or disagreement with
4072 any action taken at a meeting that the member did not attend.
4073 This agreement or disagreement may not be used as a vote for or
4074 against the action taken and may not be used for the purposes of
4075 creating a quorum.

4076 5. When any of the board or committee members meet by
4077 telephone conference, those board or committee members attending
4078 by telephone conference may be counted toward obtaining a quorum
4079 and may vote by telephone. A telephone speaker must be used so
4080 that the conversation of those board or committee members
4081 attending by telephone may be heard by the board or committee
4082 members attending in person as well as by any unit owners
4083 present at a meeting.

4084 (c) Board of administration meetings.—Meetings of the
4085 board of administration at which a quorum of the members is

HB 5005

2011

4086 present shall be open to all unit owners. Any unit owner may
4087 tape record or videotape meetings of the board of
4088 administration. The right to attend such meetings includes the
4089 right to speak at such meetings with reference to all designated
4090 agenda items. ~~The division shall adopt reasonable rules~~
4091 ~~governing the tape recording and videotaping of the meeting.~~ The
4092 association may adopt written reasonable rules governing the
4093 frequency, duration, and manner of unit owner statements.
4094 Adequate notice of all meetings, which notice shall specifically
4095 incorporate an identification of agenda items, shall be posted
4096 conspicuously on the condominium property at least 48 continuous
4097 hours preceding the meeting except in an emergency. If 20
4098 percent of the voting interests petition the board to address an
4099 item of business, the board shall at its next regular board
4100 meeting or at a special meeting of the board, but not later than
4101 60 days after the receipt of the petition, place the item on the
4102 agenda. Any item not included on the notice may be taken up on
4103 an emergency basis by at least a majority plus one of the
4104 members of the board. Such emergency action shall be noticed and
4105 ratified at the next regular meeting of the board. However,
4106 written notice of any meeting at which nonemergency special
4107 assessments, or at which amendment to rules regarding unit use,
4108 will be considered shall be mailed, delivered, or electronically
4109 transmitted to the unit owners and posted conspicuously on the
4110 condominium property not less than 14 days prior to the meeting.
4111 Evidence of compliance with this 14-day notice shall be made by
4112 an affidavit executed by the person providing the notice and
4113 filed among the official records of the association. Upon notice

HB 5005

2011

4114 to the unit owners, the board shall by duly adopted rule
4115 designate a specific location on the condominium property or
4116 association property upon which all notices of board meetings
4117 shall be posted. If there is no condominium property or
4118 association property upon which notices can be posted, notices
4119 of board meetings shall be mailed, delivered, or electronically
4120 transmitted at least 14 days before the meeting to the owner of
4121 each unit. In lieu of or in addition to the physical posting of
4122 notice of any meeting of the board of administration on the
4123 condominium property, the association may, by reasonable rule,
4124 adopt a procedure for conspicuously posting and repeatedly
4125 broadcasting the notice and the agenda on a closed-circuit cable
4126 television system serving the condominium association. However,
4127 if broadcast notice is used in lieu of a notice posted
4128 physically on the condominium property, the notice and agenda
4129 must be broadcast at least four times every broadcast hour of
4130 each day that a posted notice is otherwise required under this
4131 section. When broadcast notice is provided, the notice and
4132 agenda must be broadcast in a manner and for a sufficient
4133 continuous length of time so as to allow an average reader to
4134 observe the notice and read and comprehend the entire content of
4135 the notice and the agenda. Notice of any meeting in which
4136 regular or special assessments against unit owners are to be
4137 considered for any reason shall specifically state that
4138 assessments will be considered and the nature, estimated cost,
4139 and description of the purposes for such assessments. Meetings
4140 of a committee to take final action on behalf of the board or
4141 make recommendations to the board regarding the association

HB 5005

2011

4142 budget are subject to the provisions of this paragraph. Meetings
4143 of a committee that does not take final action on behalf of the
4144 board or make recommendations to the board regarding the
4145 association budget are subject to the provisions of this
4146 section, unless those meetings are exempted from this section by
4147 the bylaws of the association. Notwithstanding any other law,
4148 the requirement that board meetings and committee meetings be
4149 open to the unit owners is inapplicable to meetings between the
4150 board or a committee and the association's attorney, with
4151 respect to proposed or pending litigation, when the meeting is
4152 held for the purpose of seeking or rendering legal advice.

4153 (d) Unit owner meetings.—

4154 1. An annual meeting of the unit owners shall be held at
4155 the location provided in the association bylaws and, if the
4156 bylaws are silent as to the location, the meeting shall be held
4157 within 45 miles of the condominium property. However, such
4158 distance requirement does not apply to an association governing
4159 a timeshare condominium. Unless the bylaws provide otherwise, a
4160 vacancy on the board caused by the expiration of a director's
4161 term shall be filled by electing a new board member, and the
4162 election must be by secret ballot. However, if the number of
4163 vacancies equals or exceeds the number of candidates, an
4164 election is not required. Except in a timeshare condominium, the
4165 terms of all members of the board expire at the annual meeting
4166 and such board members may stand for reelection unless otherwise
4167 permitted by the bylaws. If the bylaws permit staggered terms of
4168 no more than 2 years and upon approval of a majority of the
4169 total voting interests, the association board members may serve

HB 5005

2011

4170 2-year staggered terms. If the number of board members whose
4171 terms have expired exceeds the number of eligible members
4172 showing interest in or demonstrating an intention to run for the
4173 vacant positions, each board member whose term has expired is
4174 eligible for reappointment to the board of administration and
4175 need not stand for reelection. In a condominium association of
4176 more than 10 units or in a condominium association that does not
4177 include timeshare units or timeshare interests, coowners of a
4178 unit may not serve as members of the board of directors at the
4179 same time unless they own more than one unit or unless there are
4180 not enough eligible candidates to fill the vacancies on the
4181 board at the time of the vacancy. Any unit owner desiring to be
4182 a candidate for board membership must comply with sub-
4183 subparagraph 3.a. A person ~~who has been suspended or removed by~~
4184 ~~the division under this chapter, or who~~ is delinquent in the
4185 payment of any fee, fine, or special or regular assessment as
4186 provided in paragraph (m) ~~(n)~~, is not eligible for board
4187 membership. A person who has been convicted of any felony in
4188 this state or in a United States District or Territorial Court,
4189 or who has been convicted of any offense in another jurisdiction
4190 that would be considered a felony if committed in this state, is
4191 not eligible for board membership unless such felon's civil
4192 rights have been restored for at least 5 years as of the date on
4193 which such person seeks election to the board. The validity of
4194 an action by the board is not affected if it is later determined
4195 that a member of the board is ineligible for board membership
4196 due to having been convicted of a felony.

4197 2. The bylaws must provide the method of calling meetings

HB 5005

2011

4198 of unit owners, including annual meetings. Written notice, which
4199 must include an agenda, shall be mailed, hand delivered, or
4200 electronically transmitted to each unit owner at least 14 days
4201 before the annual meeting and must be posted in a conspicuous
4202 place on the condominium property at least 14 continuous days
4203 preceding the annual meeting. Upon notice to the unit owners,
4204 the board shall, by duly adopted rule, designate a specific
4205 location on the condominium property or association property
4206 upon which all notices of unit owner meetings shall be posted.
4207 However, if there is no condominium property or association
4208 property upon which notices can be posted, this requirement does
4209 not apply. In lieu of or in addition to the physical posting of
4210 meeting notices, the association may, by reasonable rule, adopt
4211 a procedure for conspicuously posting and repeatedly
4212 broadcasting the notice and the agenda on a closed-circuit cable
4213 television system serving the condominium association. However,
4214 if broadcast notice is used in lieu of a notice posted
4215 physically on the condominium property, the notice and agenda
4216 must be broadcast at least four times every broadcast hour of
4217 each day that a posted notice is otherwise required under this
4218 section. If broadcast notice is provided, the notice and agenda
4219 must be broadcast in a manner and for a sufficient continuous
4220 length of time so as to allow an average reader to observe the
4221 notice and read and comprehend the entire content of the notice
4222 and the agenda. Unless a unit owner waives in writing the right
4223 to receive notice of the annual meeting, such notice must be
4224 hand delivered, mailed, or electronically transmitted to each
4225 unit owner. Notice for meetings and notice for all other

HB 5005

2011

4226 | purposes must be mailed to each unit owner at the address last
4227 | furnished to the association by the unit owner, or hand
4228 | delivered to each unit owner. However, if a unit is owned by
4229 | more than one person, the association shall provide notice, for
4230 | meetings and all other purposes, to that one address which the
4231 | developer initially identifies for that purpose and thereafter
4232 | as one or more of the owners of the unit shall advise the
4233 | association in writing, or if no address is given or the owners
4234 | of the unit do not agree, to the address provided on the deed of
4235 | record. An officer of the association, or the manager or other
4236 | person providing notice of the association meeting, shall
4237 | provide an affidavit or United States Postal Service certificate
4238 | of mailing, to be included in the official records of the
4239 | association affirming that the notice was mailed or hand
4240 | delivered, in accordance with this provision.

4241 | 3. The members of the board shall be elected by written
4242 | ballot or voting machine. Proxies may not be used in electing
4243 | the board in general elections or elections to fill vacancies
4244 | caused by recall, resignation, or otherwise, unless otherwise
4245 | provided in this chapter.

4246 | a. At least 60 days before a scheduled election, the
4247 | association shall mail, deliver, or electronically transmit,
4248 | whether by separate association mailing or included in another
4249 | association mailing, delivery, or transmission, including
4250 | regularly published newsletters, to each unit owner entitled to
4251 | a vote, a first notice of the date of the election. Any unit
4252 | owner or other eligible person desiring to be a candidate for
4253 | the board must give written notice of his or her intent to be a

HB 5005

2011

4254 candidate to the association at least 40 days before a scheduled
4255 election. Together with the written notice and agenda as set
4256 forth in subparagraph 2., the association shall mail, deliver,
4257 or electronically transmit a second notice of the election to
4258 all unit owners entitled to vote, together with a ballot that
4259 lists all candidates. Upon request of a candidate, an
4260 information sheet, no larger than 8 1/2 inches by 11 inches,
4261 which must be furnished by the candidate at least 35 days before
4262 the election, must be included with the mailing, delivery, or
4263 transmission of the ballot, with the costs of mailing, delivery,
4264 or electronic transmission and copying to be borne by the
4265 association. The association is not liable for the contents of
4266 the information sheets prepared by the candidates. In order to
4267 reduce costs, the association may print or duplicate the
4268 information sheets on both sides of the paper. ~~The division~~
4269 ~~shall by rule establish voting procedures consistent with this~~
4270 ~~sub-subparagraph, including rules establishing procedures for~~
4271 ~~giving notice by electronic transmission and rules providing for~~
4272 ~~the secrecy of ballots.~~ Elections shall be decided by a
4273 plurality of those ballots cast. There is no quorum requirement;
4274 however, at least 20 percent of the eligible voters must cast a
4275 ballot in order to have a valid election of members of the
4276 board. A unit owner may not permit any other person to vote his
4277 or her ballot, and any ballots improperly cast are invalid,
4278 provided any unit owner who violates this provision may be fined
4279 by the association in accordance with s. 718.303. A unit owner
4280 who needs assistance in casting the ballot for the reasons
4281 stated in s. 101.051 may obtain such assistance. The regular

HB 5005

2011

4282 election must occur on the date of the annual meeting. This sub-
 4283 subparagraph does not apply to timeshare condominium
 4284 associations. Notwithstanding this sub-subparagraph, an election
 4285 is not required unless more candidates file notices of intent to
 4286 run or are nominated than board vacancies exist.

4287 b. Within 90 days after being elected or appointed to the
 4288 board, each newly elected or appointed director shall certify in
 4289 writing to the secretary of the association that he or she has
 4290 read the association's declaration of condominium, articles of
 4291 incorporation, bylaws, and current written policies; that he or
 4292 she will work to uphold such documents and policies to the best
 4293 of his or her ability; and that he or she will faithfully
 4294 discharge his or her fiduciary responsibility to the
 4295 association's members. ~~In lieu of this written certification,~~
 4296 ~~the newly elected or appointed director may submit a certificate~~
 4297 ~~of satisfactory completion of the educational curriculum~~
 4298 ~~administered by a division-approved condominium education~~
 4299 ~~provider.~~ A director who fails to timely file the written
 4300 certification or educational certificate is suspended from
 4301 service on the board until he or she complies with this sub-
 4302 subparagraph. The board may temporarily fill the vacancy during
 4303 the period of suspension. The secretary shall cause the
 4304 association to retain a director's written certification or
 4305 educational certificate for inspection by the members for 5
 4306 years after a director's election. Failure to have such written
 4307 certification or educational certificate on file does not affect
 4308 the validity of any action.

4309 4. Any approval by unit owners called for by this chapter

4310 or the applicable declaration or bylaws, including, but not
 4311 limited to, the approval requirement in s. 718.111(8), shall be
 4312 made at a duly noticed meeting of unit owners and is subject to
 4313 all requirements of this chapter or the applicable condominium
 4314 documents relating to unit owner decisionmaking, except that
 4315 unit owners may take action by written agreement, without
 4316 meetings, on matters for which action by written agreement
 4317 without meetings is expressly allowed by the applicable bylaws
 4318 or declaration or any statute that provides for such action.

4319 5. Unit owners may waive notice of specific meetings if
 4320 allowed by the applicable bylaws or declaration or any statute.
 4321 If authorized by the bylaws, notice of meetings of the board of
 4322 administration, unit owner meetings, except unit owner meetings
 4323 called to recall board members under paragraph (j), and
 4324 committee meetings may be given by electronic transmission to
 4325 unit owners who consent to receive notice by electronic
 4326 transmission.

4327 6. Unit owners shall have the right to participate in
 4328 meetings of unit owners with reference to all designated agenda
 4329 items. However, the association may adopt reasonable rules
 4330 governing the frequency, duration, and manner of unit owner
 4331 participation.

4332 7. Any unit owner may tape record or videotape a meeting
 4333 of the unit owners ~~subject to reasonable rules adopted by the~~
 4334 ~~division.~~

4335 8. Unless otherwise provided in the bylaws, any vacancy
 4336 occurring on the board before the expiration of a term may be
 4337 filled by the affirmative vote of the majority of the remaining

HB 5005

2011

4338 | directors, even if the remaining directors constitute less than
 4339 | a quorum, or by the sole remaining director. In the alternative,
 4340 | a board may hold an election to fill the vacancy, in which case
 4341 | the election procedures must conform to the requirements of sub-
 4342 | subparagraph 3.a. unless the association governs 10 units or
 4343 | fewer and has opted out of the statutory election process, in
 4344 | which case the bylaws of the association control. Unless
 4345 | otherwise provided in the bylaws, a board member appointed or
 4346 | elected under this section shall fill the vacancy for the
 4347 | unexpired term of the seat being filled. Filling vacancies
 4348 | created by recall is governed by paragraph (j) ~~and rules adopted~~
 4349 | ~~by the division.~~

4350 |
 4351 | Notwithstanding subparagraph (b)2. and sub-subparagraph (d)3.a.,
 4352 | an association of 10 or fewer units may, by affirmative vote of
 4353 | a majority of the total voting interests, provide for different
 4354 | voting and election procedures in its bylaws, which vote may be
 4355 | by a proxy specifically delineating the different voting and
 4356 | election procedures. The different voting and election
 4357 | procedures may provide for elections to be conducted by limited
 4358 | or general proxy.

4359 | (j) Recall of board members.—Subject to the provisions of
 4360 | s. 718.301, any member of the board of administration may be
 4361 | recalled and removed from office with or without cause by the
 4362 | vote or agreement in writing by a majority of all the voting
 4363 | interests. A special meeting of the unit owners to recall a
 4364 | member or members of the board of administration may be called
 4365 | by 10 percent of the voting interests giving notice of the

HB 5005

2011

4366 meeting as required for a meeting of unit owners, and the notice
 4367 shall state the purpose of the meeting. Electronic transmission
 4368 may not be used as a method of giving notice of a meeting called
 4369 in whole or in part for this purpose.

4370 1. If the recall is approved by a majority of all voting
 4371 interests by a vote at a meeting, the recall will be effective
 4372 as provided herein. The board shall duly notice and hold a board
 4373 meeting within 5 full business days of the adjournment of the
 4374 unit owner meeting to recall one or more board members. At the
 4375 meeting, the board shall ~~either~~ certify the recall, in which
 4376 case such member or members shall be recalled effective
 4377 immediately and shall turn over to the board within 5 full
 4378 business days any and all records and property of the
 4379 association in their possession, ~~or shall proceed as set forth~~
 4380 ~~in subparagraph 3.~~

4381 2. If the proposed recall is by an agreement in writing by
 4382 a majority of all voting interests, the agreement in writing or
 4383 a copy thereof shall be served on the association by certified
 4384 mail or by personal service in the manner authorized by chapter
 4385 48 and the Florida Rules of Civil Procedure. The board of
 4386 administration shall duly notice and hold a meeting of the board
 4387 within 5 full business days after receipt of the agreement in
 4388 writing. At the meeting, the board shall ~~either~~ certify the
 4389 written agreement to recall a member or members of the board, in
 4390 which case such member or members shall be recalled effective
 4391 immediately and shall turn over to the board within 5 full
 4392 business days any and all records and property of the
 4393 association in their possession, ~~or proceed as described in~~

4394 ~~subparagraph 3.~~
 4395 ~~3. If the board determines not to certify the written~~
 4396 ~~agreement to recall a member or members of the board, or does~~
 4397 ~~not certify the recall by a vote at a meeting, the board shall,~~
 4398 ~~within 5 full business days after the meeting, file with the~~
 4399 ~~division a petition for arbitration pursuant to the procedures~~
 4400 ~~in s. 718.1255. For the purposes of this section, the unit~~
 4401 ~~owners who voted at the meeting or who executed the agreement in~~
 4402 ~~writing shall constitute one party under the petition for~~
 4403 ~~arbitration. If the arbitrator certifies the recall as to any~~
 4404 ~~member or members of the board, the recall will be effective~~
 4405 ~~upon mailing of the final order of arbitration to the~~
 4406 ~~association. If the association fails to comply with the order~~
 4407 ~~of the arbitrator, the division may take action pursuant to s.~~
 4408 ~~718.501. Any member or members so recalled shall deliver to the~~
 4409 ~~board any and all records of the association in their possession~~
 4410 ~~within 5 full business days of the effective date of the recall.~~
 4411 3.4. If the board fails to duly notice and hold a board
 4412 meeting within 5 full business days of service of an agreement
 4413 in writing or within 5 full business days of the adjournment of
 4414 the unit owner recall meeting, the recall shall be deemed
 4415 effective and the board members so recalled shall immediately
 4416 turn over to the board any and all records and property of the
 4417 association.
 4418 4.5. If a vacancy occurs on the board as a result of a
 4419 recall or removal and less than a majority of the board members
 4420 are removed, the vacancy may be filled by the affirmative vote
 4421 of a majority of the remaining directors, notwithstanding any

4422 provision to the contrary contained in this subsection. ~~If~~
 4423 ~~vacancies occur on the board as a result of a recall and a~~
 4424 ~~majority or more of the board members are removed, the vacancies~~
 4425 ~~shall be filled in accordance with procedural rules to be~~
 4426 ~~adopted by the division, which rules need not be consistent with~~
 4427 ~~this subsection. The rules must provide procedures governing the~~
 4428 ~~conduct of the recall election as well as the operation of the~~
 4429 ~~association during the period after a recall but prior to the~~
 4430 ~~recall election.~~

4431 ~~(k) Arbitration. There shall be a provision for mandatory~~
 4432 ~~nonbinding arbitration as provided for in s. 718.1255.~~

4433 Section 152. Section 718.1255, Florida Statutes, is
 4434 repealed.

4435 Section 153. Subsection (11) of section 718.202, Florida
 4436 Statutes, is renumbered as subsection (10) and subsections (1),
 4437 (8), and (10) of that section are amended to read:

4438 718.202 Sales or reservation deposits prior to closing.—

4439 (1) If a developer contracts to sell a condominium parcel
 4440 and the construction, furnishing, and landscaping of the
 4441 property submitted or proposed to be submitted to condominium
 4442 ownership has not been substantially completed in accordance
 4443 with the plans and specifications and representations made by
 4444 the developer in the disclosures required by this chapter, the
 4445 developer shall pay into an escrow account all payments up to 10
 4446 percent of the sale price received by the developer from the
 4447 buyer towards the sale price. The escrow agent shall give to the
 4448 purchaser a receipt for the deposit, upon request. ~~In lieu of~~
 4449 ~~the foregoing, the division director has the discretion to~~

HB 5005

2011

4450 ~~accept other assurances, including, but not limited to, a surety~~
4451 ~~bond or an irrevocable letter of credit in an amount equal to~~
4452 ~~the escrow requirements of this section.~~ Default determinations
4453 and refund of deposits shall be governed by the escrow release
4454 provision of this subsection. Funds shall be released from
4455 escrow as follows:

4456 (a) If a buyer properly terminates the contract pursuant
4457 to its terms or pursuant to this chapter, the funds shall be
4458 paid to the buyer together with any interest earned.

4459 (b) If the buyer defaults in the performance of his or her
4460 obligations under the contract of purchase and sale, the funds
4461 shall be paid to the developer together with any interest
4462 earned.

4463 (c) If the contract does not provide for the payment of
4464 any interest earned on the escrowed funds, interest shall be
4465 paid to the developer at the closing of the transaction.

4466 (d) If the funds of a buyer have not been previously
4467 disbursed in accordance with the provisions of this subsection,
4468 they may be disbursed to the developer by the escrow agent at
4469 the closing of the transaction, unless prior to the disbursement
4470 the escrow agent receives from the buyer written notice of a
4471 dispute between the buyer and developer.

4472 (8) Every escrow account required by this section shall be
4473 established with a bank; a savings and loan association; an
4474 attorney who is a member of The Florida Bar; a real estate
4475 broker registered under chapter 475; a title insurer authorized
4476 to do business in this state, acting through either its
4477 employees or a title insurance agent licensed under chapter 626;

HB 5005

2011

4478 or any financial lending institution having a net worth in
 4479 excess of \$5 million. The escrow agent shall not be located
 4480 outside the state unless, pursuant to the escrow agreement, the
 4481 escrow agent submits to the jurisdiction of ~~the division~~ and the
 4482 courts of this state for any cause of action arising from the
 4483 escrow. Every escrow agent shall be independent of the
 4484 developer, and no developer or any officer, director, affiliate,
 4485 subsidiary, or employee of a developer may serve as escrow
 4486 agent. Escrow funds may be invested only in securities of the
 4487 United States or an agency thereof or in accounts in
 4488 institutions the deposits of which are insured by an agency of
 4489 the United States.

4490 ~~(10) Nothing in this section shall be construed to require~~
 4491 ~~any filing with the division in the case of condominiums other~~
 4492 ~~than residential condominiums.~~

4493 Section 154. Subsections (2) and (8) of section 718.301,
 4494 Florida Statutes, are amended to read:

4495 718.301 Transfer of association control; claims of defect
 4496 by association.—

4497 (2) Within 75 days after the unit owners other than the
 4498 developer are entitled to elect a member or members of the board
 4499 of administration of an association, the association shall call,
 4500 and give not less than 60 days' notice of an election for the
 4501 members of the board of administration. The election shall
 4502 proceed as provided in s. 718.112(2)(d). The notice may be given
 4503 by any unit owner if the association fails to do so. Upon
 4504 ~~election of the first unit owner other than the developer to the~~
 4505 ~~board of administration, the developer shall forward to the~~

HB 5005

2011

4506 ~~division the name and mailing address of the unit owner board~~
 4507 ~~member.~~

4508 ~~(8) The division has authority to adopt rules pursuant to~~
 4509 ~~the Administrative Procedure Act to ensure the efficient and~~
 4510 ~~effective transition from developer control of a condominium to~~
 4511 ~~the establishment of a unit owner controlled association.~~

4512 Section 155. Sections 718.501, 718.5011, 718.5012,
 4513 718.5014, 718.50151, 718.50152, 718.50153, 718.50154, 718.50155,
 4514 and 718.502 are repealed.

4515 Section 156. Paragraphs (b) and (c) of subsection (1) and
 4516 paragraph (a) of subsection (2) of section 718.503, Florida
 4517 Statutes, are amended to read:

4518 718.503 Developer disclosure prior to sale; nondeveloper
 4519 unit owner disclosure prior to sale; voidability.—

4520 (1) DEVELOPER DISCLOSURE.—

4521 (b) Copies of documents to be furnished to prospective
 4522 buyer or lessee.—Until such time as the developer has furnished
 4523 the documents listed below to a person who has entered into a
 4524 contract to purchase a residential unit or lease it for more
 4525 than 5 years, the contract may be voided by that person,
 4526 entitling the person to a refund of any deposit together with
 4527 interest thereon as provided in s. 718.202. The contract may be
 4528 terminated by written notice from the proposed buyer or lessee
 4529 delivered to the developer within 15 days after the buyer or
 4530 lessee receives all of the documents required by this section.
 4531 The developer may not close for 15 days following the execution
 4532 of the agreement and delivery of the documents to the buyer as
 4533 evidenced by a signed receipt for documents unless the buyer is

HB 5005

2011

4534 informed in the 15-day voidability period and agrees to close
4535 prior to the expiration of the 15 days. The developer shall
4536 retain in his or her records a separate agreement signed by the
4537 buyer as proof of the buyer's agreement to close prior to the
4538 expiration of said voidability period. Said proof shall be
4539 retained for a period of 5 years after the date of the closing
4540 of the transaction. The documents to be delivered to the
4541 prospective buyer are the prospectus or disclosure statement
4542 with all exhibits, if the development is subject to the
4543 provisions of s. 718.504, or, if not, then copies of the
4544 following which are applicable:

4545 1. The question and answer sheet described in s. 718.504,
4546 and declaration of condominium, or the proposed declaration if
4547 the declaration has not been recorded, which shall include the
4548 certificate of a surveyor approximately representing the
4549 locations required by s. 718.104.

4550 2. The documents creating the association.

4551 3. The bylaws.

4552 4. The ground lease or other underlying lease of the
4553 condominium.

4554 5. The management contract, maintenance contract, and
4555 other contracts for management of the association and operation
4556 of the condominium and facilities used by the unit owners having
4557 a service term in excess of 1 year, and any management contracts
4558 that are renewable.

4559 6. The estimated operating budget for the condominium and
4560 a schedule of expenses for each type of unit, including fees
4561 assessed pursuant to s. 718.113(1) for the maintenance of

HB 5005

2011

4562 limited common elements where such costs are shared only by
 4563 those entitled to use the limited common elements.

4564 7. The lease of recreational and other facilities that
 4565 will be used only by unit owners of the subject condominium.

4566 8. The lease of recreational and other common facilities
 4567 that will be used by unit owners in common with unit owners of
 4568 other condominiums.

4569 9. The form of unit lease if the offer is of a leasehold.

4570 10. Any declaration of servitude of properties serving the
 4571 condominium but not owned by unit owners or leased to them or
 4572 the association.

4573 11. If the development is to be built in phases or if the
 4574 association is to manage more than one condominium, a
 4575 description of the plan of phase development or the arrangements
 4576 for the association to manage two or more condominiums.

4577 12. If the condominium is a conversion of existing
 4578 improvements, the statements and disclosure required by s.
 4579 718.616.

4580 13. The form of agreement for sale or lease of units.

4581 14. A copy of the floor plan of the unit and the plot plan
 4582 showing the location of the residential buildings and the
 4583 recreation and other common areas.

4584 15. A copy of all covenants and restrictions which will
 4585 affect the use of the property and which are not contained in
 4586 the foregoing.

4587 16. If the developer is required by state or local
 4588 authorities to obtain acceptance or approval of any dock or
 4589 marina facilities intended to serve the condominium, ~~a copy of~~

HB 5005

2011

4590 ~~any such acceptance or approval acquired by the time of filing~~
 4591 ~~with the division under s. 718.502(1), or a statement that such~~
 4592 acceptance or approval has not been acquired or received.

4593 17. Evidence demonstrating that the developer has an
 4594 ownership, leasehold, or contractual interest in the land upon
 4595 which the condominium is to be developed.

4596 (c) Subsequent estimates; when provided. ~~If the closing on~~
 4597 ~~a contract occurs more than 12 months after the filing of the~~
 4598 ~~offering circular with the division,~~ The developer shall provide
 4599 a copy of the current estimated operating budget of the
 4600 association to the buyer at closing, which shall not be
 4601 considered an amendment that modifies the offering provided any
 4602 changes to the association's budget from the budget given to the
 4603 buyer at the time of contract signing were the result of matters
 4604 beyond the developer's control. Changes in budgets of any master
 4605 association, recreation association, or club and similar budgets
 4606 for entities other than the association shall likewise not be
 4607 considered amendments that modify the offering. It is the intent
 4608 of this paragraph to clarify existing law.

4609 (2) NONDEVELOPER DISCLOSURE.—

4610 (a) Each unit owner who is not a developer as defined by
 4611 this chapter shall comply with the provisions of this subsection
 4612 prior to the sale of his or her unit. Each prospective purchaser
 4613 who has entered into a contract for the purchase of a
 4614 condominium unit is entitled, at the seller's expense, to a
 4615 current copy of the declaration of condominium, articles of
 4616 incorporation of the association, bylaws and rules of the
 4617 association, financial information required by s. 718.111, and

HB 5005

2011

4618 the document entitled "Frequently Asked Questions and Answers"
 4619 required by s. 718.504. On and after January 1, 2009, the
 4620 prospective purchaser shall also be entitled to receive from the
 4621 seller a copy of a governance form. ~~Such form shall be provided~~
 4622 ~~by the division summarizing governance of condominium~~
 4623 ~~associations. In addition to such other information as the~~
 4624 ~~division considers helpful to a prospective purchaser in~~
 4625 ~~understanding association governance,~~ The governance form shall
 4626 address the following subjects:

- 4627 1. The role of the board in conducting the day-to-day
 4628 affairs of the association on behalf of, and in the best
 4629 interests of, the owners.
- 4630 2. The board's responsibility to provide advance notice of
 4631 board and membership meetings.
- 4632 3. The rights of owners to attend and speak at board and
 4633 membership meetings.
- 4634 4. The responsibility of the board and of owners with
 4635 respect to maintenance of the condominium property.
- 4636 5. The responsibility of the board and owners to abide by
 4637 the condominium documents, this chapter, ~~rules adopted by the~~
 4638 ~~division,~~ and reasonable rules adopted by the board.
- 4639 6. Owners' rights to inspect and copy association records
 4640 and the limitations on such rights.
- 4641 7. Remedies available to owners with respect to actions by
 4642 the board which may be abusive or beyond the board's power and
 4643 authority.
- 4644 8. The right of the board to hire a property management
 4645 firm, subject to its own primary responsibility for such

HB 5005

2011

4646 management.

4647 9. The responsibility of owners with regard to payment of
 4648 regular or special assessments necessary for the operation of
 4649 the property and the potential consequences of failure to pay
 4650 such assessments.

4651 10. The voting rights of owners.

4652 11. Rights and obligations of the board in enforcement of
 4653 rules in the condominium documents and rules adopted by the
 4654 board.

4655
 4656 The governance form shall also include the following statement
 4657 in conspicuous type: "This publication is intended as an
 4658 informal educational overview of condominium governance. In the
 4659 event of a conflict, the provisions of chapter 718, Florida
 4660 Statutes, ~~rules adopted by the Division of Florida Condominiums,~~
 4661 ~~Timeshares, and Mobile Homes of the Department of Business and~~
 4662 ~~Professional Regulation,~~ the provisions of the condominium
 4663 documents, and reasonable rules adopted by the condominium
 4664 association's board of administration prevail over the contents
 4665 of this publication."

4666 Section 157. Section 718.504, Florida Statutes, is amended
 4667 to read:

4668 718.504 Prospectus or offering circular.—Every developer
 4669 of a residential condominium which contains more than 20
 4670 residential units, or which is part of a group of residential
 4671 condominiums which will be served by property to be used in
 4672 common by unit owners of more than 20 residential units, shall
 4673 prepare a prospectus or offering circular ~~and file it with the~~

HB 5005

2011

4674 ~~Division of Florida Condominiums, Timeshares, and Mobile Homes~~
4675 prior to entering into an enforceable contract of purchase and
4676 sale of any unit or lease of a unit for more than 5 years and
4677 shall furnish a copy of the prospectus or offering circular to
4678 each buyer. In addition to the prospectus or offering circular,
4679 each buyer shall be furnished a separate page entitled
4680 "Frequently Asked Questions and Answers," ~~which shall be in~~
4681 ~~accordance with a format approved by the division~~ and a copy of
4682 the financial information required by s. 718.111. This page
4683 shall, in readable language, inform prospective purchasers
4684 regarding their voting rights and unit use restrictions,
4685 including restrictions on the leasing of a unit; shall indicate
4686 whether and in what amount the unit owners or the association is
4687 obligated to pay rent or land use fees for recreational or other
4688 commonly used facilities; shall contain a statement identifying
4689 that amount of assessment which, pursuant to the budget, would
4690 be levied upon each unit type, exclusive of any special
4691 assessments, and which shall further identify the basis upon
4692 which assessments are levied, whether monthly, quarterly, or
4693 otherwise; shall state and identify any court cases in which the
4694 association is currently a party of record in which the
4695 association may face liability in excess of \$100,000; and which
4696 shall further state whether membership in a recreational
4697 facilities association is mandatory, and if so, shall identify
4698 the fees currently charged per unit type. ~~The division shall by~~
4699 ~~rule require such other disclosure as in its judgment will~~
4700 ~~assist prospective purchasers. The prospectus or offering~~
4701 ~~circular may include more than one condominium, although not all~~

HB 5005

2011

4702 ~~such units are being offered for sale as of the date of the~~
 4703 ~~prospectus or offering circular.~~ The prospectus or offering
 4704 circular must contain the following information:

4705 (1) The front cover or the first page must contain only:

4706 (a) The name of the condominium.

4707 (b) The following statements in conspicuous type:

4708 1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT
 4709 MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

4710 2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN
 4711 NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES,
 4712 ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES
 4713 MATERIALS.

4714 3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY
 4715 STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS
 4716 PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT
 4717 REPRESENTATIONS.

4718 (2) Summary: The next page must contain all statements
 4719 required to be in conspicuous type in the prospectus or offering
 4720 circular.

4721 (3) A separate index of the contents and exhibits of the
 4722 prospectus.

4723 (4) Beginning on the first page of the text (not including
 4724 the summary and index), a description of the condominium,
 4725 including, but not limited to, the following information:

4726 (a) Its name and location.

4727 (b) A description of the condominium property, including,
 4728 without limitation:

4729 1. The number of buildings, the number of units in each

HB 5005

2011

4730 building, the number of bathrooms and bedrooms in each unit, and
4731 the total number of units, if the condominium is not a phase
4732 condominium, or the maximum number of buildings that may be
4733 contained within the condominium, the minimum and maximum
4734 numbers of units in each building, the minimum and maximum
4735 numbers of bathrooms and bedrooms that may be contained in each
4736 unit, and the maximum number of units that may be contained
4737 within the condominium, if the condominium is a phase
4738 condominium.

4739 2. The page in the condominium documents where a copy of
4740 the plot plan and survey of the condominium is located.

4741 3. The estimated latest date of completion of
4742 constructing, finishing, and equipping. In lieu of a date, the
4743 description shall include a statement that the estimated date of
4744 completion of the condominium is in the purchase agreement and a
4745 reference to the article or paragraph containing that
4746 information.

4747 (c) The maximum number of units that will use facilities
4748 in common with the condominium. If the maximum number of units
4749 will vary, a description of the basis for variation and the
4750 minimum amount of dollars per unit to be spent for additional
4751 recreational facilities or enlargement of such facilities. If
4752 the addition or enlargement of facilities will result in a
4753 material increase of a unit owner's maintenance expense or
4754 rental expense, if any, the maximum increase and limitations
4755 thereon shall be stated.

4756 (5) (a) A statement in conspicuous type describing whether
4757 the condominium is created and being sold as fee simple

HB 5005

2011

4758 interests or as leasehold interests. If the condominium is
4759 created or being sold on a leasehold, the location of the lease
4760 in the disclosure materials shall be stated.

4761 (b) If timeshare estates are or may be created with
4762 respect to any unit in the condominium, a statement in
4763 conspicuous type stating that timeshare estates are created and
4764 being sold in units in the condominium.

4765 (6) A description of the recreational and other commonly
4766 used facilities that will be used only by unit owners of the
4767 condominium, including, but not limited to, the following:

4768 (a) Each room and its intended purposes, location,
4769 approximate floor area, and capacity in numbers of people.

4770 (b) Each swimming pool, as to its general location,
4771 approximate size and depths, approximate deck size and capacity,
4772 and whether heated.

4773 (c) Additional facilities, as to the number of each
4774 facility, its approximate location, approximate size, and
4775 approximate capacity.

4776 (d) A general description of the items of personal
4777 property and the approximate number of each item of personal
4778 property that the developer is committing to furnish for each
4779 room or other facility or, in the alternative, a representation
4780 as to the minimum amount of expenditure that will be made to
4781 purchase the personal property for the facility.

4782 (e) The estimated date when each room or other facility
4783 will be available for use by the unit owners.

4784 (f)1. An identification of each room or other facility to
4785 be used by unit owners that will not be owned by the unit owners

4786 or the association;

4787 2. A reference to the location in the disclosure materials
 4788 of the lease or other agreements providing for the use of those
 4789 facilities; and

4790 3. A description of the terms of the lease or other
 4791 agreements, including the length of the term; the rent payable,
 4792 directly or indirectly, by each unit owner, and the total rent
 4793 payable to the lessor, stated in monthly and annual amounts for
 4794 the entire term of the lease; and a description of any option to
 4795 purchase the property leased under any such lease, including the
 4796 time the option may be exercised, the purchase price or how it
 4797 is to be determined, the manner of payment, and whether the
 4798 option may be exercised for a unit owner's share or only as to
 4799 the entire leased property.

4800 (g) A statement as to whether the developer may provide
 4801 additional facilities not described above; their general
 4802 locations and types; improvements or changes that may be made;
 4803 the approximate dollar amount to be expended; and the maximum
 4804 additional common expense or cost to the individual unit owners
 4805 that may be charged during the first annual period of operation
 4806 of the modified or added facilities.

4807
 4808 Descriptions as to locations, areas, capacities, numbers,
 4809 volumes, or sizes may be stated as approximations or minimums.

4810 (7) A description of the recreational and other facilities
 4811 that will be used in common with other condominiums, community
 4812 associations, or planned developments which require the payment
 4813 of the maintenance and expenses of such facilities, directly or

4814 indirectly, by the unit owners. The description shall include,
 4815 but not be limited to, the following:

4816 (a) Each building and facility committed to be built.

4817 (b) Facilities not committed to be built except under
 4818 certain conditions, and a statement of those conditions or
 4819 contingencies.

4820 (c) As to each facility committed to be built, or which
 4821 will be committed to be built upon the happening of one of the
 4822 conditions in paragraph (b), a statement of whether it will be
 4823 owned by the unit owners having the use thereof or by an
 4824 association or other entity which will be controlled by them, or
 4825 others, and the location in the exhibits of the lease or other
 4826 document providing for use of those facilities.

4827 (d) The year in which each facility will be available for
 4828 use by the unit owners or, in the alternative, the maximum
 4829 number of unit owners in the project at the time each of all of
 4830 the facilities is committed to be completed.

4831 (e) A general description of the items of personal
 4832 property, and the approximate number of each item of personal
 4833 property, that the developer is committing to furnish for each
 4834 room or other facility or, in the alternative, a representation
 4835 as to the minimum amount of expenditure that will be made to
 4836 purchase the personal property for the facility.

4837 (f) If there are leases, a description thereof, including
 4838 the length of the term, the rent payable, and a description of
 4839 any option to purchase.

4840
 4841 Descriptions shall include location, areas, capacities, numbers,

4842 volumes, or sizes and may be stated as approximations or
 4843 minimums.

4844 (8) Recreation lease or associated club membership:

4845 (a) If any recreational facilities or other facilities
 4846 offered by the developer and available to, or to be used by,
 4847 unit owners are to be leased or have club membership associated,
 4848 the following statement in conspicuous type shall be included:
 4849 THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS
 4850 CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS
 4851 CONDOMINIUM. There shall be a reference to the location in the
 4852 disclosure materials where the recreation lease or club
 4853 membership is described in detail.

4854 (b) If it is mandatory that unit owners pay a fee, rent,
 4855 dues, or other charges under a recreational facilities lease or
 4856 club membership for the use of facilities, there shall be in
 4857 conspicuous type the applicable statement:

4858 1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS
 4859 MANDATORY FOR UNIT OWNERS; or

4860 2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP,
 4861 TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

4862 3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE
 4863 COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP,
 4864 REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES
 4865 LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4866 4. A similar statement of the nature of the organization
 4867 or the manner in which the use rights are created, and that unit
 4868 owners are required to pay.

4869

4870 Immediately following the applicable statement, the location in
 4871 the disclosure materials where the development is described in
 4872 detail shall be stated.

4873 (c) If the developer, or any other person other than the
 4874 unit owners and other persons having use rights in the
 4875 facilities, reserves, or is entitled to receive, any rent, fee,
 4876 or other payment for the use of the facilities, then there shall
 4877 be the following statement in conspicuous type: THE UNIT OWNERS
 4878 OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR
 4879 RECREATIONAL OR OTHER COMMONLY USED FACILITIES. Immediately
 4880 following this statement, the location in the disclosure
 4881 materials where the rent or land use fees are described in
 4882 detail shall be stated.

4883 (d) If, in any recreation format, whether leasehold, club,
 4884 or other, any person other than the association has the right to
 4885 a lien on the units to secure the payment of assessments, rent,
 4886 or other exactions, there shall appear a statement in
 4887 conspicuous type in substantially the following form:

4888 1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO
 4889 SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE
 4890 RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE
 4891 PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

4892 2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO
 4893 SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE
 4894 FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL
 4895 OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE
 4896 THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

4897

HB 5005

2011

4898 Immediately following the applicable statement, the location in
4899 the disclosure materials where the lien or lien right is
4900 described in detail shall be stated.

4901 (9) If the developer or any other person has the right to
4902 increase or add to the recreational facilities at any time after
4903 the establishment of the condominium whose unit owners have use
4904 rights therein, without the consent of the unit owners or
4905 associations being required, there shall appear a statement in
4906 conspicuous type in substantially the following form:

4907 RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT
4908 OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this
4909 statement, the location in the disclosure materials where such
4910 reserved rights are described shall be stated.

4911 (10) A statement of whether the developer's plan includes
4912 a program of leasing units rather than selling them, or leasing
4913 units and selling them subject to such leases. If so, there
4914 shall be a description of the plan, including the number and
4915 identification of the units and the provisions and term of the
4916 proposed leases, and a statement in boldfaced type that: THE
4917 UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

4918 (11) The arrangements for management of the association
4919 and maintenance and operation of the condominium property and of
4920 other property that will serve the unit owners of the
4921 condominium property, and a description of the management
4922 contract and all other contracts for these purposes having a
4923 term in excess of 1 year, including the following:

- 4924 (a) The names of contracting parties.
4925 (b) The term of the contract.

HB 5005

2011

4926 (c) The nature of the services included.

4927 (d) The compensation, stated on a monthly and annual
 4928 basis, and provisions for increases in the compensation.

4929 (e) A reference to the volumes and pages of the
 4930 condominium documents and of the exhibits containing copies of
 4931 such contracts.

4932

4933 Copies of all described contracts shall be attached as exhibits.
 4934 If there is a contract for the management of the condominium
 4935 property, then a statement in conspicuous type in substantially
 4936 the following form shall appear, identifying the proposed or
 4937 existing contract manager: THERE IS (IS TO BE) A CONTRACT FOR
 4938 THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE
 4939 CONTRACT MANAGER). Immediately following this statement, the
 4940 location in the disclosure materials of the contract for
 4941 management of the condominium property shall be stated.

4942 (12) If the developer or any other person or persons other
 4943 than the unit owners has the right to retain control of the
 4944 board of administration of the association for a period of time
 4945 which can exceed 1 year after the closing of the sale of a
 4946 majority of the units in that condominium to persons other than
 4947 successors or alternate developers, then a statement in
 4948 conspicuous type in substantially the following form shall be
 4949 included: THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO
 4950 RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS
 4951 HAVE BEEN SOLD. Immediately following this statement, the
 4952 location in the disclosure materials where this right to control
 4953 is described in detail shall be stated.

HB 5005

2011

4954 (13) If there are any restrictions upon the sale,
 4955 transfer, conveyance, or leasing of a unit, then a statement in
 4956 conspicuous type in substantially the following form shall be
 4957 included: THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR
 4958 CONTROLLED. Immediately following this statement, the location
 4959 in the disclosure materials where the restriction, limitation,
 4960 or control on the sale, lease, or transfer of units is described
 4961 in detail shall be stated.

4962 (14) If the condominium is part of a phase project, the
 4963 following information shall be stated:

4964 (a) A statement in conspicuous type in substantially the
 4965 following form: THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND
 4966 UNITS MAY BE ADDED TO THIS CONDOMINIUM. Immediately following
 4967 this statement, the location in the disclosure materials where
 4968 the phasing is described shall be stated.

4969 (b) A summary of the provisions of the declaration which
 4970 provide for the phasing.

4971 (c) A statement as to whether or not residential buildings
 4972 and units which are added to the condominium may be
 4973 substantially different from the residential buildings and units
 4974 originally in the condominium. If the added residential
 4975 buildings and units may be substantially different, there shall
 4976 be a general description of the extent to which such added
 4977 residential buildings and units may differ, and a statement in
 4978 conspicuous type in substantially the following form shall be
 4979 included: BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM
 4980 MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND
 4981 UNITS IN THE CONDOMINIUM. Immediately following this statement,

HB 5005

2011

4982 | the location in the disclosure materials where the extent to
 4983 | which added residential buildings and units may substantially
 4984 | differ is described shall be stated.

4985 | (d) A statement of the maximum number of buildings
 4986 | containing units, the maximum and minimum numbers of units in
 4987 | each building, the maximum number of units, and the minimum and
 4988 | maximum square footage of the units that may be contained within
 4989 | each parcel of land which may be added to the condominium.

4990 | (15) If a condominium created on or after July 1, 2000, is
 4991 | or may become part of a multicondominium, the following
 4992 | information must be provided:

4993 | (a) A statement in conspicuous type in substantially the
 4994 | following form: THIS CONDOMINIUM IS (MAY BE) PART OF A
 4995 | MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL
 4996 | (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately following
 4997 | this statement, the location in the prospectus or offering
 4998 | circular and its exhibits where the multicondominium aspects of
 4999 | the offering are described must be stated.

5000 | (b) A summary of the provisions in the declaration,
 5001 | articles of incorporation, and bylaws which establish and
 5002 | provide for the operation of the multicondominium, including a
 5003 | statement as to whether unit owners in the condominium will have
 5004 | the right to use recreational or other facilities located or
 5005 | planned to be located in other condominiums operated by the same
 5006 | association, and the manner of sharing the common expenses
 5007 | related to such facilities.

5008 | (c) A statement of the minimum and maximum number of
 5009 | condominiums, and the minimum and maximum number of units in

HB 5005

2011

5010 each of those condominiums, which will or may be operated by the
5011 association, and the latest date by which the exact number will
5012 be finally determined.

5013 (d) A statement as to whether any of the condominiums in
5014 the multicondominium may include units intended to be used for
5015 nonresidential purposes and the purpose or purposes permitted
5016 for such use.

5017 (e) A general description of the location and approximate
5018 acreage of any land on which any additional condominiums to be
5019 operated by the association may be located.

5020 (16) If the condominium is created by conversion of
5021 existing improvements, the following information shall be
5022 stated:

5023 (a) The information required by s. 718.616.

5024 (b) A caveat that there are no express warranties unless
5025 they are stated in writing by the developer.

5026 (17) A summary of the restrictions, if any, to be imposed
5027 on units concerning the use of any of the condominium property,
5028 including statements as to whether there are restrictions upon
5029 children and pets, and reference to the volumes and pages of the
5030 condominium documents where such restrictions are found, or if
5031 such restrictions are contained elsewhere, then a copy of the
5032 documents containing the restrictions shall be attached as an
5033 exhibit.

5034 (18) If there is any land that is offered by the developer
5035 for use by the unit owners and that is neither owned by them nor
5036 leased to them, the association, or any entity controlled by
5037 unit owners and other persons having the use rights to such

HB 5005

2011

5038 land, a statement shall be made as to how such land will serve
5039 the condominium. If any part of such land will serve the
5040 condominium, the statement shall describe the land and the
5041 nature and term of service, and the declaration or other
5042 instrument creating such servitude shall be included as an
5043 exhibit.

5044 (19) The manner in which utility and other services,
5045 including, but not limited to, sewage and waste disposal, water
5046 supply, and storm drainage, will be provided and the person or
5047 entity furnishing them.

5048 (20) An explanation of the manner in which the
5049 apportionment of common expenses and ownership of the common
5050 elements has been determined.

5051 (21) An estimated operating budget for the condominium and
5052 the association, and a schedule of the unit owner's expenses
5053 shall be attached as an exhibit and shall contain the following
5054 information:

5055 (a) The estimated monthly and annual expenses of the
5056 condominium and the association that are collected from unit
5057 owners by assessments.

5058 (b) The estimated monthly and annual expenses of each unit
5059 owner for a unit, other than common expenses paid by all unit
5060 owners, payable by the unit owner to persons or entities other
5061 than the association, as well as to the association, including
5062 fees assessed pursuant to s. 718.113(1) for maintenance of
5063 limited common elements where such costs are shared only by
5064 those entitled to use the limited common element, and the total
5065 estimated monthly and annual expense. There may be excluded from

HB 5005

2011

5066 | this estimate expenses which are not provided for or
5067 | contemplated by the condominium documents, including, but not
5068 | limited to, the costs of private telephone; maintenance of the
5069 | interior of condominium units, which is not the obligation of
5070 | the association; maid or janitorial services privately
5071 | contracted for by the unit owners; utility bills billed directly
5072 | to each unit owner for utility services to his or her unit;
5073 | insurance premiums other than those incurred for policies
5074 | obtained by the condominium; and similar personal expenses of
5075 | the unit owner. A unit owner's estimated payments for
5076 | assessments shall also be stated in the estimated amounts for
5077 | the times when they will be due.

5078 | (c) The estimated items of expenses of the condominium and
5079 | the association, except as excluded under paragraph (b),
5080 | including, but not limited to, the following items, which shall
5081 | be stated as an association expense collectible by assessments
5082 | or as unit owners' expenses payable to persons other than the
5083 | association:

- 5084 | 1. Expenses for the association and condominium:
5085 | a. Administration of the association.
5086 | b. Management fees.
5087 | c. Maintenance.
5088 | d. Rent for recreational and other commonly used
5089 | facilities.
5090 | e. Taxes upon association property.
5091 | f. Taxes upon leased areas.
5092 | g. Insurance.
5093 | h. Security provisions.

HB 5005

2011

- 5094 i. Other expenses.
- 5095 j. Operating capital.
- 5096 k. Reserves.
- 5097 ~~1. Fees payable to the division.~~
- 5098 2. Expenses for a unit owner:
 - 5099 a. Rent for the unit, if subject to a lease.
 - 5100 b. Rent payable by the unit owner directly to the lessor
 - 5101 or agent under any recreational lease or lease for the use of
 - 5102 commonly used facilities, which use and payment is a mandatory
 - 5103 condition of ownership and is not included in the common expense
 - 5104 or assessments for common maintenance paid by the unit owners to
 - 5105 the association.

5106 (d) The following statement in conspicuous type: THE
 5107 BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN
 5108 ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH ESTIMATE
 5109 ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON
 5110 FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION.
 5111 ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH
 5112 CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN
 5113 THE OFFERING.

5114 (e) Each budget for an association prepared by a developer
 5115 consistent with this subsection shall be prepared in good faith
 5116 and shall reflect accurate estimated amounts for the required
 5117 items in paragraph (c) ~~at the time of the filing of the offering~~
 5118 ~~circular with the division,~~ and subsequent increased amounts of
 5119 any item included in the association's estimated budget that are
 5120 beyond the control of the developer shall not be considered an
 5121 amendment that would give rise to rescission rights set forth in

HB 5005

2011

5122 s. 718.503(1)(a) or (b), nor shall such increases modify, void,
 5123 or otherwise affect any guarantee of the developer contained in
 5124 the offering circular or any purchase contract. It is the intent
 5125 of this paragraph to clarify existing law.

5126 (f) The estimated amounts shall be stated for a period of
 5127 at least 12 months and may distinguish between the period prior
 5128 to the time unit owners other than the developer elect a
 5129 majority of the board of administration and the period after
 5130 that date.

5131 (22) A schedule of estimated closing expenses to be paid
 5132 by a buyer or lessee of a unit and a statement of whether title
 5133 opinion or title insurance policy is available to the buyer and,
 5134 if so, at whose expense.

5135 (23) The identity of the developer and the chief operating
 5136 officer or principal directing the creation and sale of the
 5137 condominium and a statement of its and his or her experience in
 5138 this field.

5139 (24) Copies of the following, to the extent they are
 5140 applicable, shall be included as exhibits:

5141 (a) The declaration of condominium, or the proposed
 5142 declaration if the declaration has not been recorded.

5143 (b) The articles of incorporation creating the
 5144 association.

5145 (c) The bylaws of the association.

5146 (d) The ground lease or other underlying lease of the
 5147 condominium.

5148 (e) The management agreement and all maintenance and other
 5149 contracts for management of the association and operation of the

HB 5005

2011

5150 condominium and facilities used by the unit owners having a
 5151 service term in excess of 1 year.

5152 (f) The estimated operating budget for the condominium and
 5153 the required schedule of unit owners' expenses.

5154 (g) A copy of the floor plan of the unit and the plot plan
 5155 showing the location of the residential buildings and the
 5156 recreation and other common areas.

5157 (h) The lease of recreational and other facilities that
 5158 will be used only by unit owners of the subject condominium.

5159 (i) The lease of facilities used by owners and others.

5160 (j) The form of unit lease, if the offer is of a
 5161 leasehold.

5162 (k) A declaration of servitude of properties serving the
 5163 condominium but not owned by unit owners or leased to them or
 5164 the association.

5165 (l) The statement of condition of the existing building or
 5166 buildings, if the offering is of units in an operation being
 5167 converted to condominium ownership.

5168 (m) The statement of inspection for termite damage and
 5169 treatment of the existing improvements, if the condominium is a
 5170 conversion.

5171 (n) The form of agreement for sale or lease of units.

5172 (o) A copy of the agreement for escrow of payments made to
 5173 the developer prior to closing.

5174 (p) A copy of the documents containing any restrictions on
 5175 use of the property required by subsection (17).

5176 (25) Any prospectus or offering circular complying, prior
 5177 to the effective date of this act, with the provisions of former

5178 ss. 711.69 and 711.802 may continue to be used without amendment
 5179 or may be amended to comply with this chapter.

5180 (26) A brief narrative description of the location and
 5181 effect of all existing and intended easements located or to be
 5182 located on the condominium property other than those described
 5183 in the declaration.

5184 (27) If the developer is required by state or local
 5185 authorities to obtain acceptance or approval of any dock or
 5186 marina facilities intended to serve the condominium, ~~a copy of~~
 5187 ~~any such acceptance or approval acquired by the time of filing~~
 5188 ~~with the division under s. 718.502(1) or~~ a statement that such
 5189 acceptance or approval has not been acquired or received.

5190 (28) Evidence demonstrating that the developer has an
 5191 ownership, leasehold, or contractual interest in the land upon
 5192 which the condominium is to be developed.

5193 Section 158. Section 718.509, Florida Statutes, is
 5194 repealed.

5195 Section 159. Section 718.621, Florida Statutes, is
 5196 repealed.

5197 Section 160. Subsections (18) through (28) of section
 5198 719.103, Florida Statutes, are renumbered as subsections (17)
 5199 through (27), respectively, and subsection (17) is amended to
 5200 read:

5201 719.103 Definitions.—As used in this chapter:

5202 ~~(17) "Division" means the Division of Florida~~
 5203 ~~Condominiums, Timeshares, and Mobile Homes of the Department of~~
 5204 ~~Business and Professional Regulation.~~

HB 5005

2011

5205 Section 161. Subsection (1) of section 719.1035, Florida
 5206 Statutes, is amended to read:

5207 719.1035 Creation of cooperatives.—

5208 (1) The date when cooperative existence shall commence is
 5209 upon commencement of corporate existence of the cooperative
 5210 association as provided in s. 607.0203. The cooperative
 5211 documents must be recorded in the county in which the
 5212 cooperative is located before property may be conveyed or
 5213 transferred to the cooperative. All persons who have any record
 5214 interest in any mortgage encumbering the interest in the land
 5215 being submitted to cooperative ownership must either join in the
 5216 execution of the cooperative documents or execute, with the
 5217 requirements for deed, and record, a consent to the cooperative
 5218 documents or an agreement subordinating their mortgage interest
 5219 to the cooperative documents. ~~Upon creation of a cooperative,~~
 5220 ~~the developer or association shall file the recording~~
 5221 ~~information with the division within 30 working days on a form~~
 5222 ~~prescribed by the division.~~

5223 Section 162. Subsection (4), paragraph (a) of subsection
 5224 (8), and subsection (11) of section 719.104, Florida Statutes,
 5225 are amended to read:

5226 719.104 Cooperatives; access to units; records; financial
 5227 reports; assessments; purchase of leases.—

5228 (4) FINANCIAL REPORT.—

5229 ~~(a)~~ Within 60 days following the end of the fiscal or
 5230 calendar year or annually on such date as is otherwise provided
 5231 in the bylaws of the association, the board of administration of
 5232 the association shall mail or furnish by personal delivery to

5233 each unit owner a complete financial report of actual receipts
 5234 and expenditures for the previous 12 months, or a complete set
 5235 of financial statements for the preceding fiscal year prepared
 5236 in accordance with generally accepted accounting procedures. The
 5237 report shall show the amounts of receipts by accounts and
 5238 receipt classifications and shall show the amounts of expenses
 5239 by accounts and expense classifications including, if
 5240 applicable, but not limited to, the following:

- 5241 1. Costs for security;
- 5242 2. Professional and management fees and expenses;
- 5243 3. Taxes;
- 5244 4. Costs for recreation facilities;
- 5245 5. Expenses for refuse collection and utility services;
- 5246 6. Expenses for lawn care;
- 5247 7. Costs for building maintenance and repair;
- 5248 8. Insurance costs;
- 5249 9. Administrative and salary expenses; and
- 5250 10. Reserves for capital expenditures, deferred
 5251 maintenance, and any other category for which the association
 5252 maintains a reserve account or accounts.

5253 ~~(b) The division shall adopt rules that may require that~~
 5254 ~~the association deliver to the unit owners, in lieu of the~~
 5255 ~~financial report required by this section, a complete set of~~
 5256 ~~financial statements for the preceding fiscal year. The~~
 5257 ~~financial statements shall be delivered within 90 days following~~
 5258 ~~the end of the previous fiscal year or annually on such other~~
 5259 ~~date as provided in the bylaws. The rules of the division may~~
 5260 ~~require that the financial statements be compiled, reviewed, or~~

5261 ~~audited, and the rules shall take into consideration the~~
 5262 ~~criteria set forth in s. 719.501(1)(j). The requirement to have~~
 5263 ~~the financial statements compiled, reviewed, or audited does not~~
 5264 ~~apply to associations if a majority of the voting interests of~~
 5265 ~~the association present at a duly called meeting of the~~
 5266 ~~association have determined for a fiscal year to waive this~~
 5267 ~~requirement. In an association in which turnover of control by~~
 5268 ~~the developer has not occurred, the developer may vote to waive~~
 5269 ~~the audit requirement for the first 2 years of the operation of~~
 5270 ~~the association, after which time waiver of an applicable audit~~
 5271 ~~requirement shall be by a majority of voting interests other~~
 5272 ~~than the developer. The meeting shall be held prior to the end~~
 5273 ~~of the fiscal year, and the waiver shall be effective for only~~
 5274 ~~one fiscal year. This subsection does not apply to a cooperative~~
 5275 ~~that consists of 50 or fewer units.~~

5276 (8) CORPORATE ENTITY.—

5277 (a) The officers and directors of the association have a
 5278 fiduciary relationship to the unit owners. An officer, director,
 5279 or manager may not solicit, offer to accept, or accept any thing
 5280 or service of value for which consideration has not been
 5281 provided for his or her own benefit or that of his or her
 5282 immediate family, from any person providing or proposing to
 5283 provide goods or services to the association. ~~Any such officer,~~
 5284 ~~director, or manager who knowingly solicits, offers to accept,~~
 5285 ~~or accepts any thing or service of value is subject to a civil~~
 5286 ~~penalty pursuant to s. 719.501(1)(d).~~ However, this paragraph
 5287 does not prohibit an officer, director, or manager from
 5288 accepting services or items received in connection with trade

HB 5005

2011

5289 fairs or education programs.

5290 ~~(11) NOTIFICATION OF DIVISION. When the board of directors~~
 5291 ~~intends to dissolve or merge the cooperative association, the~~
 5292 ~~board shall so notify the division before taking any action to~~
 5293 ~~dissolve or merge the cooperative association.~~

5294 Section 163. Paragraph (c) of subsection (5) and paragraph
 5295 (b) of subsection (6) of section 719.1055, Florida Statutes, are
 5296 amended to read:

5297 719.1055 Amendment of cooperative documents; alteration
 5298 and acquisition of property.—

5299 (5) The bylaws must include a provision whereby a
 5300 certificate of compliance from a licensed electrical contractor
 5301 or electrician may be accepted by the association's board as
 5302 evidence of compliance of the cooperative units with the
 5303 applicable fire and life safety code.

5304 (c) As part of the information collected annually from
 5305 cooperatives, ~~the division shall require~~ associations must ~~to~~
 5306 report the membership vote and recording of a certificate under
 5307 this subsection and, if retrofitting has been undertaken, the
 5308 per-unit cost of such work. ~~The division shall annually report~~
 5309 to the Division of State Fire Marshal of the Department of
 5310 Financial Services ~~the number of cooperatives that have elected~~
 5311 ~~to forego retrofitting.~~

5312 (6) Notwithstanding the provisions of chapter 633 or of
 5313 any other code, statute, ordinance, administrative rule, or
 5314 regulation, or any interpretation thereof, a cooperative or unit
 5315 owner is not obligated to retrofit the common elements or units
 5316 of a residential cooperative that meets the definition of

HB 5005

2011

5317 "housing for older persons" in s. 760.29(4)(b)3. to comply with
 5318 requirements relating to handrails and guardrails in a building
 5319 that has been certified for occupancy by the applicable
 5320 governmental entity, if the unit owners have voted to forego
 5321 such retrofitting by the affirmative vote of two-thirds of all
 5322 voting interests in the affected cooperative. However, a
 5323 cooperative may not forego the retrofitting in common areas in a
 5324 high-rise building. For purposes of this subsection, the term
 5325 "high-rise building" means a building that is greater than 75
 5326 feet in height where the building height is measured from the
 5327 lowest level of fire department access to the floor of the
 5328 highest occupiable story. For purposes of this subsection, the
 5329 term "common areas" means stairwells and exposed, outdoor
 5330 walkways and corridors. In no event shall the local authority
 5331 having jurisdiction require completion of retrofitting of common
 5332 areas with handrails and guardrails before the end of 2014.

5333 (b) As part of the information collected annually from
 5334 cooperatives, ~~the division shall require~~ associations must ~~to~~
 5335 report the membership vote and recording of a certificate under
 5336 this subsection and, if retrofitting has been undertaken, the
 5337 per-unit cost of such work. ~~The division shall annually report~~
 5338 to the Division of State Fire Marshal of the Department of
 5339 Financial Services ~~the number of cooperatives that have elected~~
 5340 ~~to forego retrofitting.~~

5341 Section 164. Paragraphs (a), (b), (c), (d), (f) and (l) of
 5342 subsection (1) of section 719.106, Florida Statutes, are amended
 5343 to read:

5344 719.106 Bylaws; cooperative ownership.—

5345 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
 5346 documents shall provide for the following, and if they do not,
 5347 they shall be deemed to include the following:

5348 (a) Administration.—

5349 1. The form of administration of the association shall be
 5350 described, indicating the titles of the officers and board of
 5351 administration and specifying the powers, duties, manner of
 5352 selection and removal, and compensation, if any, of officers and
 5353 board members. In the absence of such a provision, the board of
 5354 administration shall be composed of five members, except in the
 5355 case of cooperatives having five or fewer units, in which case
 5356 in not-for-profit corporations, the board shall consist of not
 5357 fewer than three members. In the absence of provisions to the
 5358 contrary, the board of administration shall have a president, a
 5359 secretary, and a treasurer, who shall perform the duties of
 5360 those offices customarily performed by officers of corporations.
 5361 Unless prohibited in the bylaws, the board of administration may
 5362 appoint other officers and grant them those duties it deems
 5363 appropriate. Unless otherwise provided in the bylaws, the
 5364 officers shall serve without compensation and at the pleasure of
 5365 the board. Unless otherwise provided in the bylaws, the members
 5366 of the board shall serve without compensation.

5367 2. When a unit owner files a written inquiry by certified
 5368 mail with the board of administration, the board shall respond
 5369 in writing to the unit owner within 30 days of receipt of the
 5370 inquiry. The board's response shall either give a substantive
 5371 response to the inquirer or, notify the inquirer that a legal
 5372 opinion has been requested, ~~or notify the inquirer that advice~~

HB 5005

2011

5373 ~~has been requested from the division. If the board requests~~
 5374 ~~advice from the division, the board shall, within 10 days of its~~
 5375 ~~receipt of the advice, provide in writing a substantive response~~
 5376 ~~to the inquirer.~~ If a legal opinion is requested, the board
 5377 shall, within 60 days after the receipt of the inquiry, provide
 5378 in writing a substantive response to the inquirer. The failure
 5379 to provide a substantive response to the inquirer as provided
 5380 herein precludes the board from recovering attorney's fees and
 5381 costs in any subsequent litigation, administrative proceeding,
 5382 or arbitration arising out of the inquiry. The association may,
 5383 through its board of administration, adopt reasonable rules and
 5384 regulations regarding the frequency and manner of responding to
 5385 the unit owners' inquiries, one of which may be that the
 5386 association is obligated to respond to only one written inquiry
 5387 per unit in any given 30-day period. In such case, any
 5388 additional inquiry or inquiries must be responded to in the
 5389 subsequent 30-day period, or periods, as applicable.

5390 (b) Quorum; voting requirements; proxies.—

5391 1. Unless otherwise provided in the bylaws, the percentage
 5392 of voting interests required to constitute a quorum at a meeting
 5393 of the members shall be a majority of voting interests, and
 5394 decisions shall be made by owners of a majority of the voting
 5395 interests. Unless otherwise provided in this chapter, or in the
 5396 articles of incorporation, bylaws, or other cooperative
 5397 documents, and except as provided in subparagraph (d)1.,
 5398 decisions shall be made by owners of a majority of the voting
 5399 interests represented at a meeting at which a quorum is present.

5400 2. Except as specifically otherwise provided herein, after

HB 5005

2011

5401 January 1, 1992, unit owners may not vote by general proxy, but
5402 may vote by limited proxies ~~substantially conforming to a~~
5403 ~~limited proxy form adopted by the division~~. Limited proxies and
5404 general proxies may be used to establish a quorum. Limited
5405 proxies shall be used for votes taken to waive or reduce
5406 reserves in accordance with subparagraph (j)2., ~~for votes taken~~
5407 ~~to waive the financial reporting requirements of s.~~
5408 ~~719.104(4)(b)~~, for votes taken to amend the articles of
5409 incorporation or bylaws pursuant to this section, and for any
5410 other matter for which this chapter requires or permits a vote
5411 of the unit owners. Except as provided in paragraph (d), after
5412 January 1, 1992, no proxy, limited or general, shall be used in
5413 the election of board members. General proxies may be used for
5414 other matters for which limited proxies are not required, and
5415 may also be used in voting for nonsubstantive changes to items
5416 for which a limited proxy is required and given. Notwithstanding
5417 the provisions of this section, unit owners may vote in person
5418 at unit owner meetings. Nothing contained herein shall limit the
5419 use of general proxies or require the use of limited proxies or
5420 require the use of limited proxies for any agenda item or
5421 election at any meeting of a timeshare cooperative.

5422 3. Any proxy given shall be effective only for the
5423 specific meeting for which originally given and any lawfully
5424 adjourned meetings thereof. In no event shall any proxy be valid
5425 for a period longer than 90 days after the date of the first
5426 meeting for which it was given. Every proxy shall be revocable
5427 at any time at the pleasure of the unit owner executing it.

5428 4. A member of the board of administration or a committee

5429 | may submit in writing his or her agreement or disagreement with
 5430 | any action taken at a meeting that the member did not attend.
 5431 | This agreement or disagreement may not be used as a vote for or
 5432 | against the action taken and may not be used for the purposes of
 5433 | creating a quorum.

5434 | 5. When some or all of the board or committee members meet
 5435 | by telephone conference, those board or committee members
 5436 | attending by telephone conference may be counted toward
 5437 | obtaining a quorum and may vote by telephone. A telephone
 5438 | speaker shall be utilized so that the conversation of those
 5439 | board or committee members attending by telephone may be heard
 5440 | by the board or committee members attending in person, as well
 5441 | as by unit owners present at a meeting.

5442 | (c) Board of administration meetings.—Meetings of the
 5443 | board of administration at which a quorum of the members is
 5444 | present shall be open to all unit owners. Any unit owner may
 5445 | tape record or videotape meetings of the board of
 5446 | administration. The right to attend such meetings includes the
 5447 | right to speak at such meetings with reference to all designated
 5448 | agenda items. ~~The division shall adopt reasonable rules~~
 5449 | ~~governing the tape recording and videotaping of the meeting.~~ The
 5450 | association may adopt reasonable written rules governing the
 5451 | frequency, duration, and manner of unit owner statements.
 5452 | Adequate notice of all meetings shall be posted in a conspicuous
 5453 | place upon the cooperative property at least 48 continuous hours
 5454 | preceding the meeting, except in an emergency. Any item not
 5455 | included on the notice may be taken up on an emergency basis by
 5456 | at least a majority plus one of the members of the board. Such

HB 5005

2011

5457 emergency action shall be noticed and ratified at the next
5458 regular meeting of the board. However, written notice of any
5459 meeting at which nonemergency special assessments, or at which
5460 amendment to rules regarding unit use, will be considered shall
5461 be mailed, delivered, or electronically transmitted to the unit
5462 owners and posted conspicuously on the cooperative property not
5463 less than 14 days prior to the meeting. Evidence of compliance
5464 with this 14-day notice shall be made by an affidavit executed
5465 by the person providing the notice and filed among the official
5466 records of the association. Upon notice to the unit owners, the
5467 board shall by duly adopted rule designate a specific location
5468 on the cooperative property upon which all notices of board
5469 meetings shall be posted. In lieu of or in addition to the
5470 physical posting of notice of any meeting of the board of
5471 administration on the cooperative property, the association may,
5472 by reasonable rule, adopt a procedure for conspicuously posting
5473 and repeatedly broadcasting the notice and the agenda on a
5474 closed-circuit cable television system serving the cooperative
5475 association. However, if broadcast notice is used in lieu of a
5476 notice posted physically on the cooperative property, the notice
5477 and agenda must be broadcast at least four times every broadcast
5478 hour of each day that a posted notice is otherwise required
5479 under this section. When broadcast notice is provided, the
5480 notice and agenda must be broadcast in a manner and for a
5481 sufficient continuous length of time so as to allow an average
5482 reader to observe the notice and read and comprehend the entire
5483 content of the notice and the agenda. Notice of any meeting in
5484 which regular assessments against unit owners are to be

HB 5005

2011

5485 considered for any reason shall specifically contain a statement
5486 that assessments will be considered and the nature of any such
5487 assessments. Meetings of a committee to take final action on
5488 behalf of the board or to make recommendations to the board
5489 regarding the association budget are subject to the provisions
5490 of this paragraph. Meetings of a committee that does not take
5491 final action on behalf of the board or make recommendations to
5492 the board regarding the association budget are subject to the
5493 provisions of this section, unless those meetings are exempted
5494 from this section by the bylaws of the association.
5495 Notwithstanding any other law to the contrary, the requirement
5496 that board meetings and committee meetings be open to the unit
5497 owners is inapplicable to meetings between the board or a
5498 committee and the association's attorney, with respect to
5499 proposed or pending litigation, when the meeting is held for the
5500 purpose of seeking or rendering legal advice.

5501 (d) Shareholder meetings.—There shall be an annual meeting
5502 of the shareholders. All members of the board of administration
5503 shall be elected at the annual meeting unless the bylaws provide
5504 for staggered election terms or for their election at another
5505 meeting. Any unit owner desiring to be a candidate for board
5506 membership must comply with subparagraph 1. The bylaws must
5507 provide the method for calling meetings, including annual
5508 meetings. Written notice, which must incorporate an
5509 identification of agenda items, shall be given to each unit
5510 owner at least 14 days before the annual meeting and posted in a
5511 conspicuous place on the cooperative property at least 14
5512 continuous days preceding the annual meeting. Upon notice to the

HB 5005

2011

5513 unit owners, the board must by duly adopted rule designate a
5514 specific location on the cooperative property upon which all
5515 notice of unit owner meetings are posted. In lieu of or in
5516 addition to the physical posting of the meeting notice, the
5517 association may, by reasonable rule, adopt a procedure for
5518 conspicuously posting and repeatedly broadcasting the notice and
5519 the agenda on a closed-circuit cable television system serving
5520 the cooperative association. However, if broadcast notice is
5521 used in lieu of a posted notice, the notice and agenda must be
5522 broadcast at least four times every broadcast hour of each day
5523 that a posted notice is otherwise required under this section.
5524 If broadcast notice is provided, the notice and agenda must be
5525 broadcast in a manner and for a sufficient continuous length of
5526 time to allow an average reader to observe the notice and read
5527 and comprehend the entire content of the notice and the agenda.
5528 Unless a unit owner waives in writing the right to receive
5529 notice of the annual meeting, the notice of the annual meeting
5530 must be sent by mail, hand delivered, or electronically
5531 transmitted to each unit owner. An officer of the association
5532 must provide an affidavit or United States Postal Service
5533 certificate of mailing, to be included in the official records
5534 of the association, affirming that notices of the association
5535 meeting were mailed, hand delivered, or electronically
5536 transmitted, in accordance with this provision, to each unit
5537 owner at the address last furnished to the association.

5538 1. The board of administration shall be elected by written
5539 ballot or voting machine. A proxy may not be used in electing
5540 the board of administration in general elections or elections to

HB 5005

2011

5541 fill vacancies caused by recall, resignation, or otherwise
5542 unless otherwise provided in this chapter. At least 60 days
5543 before a scheduled election, the association shall mail,
5544 deliver, or transmit, whether by separate association mailing,
5545 delivery, or electronic transmission or included in another
5546 association mailing, delivery, or electronic transmission,
5547 including regularly published newsletters, to each unit owner
5548 entitled to vote, a first notice of the date of the election.
5549 Any unit owner or other eligible person desiring to be a
5550 candidate for the board of administration must give written
5551 notice to the association at least 40 days before a scheduled
5552 election. Together with the written notice and agenda as set
5553 forth in this section, the association shall mail, deliver, or
5554 electronically transmit a second notice of election to all unit
5555 owners entitled to vote, together with a ballot which lists all
5556 candidates. Upon request of a candidate, the association shall
5557 include an information sheet, no larger than 8 1/2 inches by 11
5558 inches, which must be furnished by the candidate at least 35
5559 days before the election, to be included with the mailing,
5560 delivery, or electronic transmission of the ballot, with the
5561 costs of mailing, delivery, or transmission and copying to be
5562 borne by the association. The association is not liable for the
5563 contents of the information sheets provided by the candidates.
5564 In order to reduce costs, the association may print or duplicate
5565 the information sheets on both sides of the paper. ~~The division
5566 shall by rule establish voting procedures consistent with this
5567 subparagraph, including rules establishing procedures for giving
5568 notice by electronic transmission and rules providing for the~~

HB 5005

2011

5569 ~~secrecy of ballots.~~ Elections shall be decided by a plurality of
5570 those ballots cast. There is no quorum requirement. However, at
5571 least 20 percent of the eligible voters must cast a ballot in
5572 order to have a valid election. A unit owner may not permit any
5573 other person to vote his or her ballot, and any such ballots
5574 improperly cast are invalid. A unit owner who needs assistance
5575 in casting the ballot for the reasons stated in s. 101.051 may
5576 obtain assistance in casting the ballot. Any unit owner
5577 violating this provision may be fined by the association in
5578 accordance with s. 719.303. The regular election must occur on
5579 the date of the annual meeting. This subparagraph does not apply
5580 to timeshare cooperatives. Notwithstanding this subparagraph, an
5581 election and balloting are not required unless more candidates
5582 file a notice of intent to run or are nominated than vacancies
5583 exist on the board.

5584 2. Any approval by unit owners called for by this chapter,
5585 or the applicable cooperative documents, must be made at a duly
5586 noticed meeting of unit owners and is subject to this chapter or
5587 the applicable cooperative documents relating to unit owner
5588 decisionmaking, except that unit owners may take action by
5589 written agreement, without meetings, on matters for which action
5590 by written agreement without meetings is expressly allowed by
5591 the applicable cooperative documents or law which provides for
5592 the unit owner action.

5593 3. Unit owners may waive notice of specific meetings if
5594 allowed by the applicable cooperative documents or law. If
5595 authorized by the bylaws, notice of meetings of the board of
5596 administration, shareholder meetings, except shareholder

HB 5005

2011

5597 meetings called to recall board members under paragraph (f), and
5598 committee meetings may be given by electronic transmission to
5599 unit owners who consent to receive notice by electronic
5600 transmission.

5601 4. Unit owners have the right to participate in meetings
5602 of unit owners with reference to all designated agenda items.
5603 However, the association may adopt reasonable rules governing
5604 the frequency, duration, and manner of unit owner participation.

5605 5. Any unit owner may tape record or videotape meetings of
5606 the unit owners ~~subject to reasonable rules adopted by the~~
5607 ~~division.~~

5608 6. Unless otherwise provided in the bylaws, a vacancy
5609 occurring on the board before the expiration of a term may be
5610 filled by the affirmative vote of the majority of the remaining
5611 directors, even if the remaining directors constitute less than
5612 a quorum, or by the sole remaining director. In the alternative,
5613 a board may hold an election to fill the vacancy, in which case
5614 the election procedures must conform to the requirements of
5615 subparagraph 1. unless the association has opted out of the
5616 statutory election process, in which case the bylaws of the
5617 association control. Unless otherwise provided in the bylaws, a
5618 board member appointed or elected under this subparagraph shall
5619 fill the vacancy for the unexpired term of the seat being
5620 filled. Filling vacancies created by recall is governed by
5621 paragraph (f) ~~and rules adopted by the division.~~

5622

5623 Notwithstanding subparagraphs (b)2. and (d)1., an association
5624 may, by the affirmative vote of a majority of the total voting

HB 5005

2011

5625 interests, provide for a different voting and election procedure
 5626 in its bylaws, which vote may be by a proxy specifically
 5627 delineating the different voting and election procedures. The
 5628 different voting and election procedures may provide for
 5629 elections to be conducted by limited or general proxy.

5630 (f) Recall of board members.—Subject to the provisions of
 5631 s. 719.301, any member of the board of administration may be
 5632 recalled and removed from office with or without cause by the
 5633 vote or agreement in writing by a majority of all the voting
 5634 interests. A special meeting of the voting interests to recall
 5635 any member of the board of administration may be called by 10
 5636 percent of the unit owners giving notice of the meeting as
 5637 required for a meeting of unit owners, and the notice shall
 5638 state the purpose of the meeting. Electronic transmission may
 5639 not be used as a method of giving notice of a meeting called in
 5640 whole or in part for this purpose.

5641 1. If the recall is approved by a majority of all voting
 5642 interests by a vote at a meeting, the recall shall be effective
 5643 as provided herein. The board shall duly notice and hold a board
 5644 meeting within 5 full business days of the adjournment of the
 5645 unit owner meeting to recall one or more board members. At the
 5646 meeting, the board shall ~~either~~ certify the recall, in which
 5647 case such member or members shall be recalled effective
 5648 immediately and shall turn over to the board within 5 full
 5649 business days any and all records and property of the
 5650 association in their possession, ~~or shall proceed as set forth~~
 5651 ~~in subparagraph 3.~~

5652 2. If the proposed recall is by an agreement in writing by

HB 5005

2011

5653 a majority of all voting interests, the agreement in writing or
 5654 a copy thereof shall be served on the association by certified
 5655 mail or by personal service in the manner authorized by chapter
 5656 48 and the Florida Rules of Civil Procedure. The board of
 5657 administration shall duly notice and hold a meeting of the board
 5658 within 5 full business days after receipt of the agreement in
 5659 writing. At the meeting, the board shall ~~either~~ certify the
 5660 written agreement to recall members of the board, in which case
 5661 such members shall be recalled effective immediately and shall
 5662 turn over to the board, within 5 full business days, any and all
 5663 records and property of the association in their possession, ~~or~~
 5664 ~~proceed as described in subparagraph 3.~~

5665 ~~3. If the board determines not to certify the written~~
 5666 ~~agreement to recall members of the board, or does not certify~~
 5667 ~~the recall by a vote at a meeting, the board shall, within 5~~
 5668 ~~full business days after the board meeting, file with the~~
 5669 ~~division a petition for binding arbitration pursuant to the~~
 5670 ~~procedures of s. 719.1255. For purposes of this paragraph, the~~
 5671 ~~unit owners who voted at the meeting or who executed the~~
 5672 ~~agreement in writing shall constitute one party under the~~
 5673 ~~petition for arbitration. If the arbitrator certifies the recall~~
 5674 ~~as to any member of the board, the recall shall be effective~~
 5675 ~~upon mailing of the final order of arbitration to the~~
 5676 ~~association. If the association fails to comply with the order~~
 5677 ~~of the arbitrator, the division may take action pursuant to s.~~
 5678 ~~719.501. Any member so recalled shall deliver to the board any~~
 5679 ~~and all records and property of the association in the member's~~
 5680 ~~possession within 5 full business days of the effective date of~~

5681 ~~the recall.~~

5682 3.4. If the board fails to duly notice and hold a board
 5683 meeting within 5 full business days of service of an agreement
 5684 in writing or within 5 full business days of the adjournment of
 5685 the unit owner recall meeting, the recall shall be deemed
 5686 effective and the board members so recalled shall immediately
 5687 turn over to the board any and all records and property of the
 5688 association.

5689 4.5. If a vacancy occurs on the board as a result of a
 5690 recall and less than a majority of the board members are
 5691 removed, the vacancy may be filled by the affirmative vote of a
 5692 majority of the remaining directors, notwithstanding any
 5693 provision to the contrary contained in this chapter. ~~If~~
 5694 ~~vacancies occur on the board as a result of a recall and a~~
 5695 ~~majority or more of the board members are removed, the vacancies~~
 5696 ~~shall be filled in accordance with procedural rules to be~~
 5697 ~~adopted by the division, which rules need not be consistent with~~
 5698 ~~this chapter. The rules must provide procedures governing the~~
 5699 ~~conduct of the recall election as well as the operation of the~~
 5700 ~~association during the period after a recall but prior to the~~
 5701 ~~recall election.~~

5702 ~~(1) Arbitration. There shall be a provision for mandatory~~
 5703 ~~nonbinding arbitration of internal disputes arising from the~~
 5704 ~~operation of the cooperative in accordance with s. 719.1255.~~

5705 Section 165. Section 719.1255, Florida Statutes, is
 5706 repealed.

5707 Section 166. Subsections (1) and (8) of section 719.202,
 5708 Florida Statutes, are amended to read:

HB 5005

2011

5709 | 719.202 Sales or reservation deposits prior to closing.-
 5710 | (1) If a developer contracts to sell a cooperative parcel
 5711 | and the construction, furnishing, and landscaping of the
 5712 | property submitted or proposed to be submitted to cooperative
 5713 | ownership has not been substantially completed in accordance
 5714 | with the plans and specifications and representations made by
 5715 | the developer in the disclosures required by this chapter, the
 5716 | developer shall pay into an escrow account all payments up to 10
 5717 | percent of the sale price received by the developer from the
 5718 | buyer towards the sale price. The escrow agent shall give to the
 5719 | purchaser a receipt for the deposit, upon request. ~~In lieu of~~
 5720 | ~~the foregoing, the division director shall have the discretion~~
 5721 | ~~to accept other assurances, including, but not limited to, a~~
 5722 | ~~surety bond or an irrevocable letter of credit in an amount~~
 5723 | ~~equal to the escrow requirements of this section.~~ Default
 5724 | determinations and refund of deposits shall be governed by the
 5725 | escrow release provision of this subsection. Funds shall be
 5726 | released from the escrow as follows:
 5727 | (a) If a buyer properly terminates the contract pursuant
 5728 | to its terms or pursuant to this chapter, the funds shall be
 5729 | paid to the buyer together with any interest earned.
 5730 | (b) If the buyer defaults in the performance of his or her
 5731 | obligations under the contract of purchase and sale, the funds
 5732 | shall be paid to the developer together with any interest
 5733 | earned.
 5734 | (c) If the contract does not provide for the payment of
 5735 | any interest earned on the escrowed funds, interest shall be
 5736 | paid to the developer at the closing of the transaction.

HB 5005

2011

5737 (d) If the funds of a buyer have not been previously
5738 disbursed in accordance with the provisions of this subsection,
5739 they may be disbursed to the developer by the escrow agent at
5740 the closing of the transaction, unless prior to the disbursement
5741 the escrow agent receives from the buyer written notice of a
5742 dispute between the buyer and developer.

5743 (8) Each escrow account required by this section shall be
5744 established with a bank, a savings and loan association, an
5745 attorney who is a member of The Florida Bar, a real estate
5746 broker registered under chapter 475, or any financial lending
5747 institution having a net worth in excess of \$5 million. The
5748 escrow agent shall not be located outside the state unless,
5749 pursuant to the escrow agreement, the escrow agent submits to
5750 the jurisdiction of ~~the division and~~ the courts of this state
5751 for any cause of action arising from the escrow. Each escrow
5752 agent shall be independent of the developer, and no developer or
5753 any officer, director, affiliate, subsidiary, or employee
5754 thereof may serve as escrow agent. Escrow funds may be invested
5755 only in securities of the United States or any agency thereof or
5756 in accounts in institutions the deposits of which are insured by
5757 an agency of the United States.

5758 Section 167. Subsections (2) and (6) of section 719.301,
5759 Florida Statutes, are amended to read:

5760 719.301 Transfer of association control.—

5761 (2) Within 75 days after the unit owners other than the
5762 developer are entitled to elect a member or members of the board
5763 of administration of an association, the association shall call,
5764 and give not less than 60 days' notice of, an election for the

HB 5005

2011

5765 members of the board of administration. The election shall
5766 proceed as provided in s. 719.106(1)(d). The notice may be given
5767 by any unit owner if the association fails to do so. ~~Upon~~
5768 ~~election of the first unit owner other than the developer to the~~
5769 ~~board of administration, the developer shall forward to the~~
5770 ~~division the name and mailing address of the unit owner board~~
5771 ~~member.~~

5772 ~~(6) The division may adopt rules administering the~~
5773 ~~provisions of this section.~~

5774 Section 168. Section 719.501, Florida Statutes, is
5775 repealed.

5776 Section 169. Section 719.502, Florida Statutes, is
5777 repealed.

5778 Section 170. Paragraphs (b) and (c) of subsection (1) of
5779 section 719.503, Florida Statutes, are amended to read:

5780 719.503 Disclosure prior to sale.—

5781 (1) DEVELOPER DISCLOSURE.—

5782 (b) Copies of documents to be furnished to prospective
5783 buyer or lessee.—Until such time as the developer has furnished
5784 the documents listed below to a person who has entered into a
5785 contract to purchase a unit or lease it for more than 5 years,
5786 the contract may be voided by that person, entitling the person
5787 to a refund of any deposit together with interest thereon as
5788 provided in s. 719.202. The contract may be terminated by
5789 written notice from the proposed buyer or lessee delivered to
5790 the developer within 15 days after the buyer or lessee receives
5791 all of the documents required by this section. The developer
5792 shall not close for 15 days following the execution of the

HB 5005

2011

5793 agreement and delivery of the documents to the buyer as
 5794 evidenced by a receipt for documents signed by the buyer unless
 5795 the buyer is informed in the 15-day voidability period and
 5796 agrees to close prior to the expiration of the 15 days. The
 5797 developer shall retain in his or her records a separate signed
 5798 agreement as proof of the buyer's agreement to close prior to
 5799 the expiration of said voidability period. Said proof shall be
 5800 retained for a period of 5 years after the date of the closing
 5801 transaction. The documents to be delivered to the prospective
 5802 buyer are the prospectus or disclosure statement with all
 5803 exhibits, if the development is subject to the provisions of s.
 5804 719.504, or, if not, then copies of the following which are
 5805 applicable:

5806 1. The question and answer sheet described in s. 719.504,
 5807 and cooperative documents, or the proposed cooperative documents
 5808 if the documents have not been recorded, which shall include the
 5809 certificate of a surveyor approximately representing the
 5810 locations required by s. 719.104.

5811 2. The documents creating the association.

5812 3. The bylaws.

5813 4. The ground lease or other underlying lease of the
 5814 cooperative.

5815 5. The management contract, maintenance contract, and
 5816 other contracts for management of the association and operation
 5817 of the cooperative and facilities used by the unit owners having
 5818 a service term in excess of 1 year, and any management contracts
 5819 that are renewable.

5820 6. The estimated operating budget for the cooperative and

HB 5005

2011

5821 a schedule of expenses for each type of unit, including fees
 5822 assessed to a shareholder who has exclusive use of limited
 5823 common areas, where such costs are shared only by those entitled
 5824 to use such limited common areas.

5825 7. The lease of recreational and other facilities that
 5826 will be used only by unit owners of the subject cooperative.

5827 8. The lease of recreational and other common areas that
 5828 will be used by unit owners in common with unit owners of other
 5829 cooperatives.

5830 9. The form of unit lease if the offer is of a leasehold.

5831 10. Any declaration of servitude of properties serving the
 5832 cooperative but not owned by unit owners or leased to them or
 5833 the association.

5834 11. If the development is to be built in phases or if the
 5835 association is to manage more than one cooperative, a
 5836 description of the plan of phase development or the arrangements
 5837 for the association to manage two or more cooperatives.

5838 12. If the cooperative is a conversion of existing
 5839 improvements, the statements and disclosure required by s.
 5840 719.616.

5841 13. The form of agreement for sale or lease of units.

5842 14. A copy of the floor plan of the unit and the plot plan
 5843 showing the location of the residential buildings and the
 5844 recreation and other common areas.

5845 15. A copy of all covenants and restrictions which will
 5846 affect the use of the property and which are not contained in
 5847 the foregoing.

5848 16. If the developer is required by state or local

HB 5005

2011

5849 | authorities to obtain acceptance or approval of any dock or
 5850 | marina facilities intended to serve the cooperative, ~~a copy of~~
 5851 | ~~any such acceptance or approval acquired by the time of filing~~
 5852 | ~~with the division pursuant to s. 719.502(1) or~~ a statement that
 5853 | such acceptance or approval has not been acquired or received.

5854 | 17. Evidence demonstrating that the developer has an
 5855 | ownership, leasehold, or contractual interest in the land upon
 5856 | which the cooperative is to be developed.

5857 | (c) Subsequent estimates; when provided. ~~If the closing on~~
 5858 | ~~a contract occurs more than 12 months after the filing of the~~
 5859 | ~~offering circular with the division,~~ The developer shall provide
 5860 | a copy of the current estimated operating budget of the
 5861 | association to the buyer at closing, which shall not be
 5862 | considered an amendment that modifies the offering, provided any
 5863 | changes to the association's budget from the budget given to the
 5864 | buyer at the time of contract signing were the result of matters
 5865 | beyond the developer's control. Changes in budgets of any master
 5866 | association, recreation association, or club and similar budgets
 5867 | for entities other than the association shall likewise not be
 5868 | considered amendments that modify the offering. It is the intent
 5869 | of this paragraph to clarify existing law.

5870 | Section 171. Section 719.504, Florida Statutes, is amended
 5871 | to read:

5872 | 719.504 Prospectus or offering circular.—Every developer
 5873 | of a residential cooperative which contains more than 20
 5874 | residential units, or which is part of a group of residential
 5875 | cooperatives which will be served by property to be used in
 5876 | common by unit owners of more than 20 residential units, shall

HB 5005

2011

5877 | prepare a prospectus or offering circular ~~and file it with the~~
5878 | ~~Division of Florida Condominiums, Timeshares, and Mobile Homes~~
5879 | prior to entering into an enforceable contract of purchase and
5880 | sale of any unit or lease of a unit for more than 5 years and
5881 | shall furnish a copy of the prospectus or offering circular to
5882 | each buyer. In addition to the prospectus or offering circular,
5883 | each buyer shall be furnished a separate page entitled
5884 | "Frequently Asked Questions and Answers" ~~Answers," which must be~~
5885 | ~~in accordance with a format approved by the division.~~ This page
5886 | must, in readable language: inform prospective purchasers
5887 | regarding their voting rights and unit use restrictions,
5888 | including restrictions on the leasing of a unit; indicate
5889 | whether and in what amount the unit owners or the association is
5890 | obligated to pay rent or land use fees for recreational or other
5891 | commonly used facilities; contain a statement identifying that
5892 | amount of assessment which, pursuant to the budget, would be
5893 | levied upon each unit type, exclusive of any special
5894 | assessments, and which identifies the basis upon which
5895 | assessments are levied, whether monthly, quarterly, or
5896 | otherwise; state and identify any court cases in which the
5897 | association is currently a party of record in which the
5898 | association may face liability in excess of \$100,000; and state
5899 | whether membership in a recreational facilities association is
5900 | mandatory and, if so, identify the fees currently charged per
5901 | unit type. ~~The division shall by rule require such other~~
5902 | ~~disclosure as in its judgment will assist prospective~~
5903 | ~~purchasers.~~ The prospectus or offering circular may include more
5904 | than one cooperative, although not all such units are being

HB 5005

2011

5905 | offered for sale as of the date of the prospectus or offering
 5906 | circular. The prospectus or offering circular must contain the
 5907 | following information:

5908 | (1) The front cover or the first page must contain only:

5909 | (a) The name of the cooperative.

5910 | (b) The following statements in conspicuous type:

5911 | 1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT
 5912 | MATTERS TO BE CONSIDERED IN ACQUIRING A COOPERATIVE UNIT.

5913 | 2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN
 5914 | NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES,
 5915 | ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES
 5916 | MATERIALS.

5917 | 3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY
 5918 | STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS
 5919 | PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT
 5920 | REPRESENTATIONS.

5921 | (2) Summary: The next page must contain all statements
 5922 | required to be in conspicuous type in the prospectus or offering
 5923 | circular.

5924 | (3) A separate index of the contents and exhibits of the
 5925 | prospectus.

5926 | (4) Beginning on the first page of the text (not including
 5927 | the summary and index), a description of the cooperative,
 5928 | including, but not limited to, the following information:

5929 | (a) Its name and location.

5930 | (b) A description of the cooperative property, including,
 5931 | without limitation:

5932 | 1. The number of buildings, the number of units in each

HB 5005

2011

5933 building, the number of bathrooms and bedrooms in each unit, and
5934 the total number of units, if the cooperative is not a phase
5935 cooperative; or, if the cooperative is a phase cooperative, the
5936 maximum number of buildings that may be contained within the
5937 cooperative, the minimum and maximum number of units in each
5938 building, the minimum and maximum number of bathrooms and
5939 bedrooms that may be contained in each unit, and the maximum
5940 number of units that may be contained within the cooperative.

5941 2. The page in the cooperative documents where a copy of
5942 the survey and plot plan of the cooperative is located.

5943 3. The estimated latest date of completion of
5944 constructing, finishing, and equipping. In lieu of a date, a
5945 statement that the estimated date of completion of the
5946 cooperative is in the purchase agreement and a reference to the
5947 article or paragraph containing that information.

5948 (c) The maximum number of units that will use facilities
5949 in common with the cooperative. If the maximum number of units
5950 will vary, a description of the basis for variation and the
5951 minimum amount of dollars per unit to be spent for additional
5952 recreational facilities or enlargement of such facilities. If
5953 the addition or enlargement of facilities will result in a
5954 material increase of a unit owner's maintenance expense or
5955 rental expense, if any, the maximum increase and limitations
5956 thereon shall be stated.

5957 (5) (a) A statement in conspicuous type describing whether
5958 the cooperative is created and being sold as fee simple
5959 interests or as leasehold interests. If the cooperative is
5960 created or being sold on a leasehold, the location of the lease

5961 in the disclosure materials shall be stated.

5962 (b) If timeshare estates are or may be created with
 5963 respect to any unit in the cooperative, a statement in
 5964 conspicuous type stating that timeshare estates are created and
 5965 being sold in such specified units in the cooperative.

5966 (6) A description of the recreational and other common
 5967 areas that will be used only by unit owners of the cooperative,
 5968 including, but not limited to, the following:

5969 (a) Each room and its intended purposes, location,
 5970 approximate floor area, and capacity in numbers of people.

5971 (b) Each swimming pool, as to its general location,
 5972 approximate size and depths, approximate deck size and capacity,
 5973 and whether heated.

5974 (c) Additional facilities, as to the number of each
 5975 facility, its approximate location, approximate size, and
 5976 approximate capacity.

5977 (d) A general description of the items of personal
 5978 property and the approximate number of each item of personal
 5979 property that the developer is committing to furnish for each
 5980 room or other facility or, in the alternative, a representation
 5981 as to the minimum amount of expenditure that will be made to
 5982 purchase the personal property for the facility.

5983 (e) The estimated date when each room or other facility
 5984 will be available for use by the unit owners.

5985 (f)1. An identification of each room or other facility to
 5986 be used by unit owners that will not be owned by the unit owners
 5987 or the association;

5988 2. A reference to the location in the disclosure materials

HB 5005

2011

5989 | of the lease or other agreements providing for the use of those
 5990 | facilities; and

5991 | 3. A description of the terms of the lease or other
 5992 | agreements, including the length of the term; the rent payable,
 5993 | directly or indirectly, by each unit owner, and the total rent
 5994 | payable to the lessor, stated in monthly and annual amounts for
 5995 | the entire term of the lease; and a description of any option to
 5996 | purchase the property leased under any such lease, including the
 5997 | time the option may be exercised, the purchase price or how it
 5998 | is to be determined, the manner of payment, and whether the
 5999 | option may be exercised for a unit owner's share or only as to
 6000 | the entire leased property.

6001 | (g) A statement as to whether the developer may provide
 6002 | additional facilities not described above, their general
 6003 | locations and types, improvements or changes that may be made,
 6004 | the approximate dollar amount to be expended, and the maximum
 6005 | additional common expense or cost to the individual unit owners
 6006 | that may be charged during the first annual period of operation
 6007 | of the modified or added facilities.

6008 |
 6009 | Descriptions as to locations, areas, capacities, numbers,
 6010 | volumes, or sizes may be stated as approximations or minimums.

6011 | (7) A description of the recreational and other facilities
 6012 | that will be used in common with other cooperatives, community
 6013 | associations, or planned developments which require the payment
 6014 | of the maintenance and expenses of such facilities, directly or
 6015 | indirectly, by the unit owners. The description shall include,
 6016 | but not be limited to, the following:

HB 5005

2011

6017 (a) Each building and facility committed to be built.

6018 (b) Facilities not committed to be built except under
6019 certain conditions, and a statement of those conditions or
6020 contingencies.

6021 (c) As to each facility committed to be built, or which
6022 will be committed to be built upon the happening of one of the
6023 conditions in paragraph (b), a statement of whether it will be
6024 owned by the unit owners having the use thereof or by an
6025 association or other entity which will be controlled by them, or
6026 others, and the location in the exhibits of the lease or other
6027 document providing for use of those facilities.

6028 (d) The year in which each facility will be available for
6029 use by the unit owners or, in the alternative, the maximum
6030 number of unit owners in the project at the time each of all of
6031 the facilities is committed to be completed.

6032 (e) A general description of the items of personal
6033 property, and the approximate number of each item of personal
6034 property, that the developer is committing to furnish for each
6035 room or other facility or, in the alternative, a representation
6036 as to the minimum amount of expenditure that will be made to
6037 purchase the personal property for the facility.

6038 (f) If there are leases, a description thereof, including
6039 the length of the term, the rent payable, and a description of
6040 any option to purchase.

6041
6042 Descriptions shall include location, areas, capacities, numbers,
6043 volumes, or sizes and may be stated as approximations or
6044 minimums.

6045 (8) Recreation lease or associated club membership:
 6046 (a) If any recreational facilities or other common areas
 6047 offered by the developer and available to, or to be used by,
 6048 unit owners are to be leased or have club membership associated,
 6049 the following statement in conspicuous type shall be included:
 6050 THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS
 6051 COOPERATIVE; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS
 6052 COOPERATIVE. There shall be a reference to the location in the
 6053 disclosure materials where the recreation lease or club
 6054 membership is described in detail.
 6055 (b) If it is mandatory that unit owners pay a fee, rent,
 6056 dues, or other charges under a recreational facilities lease or
 6057 club membership for the use of facilities, there shall be in
 6058 conspicuous type the applicable statement:
 6059 1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS
 6060 MANDATORY FOR UNIT OWNERS; or
 6061 2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP,
 6062 TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or
 6063 3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE
 6064 COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP,
 6065 REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES
 6066 LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or
 6067 4. A similar statement of the nature of the organization
 6068 or manner in which the use rights are created, and that unit
 6069 owners are required to pay.
 6070
 6071 Immediately following the applicable statement, the location in
 6072 the disclosure materials where the development is described in

6073 detail shall be stated.

6074 (c) If the developer, or any other person other than the
 6075 unit owners and other persons having use rights in the
 6076 facilities, reserves, or is entitled to receive, any rent, fee,
 6077 or other payment for the use of the facilities, then there shall
 6078 be the following statement in conspicuous type: THE UNIT OWNERS
 6079 OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR
 6080 RECREATIONAL OR OTHER COMMON AREAS. Immediately following this
 6081 statement, the location in the disclosure materials where the
 6082 rent or land use fees are described in detail shall be stated.

6083 (d) If, in any recreation format, whether leasehold, club,
 6084 or other, any person other than the association has the right to
 6085 a lien on the units to secure the payment of assessments, rent,
 6086 or other exactions, there shall appear a statement in
 6087 conspicuous type in substantially the following form:

6088 1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO
 6089 SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE
 6090 RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE
 6091 PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

6092 2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO
 6093 SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE
 6094 FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL
 6095 OR COMMONLY USED AREAS. THE UNIT OWNER'S FAILURE TO MAKE THESE
 6096 PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

6097
 6098 Immediately following the applicable statement, the location in
 6099 the disclosure materials where the lien or lien right is
 6100 described in detail shall be stated.

HB 5005

2011

6101 (9) If the developer or any other person has the right to
6102 increase or add to the recreational facilities at any time after
6103 the establishment of the cooperative whose unit owners have use
6104 rights therein, without the consent of the unit owners or
6105 associations being required, there shall appear a statement in
6106 conspicuous type in substantially the following form:
6107 RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT
6108 OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this
6109 statement, the location in the disclosure materials where such
6110 reserved rights are described shall be stated.

6111 (10) A statement of whether the developer's plan includes
6112 a program of leasing units rather than selling them, or leasing
6113 units and selling them subject to such leases. If so, there
6114 shall be a description of the plan, including the number and
6115 identification of the units and the provisions and term of the
6116 proposed leases, and a statement in boldfaced type that: THE
6117 UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

6118 (11) The arrangements for management of the association
6119 and maintenance and operation of the cooperative property and of
6120 other property that will serve the unit owners of the
6121 cooperative property, and a description of the management
6122 contract and all other contracts for these purposes having a
6123 term in excess of 1 year, including the following:

- 6124 (a) The names of contracting parties.
6125 (b) The term of the contract.
6126 (c) The nature of the services included.
6127 (d) The compensation, stated on a monthly and annual
6128 basis, and provisions for increases in the compensation.

6129 (e) A reference to the volumes and pages of the
 6130 cooperative documents and of the exhibits containing copies of
 6131 such contracts.

6132
 6133 Copies of all described contracts shall be attached as exhibits.
 6134 If there is a contract for the management of the cooperative
 6135 property, then a statement in conspicuous type in substantially
 6136 the following form shall appear, identifying the proposed or
 6137 existing contract manager: THERE IS (IS TO BE) A CONTRACT FOR
 6138 THE MANAGEMENT OF THE COOPERATIVE PROPERTY WITH (NAME OF THE
 6139 CONTRACT MANAGER). Immediately following this statement, the
 6140 location in the disclosure materials of the contract for
 6141 management of the cooperative property shall be stated.

6142 (12) If the developer or any other person or persons other
 6143 than the unit owners has the right to retain control of the
 6144 board of administration of the association for a period of time
 6145 which can exceed 1 year after the closing of the sale of a
 6146 majority of the units in that cooperative to persons other than
 6147 successors or alternate developers, then a statement in
 6148 conspicuous type in substantially the following form shall be
 6149 included: THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO
 6150 RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS
 6151 HAVE BEEN SOLD. Immediately following this statement, the
 6152 location in the disclosure materials where this right to control
 6153 is described in detail shall be stated.

6154 (13) If there are any restrictions upon the sale,
 6155 transfer, conveyance, or leasing of a unit, then a statement in
 6156 conspicuous type in substantially the following form shall be

HB 5005

2011

6157 included: THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR
 6158 CONTROLLED. Immediately following this statement, the location
 6159 in the disclosure materials where the restriction, limitation,
 6160 or control on the sale, lease, or transfer of units is described
 6161 in detail shall be stated.

6162 (14) If the cooperative is part of a phase project, the
 6163 following shall be stated:

6164 (a) A statement in conspicuous type in substantially the
 6165 following form shall be included: THIS IS A PHASE COOPERATIVE.
 6166 ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS COOPERATIVE.
 6167 Immediately following this statement, the location in the
 6168 disclosure materials where the phasing is described shall be
 6169 stated.

6170 (b) A summary of the provisions of the declaration
 6171 providing for the phasing.

6172 (c) A statement as to whether or not residential buildings
 6173 and units which are added to the cooperative may be
 6174 substantially different from the residential buildings and units
 6175 originally in the cooperative, and, if the added residential
 6176 buildings and units may be substantially different, there shall
 6177 be a general description of the extent to which such added
 6178 residential buildings and units may differ, and a statement in
 6179 conspicuous type in substantially the following form shall be
 6180 included: BUILDINGS AND UNITS WHICH ARE ADDED TO THE COOPERATIVE
 6181 MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND
 6182 UNITS IN THE COOPERATIVE. Immediately following this statement,
 6183 the location in the disclosure materials where the extent to
 6184 which added residential buildings and units may substantially

HB 5005

2011

6185 differ is described shall be stated.

6186 (d) A statement of the maximum number of buildings
 6187 containing units, the maximum and minimum number of units in
 6188 each building, the maximum number of units, and the minimum and
 6189 maximum square footage of the units that may be contained within
 6190 each parcel of land which may be added to the cooperative.

6191 (15) If the cooperative is created by conversion of
 6192 existing improvements, the following information shall be
 6193 stated:

6194 (a) The information required by s. 719.616.

6195 (b) A caveat that there are no express warranties unless
 6196 they are stated in writing by the developer.

6197 (16) A summary of the restrictions, if any, to be imposed
 6198 on units concerning the use of any of the cooperative property,
 6199 including statements as to whether there are restrictions upon
 6200 children and pets, and reference to the volumes and pages of the
 6201 cooperative documents where such restrictions are found, or if
 6202 such restrictions are contained elsewhere, then a copy of the
 6203 documents containing the restrictions shall be attached as an
 6204 exhibit.

6205 (17) If there is any land that is offered by the developer
 6206 for use by the unit owners and that is neither owned by them nor
 6207 leased to them, the association, or any entity controlled by
 6208 unit owners and other persons having the use rights to such
 6209 land, a statement shall be made as to how such land will serve
 6210 the cooperative. If any part of such land will serve the
 6211 cooperative, the statement shall describe the land and the
 6212 nature and term of service, and the cooperative documents or

HB 5005

2011

6213 other instrument creating such servitude shall be included as an
6214 exhibit.

6215 (18) The manner in which utility and other services,
6216 including, but not limited to, sewage and waste disposal, water
6217 supply, and storm drainage, will be provided and the person or
6218 entity furnishing them.

6219 (19) An explanation of the manner in which the
6220 apportionment of common expenses and ownership of the common
6221 areas have been determined.

6222 (20) An estimated operating budget for the cooperative and
6223 the association, and a schedule of the unit owner's expenses
6224 shall be attached as an exhibit and shall contain the following
6225 information:

6226 (a) The estimated monthly and annual expenses of the
6227 cooperative and the association that are collected from unit
6228 owners by assessments.

6229 (b) The estimated monthly and annual expenses of each unit
6230 owner for a unit, other than assessments payable to the
6231 association, payable by the unit owner to persons or entities
6232 other than the association, and the total estimated monthly and
6233 annual expense. There may be excluded from this estimate
6234 expenses that are personal to unit owners, which are not
6235 uniformly incurred by all unit owners, or which are not provided
6236 for or contemplated by the cooperative documents, including, but
6237 not limited to, the costs of private telephone; maintenance of
6238 the interior of cooperative units, which is not the obligation
6239 of the association; maid or janitorial services privately
6240 contracted for by the unit owners; utility bills billed directly

6241 to each unit owner for utility services to his or her unit;
 6242 insurance premiums other than those incurred for policies
 6243 obtained by the cooperative; and similar personal expenses of
 6244 the unit owner. A unit owner's estimated payments for
 6245 assessments shall also be stated in the estimated amounts for
 6246 the times when they will be due.

6247 (c) The estimated items of expenses of the cooperative and
 6248 the association, except as excluded under paragraph (b),
 6249 including, but not limited to, the following items, which shall
 6250 be stated as an association expense collectible by assessments
 6251 or as unit owners' expenses payable to persons other than the
 6252 association:

- 6253 1. Expenses for the association and cooperative:
 - 6254 a. Administration of the association.
 - 6255 b. Management fees.
 - 6256 c. Maintenance.
 - 6257 d. Rent for recreational and other commonly used areas.
 - 6258 e. Taxes upon association property.
 - 6259 f. Taxes upon leased areas.
 - 6260 g. Insurance.
 - 6261 h. Security provisions.
 - 6262 i. Other expenses.
 - 6263 j. Operating capital.
 - 6264 k. Reserves.
 - 6265 ~~l. Fee payable to the division.~~
- 6266 2. Expenses for a unit owner:
 - 6267 a. Rent for the unit, if subject to a lease.
 - 6268 b. Rent payable by the unit owner directly to the lessor

HB 5005

2011

6269 or agent under any recreational lease or lease for the use of
6270 commonly used areas, which use and payment are a mandatory
6271 condition of ownership and are not included in the common
6272 expense or assessments for common maintenance paid by the unit
6273 owners to the association.

6274 (d) The following statement in conspicuous type: THE
6275 BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN
6276 ACCORDANCE WITH THE COOPERATIVE ACT AND IS A GOOD FAITH ESTIMATE
6277 ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON
6278 FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION.
6279 ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH
6280 CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN
6281 THE OFFERING.

6282 (e) Each budget for an association prepared by a developer
6283 consistent with this subsection shall be prepared in good faith
6284 and shall reflect accurate estimated amounts for the required
6285 items in paragraph (c) ~~at the time of the filing of the offering~~
6286 ~~ircular with the division,~~ and subsequent increased amounts of
6287 any item included in the association's estimated budget that are
6288 beyond the control of the developer shall not be considered an
6289 amendment that would give rise to rescission rights set forth in
6290 s. 719.503(1)(a) or (b), nor shall such increases modify, void,
6291 or otherwise affect any guarantee of the developer contained in
6292 the offering circular or any purchase contract. It is the intent
6293 of this paragraph to clarify existing law.

6294 (f) The estimated amounts shall be stated for a period of
6295 at least 12 months and may distinguish between the period prior
6296 to the time unit owners other than the developer elect a

6297 majority of the board of administration and the period after
 6298 that date.

6299 (21) A schedule of estimated closing expenses to be paid
 6300 by a buyer or lessee of a unit and a statement of whether title
 6301 opinion or title insurance policy is available to the buyer and,
 6302 if so, at whose expense.

6303 (22) The identity of the developer and the chief operating
 6304 officer or principal directing the creation and sale of the
 6305 cooperative and a statement of its and his or her experience in
 6306 this field.

6307 (23) Copies of the following, to the extent they are
 6308 applicable, shall be included as exhibits:

6309 (a) The cooperative documents, or the proposed cooperative
 6310 documents if the documents have not been recorded.

6311 (b) The articles of incorporation creating the
 6312 association.

6313 (c) The bylaws of the association.

6314 (d) The ground lease or other underlying lease of the
 6315 cooperative.

6316 (e) The management agreement and all maintenance and other
 6317 contracts for management of the association and operation of the
 6318 cooperative and facilities used by the unit owners having a
 6319 service term in excess of 1 year.

6320 (f) The estimated operating budget for the cooperative and
 6321 the required schedule of unit owners' expenses.

6322 (g) A copy of the floor plan of the unit and the plot plan
 6323 showing the location of the residential buildings and the
 6324 recreation and other common areas.

HB 5005

2011

- 6325 (h) The lease of recreational and other facilities that
- 6326 will be used only by unit owners of the subject cooperative.
- 6327 (i) The lease of facilities used by owners and others.
- 6328 (j) The form of unit lease, if the offer is of a
- 6329 leasehold.
- 6330 (k) A declaration of servitude of properties serving the
- 6331 cooperative but not owned by unit owners or leased to them or
- 6332 the association.
- 6333 (l) The statement of condition of the existing building or
- 6334 buildings, if the offering is of units in an operation being
- 6335 converted to cooperative ownership.
- 6336 (m) The statement of inspection for termite damage and
- 6337 treatment of the existing improvements, if the cooperative is a
- 6338 conversion.
- 6339 (n) The form of agreement for sale or lease of units.
- 6340 (o) A copy of the agreement for escrow of payments made to
- 6341 the developer prior to closing.
- 6342 (p) A copy of the documents containing any restrictions on
- 6343 use of the property required by subsection (16).
- 6344 (24) Any prospectus or offering circular complying with
- 6345 the provisions of former ss. 711.69 and 711.802 may continue to
- 6346 be used without amendment, or may be amended to comply with this
- 6347 chapter.
- 6348 (25) A brief narrative description of the location and
- 6349 effect of all existing and intended easements located or to be
- 6350 located on the cooperative property other than those in the
- 6351 declaration.
- 6352 (26) If the developer is required by state or local

6353 | authorities to obtain acceptance or approval of any dock or
 6354 | marina facility intended to serve the cooperative, ~~a copy of~~
 6355 | ~~such acceptance or approval acquired by the time of filing with~~
 6356 | ~~the division pursuant to s. 719.502~~ or a statement that such
 6357 | acceptance has not been acquired or received.

6358 | (27) Evidence demonstrating that the developer has an
 6359 | ownership, leasehold, or contractual interest in the land upon
 6360 | which the cooperative is to be developed.

6361 | Section 172. Section 719.508, Florida Statutes, is
 6362 | repealed.

6363 | Section 173. Paragraph (a) of subsection (2) and
 6364 | subsections (4) and (5) of section 719.608, Florida Statutes,
 6365 | are amended to read:

6366 | 719.608 Notice of intended conversion; time of delivery;
 6367 | content.—

6368 | (2) (a) Each notice of intended conversion shall be dated
 6369 | and in writing. The notice shall contain the following
 6370 | statement, with the phrases of the following statement which
 6371 | appear in upper case printed in conspicuous type:

6372 | These apartments are being converted to cooperative by
 6373 | ...(name of developer)..., the developer.

6374 | 1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF
 6375 | YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL
 6376 | AGREEMENT AS FOLLOWS:

6377 | a. If you have continuously been a resident of these
 6378 | apartments during the last 180 days and your rental agreement
 6379 | expires during the next 270 days, you may extend your rental
 6380 | agreement for up to 270 days after the date of this notice.

HB 5005

2011

6381 b. If you have not been a continuous resident of these
 6382 apartments for the last 180 days and your rental agreement
 6383 expires during the next 180 days, you may extend your rental
 6384 agreement for up to 180 days after the date of this notice.

6385 c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU
 6386 MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE
 6387 DATE OF THIS NOTICE.

6388 2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS,
 6389 you may extend your rental agreement for up to 45 days after the
 6390 date of this notice while you decide whether to extend your
 6391 rental agreement as explained above. To do so, you must notify
 6392 the developer in writing. You will then have the full 45 days to
 6393 decide whether to extend your rental agreement as explained
 6394 above.

6395 3. During the extension of your rental agreement you will
 6396 be charged the same rent that you are now paying.

6397 4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION
 6398 OF THE RENTAL AGREEMENT AS FOLLOWS:

6399 a. If your rental agreement began or was extended or
 6400 renewed after May 1, 1980, and your rental agreement, including
 6401 extensions and renewals, has an unexpired term of 180 days or
 6402 less, you may cancel your rental agreement upon 30 days' written
 6403 notice and move. Also, upon 30 days' written notice, you may
 6404 cancel any extension of the rental agreement.

6405 b. If your rental agreement was not begun or was not
 6406 extended or renewed after May 1, 1980, you may not cancel the
 6407 rental agreement without the consent of the developer. If your
 6408 rental agreement, including extensions and renewals, has an

HB 5005

2011

6409 unexpired term of 180 days or less, you may, however, upon 30
 6410 days' written notice cancel any extension of the rental
 6411 agreement.

6412 5. All notices must be given in writing and sent by mail,
 6413 return receipt requested, or delivered in person to the
 6414 developer at this address: ...(name and address of
 6415 developer)....

6416 6. If you have continuously been a resident of these
 6417 apartments during the last 180 days:

6418 a. You have the right to purchase your apartment and will
 6419 have 45 days to decide whether to purchase. If you do not buy
 6420 the unit at that price and the unit is later offered at a lower
 6421 price, you will have the opportunity to buy the unit at the
 6422 lower price. However, in all events your right to purchase the
 6423 unit ends when the rental agreement or any extension of the
 6424 rental agreement ends or when you waive this right in writing.

6425 b. Within 90 days you will be provided purchase
 6426 information relating to your apartment, including the price of
 6427 your unit and the condition of the building. If you do not
 6428 receive this information within 90 days, your rental agreement
 6429 and any extension will be extended 1 day for each day over 90
 6430 days until you are given the purchase information. If you do not
 6431 want this rental agreement extension, you must notify the
 6432 developer in writing.

6433 7. If you have any questions regarding this conversion or
 6434 the Cooperative Act, you may contact the developer ~~or the state~~
 6435 ~~agency which regulates cooperatives: The Division of Florida~~
 6436 ~~Condominiums, Timeshares, and Mobile Homes, ... (Tallahassee~~

6437 ~~address and telephone number of division)...~~

6438 ~~(4) Upon the request of a developer and payment of a fee~~
 6439 ~~prescribed by the rules of the division not to exceed \$50, the~~
 6440 ~~division may verify to a developer that a notice complies with~~
 6441 ~~this section.~~

6442 ~~(5) Prior to delivering a notice of intended conversion to~~
 6443 ~~tenants of existing improvements being converted to a~~
 6444 ~~residential cooperative, each developer shall file with the~~
 6445 ~~division a copy of the notice of intended conversion. Upon~~
 6446 ~~filing, each developer shall pay to the division a filing fee of~~
 6447 ~~\$100.~~

6448 Section 174. Section 719.621, Florida Statutes, is
 6449 repealed.

6450 Section 175. Subsections (8) through (13) of section
 6451 720.301, Florida Statutes, are renumbered as subsections (7)
 6452 through (12), respectively, and present subsection (7) is
 6453 amended to read:

6454 720.301 Definitions.—As used in this chapter, the term:

6455 ~~(7) "Division" means the Division of Florida Condominiums,~~
 6456 ~~Timeshares, and Mobile Homes in the Department of Business and~~
 6457 ~~Professional Regulation.~~

6458 Section 176. Paragraphs (d) and (e) of subsection (10) of
 6459 section 720.303, Florida Statutes, are amended to read:

6460 720.303 Association powers and duties; meetings of board;
 6461 official records; budgets; financial reporting; association
 6462 funds; recalls.—

6463 (10) RECALL OF DIRECTORS.—

6464 (d) If the board determines not to certify the written

HB 5005

2011

6465 agreement or written ballots to recall a director or directors
 6466 of the board or does not certify the recall by a vote at a
 6467 meeting, the board shall, within 5 full business days after the
 6468 meeting, file with the department a petition for binding
 6469 arbitration ~~pursuant to the applicable procedures in ss.~~
 6470 ~~718.112(2)(j) and 718.1255 and the rules adopted thereunder.~~ For
 6471 the purposes of this section, the members who voted at the
 6472 meeting or who executed the agreement in writing shall
 6473 constitute one party under the petition for arbitration. If the
 6474 arbitrator certifies the recall as to any director or directors
 6475 of the board, the recall will be effective upon mailing of the
 6476 final order of arbitration to the association. The director or
 6477 directors so recalled shall deliver to the board any and all
 6478 records of the association in their possession within 5 full
 6479 business days after the effective date of the recall.

6480 (e) If a vacancy occurs on the board as a result of a
 6481 recall and less than a majority of the board directors are
 6482 removed, the vacancy may be filled by the affirmative vote of a
 6483 majority of the remaining directors, notwithstanding any
 6484 provision to the contrary contained in this subsection or in the
 6485 association documents. If vacancies occur on the board as a
 6486 result of a recall and a majority or more of the board directors
 6487 are removed, the vacancies shall be filled by members voting in
 6488 favor of the recall; if removal is at a meeting, any vacancies
 6489 shall be filled by the members at the meeting. If the recall
 6490 occurred by agreement in writing or by written ballot, members
 6491 may vote for replacement directors in the same instrument ~~in~~
 6492 ~~accordance with procedural rules adopted by the division, which~~

HB 5005

2011

6493 ~~rules need not be consistent with this subsection.~~

6494 Section 177. Subsection (9) of section 720.306, Florida
6495 Statutes, is amended to read:

6496 720.306 Meetings of members; voting and election
6497 procedures; amendments.—

6498 (9) ELECTIONS AND BOARD VACANCIES.—Elections of directors
6499 must be conducted in accordance with the procedures set forth in
6500 the governing documents of the association. All members of the
6501 association are eligible to serve on the board of directors, and
6502 a member may nominate himself or herself as a candidate for the
6503 board at a meeting where the election is to be held or, if the
6504 election process allows voting by absentee ballot, in advance of
6505 the balloting. Except as otherwise provided in the governing
6506 documents, boards of directors must be elected by a plurality of
6507 the votes cast by eligible voters. ~~Any election dispute between~~
6508 ~~a member and an association must be submitted to mandatory~~
6509 ~~binding arbitration with the division. Such proceedings must be~~
6510 ~~conducted in the manner provided by s. 718.1255 and the~~
6511 ~~procedural rules adopted by the division.~~ Unless otherwise
6512 provided in the bylaws, any vacancy occurring on the board
6513 before the expiration of a term may be filled by an affirmative
6514 vote of the majority of the remaining directors, even if the
6515 remaining directors constitute less than a quorum, or by the
6516 sole remaining director. In the alternative, a board may hold an
6517 election to fill the vacancy, in which case the election
6518 procedures must conform to the requirements of the governing
6519 documents. Unless otherwise provided in the bylaws, a board
6520 member appointed or elected under this section is appointed for

HB 5005

2011

6521 the unexpired term of the seat being filled. Filling vacancies
 6522 created by recall is governed by s. 720.303(10) ~~and rules~~
 6523 ~~adopted by the division.~~

6524 Section 178. Subsection (1) and paragraph (c) of
 6525 subsection (2) of section 720.311, Florida Statutes, are amended
 6526 to read:

6527 720.311 Dispute resolution.—

6528 (1) The Legislature finds that alternative dispute
 6529 resolution has made progress in reducing court dockets and
 6530 trials and in offering a more efficient, cost-effective option
 6531 to litigation. The filing of any petition for arbitration or the
 6532 serving of a demand for presuit mediation as provided for in
 6533 this section shall toll the applicable statute of limitations.
 6534 Any recall dispute filed with the department pursuant to s.
 6535 720.303(10) shall be conducted by the department ~~in accordance~~
 6536 ~~with the provisions of ss. 718.112(2)(j) and 718.1255 and the~~
 6537 ~~rules adopted by the division.~~ In addition, the department shall
 6538 conduct mandatory binding arbitration of election disputes
 6539 between a member and an association ~~pursuant to s. 718.1255 and~~
 6540 ~~rules adopted by the division.~~ Neither election disputes nor
 6541 recall disputes are eligible for presuit mediation; these
 6542 disputes shall be arbitrated by the department. At the
 6543 conclusion of the proceeding, the department shall charge the
 6544 parties a fee in an amount adequate to cover all costs and
 6545 expenses incurred by the department in conducting the
 6546 proceeding. Initially, the petitioner shall remit a filing fee
 6547 of at least \$200 to the department. The fees paid to the
 6548 department shall become a recoverable cost in the arbitration

HB 5005

2011

6549 proceeding, and the prevailing party in an arbitration
 6550 proceeding shall recover its reasonable costs and attorney's
 6551 fees in an amount found reasonable by the arbitrator. The
 6552 department shall adopt rules to effectuate the purposes of this
 6553 section.

6554 (2)

6555 (c) If presuit mediation as described in paragraph (a) is
 6556 not successful in resolving all issues between the parties, the
 6557 parties may file the unresolved dispute in a court of competent
 6558 jurisdiction or elect to enter into binding or nonbinding
 6559 arbitration ~~pursuant to the procedures set forth in s. 718.1255~~
 6560 ~~and rules adopted by the division~~, with the arbitration
 6561 proceeding to be conducted by a department arbitrator or by a
 6562 private arbitrator certified by the department. If all parties
 6563 do not agree to arbitration proceedings following an
 6564 unsuccessful presuit mediation, any party may file the dispute
 6565 in court. A final order resulting from nonbinding arbitration is
 6566 final and enforceable in the courts if a complaint for trial de
 6567 novo is not filed in a court of competent jurisdiction within 30
 6568 days after entry of the order. As to any issue or dispute that
 6569 is not resolved at presuit mediation, and as to any issue that
 6570 is settled at presuit mediation but is thereafter subject to an
 6571 action seeking enforcement of the mediation settlement, the
 6572 prevailing party in any subsequent arbitration or litigation
 6573 proceeding shall be entitled to seek recovery of all costs and
 6574 attorney's fees incurred in the presuit mediation process.

6575 Section 179. Subsections (1) and (2) of section 720.407,
 6576 Florida Statutes, are amended to read:

6577 720.407 Recording; notice of recording; applicability and
6578 effective date.—

6579 (1) No later than 30 days after receiving approval from
6580 the department, the organizing committee shall file the articles
6581 of incorporation of the association with the Division of
6582 Corporations of the Department of State if the articles have not
6583 been previously filed with the Division of Corporations.

6584 (2) No later than 30 days after receiving approval from
6585 the department ~~division~~, the president and secretary of the
6586 association shall execute the revived declaration and other
6587 governing documents ~~approved by the department~~ in the name of
6588 the association and have the documents recorded with the clerk
6589 of the circuit court in the county where the affected parcels
6590 are located.

6591 Section 180. Subsections (1) through (3), subsection (8),
6592 and subsection (11) of section 721.03, Florida Statutes, are
6593 amended to read:

6594 721.03 Scope of chapter.—

6595 (1) This chapter applies to all timeshare plans consisting
6596 of more than seven timeshare periods over a period of at least 3
6597 years in which the accommodations and facilities, if any, are
6598 located within this state or offered within this state; provided
6599 that:

6600 (a) With respect to a timeshare plan containing
6601 accommodations or facilities located in this state ~~which has~~
6602 ~~previously been filed with and approved by the division and~~
6603 which is offered for sale in other jurisdictions within the
6604 jurisdictional limits of the United States, the offering or sale

6605 of the timeshare plan in such jurisdictions is ~~shall~~ not be
 6606 subject to ~~the provisions of~~ this chapter.

6607 (b) With respect to a timeshare plan containing
 6608 accommodations or facilities located in this state which is
 6609 offered for sale outside the jurisdictional limits of the United
 6610 States, such offer or sale is ~~shall be~~ exempt from the
 6611 requirements of this chapter, ~~provided that the developer shall~~
 6612 ~~either file the timeshare plan with the division for approval~~
 6613 ~~pursuant to this chapter, or pay an exemption registration fee~~
 6614 ~~of \$100 and file the following minimum information pertaining to~~
 6615 ~~the timeshare plan with the division for approval:~~

6616 1. ~~The name and address of the timeshare plan.~~

6617 2. ~~The name and address of the developer and seller, if~~
 6618 ~~any.~~

6619 3. ~~The location and a brief description of the~~
 6620 ~~accommodations and facilities, if any, that are located in this~~
 6621 ~~state.~~

6622 4. ~~The number of timeshare interests and timeshare periods~~
 6623 ~~to be offered.~~

6624 5. ~~The term of the timeshare plan.~~

6625 6. ~~A copy of the timeshare instrument relating to the~~
 6626 ~~management and operation of accommodations and facilities, if~~
 6627 ~~any, that are located in this state.~~

6628 7. ~~A copy of the budget required by s. 721.07(5)(t) or s.~~
 6629 ~~721.55(4)(h)5., as applicable.~~

6630 8. ~~A copy of the management agreement and any other~~
 6631 ~~contracts regarding management or operation of the~~
 6632 ~~accommodations and facilities, if any, that are located in this~~

6633 ~~state, and which have terms in excess of 1 year.~~

6634 ~~9. A copy of the provision of the purchase contract to be~~
 6635 ~~utilized in offering the timeshare plan containing the following~~
 6636 ~~disclosure in conspicuous type immediately above the space~~
 6637 ~~provided for the purchaser's signature:~~

6638
 6639 ~~The offering of this timeshare plan outside the jurisdictional~~
 6640 ~~limits of the United States of America is exempt from regulation~~
 6641 ~~under Florida law, and any such purchase is not protected by the~~
 6642 ~~State of Florida. However, the management and operation of any~~
 6643 ~~accommodations or facilities located in Florida is subject to~~
 6644 ~~Florida law and may give rise to enforcement action regardless~~
 6645 ~~of the location of any offer.~~

6646
 6647 (c) All timeshare accommodations or facilities which are
 6648 located outside the state but offered for sale in this state
 6649 shall be governed by the following:

6650 1. The offering for sale in this state of timeshare
 6651 accommodations and facilities located outside the state is
 6652 subject only to the provisions of ss. 721.01-721.12, 721.18,
 6653 721.20, 721.21, ~~721.26, 721.28,~~ and part II.

6654 ~~2. The division shall not require a developer of timeshare~~
 6655 ~~accommodations or facilities located outside of this state to~~
 6656 ~~make changes in any timeshare instrument to conform to the~~
 6657 ~~provisions of s. 721.07 or s. 721.55. The division shall have~~
 6658 ~~the power to require disclosure of those provisions of the~~
 6659 ~~timeshare instrument that do not conform to s. 721.07 or s.~~
 6660 ~~721.55 as the director determines is necessary to fairly,~~

6661 ~~meaningfully, and effectively disclose all aspects of the~~
 6662 ~~timeshare plan.~~

6663 ~~3. Except as provided in this subparagraph, the division~~
 6664 ~~shall have no authority to determine whether any person has~~
 6665 ~~complied with another state's laws or to disapprove any filing~~
 6666 ~~out of state, timeshare instrument, or component site document,~~
 6667 ~~based solely upon the lack or degree of timeshare regulation in~~
 6668 ~~another state. The division may require a developer to obtain~~
 6669 ~~and provide to the division existing documentation relating to~~
 6670 ~~an out of state filing, timeshare instrument, or component site~~
 6671 ~~document and prove compliance of same with the laws of that~~
 6672 ~~state. In this regard, the division may accept any evidence of~~
 6673 ~~the approval or acceptance of any out-of-state filing, timeshare~~
 6674 ~~instrument, or component site document by another state in lieu~~
 6675 ~~of requiring a developer to file the out-of-state filing,~~
 6676 ~~timeshare instrument, or component site document with the~~
 6677 ~~division pursuant to this section, or the division may accept an~~
 6678 ~~opinion letter from an attorney or law firm opining as to the~~
 6679 ~~compliance of such out of state filing, timeshare instrument, or~~
 6680 ~~component site document with the laws of another state. The~~
 6681 ~~division may refuse to approve the inclusion of any out-of-state~~
 6682 ~~filing, timeshare instrument, or component site document as part~~
 6683 ~~of a public offering statement based upon the inability of the~~
 6684 ~~developer to establish the compliance of same with the laws of~~
 6685 ~~another state.~~

6686 ~~4. The division is authorized to enter into an agreement~~
 6687 ~~with another state for the purpose of facilitating the~~
 6688 ~~processing of out-of-state timeshare instruments or other~~

6689 ~~component site documents pursuant to this chapter and for the~~
 6690 ~~purpose of facilitating the referral of consumer complaints to~~
 6691 ~~the appropriate state.~~

6692 2.5. Notwithstanding any other provision of this
 6693 paragraph, the offer, in this state, of an additional interest
 6694 to existing purchasers in the same timeshare plan, the same
 6695 nonspecific multisite timeshare plan, or the same component site
 6696 of a multisite timeshare plan with accommodations and facilities
 6697 located outside of this state shall not be subject to the
 6698 provisions of this chapter if the offer complies with the
 6699 provisions of s. 721.11(4).

6700 (2) When a timeshare plan is subject to both the
 6701 provisions of this chapter and the provisions of chapter 718 or
 6702 chapter 719, the plan shall meet the requirements of both
 6703 chapters unless exempted as provided in this section. ~~The~~
 6704 ~~division shall have the authority to adopt rules differentiating~~
 6705 ~~between timeshare condominiums and nontimeshare condominiums,~~
 6706 ~~and between timeshare cooperatives and nontimeshare~~
 6707 ~~cooperatives, in the interpretation and implementation of~~
 6708 ~~chapters 718 and 719, respectively.~~ In the event of a conflict
 6709 between the provisions of this chapter and the provisions of
 6710 chapter 718 or chapter 719, the provisions of this chapter shall
 6711 prevail.

6712 (3) A timeshare plan which is subject to the provisions of
 6713 chapter 718 or chapter 719, if fully in compliance with the
 6714 provisions of this chapter, is exempt from the following:

6715 (a) Sections 718.202 and 719.202, relating to sales or
 6716 reservation deposits prior to closing.

6717 ~~(b) Sections 718.502 and 719.502, relating to filing prior~~
 6718 ~~to sale or lease.~~

6719 (b)~~(e)~~ Sections 718.503 and 719.503, relating to
 6720 disclosure prior to sale.

6721 (c)~~(d)~~ Sections 718.504 and 719.504, relating to
 6722 prospectus or offering circular.

6723 (d)~~(e)~~ Part VI of chapter 718 and part VI of chapter 719,
 6724 relating to conversion of existing improvements to the
 6725 condominium or cooperative form of ownership, respectively,
 6726 provided that a developer converting existing improvements to a
 6727 timeshare condominium or timeshare cooperative must comply with
 6728 ss. 718.606, 718.608, 718.61, and 718.62, or ss. 719.606,
 6729 719.608, 719.61, and 719.62, if applicable, and, if the existing
 6730 improvements received a certificate of occupancy more than 18
 6731 months before such conversion, one of the following:

6732 1. The accommodations and facilities shall be renovated
 6733 and improved to a condition such that the remaining useful life
 6734 in years of the roof, plumbing, air-conditioning, and any
 6735 component of the structure which has a useful life less than the
 6736 useful life of the overall structure is equal to the useful life
 6737 of accommodations or facilities that would exist if such
 6738 accommodations and facilities were newly constructed and not
 6739 previously occupied.

6740 2. The developer shall fund reserve accounts for capital
 6741 expenditures and deferred maintenance for the roof, plumbing,
 6742 air-conditioning, and any component of the structure the useful
 6743 life of which is less than the useful life of the overall
 6744 structure. The reserve accounts shall be funded for each

HB 5005

2011

6745 component in an amount equal to the product of the estimated
6746 current replacement cost of such component as of the date of
6747 such conversion (as disclosed and substantiated by a certificate
6748 under the seal of an architect or engineer authorized to
6749 practice in this state) multiplied by a fraction, the numerator
6750 of which shall be the age of the component in years (as
6751 disclosed and substantiated by a certificate under the seal of
6752 an architect or engineer authorized to practice in this state)
6753 and the denominator of which shall be the total useful life of
6754 the component in years (as disclosed and substantiated by a
6755 certificate under the seal of an architect or engineer
6756 authorized to practice in this state). Alternatively, the
6757 reserve accounts may be funded for each component in an amount
6758 equal to the amount that, except for the application of this
6759 subsection, would be required to be maintained pursuant to s.
6760 718.618(1) or s. 719.618(1). The developer shall fund the
6761 reserve accounts contemplated in this subparagraph out of the
6762 proceeds of each sale of a timeshare interest, on a pro rata
6763 basis, in an amount not less than a percentage of the total
6764 amount to be deposited in the reserve account equal to the
6765 percentage of ownership allocable to the timeshare interest
6766 sold. When an owners' association makes an expenditure of
6767 reserve account funds before the developer has initially sold
6768 all timeshare interests, the developer shall make a deposit in
6769 the reserve account if the reserve account is insufficient to
6770 pay the expenditure. Such deposit shall be at least equal to
6771 that portion of the expenditure which would be charged against
6772 the reserve account deposit that would have been made for any

6773 such timeshare interest had the timeshare interest been
 6774 initially sold. When a developer deposits amounts in excess of
 6775 the minimum reserve account funding, later deposits may be
 6776 reduced to the extent of the excess funding.

6777 3. The developer shall provide each purchaser with a
 6778 warranty of fitness and merchantability pursuant to s.
 6779 718.618(6) or s. 719.618(6).

6780 (8) With respect to any personal property timeshare plan, ÷
 6781 ~~(a)~~ this chapter applies only to personal property
 6782 timeshare plans that are offered in this state.

6783 ~~(b) The division shall have the authority to adopt rules~~
 6784 ~~interpreting and implementing the provisions of this chapter as~~
 6785 ~~they apply to any personal property timeshare plan or any~~
 6786 ~~accommodation or facility that is part of a personal property~~
 6787 ~~timeshare plan offered in this state, or as the provisions of~~
 6788 ~~this chapter apply to any other laws of this state, of the~~
 6789 ~~several states, of the United States, or of any other~~
 6790 ~~jurisdiction, with respect to any personal property timeshare~~
 6791 ~~plan or any accommodation or facility that is part of a personal~~
 6792 ~~property timeshare plan offered in this state.~~

6793 ~~(c) Any developer and any managing entity of a personal~~
 6794 ~~property timeshare plan must submit to personal jurisdiction in~~
 6795 ~~this state in a form satisfactory to the division at the time of~~
 6796 ~~filing a public offering statement.~~

6797 (11) (a) A seller may offer timeshare interests in a real
 6798 property timeshare plan located outside of this state without
 6799 filing a public offering statement for such out-of-state real
 6800 property timeshare plan pursuant to s. ~~721.07~~ or s. 721.55,

HB 5005

2011

6801 provided all of the following criteria have been satisfied:

6802 1. The seller shall provide a disclosure statement to each
6803 prospective purchaser of such out-of-state timeshare plan. ~~The~~
6804 ~~disclosure statement for a single-site timeshare plan shall~~
6805 ~~contain information otherwise required under s. 721.07(5)(e)-~~
6806 ~~(ee) and the exhibits required by s. 721.07(5)(ff)1., 2., 3.,~~
6807 ~~4., 5., 7., 8., and 20.~~ The disclosure statement for a multisite
6808 timeshare plan shall contain information otherwise required
6809 under s. 721.55(4) ~~and (5)~~ and the exhibits required under s.
6810 721.55(6)~~(7)~~. If a developer has, in good faith, attempted to
6811 comply with the requirements of this subsection and if the
6812 developer has substantially complied with the disclosure
6813 requirements of this subsection, nonmaterial errors or omissions
6814 shall not be actionable. With respect to any offer for an out-
6815 of-state timeshare plan made pursuant to this subsection, the
6816 delivery by the seller to a prospective purchaser of the
6817 disclosure statement required by this subparagraph shall be
6818 deemed to satisfy any requirement of this chapter regarding a
6819 public offering statement.

6820 2. The seller shall utilize and furnish to each purchaser
6821 of an out-of-state timeshare plan offered under this subsection
6822 a fully completed and executed copy of a purchase contract that
6823 contains the statement set forth in s. 721.065(2)(c) in
6824 conspicuous type located immediately prior to the space in the
6825 contract reserved for the purchaser's signature. The purchase
6826 contract shall also contain the initial purchase price and any
6827 additional charges to which the purchaser may be subject in
6828 connection with the purchase of the timeshare plan, such as

6829 financing, or that will be collected from the purchaser on or
 6830 before closing, such as the current year's annual assessment for
 6831 common expenses.

6832 3. All purchase contracts for out-of-state timeshare plans
 6833 offered under this subsection must also contain the following
 6834 statements in conspicuous type:

6835 This timeshare plan has not been reviewed or approved by the
 6836 State of Florida.

6837 The timeshare interest you are purchasing requires certain
 6838 procedures to be followed in order for you to use your interest.
 6839 These procedures may be different from those followed in other
 6840 timeshare plans. You should read and understand these procedures
 6841 prior to purchasing.

6842 4.a. An out-of-state timeshare plan may only be offered
 6843 pursuant to this subsection by the seller on behalf of:

6844 (I) The developer of a timeshare plan ~~that has been~~
 6845 ~~approved by the division~~ within the preceding 7 years pursuant
 6846 to ~~s. 721.07~~ or s. 721.55, or concerning which an amendment by
 6847 the developer has been approved by the division within the
 6848 preceding 7 years, which timeshare plan has been neither
 6849 terminated nor withdrawn; or

6850 (II) A developer under common ownership or control with a
 6851 developer described in sub-sub-subparagraph (I), provided that
 6852 any common ownership shall constitute at least a 50-percent
 6853 ownership interest.

6854 b. An out-of-state timeshare plan may only be offered
 6855 pursuant to this subsection to a person who already owns a
 6856 timeshare interest in a timeshare plan filed by a developer

HB 5005

2011

6857 | described in sub-subparagraph a.

6858 | 5. Any seller of an out-of-state timeshare plan offered
6859 | pursuant to this subsection shall be required to provide notice
6860 | of such plan to the division on a form prescribed by the
6861 | division, along with payment of a one-time fee not to exceed
6862 | \$1,000 per filing.

6863 | (b) Timeshare plans offered pursuant to this subsection
6864 | shall be exempt from the requirements of ss. 721.06, 721.065,
6865 | ~~721.07, 721.27, and~~ 721.55, ~~and 721.58~~ in addition to the
6866 | exemptions otherwise applicable to accommodations and facilities
6867 | located outside of the state pursuant to subparagraph (1)(c)1.

6868 | (c) Any escrow account required to be established by s.
6869 | 721.08 for any out-of-state timeshare plan offered under this
6870 | subsection may be maintained in the situs jurisdiction ~~provided~~
6871 | ~~the escrow agent submits to personal jurisdiction in this state~~
6872 | ~~in a form satisfactory to the division.~~

6873 | Section 181. Subsections (12) through (17) of section
6874 | 721.05, Florida Statutes, are renumbered as subsections (11)
6875 | through (16), respectively, subsections (19) through (44) of
6876 | that section are renumbered as subsections (17) through (42),
6877 | respectively, and present subsection (8), paragraph (e) of
6878 | subsection (10), and subsections (11), (18), (19), (29), and
6879 | (31) of that section are amended to read:

6880 | 721.05 Definitions.—As used in this chapter, the term:

6881 | (8) "Conspicuous type" means:

6882 | (a) Type in upper and lower case letters two point sizes
6883 | larger than the largest nonconspicuous type, exclusive of
6884 | headings, on the page on which it appears but in at least 10-

HB 5005

2011

6885 point type; or

6886 (b) Where the use of 10-point type would be impractical or
 6887 impossible with respect to a particular piece of written
 6888 advertising material, a different style of type or print may be
 6889 used, so long as the print remains conspicuous under the
 6890 circumstances.

6891
 6892 Where conspicuous type is required, it must be separated on all
 6893 sides from other type and print. Conspicuous type may be
 6894 utilized in contracts for purchase or public offering statements
 6895 only where required by law ~~or as authorized by the division.~~

6896 (10) "Developer" includes:

6897 (e) A successor or concurrent developer shall be exempt
 6898 from any liability inuring to a predecessor or concurrent
 6899 developer of the same timeshare plan, except as provided in s.
 6900 721.15(7), provided that this exemption shall not apply to any
 6901 of the successor or concurrent developer's responsibilities,
 6902 duties, or liabilities with respect to the timeshare plan that
 6903 accrue after the date the successor or concurrent developer
 6904 became a successor or concurrent developer, and provided that
 6905 such transfer does not constitute a fraudulent transfer. In
 6906 addition to other provisions of law, a transfer by a predecessor
 6907 developer to a successor or concurrent developer shall be deemed
 6908 fraudulent if the predecessor developer made the transfer:

6909 1. With actual intent to hinder, delay, or defraud any
 6910 purchaser ~~or the division;~~ or

6911 2. To a person that would constitute an insider under s.
 6912 726.102(7).

6913
 6914 ~~The provisions of~~ This paragraph does ~~shall not be construed to~~
 6915 relieve any successor or concurrent developer from the
 6916 obligation to comply with the provisions of any applicable
 6917 timeshare instrument.

6918 ~~(11) "Division" means the Division of Florida~~
 6919 ~~Condominiums, Timeshares, and Mobile Homes of the Department of~~
 6920 ~~Business and Professional Regulation.~~

6921 ~~(18) "Filed public offering statement" means a public~~
 6922 ~~offering statement that has been filed with the division~~
 6923 ~~pursuant to s. 721.07(5) or s. 721.55.~~

6924 ~~(17)~~(19) "Incidental benefit" means an accommodation,
 6925 product, service, discount, or other benefit which is offered to
 6926 a prospective purchaser of a timeshare plan or to a purchaser of
 6927 a timeshare plan prior to the expiration of his or her initial
 6928 10-day voidability period pursuant to s. 721.10; which is not an
 6929 exchange program as defined in subsection ~~(15)~~(16); ~~and which~~
 6930 ~~complies with the provisions of s. 721.075.~~ The term shall not
 6931 include an offer of the use of the accommodations and facilities
 6932 of the timeshare plan on a free or discounted one-time basis.

6933 ~~(27)~~(29) "Public offering statement" means the written
 6934 materials describing a single-site timeshare plan or a multisite
 6935 timeshare plan, including a text and any exhibits attached
 6936 thereto as required by ss. ~~721.07~~7, ~~721.55~~7, and 721.551. The term
 6937 "public offering statement" shall refer to both a filed public
 6938 offering statement and a purchaser public offering statement.

6939 ~~(29)~~(31) "Purchaser public offering statement" means that
 6940 portion of the filed public offering statement which must be

HB 5005

2011

6941 delivered to purchasers pursuant to ~~s. 721.07(6)~~ or s. 721.551.

6942 Section 182. Paragraphs (g) and (l) of subsection (1) and
 6943 subsection (2) of section 721.06, Florida Statutes, are amended
 6944 to read:

6945 721.06 Contracts for purchase of timeshare interests.—

6946 (1) Each seller shall utilize and furnish each purchaser a
 6947 fully completed and executed copy of a contract pertaining to
 6948 the sale, which contract shall include the following
 6949 information:

6950 (g) Immediately prior to the space reserved in the
 6951 contract for the signature of the purchaser, in conspicuous
 6952 type, substantially the following statements:

6953 1. If the purchaser will receive a personal property
 6954 timeshare interest: This personal property timeshare plan is
 6955 governed only by limited sections of the timeshare management
 6956 provisions of Florida law.

6957 2. If the accommodations or facilities are located on or
 6958 in a documented vessel or foreign vessel as provided in s.
 6959 721.08(2)(c)3.e., the disclosure required by s.
 6960 721.08(2)(c)3.e.(IV).

6961 3. You may cancel this contract without any penalty or
 6962 obligation within 10 calendar days after the date you sign this
 6963 contract or the date on which you receive the last of all
 6964 documents required to be given to you ~~pursuant to section~~
 6965 ~~721.07(6), Florida Statutes,~~ whichever is later. If you decide
 6966 to cancel this contract, you must notify the seller in writing
 6967 of your intent to cancel. Your notice of cancellation shall be
 6968 effective upon the date sent and shall be sent to ...(Name of

HB 5005

2011

6969 Seller)... at ...(Address of Seller).... Any attempt to obtain a
 6970 waiver of your cancellation right is void and of no effect.
 6971 While you may execute all closing documents in advance, the
 6972 closing, as evidenced by delivery of the deed or other document,
 6973 before expiration of your 10-day cancellation period, is
 6974 prohibited.

6975 (1) If the purchaser will receive an interest in a
 6976 multisite timeshare plan pursuant to part II, a statement shall
 6977 be provided in conspicuous type in substantially the following
 6978 form:
 6979

6980 The developer is required to provide the managing entity of
 6981 the multisite timeshare plan with a copy of the approved public
 6982 offering statement text and exhibits ~~filed with the division~~ and
 6983 any approved amendments thereto, and any other component site
 6984 documents as described in ~~section 721.07~~ or section 721.55,
 6985 Florida Statutes, ~~that are not required to be filed with the~~
 6986 ~~division,~~ to be maintained by the managing entity for inspection
 6987 as part of the books and records of the plan.
 6988

6989 (2) (a) An agreement for deed shall be recorded by the
 6990 developer within 30 days after the day it is executed by the
 6991 purchaser. The developer shall pay all recording costs
 6992 associated therewith. ~~A form copy of such instrument must be~~
 6993 ~~filed with the division for review pursuant to s. 721.07.~~

6994 (b) An agreement for transfer shall be filed with the
 6995 appropriate official responsible for maintaining such records in
 6996 the appropriate jurisdiction within 30 days after the day it is

HB 5005

2011

6997 | executed by the purchaser. The developer shall pay all filing
 6998 | costs associated therewith. ~~A form copy of such instrument must~~
 6999 | ~~be filed with the division for review pursuant to s. 721.07.~~

7000 | Section 183. Sections 721.07, 721.071, and 721.075,
 7001 | Florida Statutes, are repealed.

7002 | Section 184. Subsections (6) through (10) of section
 7003 | 721.08, Florida Statutes, are renumbered as subsections (4)
 7004 | through (8), respectively, and present subsections (1), (2),
 7005 | (4), (5), and (8) of that section are amended, to read:

7006 | 721.08 Escrow accounts; nondisturbance instruments;
 7007 | alternate security arrangements; transfer of legal title.-

7008 | (1) ~~Prior to the filing of a public offering statement~~
 7009 | ~~with the division,~~ All developers shall establish an escrow
 7010 | account with an escrow agent for the purpose of protecting the
 7011 | funds or other property of purchasers required to be escrowed by
 7012 | this section. An escrow agent shall maintain the accounts called
 7013 | for in this section only in such a manner as to be under the
 7014 | direct supervision and control of the escrow agent. The escrow
 7015 | agent shall have a fiduciary duty to each purchaser to maintain
 7016 | the escrow accounts in accordance with good accounting practices
 7017 | and to release the purchaser's funds or other property from
 7018 | escrow only in accordance with this chapter. The escrow agent
 7019 | shall retain all affidavits received pursuant to this section
 7020 | for a period of 5 years. If ~~Should~~ the escrow agent receives
 7021 | ~~receive~~ conflicting demands for funds or other property held in
 7022 | escrow, the escrow agent shall ~~immediately notify the division~~
 7023 | ~~of the dispute and~~ either promptly submit the matter to
 7024 | arbitration or, by interpleader or otherwise, seek an

HB 5005

2011

7025 adjudication of the matter by court.

7026 (2) One hundred percent of all funds or other property
 7027 which is received from or on behalf of purchasers of the
 7028 timeshare plan or timeshare interest before ~~prior to~~ the
 7029 occurrence of events required in this subsection shall be
 7030 deposited pursuant to an escrow agreement ~~approved by the~~
 7031 ~~division~~. The funds or other property may be released from
 7032 escrow only as follows:

7033 (a) Cancellation.—In the event a purchaser gives a valid
 7034 notice of cancellation pursuant to s. 721.10 or is otherwise
 7035 entitled to cancel the sale, the funds or other property
 7036 received from or on behalf of the purchaser, or the proceeds
 7037 thereof, shall be returned to the purchaser. Such refund shall
 7038 be made within 20 days after demand therefor by the purchaser or
 7039 within 5 days after receipt of funds from the purchaser's
 7040 cleared check, whichever is later. If the purchaser has received
 7041 benefits under the contract prior to the effective date of the
 7042 cancellation, the funds or other property to be returned to the
 7043 purchaser may be reduced by the proportion of contract benefits
 7044 actually received.

7045 (b) Purchaser's default.—Following expiration of the 10-
 7046 day cancellation period, if the purchaser defaults in the
 7047 performance of her or his obligations under the terms of the
 7048 contract to purchase or such other agreement by which a seller
 7049 sells the timeshare interest, the developer shall provide an
 7050 affidavit to the escrow agent requesting release of the escrowed
 7051 funds or other property and shall provide a copy of such
 7052 affidavit to the purchaser who has defaulted. The developer's

HB 5005

2011

7053 affidavit, as required herein, shall include:

7054 1. A statement that the purchaser has defaulted and that
7055 the developer has not defaulted;

7056 2. A brief explanation of the nature of the default and
7057 the date of its occurrence;

7058 3. A statement that pursuant to the terms of the contract
7059 the developer is entitled to the funds held by the escrow agent;
7060 and

7061 4. A statement that the developer has not received from
7062 the purchaser any written notice of a dispute between the
7063 purchaser and developer or a claim by the purchaser to the
7064 escrow.

7065 (c) Compliance with conditions.—

7066 1. Timeshare licenses.—If the timeshare plan is one in
7067 which timeshare licenses are to be sold and no cancellation or
7068 default has occurred, the escrow agent may release the escrowed
7069 funds or other property to or on the order of the developer upon
7070 presentation of:

7071 a. An affidavit by the developer that all of the following
7072 conditions have been met:

7073 (I) Expiration of the cancellation period.

7074 (II) Completion of construction.

7075 (III) Closing.

7076 (IV) Either:

7077 (A) Execution, delivery, and recordation by each
7078 interestholder of the nondisturbance and notice to creditors
7079 instrument, as described in this section; or

7080 (B) Transfer by the developer of legal title to the

HB 5005

2011

7081 subject accommodations and facilities, or all use rights
7082 therein, into a trust satisfying the requirements of
7083 subparagraph 4. and the execution, delivery, and recordation by
7084 each other interestholder of the nondisturbance and notice to
7085 creditors instrument, as described in this section.

7086 b. A certified copy of each recorded nondisturbance and
7087 notice to creditors instrument.

7088 c. One of the following:

7089 (I) A copy of a memorandum of agreement, as defined in s.
7090 721.05, together with satisfactory evidence that the original
7091 memorandum of agreement has been irretrievably delivered for
7092 recording to the appropriate official responsible for
7093 maintaining the public records in the county in which the
7094 subject accommodations and facilities are located. The original
7095 memorandum of agreement must be recorded within 180 days after
7096 the date on which the purchaser executed her or his purchase
7097 agreement.

7098 (II) A notice delivered for recording to the appropriate
7099 official responsible for maintaining the public records in each
7100 county in which the subject accommodations and facilities are
7101 located notifying all persons of the identity of an independent
7102 escrow agent or trustee satisfying the requirements of
7103 subparagraph 4. that shall maintain separate books and records,
7104 in accordance with good accounting practices, for the timeshare
7105 plan in which timeshare licenses are to be sold. The books and
7106 records shall indicate each accommodation and facility that is
7107 subject to such a timeshare plan and each purchaser of a
7108 timeshare license in the timeshare plan.

HB 5005

2011

7109 2. Timeshare estates.—If the timeshare plan is one in
 7110 which timeshare estates are to be sold and no cancellation or
 7111 default has occurred, the escrow agent may release the escrowed
 7112 funds or other property to or on the order of the developer upon
 7113 presentation of:

7114 a. An affidavit by the developer that all of the following
 7115 conditions have been met:

7116 (I) Expiration of the cancellation period.

7117 (II) Completion of construction.

7118 (III) Closing.

7119 b. If the timeshare estate is sold by agreement for deed,
 7120 a certified copy of the recorded nondisturbance and notice to
 7121 creditors instrument, as described in this section.

7122 c. Evidence that each accommodation and facility:

7123 (I) Is free and clear of the claims of any
 7124 interestholders, other than the claims of interestholders that,
 7125 through a recorded instrument, are irrevocably made subject to
 7126 the timeshare instrument and the use rights of purchasers made
 7127 available through the timeshare instrument;

7128 (II) Is the subject of a recorded nondisturbance and
 7129 notice to creditors instrument that complies with subsection (3)
 7130 and s. 721.17; or

7131 (III) Has been transferred into a trust satisfying the
 7132 requirements of subparagraph 4.

7133 d. Evidence that the timeshare estate:

7134 (I) Is free and clear of the claims of any
 7135 interestholders, other than the claims of interestholders that,
 7136 through a recorded instrument, are irrevocably made subject to

7137 the timeshare instrument and the use rights of purchasers made
 7138 available through the timeshare instrument; or

7139 (II) Is the subject of a recorded nondisturbance and
 7140 notice to creditors instrument that complies with subsection (3)
 7141 and s. 721.17.

7142 3. Personal property timeshare interests.—If the timeshare
 7143 plan is one in which personal property timeshare interests are
 7144 to be sold and no cancellation or default has occurred, the
 7145 escrow agent may release the escrowed funds or other property to
 7146 or on the order of the developer upon presentation of:

7147 a. An affidavit by the developer that all of the following
 7148 conditions have been met:

7149 (I) Expiration of the cancellation period.

7150 (II) Completion of construction.

7151 (III) Closing.

7152 b. If the personal property timeshare interest is sold by
 7153 agreement for transfer, evidence that the agreement for transfer
 7154 complies fully with s. 721.06 and this section.

7155 c. Evidence that one of the following has occurred:

7156 (I) Transfer by the owner of the underlying personal
 7157 property of legal title to the subject accommodations and
 7158 facilities or all use rights therein into a trust satisfying the
 7159 requirements of subparagraph 4.; or

7160 (II) Transfer by the owner of the underlying personal
 7161 property of legal title to the subject accommodations and
 7162 facilities or all use rights therein into an owners' association
 7163 satisfying the requirements of subparagraph 5.

7164 d. Evidence of compliance with the provisions of

HB 5005

2011

7165 subparagraph 6., if required.

7166 e. If a personal property timeshare plan is created with
 7167 respect to accommodations and facilities that are located on or
 7168 in an oceangoing vessel, including a "documented vessel" or a
 7169 "foreign vessel," as defined and governed by 46 U.S.C., chapter
 7170 301:

7171 (I) In making the transfer required in sub-subparagraph
 7172 c., the developer shall use as its transfer instrument a
 7173 document that establishes and protects the continuance of the
 7174 use rights in the subject accommodations and facilities in a
 7175 manner that is enforceable by the trust or owners' association.

7176 (II) The transfer instrument shall comply fully with the
 7177 provisions of this chapter, shall be part of the timeshare
 7178 instrument, and shall contain specific provisions that:

7179 (A) Prohibit the vessel owner, the developer, any manager
 7180 or operator of the vessel, the owners' association or the
 7181 trustee, the managing entity, or any other person from incurring
 7182 any liens against the vessel except for liens that are required
 7183 for the operation and upkeep of the vessel, including liens for
 7184 fuel expenditures, repairs, crews' wages, and salvage, and
 7185 except as provided in sub-sub-subparagraphs 4.b.(III) and
 7186 5.b.(III). All expenses, fees, and taxes properly incurred in
 7187 connection with the creation, satisfaction, and discharge of any
 7188 such permitted lien, or a prorated portion thereof if less than
 7189 all of the accommodations on the vessel are subject to the
 7190 timeshare plan, shall be common expenses of the timeshare plan.

7191 (B) Grant a lien against the vessel in favor of the
 7192 owners' association or trustee to secure the full and faithful

HB 5005

2011

7193 performance of the vessel owner and developer of all of their
 7194 obligations to the purchasers.

7195 (C) Establish governing law in a jurisdiction that
 7196 recognizes and will enforce the timeshare instrument and the
 7197 laws of the jurisdiction of registry of the vessel.

7198 (D) Require that a description of the use rights of
 7199 purchasers be posted and displayed on the vessel in a manner
 7200 that will give notice of such rights to any party examining the
 7201 vessel. This notice must identify the owners' association or
 7202 trustee and include a statement disclosing the limitation on
 7203 incurring liens against the vessel described in sub-sub-sub-
 7204 subparagraph (A).

7205 (E) Include the nondisturbance and notice to creditors
 7206 instrument for the vessel owner and any other interestholders.

7207 (F) The owners' association created under subparagraph 5.
 7208 or trustee created under subparagraph 4. shall have access to
 7209 any certificates of classification in accordance with the
 7210 timeshare instrument.

7211 (III) If the vessel is a foreign vessel, the vessel must
 7212 be registered in a jurisdiction that permits a filing evidencing
 7213 the use rights of purchasers in the subject accommodations and
 7214 facilities, offers protection for such use rights against
 7215 unfiled and inferior claims, and recognizes the document or
 7216 instrument creating such use rights as a lien against the
 7217 vessel.

7218 (IV) ~~In addition to the disclosures required by s.~~
 7219 ~~721.07(5),~~ The public offering statement and purchase contract
 7220 must contain a disclosure in conspicuous type in substantially

HB 5005

2011

7221 the following form:

7222 The laws of the State of Florida govern the offering of this
7223 timeshare plan in this state. There are inherent risks in
7224 purchasing a timeshare interest in this timeshare plan because
7225 the accommodations and facilities of the timeshare plan are
7226 located on a vessel that will sail into international waters and
7227 into waters governed by many different jurisdictions. Therefore,
7228 the laws of the State of Florida cannot fully protect your
7229 purchase of an interest in this timeshare plan. Specifically,
7230 management and operational issues may need to be addressed in
7231 the jurisdiction in which the vessel is registered, which is
7232 (insert jurisdiction in which vessel is registered). Concerns of
7233 purchasers may be sent to (insert name of applicable regulatory
7234 agency and address).

7235 4. Trust.—

7236 a. If the subject accommodations or facilities, or all use
7237 rights therein, are to be transferred into a trust in order to
7238 comply with this paragraph, such transfer shall take place
7239 pursuant to this subparagraph.

7240 b. Prior to the transfer by each interestholder of the
7241 subject accommodations and facilities, or all use rights
7242 therein, to a trust, any lien or other encumbrance against such
7243 accommodations and facilities, or use rights therein, shall be
7244 made subject to a nondisturbance and notice to creditors
7245 instrument pursuant to subsection (3). No transfer pursuant to
7246 this subparagraph shall become effective until the trustee
7247 accepts such transfer and the responsibilities set forth herein.
7248 A trust established pursuant to this subparagraph shall comply

7249 with the following provisions:

7250 (I) The trustee shall be an individual or a business
 7251 entity authorized and qualified to conduct trust business in
 7252 this state. Any corporation authorized to do business in this
 7253 state may act as trustee in connection with a timeshare plan
 7254 pursuant to this chapter. The trustee must be independent from
 7255 any developer or managing entity of the timeshare plan or any
 7256 interestholder of any accommodation or facility of such plan.

7257 (II) The trust shall be irrevocable so long as any
 7258 purchaser has a right to occupy any portion of the timeshare
 7259 property pursuant to the timeshare plan.

7260 (III) The trustee shall not convey, hypothecate, mortgage,
 7261 assign, lease, or otherwise transfer or encumber in any fashion
 7262 any interest in or portion of the timeshare property with
 7263 respect to which any purchaser has a right of use or occupancy
 7264 unless the timeshare plan is terminated pursuant to the
 7265 timeshare instrument, or such conveyance, hypothecation,
 7266 mortgage, assignment, lease, transfer, or encumbrance is
 7267 approved by a vote of two-thirds of all voting interests of the
 7268 timeshare plan and such decision is declared by a court of
 7269 competent jurisdiction to be in the best interests of the
 7270 purchasers of the timeshare plan. ~~The trustee shall notify the~~
 7271 ~~division in writing within 10 days after receiving notice of the~~
 7272 ~~filing of any petition relating to obtaining such a court order.~~
 7273 ~~The division shall have standing to advise the court of the~~
 7274 ~~division's interpretation of the statute as it relates to the~~
 7275 ~~petition.~~

7276 (IV) All purchasers of the timeshare plan or the owners'

7277 association of the timeshare plan shall be the express
 7278 beneficiaries of the trust. The trustee shall act as a fiduciary
 7279 to the beneficiaries of the trust. The personal liability of the
 7280 trustee shall be governed by ss. 736.08125, 736.08163, 736.1013,
 7281 and 736.1015. The agreement establishing the trust shall set
 7282 forth the duties of the trustee. ~~The trustee shall be required~~
 7283 ~~to furnish promptly to the division upon request a copy of the~~
 7284 ~~complete list of the names and addresses of the owners in the~~
 7285 ~~timeshare plan and a copy of any other books and records of the~~
 7286 ~~timeshare plan required to be maintained pursuant to s. 721.13~~
 7287 ~~that are in the possession, custody, or control of the trustee.~~
 7288 All expenses reasonably incurred by the trustee in the
 7289 performance of its duties, together with any reasonable
 7290 compensation of the trustee, shall be common expenses of the
 7291 timeshare plan.

7292 (V) The trustee shall not resign upon less than 90 days'
 7293 prior written notice to the managing entity ~~and the division~~. No
 7294 resignation shall become effective until a substitute trustee,
 7295 ~~approved by the division,~~ is appointed by the managing entity
 7296 and accepts the appointment.

7297 (VI) The documents establishing the trust arrangement
 7298 shall constitute a part of the timeshare instrument.

7299 (VII) For trusts holding property in a timeshare plan
 7300 located outside this state, the trust and trustee holding such
 7301 property shall be deemed in compliance with the requirements of
 7302 this subparagraph if such trust and trustee are authorized and
 7303 qualified to conduct trust business under the laws of such
 7304 jurisdiction and the agreement or law governing such trust

7305 arrangement provides substantially similar protections for the
 7306 purchaser as are required in this subparagraph for trusts
 7307 holding property in a timeshare plan in this state.

7308 (VIII) The trustee shall have appointed a registered agent
 7309 in this state for service of process. ~~In the event such a~~
 7310 ~~registered agent is not appointed, service of process may be~~
 7311 ~~served pursuant to s. 721.265.~~

7312 5. Owners' association.—

7313 a. If the subject accommodations or facilities, or all use
 7314 rights therein, are to be transferred into an owners'
 7315 association in order to comply with this paragraph, such
 7316 transfer shall take place pursuant to this subparagraph.

7317 b. Prior to the transfer by each interestholder of the
 7318 subject accommodations and facilities, or all use rights
 7319 therein, to an owners' association, any lien or other
 7320 encumbrance against such accommodations and facilities, or use
 7321 rights therein, shall be made subject to a nondisturbance and
 7322 notice to creditors instrument pursuant to subsection (3). No
 7323 transfer pursuant to this subparagraph shall become effective
 7324 until the owners' association accepts such transfer and the
 7325 responsibilities set forth herein. An owners' association
 7326 established pursuant to this subparagraph shall comply with the
 7327 following provisions:

7328 (I) The owners' association shall be a business entity
 7329 authorized and qualified to conduct business in this state.
 7330 Control of the board of directors of the owners' association
 7331 must be independent from any developer or managing entity of the
 7332 timeshare plan or any interestholder.

HB 5005

2011

7333 (II) The bylaws of the owners' association shall provide
 7334 that the corporation may not be voluntarily dissolved without
 7335 the unanimous vote of all owners of personal property timeshare
 7336 interests so long as any purchaser has a right to occupy any
 7337 portion of the timeshare property pursuant to the timeshare
 7338 plan.

7339 (III) The owners' association shall not convey,
 7340 hypothecate, mortgage, assign, lease, or otherwise transfer or
 7341 encumber in any fashion any interest in or portion of the
 7342 timeshare property with respect to which any purchaser has a
 7343 right of use or occupancy, unless the timeshare plan is
 7344 terminated pursuant to the timeshare instrument, or unless such
 7345 conveyance, hypothecation, mortgage, assignment, lease,
 7346 transfer, or encumbrance is approved by a vote of two-thirds of
 7347 all voting interests of the association and such decision is
 7348 declared by a court of competent jurisdiction to be in the best
 7349 interests of the purchasers of the timeshare plan. ~~The owners'~~
 7350 ~~association shall notify the division in writing within 10 days~~
 7351 ~~after receiving notice of the filing of any petition relating to~~
 7352 ~~obtaining such a court order. The division shall have standing~~
 7353 ~~to advise the court of the division's interpretation of the~~
 7354 ~~statute as it relates to the petition.~~

7355 (IV) All purchasers of the timeshare plan shall be members
 7356 of the owners' association and shall be entitled to vote on
 7357 matters requiring a vote of the owners' association as provided
 7358 in this chapter or the timeshare instrument. The owners'
 7359 association shall act as a fiduciary to the purchasers of the
 7360 timeshare plan. The articles of incorporation establishing the

HB 5005

2011

7361 owners' association shall set forth the duties of the owners'
 7362 association. All expenses reasonably incurred by the owners'
 7363 association in the performance of its duties, together with any
 7364 reasonable compensation of the officers or directors of the
 7365 owners' association, shall be common expenses of the timeshare
 7366 plan.

7367 (V) The documents establishing the owners' association
 7368 shall constitute a part of the timeshare instrument.

7369 (VI) For owners' associations holding property in a
 7370 timeshare plan located outside this state, the owners'
 7371 association holding such property shall be deemed in compliance
 7372 with the requirements of this subparagraph if such owners'
 7373 association is authorized and qualified to conduct owners'
 7374 association business under the laws of such jurisdiction and the
 7375 agreement or law governing such arrangement provides
 7376 substantially similar protections for the purchaser as are
 7377 required in this subparagraph for owners' associations holding
 7378 property in a timeshare plan in this state.

7379 (VII) The owners' association shall have appointed a
 7380 registered agent in this state for service of process. ~~In the~~
 7381 ~~event such a registered agent cannot be located, service of~~
 7382 ~~process may be made pursuant to s. 721.265.~~

7383 6. Personal property subject to certificate of title.—If
 7384 any personal property that is an accommodation or facility of a
 7385 timeshare plan is subject to a certificate of title in this
 7386 state pursuant to chapter 319 or chapter 328, the following
 7387 notation must be made on such certificate of title pursuant to
 7388 s. 319.27(1) or s. 328.15(1):

HB 5005

2011

7389 The further transfer or encumbrance of the property subject to
7390 this certificate of title, or any lien or encumbrance thereon,
7391 is subject to the requirements of section 721.17, Florida
7392 Statutes, and the transferee or lienor agrees to be bound by all
7393 of the obligations set forth therein.

7394 7. If the developer has previously provided a certified
7395 copy of any document required by this paragraph, she or he may
7396 for all subsequent disbursements substitute a true and correct
7397 copy of the certified copy, provided no changes to the document
7398 have been made or are required to be made.

7399 8. In the event that use rights relating to an
7400 accommodation or facility are transferred into a trust pursuant
7401 to subparagraph 4. or into an owners' association pursuant to
7402 subparagraph 5., all other interestholders, including the owner
7403 of the underlying fee or underlying personal property, must
7404 execute a nondisturbance and notice to creditors instrument
7405 pursuant to subsection (3).

7406 (d) Substitution of other assurances for escrowed funds or
7407 other property.—Funds or other property escrowed as provided in
7408 this section may be released from escrow to or on the order of
7409 the developer upon acceptance by the director of the division of
7410 other assurances pursuant to subsection (5) as a substitute for
7411 such escrowed funds or other property. The amount of escrowed
7412 funds or other property that may be released pursuant to this
7413 paragraph shall be equal to or less than the face amount of the
7414 assurances accepted by the director from time to time.

7415 ~~(4) In lieu of any escrow provisions required by this act,~~
7416 ~~the director of the division shall have the discretion to permit~~

HB 5005

2011

7417 ~~deposit of the funds or other property in an escrow account as~~
 7418 ~~required by the jurisdiction in which the sale took place.~~

7419 ~~(5) (a) In lieu of any escrows required by this section,~~
 7420 ~~the director of the division shall have the discretion to accept~~
 7421 ~~other assurances, including, but not limited to, a surety bond~~
 7422 ~~issued by a company authorized and licensed to do business in~~
 7423 ~~this state as surety or an irrevocable letter of credit in an~~
 7424 ~~amount equal to the escrow requirements of this section.~~

7425 ~~(b) Notwithstanding anything in chapter 718 or chapter 719~~
 7426 ~~to the contrary, the director of the division shall have the~~
 7427 ~~discretion to accept other assurances pursuant to paragraph (a)~~
 7428 ~~in lieu of any requirement that completion of construction of~~
 7429 ~~one or more accommodations or facilities of a timeshare plan be~~
 7430 ~~accomplished prior to closing.~~

7431 ~~(c) In lieu of a nondisturbance and notice to creditors~~
 7432 ~~instrument, when such an instrument is otherwise required by~~
 7433 ~~this section, the director of the division shall have the~~
 7434 ~~discretion to accept alternate means of protecting the~~
 7435 ~~continuing rights of purchasers in and to the subject~~
 7436 ~~accommodations or facilities of the timeshare plan as and for~~
 7437 ~~the term described in the timeshare instrument, and of providing~~
 7438 ~~effective constructive notice of such continuing purchaser~~
 7439 ~~rights to subsequent owners of the accommodations or facilities~~
 7440 ~~and to subsequent creditors of the affected interestholder.~~

7441 ~~(d) In lieu of the requirements in sub-sub-subparagraph~~
 7442 ~~(2) (c) 3.e. (III), the director of the division shall have the~~
 7443 ~~discretion to accept alternate means of protecting the use~~
 7444 ~~rights of purchasers in the subject accommodations and~~

HB 5005

2011

7445 ~~facilities of the timeshare plan against unfiled and inferior~~
7446 ~~claims.~~

7447 (6)~~(8)~~ An escrow agent holding escrowed funds pursuant to
7448 this chapter that have not been claimed for a period of 5 years
7449 after the date of deposit shall make at least one reasonable
7450 attempt to deliver such unclaimed funds to the purchaser who
7451 submitted such funds to escrow. In making such attempt, an
7452 escrow agent is entitled to rely on a purchaser's last known
7453 address as set forth in the books and records of the escrow
7454 agent and is not required to conduct any further search for the
7455 purchaser. If an escrow agent's attempt to deliver unclaimed
7456 funds to any purchaser is unsuccessful, the escrow agent shall
7457 give ~~may deliver such unclaimed funds to the division and the~~
7458 ~~division shall deposit such unclaimed funds in the Division of~~
7459 ~~Florida Condominiums, Timeshares, and Mobile Homes Trust Fund,~~
7460 ~~30 days after giving~~ notice in a publication of general
7461 circulation in the county in which the timeshare property
7462 containing the purchaser's timeshare interest is located. The
7463 purchaser may claim the unclaimed funds within 30 days after
7464 publication of the notice, after which ~~same at any time prior to~~
7465 ~~the delivery of such funds to the division. After delivery of~~
7466 ~~such funds to the division,~~ the purchaser shall have no more
7467 rights to the unclaimed funds. ~~The escrow agent shall not be~~
7468 ~~liable for any claims from any party arising out of the escrow~~
7469 ~~agent's delivery of the unclaimed funds to the division pursuant~~
7470 ~~to this section.~~

7471 Section 185. Paragraphs (d) through (f) of subsection (2)
7472 of section 721.09, Florida Statutes, are redesignated as

7473 paragraphs (c) through (e), respectively, and paragraphs (a),
 7474 (c), and (d) of subsection (1) and paragraph (c) of subsection
 7475 (2) of that section are amended to read:

7476 721.09 Reservation agreements; escrows.—

7477 (1) (a) ~~Prior to filing the filed public offering statement~~
 7478 ~~with the division,~~ A seller shall not offer a timeshare plan for
 7479 sale but may accept reservation deposits and advertise the
 7480 reservation deposit program ~~upon approval by the division of a~~
 7481 ~~fully executed escrow agreement and reservation agreement~~
 7482 ~~properly filed with the division.~~

7483 ~~(c) If the timeshare plan subject to the reservation~~
 7484 ~~agreement has not been filed with the division under s.~~
 7485 ~~721.07(5) or s. 721.55 within 180 days after the date the~~
 7486 ~~division approves the reservation agreement filing, the seller~~
 7487 ~~must immediately cancel all outstanding reservation agreements,~~
 7488 ~~refund all escrowed funds to prospective purchasers, and~~
 7489 ~~discontinue accepting reservation deposits or advertising the~~
 7490 ~~availability of reservation agreements.~~

7491 (c) ~~(d)~~ A seller who has filed a reservation agreement and
 7492 an escrow agreement under this section may advertise the
 7493 reservation agreement program if the advertising material meets
 7494 the following requirements:

7495 1. The seller complies with the provisions of s. 721.11
 7496 with respect to such advertising material.

7497 2. The advertising material is limited to a general
 7498 description of the proposed timeshare plan, including, but not
 7499 limited to, a general description of the type, number, and size
 7500 of accommodations and facilities and the name of the proposed

7501 timeshare plan.

7502 3. The advertising material contains a statement that the
 7503 advertising material is being distributed in connection with an
 7504 approved reservation agreement filing only ~~and that the seller~~
 7505 ~~cannot offer an interest in the timeshare plan for sale until a~~
 7506 ~~filed public offering statement has been filed with the division~~
 7507 ~~under this chapter.~~

7508 (2) Each executed reservation agreement shall be signed by
 7509 the developer and shall contain the following:

7510 ~~(c) A statement of the obligation of the developer to file~~
 7511 ~~a filed public offering statement with the division prior to~~
 7512 ~~entering into binding contracts.~~

7513 Section 186. Paragraph (b) of subsection (1) of section
 7514 721.10, Florida Statutes, is amended to read:

7515 721.10 Cancellation.—

7516 (1) A purchaser has the right to cancel the contract until
 7517 midnight of the 10th calendar day following whichever of the
 7518 following days occurs later:

7519 (b) The day on which the purchaser received the last of
 7520 all documents required to be provided to him or her, ~~including~~
 7521 ~~the notice required by s. 721.07(2)(d)2., if applicable.~~

7522
 7523 This right of cancellation may not be waived by any purchaser or
 7524 by any other person on behalf of the purchaser. Furthermore, no
 7525 closing may occur until the cancellation period of the timeshare
 7526 purchaser has expired. Any attempt to obtain a waiver of the
 7527 cancellation right of the timeshare purchaser, or to hold a
 7528 closing prior to the expiration of the cancellation period, is

HB 5005

2011

7529 unlawful and such closing is voidable at the option of the
7530 purchaser for a period of 1 year after the expiration of the
7531 cancellation period. However, nothing in this section precludes
7532 the execution of documents in advance of closing for delivery
7533 after expiration of the cancellation period.

7534 Section 187. Subsection (1), paragraph (n) of subsection
7535 (4), subsection (5), paragraph (a) of subsection (6), subsection
7536 (8), and paragraph (a) of subsection (9) of section 721.11,
7537 Florida Statutes, are amended to read:

7538 721.11 Advertising materials; oral statements.—

7539 ~~(1) (a) A developer may file advertising material with the~~
7540 ~~division for review. The division shall review any advertising~~
7541 ~~material filed for review by the developer and notify the~~
7542 ~~developer of any deficiencies within 10 days after the filing.~~
7543 ~~If the developer corrects the deficiencies or if there are no~~
7544 ~~deficiencies, the division shall notify the developer of its~~
7545 ~~approval of the advertising materials. Notwithstanding anything~~
7546 ~~to the contrary contained in this subsection, so long as the~~
7547 ~~developer uses advertising materials approved by the division,~~
7548 ~~following the developer's request for a review, the developer~~
7549 ~~shall not be liable for any violation of this section or s.~~
7550 ~~721.111 with respect to such advertising materials.~~

7551 ~~(b)~~ All advertising materials must be substantially in
7552 compliance with this chapter and in full compliance with the
7553 mandatory provisions of this chapter. ~~In the event that any such~~
7554 ~~material is not in substantial compliance with this chapter, the~~
7555 ~~division may file administrative charges and an injunction~~
7556 ~~against the developer and exact such penalties or remedies as~~

HB 5005

2011

7557 ~~provided in s. 721.26, or may require the developer to correct~~
 7558 ~~any deficiency in the materials by notifying the developer of~~
 7559 ~~the deficiency. If the developer fails to correct the deficiency~~
 7560 ~~after such notification, the division may file administrative~~
 7561 ~~charges against the developer and exact such penalties or~~
 7562 ~~remedies as provided in s. 721.26.~~

7563 (4) No advertising or oral statement made by any seller or
 7564 resale service provider shall:

7565 (n) Purport to have resulted from a referral unless the
 7566 name of the person making the referral can be produced upon
 7567 demand ~~of the division.~~

7568 (5) (a) No written advertising material, including any
 7569 lodging certificate, gift award, premium, discount, or display
 7570 booth, may be utilized without each prospective purchaser being
 7571 provided a disclosure in conspicuous type in substantially the
 7572 following form: This advertising material is being used for the
 7573 purpose of soliciting sales of timeshare interests; or This
 7574 advertising material is being used for the purpose of soliciting
 7575 sales of a vacation (or vacation membership or vacation
 7576 ownership) plan. ~~The division shall have the discretion to~~
 7577 ~~approve the use of an alternate disclosure.~~ The conspicuous
 7578 disclosure required in this subsection shall only be required to
 7579 be given to each prospective purchaser on one piece of
 7580 advertising for each advertising promotion or marketing
 7581 campaign, provided that if the promotion or campaign contains
 7582 terms and conditions, the conspicuous disclosure required in
 7583 this subsection shall be included on any piece containing such
 7584 terms and conditions. The conspicuous disclosure required in

7585 | this subsection shall be provided before the purchaser is
 7586 | required to take any affirmative action pursuant to the
 7587 | promotion. If the advertising material containing the
 7588 | conspicuous disclosure is a display booth, the disclosure
 7589 | required by this subsection must be conspicuously displayed on
 7590 | or within the display booth.

7591 | (b) This subsection does not apply to any advertising
 7592 | material which involves a project or development which includes
 7593 | sales of real estate or other commodities or services in
 7594 | addition to timeshare interests, including, but not limited to,
 7595 | lot sales, condominium or home sales, or the rental of resort
 7596 | accommodations. However, if the sale of timeshare interests, as
 7597 | compared with such other sales or rentals, is the primary
 7598 | purpose of the advertising material, a disclosure shall be made
 7599 | in conspicuous type that: This advertising material is being
 7600 | used for the purpose of soliciting the sale of ... (Disclosure
 7601 | shall include timeshare interests and may include other types of
 7602 | sales).... ~~Factors which the division may consider in~~
 7603 | ~~determining whether the primary purpose of the advertising~~
 7604 | ~~material is the sale of timeshare interests include:~~

7605 | 1. ~~The retail value of the timeshare interests compared to~~
 7606 | ~~the retail value of the other real estate, commodities, or~~
 7607 | ~~services being offered in the advertising material.~~

7608 | 2. ~~The amount of space devoted to the timeshare portion of~~
 7609 | ~~the project in the advertising material compared to the amount~~
 7610 | ~~of space devoted to other portions of the project, including,~~
 7611 | ~~but not limited to, printed material, photographs, or drawings.~~

7612 | (8) Notwithstanding ~~the provisions of s. 721.05 (7) (b), a~~

HB 5005

2011

7613 developer may portray possible accommodations or facilities to
7614 prospective purchasers by disseminating oral or written
7615 statements regarding same to broadcast or print media with no
7616 obligation on the developer's part to actually construct such
7617 accommodations or facilities ~~or to file such accommodations or~~
7618 ~~facilities with the division~~, but only so long as such oral or
7619 written statements are not considered advertising material
7620 pursuant to paragraph (3) (e).

7621 (9) Notwithstanding ~~the provisions of~~ s. 721.05(7) (b), a
7622 seller of a multisite timeshare plan may portray a possible
7623 component site to prospective purchasers with no accommodations
7624 or facilities located at such component site being available for
7625 use by purchasers so long as the seller satisfies the following
7626 requirements:

7627 (a) A developer of a multisite timeshare plan may
7628 disseminate oral or written statements to broadcast or print
7629 media describing a possible component site with no obligation on
7630 the developer's part to actually add such component site to the
7631 multisite timeshare plan ~~or to amend the developer's filing with~~
7632 ~~the division~~, but only so long as such oral or written
7633 statements are not considered advertising material pursuant to
7634 paragraph (3) (e).

7635 Section 188. Subsections (6) and (7) of section 721.111,
7636 Florida Statutes, are renumbered as subsections (4) and (5),
7637 respectively, and present subsections (4) and (5) of that
7638 section are amended to read:

7639 721.111 Prize and gift promotional offers.—

7640 ~~(4) A separate filing for each prize and gift promotional~~

HB 5005

2011

7641 ~~offer to be used in the sale of timeshare interests shall be~~
7642 ~~made with the division pursuant to s. 721.11(1). The developer~~
7643 ~~shall pay a \$100 filing fee for each prize and gift promotional~~
7644 ~~offer. One item of each prize or gift, except cash, must be made~~
7645 ~~available for inspection by the division.~~

7646 ~~(5) Each filing of a prize and gift promotional offer with~~
7647 ~~the division shall include, when applicable:~~

7648 ~~(a) A copy of all advertising material to be used in~~
7649 ~~connection with the prize and gift promotional offer.~~

7650 ~~(b) The name, address, and telephone number (including~~
7651 ~~area code) of the supplier or manufacturer from whom each type~~
7652 ~~or variety of prize, gift, or other item is obtained.~~

7653 ~~(c) The manufacturer's model number or other description~~
7654 ~~of such item.~~

7655 ~~(d) The information on which the developer relies in~~
7656 ~~determining the verifiable retail value, if the value is in~~
7657 ~~excess of \$50.~~

7658 ~~(e) The name, address, and telephone number (including~~
7659 ~~area code) of the promotional entity responsible for overseeing~~
7660 ~~and operating the prize and gift promotional offer.~~

7661 ~~(f) The name and address of the registered agent in this~~
7662 ~~state of the promotional entity for service of process purposes.~~

7663 ~~(g) Full disclosure of all pertinent information~~
7664 ~~concerning the use of lodging or vacation certificates,~~
7665 ~~including the terms and conditions of the campaign and the fact~~
7666 ~~and extent of participation in such campaign by the developer.~~
7667 ~~The developer shall provide to the division, upon the request of~~
7668 ~~the division, an affidavit, certification, or other reasonable~~

HB 5005

2011

7669 ~~evidence that the obligation incurred by a seller or the~~
 7670 ~~seller's agent in a lodging certificate program can be met.~~

7671 Section 189. Section 721.121, Florida Statutes, is
 7672 repealed.

7673 Section 190. Paragraphs (a) and (b) of subsection (2),
 7674 subsections (3) and (4), and paragraphs (b) and (c) of
 7675 subsection (12) of section 721.13, Florida Statutes, are amended
 7676 to read:

7677 721.13 Management.—

7678 (2) (a) The managing entity shall act in the capacity of a
 7679 fiduciary to the purchasers of the timeshare plan. ~~No penalty~~
 7680 ~~imposed by the division pursuant to s. 721.26 against any~~
 7681 ~~managing entity for breach of fiduciary duty shall be assessed~~
 7682 ~~as a common expense of any timeshare plan.~~

7683 (b) The managing entity shall invest the operating and
 7684 reserve funds of the timeshare plan in accordance with s.
 7685 518.11(1); however, the managing entity shall give safety of
 7686 capital greater weight than production of income. In no event
 7687 shall the managing entity invest timeshare plan funds with a
 7688 developer or with any entity that is not independent of any
 7689 developer or any managing entity within the meaning of s.
 7690 721.05 (20) ~~(22)~~, and in no event shall the managing entity invest
 7691 timeshare plan funds in notes and mortgages related in any way
 7692 to the timeshare plan.

7693 (3) The duties of the managing entity include, but are not
 7694 limited to:

7695 (a) Management and maintenance of all accommodations and
 7696 facilities constituting the timeshare plan.

7697 (b) Collection of all assessments for common expenses.
 7698 (c)1. Providing each year to all purchasers an itemized
 7699 annual budget which shall include all estimated revenues and
 7700 expenses. ~~The budget shall be in the form required by s.~~
 7701 ~~721.07(5)(t).~~ The budget shall be the final budget adopted by
 7702 the managing entity for the current fiscal year. The final
 7703 adopted budget is not required to be delivered if the managing
 7704 entity has previously delivered a proposed annual budget for the
 7705 current fiscal year to purchasers in accordance with chapter 718
 7706 or chapter 719 and the managing entity includes a description of
 7707 any changes in the adopted budget with the assessment notice and
 7708 a disclosure regarding the purchasers' right to receive a copy
 7709 of the adopted budget, if desired. The budget shall contain, as
 7710 a footnote or otherwise, any related party transaction
 7711 disclosures or notes which appear in the audited financial
 7712 statements of the managing entity for the previous budget year
 7713 as required by paragraph (e). ~~A copy of the final budget shall~~
 7714 ~~be filed with the division for review within 30 days after the~~
 7715 ~~beginning of each fiscal year, together with a statement of the~~
 7716 ~~number of periods of 7-day annual use availability that exist~~
 7717 ~~within the timeshare plan, including those periods filed for~~
 7718 ~~sale by the developer but not yet committed to the timeshare~~
 7719 ~~plan, for which annual fees are required to be paid to the~~
 7720 ~~division under s. 721.27.~~
 7721 2. Notwithstanding anything contained in chapter 718 or
 7722 chapter 719 to the contrary, the board of administration of an
 7723 owners' association which serves as the managing entity may from
 7724 time to time reallocate reserves for deferred maintenance and

HB 5005

2011

7725 ~~capital expenditures required by s. 721.07(5)(t)3.a.(XI)~~ from
 7726 any deferred maintenance or capital expenditure reserve account
 7727 to any other deferred maintenance or capital expenditure reserve
 7728 account or accounts in its discretion without the consent of
 7729 purchasers of the timeshare plan. Funds in any deferred
 7730 maintenance or capital expenditure reserve account may not be
 7731 transferred to any operating account without the consent of a
 7732 majority of the purchasers of the timeshare plan. The managing
 7733 entity may from time to time transfer excess funds in any
 7734 operating account to any deferred maintenance or capital
 7735 expenditure reserve account without the vote or approval of
 7736 purchasers of the timeshare plan. In the event any amount of
 7737 reserves for accommodations and facilities of a timeshare plan
 7738 containing timeshare licenses or personal property timeshare
 7739 interests exists at the end of the term of the timeshare plan,
 7740 such reserves shall be refunded to purchasers on a pro rata
 7741 basis.

7742 3. With respect to any timeshare plan that has a managing
 7743 entity that is an owners' association, reserves may be waived or
 7744 reduced by a majority vote of those voting interests that are
 7745 present, in person or by proxy, at a duly called meeting of the
 7746 owners' association. If a meeting of the purchasers has been
 7747 called to determine whether to waive or reduce the funding of
 7748 reserves and no such result is achieved or a quorum is not
 7749 attained, the reserves as included in the budget shall go into
 7750 effect.

7751 (d)1. Maintenance of all books and records concerning the
 7752 timeshare plan so that all such books and records are reasonably

HB 5005

2011

7753 available for inspection by any purchaser or the authorized
7754 agent of such purchaser. For purposes of this subparagraph, the
7755 books and records of the timeshare plan shall be considered
7756 "reasonably available" if copies of the requested portions are
7757 delivered to the purchaser or the purchaser's agent within 7
7758 days after the date the managing entity receives a written
7759 request for the records signed by the purchaser. The managing
7760 entity may charge the purchaser a reasonable fee for copying the
7761 requested information not to exceed 25 cents per page. However,
7762 any purchaser or agent of such purchaser shall be permitted to
7763 personally inspect and examine the books and records wherever
7764 located at any reasonable time, under reasonable conditions, and
7765 under the supervision of the custodian of those records. The
7766 custodian shall supply copies of the records where requested and
7767 upon payment of the copying fee. No fees other than those set
7768 forth in this section may be charged for the providing of,
7769 inspection, or examination of books and records. All books and
7770 financial records of the timeshare plan must be maintained in
7771 accordance with generally accepted accounting practices.

7772 ~~2. If the books and records of the timeshare plan are not~~
7773 ~~maintained on the premises of the accommodations and facilities~~
7774 ~~of the timeshare plan, the managing entity shall inform the~~
7775 ~~division in writing of the location of the books and records and~~
7776 ~~the name and address of the person who acts as custodian of the~~
7777 ~~books and records at that location. In the event that the~~
7778 ~~location of the books and records changes, the managing entity~~
7779 ~~shall notify the division of the change in location and the name~~
7780 ~~and address of the new custodian within 30 days after the date~~

HB 5005

2011

7781 ~~the books and records are moved.~~ The purchasers shall be
7782 notified of the location of the books and records and the name
7783 and address of the custodian in the copy of the annual budget
7784 provided to them pursuant to paragraph (c).

7785 ~~3. The division is authorized to adopt rules which specify~~
7786 ~~those items and matters that shall be included in the books and~~
7787 ~~records of the timeshare plan and which specify procedures to be~~
7788 ~~followed in requesting and delivering copies of the books and~~
7789 ~~records.~~

7790 3.4. Notwithstanding any provision of chapter 718 or
7791 chapter 719 to the contrary, the managing entity may not furnish
7792 the name, address, or electronic mail address of any purchaser
7793 to any other purchaser or authorized agent thereof unless the
7794 purchaser whose name, address, or electronic mail address is
7795 requested first approves the disclosure in writing.

7796 (e) Arranging for an annual audit of the financial
7797 statements of the timeshare plan by a certified public
7798 accountant licensed by the Board of Accountancy of the
7799 Department of Business and Professional Regulation, in
7800 accordance with generally accepted auditing standards as defined
7801 by the rules of the Board of Accountancy of the Department of
7802 Business and Professional Regulation. The financial statements
7803 required by this section must be prepared on an accrual basis
7804 using fund accounting, and must be presented in accordance with
7805 generally accepted accounting principles. A copy of the audited
7806 financial statements must be ~~filed with the division for review~~
7807 ~~and~~ forwarded to the board of directors and officers of the
7808 owners' association, if one exists, no later than 5 calendar

HB 5005

2011

7809 months after the end of the timeshare plan's fiscal year. If no
 7810 owners' association exists, each purchaser must be notified, no
 7811 later than 5 months after the end of the timeshare plan's fiscal
 7812 year, that a copy of the audited financial statements is
 7813 available upon request to the managing entity. Notwithstanding
 7814 any requirement of s. 718.111(13) or s. 719.104(4), the audited
 7815 financial statements required by this section are the only
 7816 annual financial reporting requirements for timeshare
 7817 condominiums or timeshare cooperatives.

7818 ~~(f) Making available for inspection by the division any~~
 7819 ~~books and records of the timeshare plan upon the request of the~~
 7820 ~~division. The division may enforce this paragraph by making~~
 7821 ~~direct application to the circuit court.~~

7822 (f) ~~(g)~~ Scheduling occupancy of the timeshare units, when
 7823 purchasers are not entitled to use specific timeshare periods,
 7824 so that all purchasers will be provided the use and possession
 7825 of the accommodations and facilities of the timeshare plan which
 7826 they have purchased.

7827 (g) ~~(h)~~ Performing any other functions and duties which are
 7828 necessary and proper to maintain the accommodations or
 7829 facilities, as provided in the contract and as advertised.

7830 (h) ~~(i)~~ 1. Entering into an ad valorem tax escrow agreement
 7831 before ~~prior to~~ the receipt of any ad valorem tax escrow
 7832 payments into the ad valorem tax escrow account, as long as an
 7833 independent escrow agent is required by s. 192.037.

7834 ~~2. Submitting to the division the statement of receipts~~
 7835 ~~and disbursements regarding the ad valorem tax escrow account as~~
 7836 ~~required by s. 192.037(6)(c). The statement of receipts and~~

7837 ~~disbursements must also include a statement disclosing that all~~
 7838 ~~ad valorem taxes have been paid in full to the tax collector~~
 7839 ~~through the current assessment year, or, if all such ad valorem~~
 7840 ~~taxes have not been paid in full to the tax collector, a~~
 7841 ~~statement disclosing those assessment years for which there are~~
 7842 ~~outstanding ad valorem taxes due and the total amount of all~~
 7843 ~~delinquent taxes, interest, and penalties for each such~~
 7844 ~~assessment year as of the date of the statement of receipts and~~
 7845 ~~disbursements.~~

7846 (i)~~(j)~~ Notwithstanding anything contained in chapter 718
 7847 or chapter 719 to the contrary, purchasers shall not have the
 7848 power to cancel contracts entered into by the managing entity
 7849 relating to a master or community antenna television system, a
 7850 franchised cable television service, or any similar paid
 7851 television programming service or bulk rate services agreement.

7852 (4) The managing entity shall maintain among its records
 7853 ~~and provide to the division upon request~~ a complete list of the
 7854 names and addresses of all purchasers and owners of timeshare
 7855 units in the timeshare plan. The managing entity shall update
 7856 this list no less frequently than quarterly. Pursuant to
 7857 paragraph (3)(d), the managing entity may not publish this
 7858 owner's list or provide a copy of it to any purchaser or to any
 7859 third party ~~other than the division~~. However, the managing
 7860 entity shall mail to those persons listed on the owner's list
 7861 materials provided by any purchaser, upon the written request of
 7862 that purchaser, if the purpose of the mailing is to advance
 7863 legitimate owners' association business, such as a proxy
 7864 solicitation for any purpose, including the recall of one or

HB 5005

2011

7865 more board members elected by the owners or the discharge of the
7866 manager or management firm. The use of any proxies solicited in
7867 this manner must comply with the provisions of the timeshare
7868 instrument and this chapter. A mailing requested for the purpose
7869 of advancing legitimate owners' association business shall occur
7870 within 30 days after receipt of a request from a purchaser. The
7871 board of administration of the owners' association shall be
7872 responsible for determining the appropriateness of any mailing
7873 requested pursuant to this subsection. The purchaser who
7874 requests the mailing must reimburse the owners' association in
7875 advance for the owners' association's actual costs in performing
7876 the mailing. It shall be a violation of this chapter and, if
7877 applicable, of part VIII of chapter 468, for the board of
7878 administration or the manager or management firm to refuse to
7879 mail any material requested by the purchaser to be mailed,
7880 provided the sole purpose of the materials is to advance
7881 legitimate owners' association business. If the purpose of the
7882 mailing is a proxy solicitation to recall one or more board
7883 members elected by the owners or to discharge the manager or
7884 management firm and the managing entity does not mail the
7885 materials within 30 days after receipt of a request from a
7886 purchaser, the circuit court in the county where the timeshare
7887 plan is located may, upon application from the requesting
7888 purchaser, summarily order the mailing of the materials solely
7889 related to the recall of one or more board members elected by
7890 the owners or the discharge of the manager or management firm.
7891 The court shall dispose of an application on an expedited basis.
7892 In the event of such an order, the court may order the managing

HB 5005

2011

7893 | entity to pay the purchaser's costs, including attorney's fees
 7894 | reasonably incurred to enforce the purchaser's rights, unless
 7895 | the managing entity can prove it refused the mailing in good
 7896 | faith because of a reasonable basis for doubt about the
 7897 | legitimacy of the mailing.

7898 | (12)

7899 | (b) A statement in conspicuous type, in substantially the
 7900 | following form, shall appear in the public offering statement ~~as~~
 7901 | ~~provided in s. 721.07:~~

7902 |
 7903 | The managing entity shall have the right to forecast anticipated
 7904 | reservation and use of the accommodations of the timeshare plan
 7905 | and is authorized to reasonably reserve, deposit, or rent the
 7906 | accommodations for the purpose of facilitating the use or future
 7907 | use of the accommodations or other benefits made available
 7908 | through the timeshare plan.

7909 |
 7910 | (c) The managing entity shall maintain copies of all
 7911 | records, data, and information supporting the processes,
 7912 | analyses, procedures, and methods utilized by the managing
 7913 | entity in its determination to reserve accommodations of the
 7914 | timeshare plan pursuant to this subsection for a period of 5
 7915 | years from the date of such determination. ~~In the event of an~~
 7916 | ~~investigation by the division for failure of a managing entity~~
 7917 | ~~to comply with this subsection, the managing entity shall make~~
 7918 | ~~all such records, data, and information available to the~~
 7919 | ~~division for inspection, provided that if the managing entity~~
 7920 | ~~complies with the provisions of s. 721.071,~~ Any such records,

HB 5005

2011

7921 data, and information ~~provided to the division~~ shall constitute
 7922 a trade secret ~~pursuant to that section.~~

7923 Section 191. Subsections (3) and (5) of section 721.18,
 7924 Florida Statutes, are renumbered as subsections (2) and (3),
 7925 respectively, and subsections (1), (2), and (4) of that section
 7926 are amended to read:

7927 721.18 Exchange programs; filing of information and other
 7928 materials; filing fees; unlawful acts in connection with an
 7929 exchange program.—

7930 (1) If a purchaser is offered the opportunity to subscribe
 7931 to an exchange program, the seller shall deliver to the
 7932 purchaser, together with the purchaser public offering
 7933 statement, and prior to the offering or execution of any
 7934 contract between the purchaser and the company offering the
 7935 exchange program, written information regarding such exchange
 7936 program; or, if the exchange company is dealing directly with
 7937 the purchaser, the exchange company shall deliver to the
 7938 purchaser, prior to the initial offering or execution of any
 7939 contract between the purchaser and the company offering the
 7940 exchange program, written information regarding such exchange
 7941 program. In either case, the purchaser shall certify in writing
 7942 to the receipt of such information. Such information shall
 7943 include, but is not limited to, the following information, ~~the~~
 7944 ~~form and substance of which shall first be approved by the~~
 7945 ~~division in accordance with subsection (2):~~

7946 (a) The name and address of the exchange company.

7947 (b) The names of all officers, directors, and shareholders
 7948 of the exchange company.

7949 (c) Whether the exchange company or any of its officers or
 7950 directors has any legal or beneficial interest in any developer,
 7951 seller, or managing entity for any timeshare plan participating
 7952 in the exchange program and, if so, the name and location of the
 7953 timeshare plan and the nature of the interest.

7954 (d) Unless otherwise stated, a statement that the
 7955 purchaser's contract with the exchange company is a contract
 7956 separate and distinct from the purchaser's contract with the
 7957 seller of the timeshare plan.

7958 (e) Whether the purchaser's participation in the exchange
 7959 program is dependent upon the continued affiliation of the
 7960 timeshare plan with the exchange program.

7961 (f) A statement that the purchaser's participation in the
 7962 exchange program is voluntary. This statement is not required to
 7963 be given by the seller or managing entity of a multisite
 7964 timeshare plan to purchasers in the multisite timeshare plan.

7965 (g) A complete and accurate description of the terms and
 7966 conditions of the purchaser's contractual relationship with the
 7967 exchange program and the procedure by which changes thereto may
 7968 be made.

7969 (h) A complete and accurate description of the procedure
 7970 to qualify for and effectuate exchanges.

7971 (i) A complete and accurate description of all
 7972 limitations, restrictions, or priorities employed in the
 7973 operation of the exchange program, including, but not limited
 7974 to, limitations on exchanges based on seasonality, timeshare
 7975 unit size, or levels of occupancy, expressed in boldfaced type,
 7976 and, in the event that such limitations, restrictions, or

HB 5005

2011

7977 | priorities are not uniformly applied by the exchange program, a
 7978 | clear description of the manner in which they are applied.

7979 | (j) Whether exchanges are arranged on a space-available
 7980 | basis and whether any guarantees of fulfillment of specific
 7981 | requests for exchanges are made by the exchange program.

7982 | (k) Whether and under what circumstances a purchaser, in
 7983 | dealing with the exchange program, may lose the use and
 7984 | occupancy of her or his timeshare period in any properly applied
 7985 | for exchange without her or his being provided with substitute
 7986 | accommodations by the exchange program.

7987 | (l) The fees or range of fees for membership or
 7988 | participation in the exchange program by purchasers, including
 7989 | any conversion or other fees payable to third parties, a
 7990 | statement whether any such fees may be altered by the exchange
 7991 | company, and the circumstances under which alterations may be
 7992 | made.

7993 | (m) The name and address of the site of each timeshare
 7994 | plan participating in the exchange program.

7995 | (n) The number of the timeshare units in each timeshare
 7996 | plan which are available for occupancy and which qualify for
 7997 | participation in the exchange program, expressed within the
 7998 | following numerical groupings: 1-5; 6-10; 11-20; 21-50; and 51
 7999 | and over.

8000 | (o) The number of currently enrolled purchasers for each
 8001 | timeshare plan participating in the exchange program, expressed
 8002 | within the following numerical groupings: 1-100; 101-249; 250-
 8003 | 499; 500-999; and 1,000 and over; and a statement of the
 8004 | criteria used to determine those purchasers who are currently

HB 5005

2011

8005 enrolled with the exchange program.

8006 (p) The disposition made by the exchange company of
 8007 timeshare periods deposited with the exchange program by
 8008 purchasers enrolled in the exchange program and not used by the
 8009 exchange company in effecting exchanges.

8010 (q) The following information, which shall be
 8011 independently audited by a certified public accountant or
 8012 accounting firm in accordance with the standards of the
 8013 Accounting Standards Board of the American Institute of
 8014 Certified Public Accountants and reported annually:

8015 1. The number of purchasers currently enrolled in the
 8016 exchange program.

8017 2. The number of accommodations and facilities that have
 8018 current written affiliation agreements with the exchange
 8019 program.

8020 3. The percentage of confirmed exchanges, which is the
 8021 number of exchanges confirmed by the exchange program divided by
 8022 the number of exchanges properly applied for, together with a
 8023 complete and accurate statement of the criteria used to
 8024 determine whether an exchange request was properly applied for.

8025 4. The number of timeshare periods for which the exchange
 8026 program has an outstanding obligation to provide an exchange to
 8027 a purchaser who relinquished a timeshare period during the year
 8028 in exchange for a timeshare period in any future year.

8029 5. The number of exchanges confirmed by the exchange
 8030 program during the year.

8031 (r) A statement in boldfaced type to the effect that the
 8032 percentage described in subparagraph (q)3. is a summary of the

8033 exchange requests entered with the exchange program in the
 8034 period reported and that the percentage does not indicate the
 8035 probabilities of a purchaser's being confirmed to any specific
 8036 choice or range of choices.

8037 ~~(2) Each exchange company offering an exchange program to~~
 8038 ~~purchasers in this state shall file with the division for review~~
 8039 ~~the information specified in subsection (1), together with any~~
 8040 ~~membership agreement and application between the purchaser and~~
 8041 ~~the exchange company, and the audit specified in subsection (1)~~
 8042 ~~on or before June 1 of each year. However, an exchange company~~
 8043 ~~shall make its initial filing at least 20 days prior to offering~~
 8044 ~~an exchange program to any purchaser in this state. Each filing~~
 8045 ~~shall be accompanied by an annual filing fee of \$500. Within 20~~
 8046 ~~days after receipt of such filing, the division shall determine~~
 8047 ~~whether the filing is adequate to meet the requirements of this~~
 8048 ~~section and shall notify the exchange company in writing that~~
 8049 ~~the division has either approved the filing or found specified~~
 8050 ~~deficiencies in the filing. If the division fails to respond~~
 8051 ~~within 20 days, the filing shall be deemed approved. The~~
 8052 ~~exchange company may correct the deficiencies; and, within 10~~
 8053 ~~days after receipt of corrections from the exchange company, the~~
 8054 ~~division shall notify the exchange company in writing that the~~
 8055 ~~division has either approved the filing or found additional~~
 8056 ~~specified deficiencies in the filing. If the exchange company~~
 8057 ~~fails to adequately respond to any deficiency notice within 10~~
 8058 ~~days, the division may reject the filing. Subsequent to such~~
 8059 ~~rejection, a new filing fee and a new division initial review~~
 8060 ~~period pursuant to this subsection shall apply to any refiling~~

HB 5005

2011

8061 ~~or further review of the rejected filing.~~

8062 ~~(a) Any material change to an approved exchange company~~
8063 ~~filing shall be filed with the division for approval as an~~
8064 ~~amendment prior to becoming effective. Each amendment filing~~
8065 ~~shall be accompanied by a filing fee of \$100. The exchange~~
8066 ~~company may correct the deficiencies; and, within 10 days after~~
8067 ~~receipt of corrections from the exchange company, the division~~
8068 ~~shall notify the exchange company in writing that the division~~
8069 ~~has either approved the filing or found additional specified~~
8070 ~~deficiencies in the filing. Each approved amendment to the~~
8071 ~~approved exchange company filing, other than an amendment that~~
8072 ~~does not materially alter or modify the exchange program in a~~
8073 ~~manner that is adverse to a purchaser, as determined by the~~
8074 ~~exchange company in its reasonable discretion, shall be~~
8075 ~~delivered to each purchaser who has not closed. An approved~~
8076 ~~exchange program filing is required to be updated with respect~~
8077 ~~to added or deleted resorts only once each year, and such annual~~
8078 ~~update shall not be deemed to be a material change to the~~
8079 ~~filing.~~

8080 ~~(b) If at any time the division determines that any of~~
8081 ~~such information supplied by an exchange company fails to meet~~
8082 ~~the requirements of this section, the division may undertake~~
8083 ~~enforcement action against the exchange company in accordance~~
8084 ~~with the provision of s. 721.26.~~

8085 ~~(4) At the request of the exchange company, the division~~
8086 ~~shall review any audio, written, or visual publications or~~
8087 ~~materials relating to an exchange company or an exchange program~~
8088 ~~filed for review by the exchange company and shall notify the~~

HB 5005

2011

8089 ~~exchange company of any deficiencies within 10 days after the~~
 8090 ~~filing. If the exchange company corrects the deficiencies, or if~~
 8091 ~~there are no deficiencies, the division shall notify the~~
 8092 ~~exchange company of its approval of the advertising materials.~~
 8093 ~~If the exchange company fails to adequately respond to any~~
 8094 ~~deficiency notice within 10 days, the division may reject the~~
 8095 ~~advertising materials. Subsequent to such rejection, a new~~
 8096 ~~division initial review period pursuant to this subsection shall~~
 8097 ~~apply to any refiling or further review.~~

8098 Section 192. Subsection (3) of section 721.20, Florida
 8099 Statutes, is amended to read:

8100 721.20 Licensing requirements; suspension or revocation of
 8101 license; exceptions to applicability; collection of advance fees
 8102 for listings unlawful.—

8103 (3) ~~A solicitor who has violated the provisions of chapter~~
 8104 ~~468, chapter 718, chapter 719, this chapter, or the rules of the~~
 8105 ~~division governing timesharing shall be subject to the~~
 8106 ~~provisions of s. 721.26.~~ Any developer or other person who
 8107 supervises, directs, or engages the services of a solicitor
 8108 shall be liable for any violation of ~~the provisions of chapter~~
 8109 ~~468, chapter 718, chapter 719, or this chapter, or the rules of~~
 8110 ~~the division governing timesharing committed by such solicitor.~~

8111 Section 193. Sections 721.26, 721.265, 721.27, 721.28,
 8112 721.29, 721.301, and 721.53, Florida Statutes, are repealed.

8113 Section 194. Section 721.55, Florida Statutes, is amended
 8114 to read:

8115 721.55 Multisite timeshare plan public offering
 8116 statement.—Each ~~filed~~ public offering statement for a multisite

HB 5005

2011

8117 | timeshare plan shall contain the information required by this
 8118 | ~~section and shall comply with the provisions of s. 721.07,~~
 8119 | ~~except as otherwise provided therein. The division is authorized~~
 8120 | ~~to provide by rule the method by which a developer must provide~~
 8121 | ~~such information to the division.~~ Each multisite timeshare plan
 8122 | ~~filed~~ public offering statement shall contain the following
 8123 | information and disclosures:

8124 | (1) A cover page containing:

8125 | (a) The name of the multisite timeshare plan.

8126 | (b) The following statement in conspicuous type:

8127 | This public offering statement contains important matters
 8128 | to be considered in acquiring an interest in a multisite
 8129 | timeshare plan (or multisite vacation ownership plan or
 8130 | multisite vacation plan or vacation club). The statements
 8131 | contained herein are only summary in nature. A prospective
 8132 | purchaser should refer to all references, accompanying exhibits,
 8133 | contract documents, and sales materials. The prospective
 8134 | purchaser should not rely upon oral representations as being
 8135 | correct and should refer to this document and accompanying
 8136 | exhibits for correct representations.

8137 | (2) A summary containing all statements required to be in
 8138 | conspicuous type in the public offering statement and in all
 8139 | exhibits thereto.

8140 | (3) A separate index for the contents and exhibits of the
 8141 | public offering statement.

8142 | (4) A text, which shall include, where applicable, the
 8143 | information and disclosures set forth in paragraphs (a)-(1).

8144 | (a) A description of the multisite timeshare plan,

HB 5005

2011

8145 including its term, legal structure, and form of ownership. For
8146 multisite timeshare plans in which the purchaser will receive a
8147 timeshare estate pursuant to s. 721.57 and for specific
8148 multisite timeshare plans, the description must also include the
8149 term of each component site within the multisite timeshare plan.

8150 (b) A description of the structure and ownership of the
8151 reservation system together with a disclosure of the entity
8152 responsible for the operation of the reservation system. The
8153 description shall include the financial terms of any lease of
8154 the reservation system, if applicable. The developer shall not
8155 be required to disclose the financial terms of any such lease if
8156 such lease is prepaid in full for the term of the multisite
8157 timeshare plan or to any extent that neither purchasers nor the
8158 managing entity will be required to make payments for the
8159 continued use of the system following default by the developer
8160 or termination of the managing entity.

8161 (c)1. A description of the manner in which the reservation
8162 system operates. The description shall include a disclosure in
8163 compliance with the demand balancing standard set forth in s.
8164 721.56~~(6)~~ and shall describe the developer's efforts to comply
8165 with same in creating the reservation system. The description
8166 shall also include a summary of the rules and regulations
8167 governing access to and use of the reservation system.

8168 2. In lieu of describing the rules and regulations of the
8169 reservation system in the public offering statement text, the
8170 developer may attach the rules and regulations as a separate
8171 public offering statement exhibit, together with a cross-
8172 reference in the public offering statement text to such exhibit.

HB 5005

2011

8173 (d) The existence of and an explanation regarding any
 8174 priority reservation features that affect a purchaser's ability
 8175 to make reservations for the use of a given accommodation or
 8176 facility on a first come, first served basis, including, if
 8177 applicable, the following statement in conspicuous type:

8178 Component sites contained in the multisite timeshare plan
 8179 (or multisite vacation ownership plan or multisite vacation plan
 8180 or vacation club) are subject to priority reservation features
 8181 which may affect your ability to obtain a reservation.

8182 (e) A summary of the material rules and regulations, if
 8183 any, other than the reservation system rules and regulations,
 8184 affecting the purchaser's use of each accommodation and facility
 8185 at each component site.

8186 (f) If the provisions of s. 721.552 and the timeshare
 8187 instrument permit additions, substitutions, or deletions of
 8188 accommodations or facilities, the public offering statement must
 8189 include substantially the following information:

8190 1. Additions.—

8191 a. A description of the basis upon which new
 8192 accommodations and facilities may be added to the multisite
 8193 timeshare plan; by whom additions may be made; and the
 8194 anticipated effect of the addition of new accommodations and
 8195 facilities upon the reservation system, its priorities, its
 8196 rules and regulations, and the availability of existing
 8197 accommodations and facilities.

8198 b. The developer must disclose the existence of any cap on
 8199 annual increases in common expenses of the multisite timeshare
 8200 plan that would apply in the event that additional

HB 5005

2011

8201 accommodations and facilities are made a part of the plan.

8202 c. The developer shall also disclose any extent to which
8203 the purchasers of the multisite timeshare plan will have the
8204 right to consent to any proposed additions; if the purchasers do
8205 not have the right to consent, the developer must include the
8206 following disclosure in conspicuous type:

8207 Accommodations and facilities may be added to this
8208 multisite timeshare plan (or multisite vacation ownership plan
8209 or multisite vacation plan or vacation club) without the consent
8210 of the purchasers. The addition of accommodations and facilities
8211 to the plan may result in the addition of new purchasers who
8212 will compete with existing purchasers in making reservations for
8213 the use of available accommodations and facilities within the
8214 plan, and may also result in an increase in the annual
8215 assessment against purchasers for common expenses.

8216 2. Substitutions.—

8217 a. A description of the basis upon which new
8218 accommodations and facilities may be substituted for existing
8219 accommodations and facilities of the multisite timeshare plan;
8220 by whom substitutions may be made; the basis upon which the
8221 determination may be made to cause such substitutions to occur;
8222 and any limitations upon the ability to cause substitutions to
8223 occur.

8224 b. The developer shall also disclose any extent to which
8225 purchasers will have the right to consent to any proposed
8226 substitutions; if the purchasers do not have the right to
8227 consent, the developer must include the following disclosure in
8228 conspicuous type:

HB 5005

2011

8229 New accommodations and facilities may be substituted for
8230 existing accommodations and facilities of this multisite
8231 timeshare plan (or multisite vacation ownership plan or
8232 multisite vacation plan or vacation club) without the consent of
8233 the purchasers. The replacement accommodations and facilities
8234 may be located at a different place or may be of a different
8235 type or quality than the replaced accommodations and facilities.
8236 The substitution of accommodations and facilities may also
8237 result in an increase in the annual assessment against
8238 purchasers for common expenses.

8239 3. Deletions.—A description of any provision of the
8240 timeshare instrument governing deletion of accommodations or
8241 facilities from the multisite timeshare plan. If the timeshare
8242 instrument does not provide for business interruption insurance
8243 in the event of a casualty, or if it is unavailable, or if the
8244 instrument permits the developer, the managing entity, or the
8245 purchasers to elect not to reconstruct after casualty under
8246 certain circumstances or to secure replacement accommodations or
8247 facilities in lieu of reconstruction, the public offering
8248 statement must contain a disclosure that during the
8249 reconstruction, replacement, or acquisition period, or as a
8250 result of a decision not to reconstruct, purchasers of the plan
8251 may temporarily compete for available accommodations on a
8252 greater than one-to-one use right to use night requirement
8253 ratio.

8254 (g) A description of the developer and the managing entity
8255 of the multisite timeshare plan, including:

8256 1. The identity of the developer; the developer's business

HB 5005

2011

8257 address; the number of years of experience the developer has in
 8258 the timeshare, hotel, motel, travel, resort, or leisure
 8259 industries; and a description of any pending lawsuit or judgment
 8260 against the developer which is material to the plan. If there
 8261 are no such pending lawsuits or judgments, there shall be a
 8262 statement to that effect.

8263 2. The identity of the managing entity of the multisite
 8264 timeshare plan; the managing entity's business address; the
 8265 number of years of experience the managing entity has in the
 8266 timeshare, hotel, motel, travel, resort, or leisure industries;
 8267 and a description of any lawsuit or judgment against the
 8268 managing entity which is material to the plan. If there are no
 8269 pending lawsuits or judgments, there shall be a statement to
 8270 that effect. The description of the managing entity shall also
 8271 include a description of the relationship among the managing
 8272 entity of the multisite timeshare plan and the various component
 8273 site managing entities.

8274 (h) A description of the purchaser's liability for common
 8275 expenses of the multisite timeshare plan, including the
 8276 following:

8277 1. A description of the common expenses of the plan,
 8278 including the method of allocation and assessment of such common
 8279 expenses, whether component site common expenses and real estate
 8280 taxes are included within the total common expense assessment of
 8281 the multisite timeshare plan, and, if not, the manner in which
 8282 timely payment of component site common expenses and real estate
 8283 taxes shall be accomplished.

8284 2. A description of any cap imposed upon the level of

8285 common expenses payable by the purchaser. In no event shall the
 8286 total common expense assessment for the multisite timeshare plan
 8287 in a given calendar year exceed 125 percent of the total common
 8288 expense assessment for the plan in the previous calendar year.

8289 3. A description of the entity responsible for the
 8290 determination of the common expenses of the multisite timeshare
 8291 plan, as well as any entity which may increase the level of
 8292 common expenses assessed against the purchaser at the multisite
 8293 timeshare plan level.

8294 4. A description of the method used to collect common
 8295 expenses, including the entity responsible for such collections,
 8296 and the lien rights of any entity for nonpayment of common
 8297 expenses. If the common expenses of any component site are
 8298 collected by the managing entity of the multisite timeshare
 8299 plan, a statement to that effect together with the identity and
 8300 address of the escrow agent required by s. 721.56~~(3)~~.

8301 5. If the purchaser will receive an interest in a
 8302 nonspecific multisite timeshare plan, a statement that a
 8303 multisite timeshare plan budget is attached to the public
 8304 offering statement as an exhibit pursuant to paragraph
 8305 (6)~~(7)~~(c). ~~The multisite timeshare plan budget shall comply with~~
 8306 ~~the provisions of s. 721.07(5)(t).~~

8307 6. If the developer intends to guarantee the level of
 8308 assessments for the multisite timeshare plan, such guarantee
 8309 must be based upon a good faith estimate of the revenues and
 8310 expenses of the multisite timeshare plan. The guarantee must
 8311 include a description of the following:

8312 a. The specific time period, measured in one or more

HB 5005

2011

8313 | calendar or fiscal years, during which the guarantee will be in
8314 | effect.

8315 | b. A statement that the developer will pay all common
8316 | expenses incurred in excess of the total revenues of the
8317 | multisite timeshare plan, if the developer is to be excused from
8318 | the payment of assessments during the guarantee period.

8319 | c. The level, expressed in total dollars, at which the
8320 | developer guarantees the assessments. If the developer has
8321 | reserved the right to extend or increase the guarantee level, a
8322 | disclosure must be included to that effect.

8323 | 7. If required under applicable law, the developer shall
8324 | also disclose the following matters for each component site:

8325 | a. Any limitation upon annual increases in common
8326 | expenses;

8327 | b. The existence of any bad debt or working capital
8328 | reserve; and

8329 | c. The existence of any replacement or deferred
8330 | maintenance reserve.

8331 | (i) If there are any restrictions upon the sale, transfer,
8332 | conveyance, or leasing of an interest in a multisite timeshare
8333 | plan, a description of the restrictions together with a
8334 | statement in conspicuous type in substantially the following
8335 | form:

8336 | The sale, lease, or transfer of interests in this multisite
8337 | timeshare plan is restricted or controlled.

8338 | (j) The following statement in conspicuous type in
8339 | substantially the following form:

8340 | The purchase of an interest in a multisite timeshare plan

HB 5005

2011

8341 (or multisite vacation ownership plan or multisite vacation plan
8342 or vacation club) should be based upon its value as a vacation
8343 experience or for spending leisure time, and not considered for
8344 purposes of acquiring an appreciating investment or with an
8345 expectation that the interest may be resold.

8346 (k) If the multisite timeshare plan provides purchasers
8347 with the opportunity to participate in an exchange program, a
8348 description of the name and address of the exchange company and
8349 the method by which a purchaser accesses the exchange program.
8350 In lieu of this requirement, the public offering statement text
8351 may contain a cross-reference to other provisions in the public
8352 offering statement or in an exhibit containing this information.

8353 (l) A description of each component site, which
8354 description may be disclosed in a written, graphic, or tabular,
8355 ~~or other~~ form ~~approved by the division~~. The description of each
8356 component site shall include the following information:

- 8357 1. The name and address of each component site.
- 8358 2. The number of accommodations, timeshare interests, and
8359 timeshare periods, expressed in periods of 7-day use
8360 availability, committed to the multisite timeshare plan and
8361 available for use by purchasers.
- 8362 3. Each type of accommodation in terms of the number of
8363 bedrooms, bathrooms, sleeping capacity, and whether or not the
8364 accommodation contains a full kitchen. For purposes of this
8365 description, a full kitchen shall mean a kitchen having a
8366 minimum of a dishwasher, range, sink, oven, and refrigerator.
- 8367 4. A description of facilities available for use by the
8368 purchaser at each component site, including the following:

HB 5005

2011

8369 a. The intended use of the facility, if not apparent from
8370 the description.

8371 b. Any user fees associated with a purchaser's use of the
8372 facility.

8373 5. A cross-reference to the location in the public
8374 offering statement of the description of any priority
8375 reservation features which may affect a purchaser's ability to
8376 obtain a reservation in the component site.

8377 ~~(5) Such other information as the division determines is~~
8378 ~~necessary to fairly, meaningfully, and effectively disclose all~~
8379 ~~aspects of the multisite timeshare plan, including, but not~~
8380 ~~limited to, any disclosures made necessary by the operation of~~
8381 ~~s. 721.03(8). However, if a developer has, in good faith,~~
8382 ~~attempted to comply with the requirements of this section, and~~
8383 ~~if, in fact, the developer has substantially complied with the~~
8384 ~~disclosure requirements of this chapter, nonmaterial errors or~~
8385 ~~omissions shall not be actionable.~~

8386 (5)~~(6)~~ Any other information that the developer, ~~with the~~
8387 ~~approval of the division,~~ desires to include in the public
8388 offering statement text.

8389 (6)~~(7)~~ The following documents shall be included as
8390 exhibits to the ~~filed~~ public offering statement, if applicable:

8391 (a) The timeshare instrument.

8392 (b) The reservation system rules and regulations.

8393 (c) The multisite timeshare plan budget pursuant to
8394 subparagraph (4) (h) 5.

8395 (d) Any document containing the material rules and
8396 regulations described in paragraph (4) (e).

HB 5005

2011

8397 (e) Any contract, agreement, or other document through
 8398 which component sites are affiliated with the multisite
 8399 timeshare plan.

8400 (f) Any escrow agreement required pursuant to s. 721.08 or
 8401 s. 721.56(3).

8402 (g) The form agreement for sale or lease of an interest in
 8403 the multisite timeshare plan.

8404 (h) The form receipt for multisite timeshare plan
 8405 documents required to be given to the purchaser pursuant to s.
 8406 721.551(2)(b).

8407 (i) The description of documents list required to be given
 8408 to the purchaser by s. 721.551(2)(b).

8409 (j) The component site managing entity affidavit or
 8410 statement required by s. 721.56(1).

8411 ~~(k) Any subordination instrument required by s. 721.53.~~

8412 ~~(1)1. If the multisite timeshare plan contains any~~
 8413 ~~component sites located in this state, the information required~~
 8414 ~~by s. 721.07(5) pertaining to each such component site unless~~
 8415 ~~exempt pursuant to s. 721.03.~~

8416 ~~2. If the purchaser will receive a timeshare estate~~
 8417 ~~pursuant to s. 721.57, or an interest in a specific multisite~~
 8418 ~~timeshare plan, in a component site located outside of this~~
 8419 ~~state but which is offered in this state, the information~~
 8420 ~~required by s. 721.07(5) pertaining to that component site,~~
 8421 ~~provided, however, that the provisions of s. 721.07(5)(t) shall~~
 8422 ~~only require disclosure of information related to the estimated~~
 8423 ~~budget for the timeshare plan and purchaser's expenses as~~
 8424 ~~required by the jurisdiction in which the component site is~~

8425 ~~located.~~

8426 ~~(8)(a) A timeshare plan containing only one component site~~
 8427 ~~must be filed with the division as a multisite timeshare plan if~~
 8428 ~~the timeshare instrument reserves the right for the developer to~~
 8429 ~~add future component sites. However, if the developer fails to~~
 8430 ~~add at least one additional component site to a timeshare plan~~
 8431 ~~described in this paragraph within 3 years after the date the~~
 8432 ~~plan is initially filed with the division, the multisite filing~~
 8433 ~~for such plan shall thereupon terminate, and the developer may~~
 8434 ~~not thereafter offer any further interests in such plan unless~~
 8435 ~~and until he or she refiles such plan with the division pursuant~~
 8436 ~~to this chapter.~~

8437 ~~(b) The public offering statement for any timeshare plan~~
 8438 ~~described in paragraph (a) must include the following disclosure~~
 8439 ~~in conspicuous type:~~

8440
 8441 ~~This timeshare plan has been filed as a multisite timeshare~~
 8442 ~~plan (or multisite vacation ownership plan or multisite vacation~~
 8443 ~~plan or vacation club); however, this plan currently contains~~
 8444 ~~only one component site. The developer is not required to add~~
 8445 ~~any additional component sites to the plan. Do not purchase an~~
 8446 ~~interest in this plan in reliance upon the addition of any other~~
 8447 ~~component sites.~~

8448 Section 195. Section 721.551, Florida Statutes, is amended
 8449 to read:

8450 721.551 Delivery of multisite timeshare plan purchaser
 8451 public offering statement.—

8452 ~~(1) The division is authorized to prescribe by rule the~~

8453 ~~form of the approved multisite timeshare plan public offering~~
 8454 ~~statement that must be furnished by a seller to each purchaser~~
 8455 ~~pursuant to this section. The form of the public offering~~
 8456 ~~statement that is furnished to purchasers must provide fair,~~
 8457 ~~meaningful, and effective disclosure of all aspects of the~~
 8458 ~~multisite timeshare plan.~~

8459 ~~(2)~~ The developer shall furnish each purchaser with the
 8460 following:

8461 (1)~~(a)~~ A copy of the approved multisite timeshare plan
 8462 public offering statement text containing the information
 8463 required by s. 721.55(1)-(5)~~(6)~~.

8464 (2)~~(b)~~ A receipt for multisite timeshare plan documents
 8465 and a list describing any exhibit to the ~~filed~~ public offering
 8466 statement which is not delivered to the purchaser. ~~The division~~
 8467 ~~is authorized to prescribe by rule the form of the receipt for~~
 8468 ~~multisite timeshare plan documents and the description of~~
 8469 ~~exhibits list that must be furnished to the purchaser pursuant~~
 8470 ~~to this section.~~

8471 ~~(c)~~ If the purchaser will receive a timeshare estate
 8472 pursuant to s. 721.57, or an interest in a specific multisite
 8473 timeshare plan, in a component site located in this state, the
 8474 developer shall also furnish the purchaser with the information
 8475 required to be delivered pursuant to s. 721.07(6)(a) and (b) for
 8476 the component site in which the purchaser will receive an estate
 8477 or interest in a specific multisite timeshare plan.

8478 (3)~~(d)~~ Any other exhibit that the developer elects to
 8479 include as part of the purchaser public offering statement,
 8480 provided that the developer first files the exhibit with the

8481 ~~division.~~

8482 (4)~~(e)~~ An executed copy of any document which the
8483 purchaser signs.

8484 (5)~~(f)~~ The developer shall be required to provide the
8485 managing entity of the multisite timeshare plan with a copy of
8486 the approved ~~filed~~ public offering statement and any approved
8487 amendments thereto to be maintained by the managing entity as
8488 part of the books and records of the timeshare plan pursuant to
8489 s. 721.13(3)(d).

8490 Section 196. Paragraph (b) of subsection (1) and paragraph
8491 (g) of subsection (2) of section 721.552, Florida Statutes, are
8492 amended to read:

8493 721.552 Additions, substitutions, or deletions of
8494 component site accommodations or facilities; purchaser remedies
8495 for violations.—Additions, substitutions, or deletions of
8496 component site accommodations or facilities may be made only in
8497 accordance with the following:

8498 (1) ADDITIONS.—

8499 (b) Any person who is authorized by the timeshare
8500 instrument to make additions to the multisite timeshare plan
8501 pursuant to this subsection shall act as a fiduciary in such
8502 capacity in the best interests of the purchasers of the plan as
8503 a whole and shall adhere to the demand balancing standard set
8504 forth in s. 721.56(4)~~(6)~~ in connection with such additions.
8505 Additions that are otherwise permitted may be made only so long
8506 as a one-to-one use right to use night requirement ratio is
8507 maintained at all times.

8508 (2) SUBSTITUTIONS.—

8509 (g) The person who is authorized by the timeshare
 8510 instrument to make substitutions to the multisite timeshare plan
 8511 pursuant to this subsection shall act as a fiduciary in such
 8512 capacity in the best interests of the purchasers of the plan as
 8513 a whole and shall adhere to the demand balancing standard set
 8514 forth in s. 721.56(4)~~(6)~~ in connection with such substitutions.
 8515 Substitutions that are otherwise permitted may be made only so
 8516 long as a one-to-one use right to use night requirement ratio is
 8517 maintained at all times.

8518 Section 197. Subsections (3) through (6) of section
 8519 721.56, Florida Statutes, are renumbered as subsections (1)
 8520 through (4), respectively, and present subsections (1), (2), and
 8521 (3) of that section are amended to read:

8522 721.56 Management of multisite timeshare plans;
 8523 reservation systems; demand balancing.-

8524 ~~(1) The developer as a prerequisite for approval of his or~~
 8525 ~~her public offering statement filing or his or her phase filing~~
 8526 ~~must obtain an affidavit, or other evidence satisfactory to the~~
 8527 ~~director of the division, from the component site managing~~
 8528 ~~entity containing all of the following:~~

8529 ~~(a) A statement that all assessments on inventory are~~
 8530 ~~fully paid as required by applicable law.~~

8531 ~~(b) A statement as to the amount of delinquent assessments~~
 8532 ~~existing at the component site, if any.~~

8533 ~~(c) If required by applicable law, a statement that the~~
 8534 ~~latest annual audit of the component site shows that, if~~
 8535 ~~required, reserves are adequately maintained with respect to~~
 8536 ~~each component site.~~

8537 ~~(d) A statement that the component site managing entity~~
 8538 ~~specifically acknowledges the existence of the multisite~~
 8539 ~~timeshare plan relating to the use of the accommodations and~~
 8540 ~~facilities of the component site by purchasers of the plan.~~

8541 ~~(2) In the event that the developer files an affidavit or~~
 8542 ~~other evidence with the division pursuant to subsection (1) and~~
 8543 ~~subsequently determines that the status of the component site~~
 8544 ~~has materially changed such that any portion of the affidavit or~~
 8545 ~~other evidence is consequently materially changed, the developer~~
 8546 ~~shall immediately notify the division of the change.~~

8547 (1) ~~(3)~~ (a) The managing entity of the multisite timeshare
 8548 plan shall establish an escrow account with an escrow agent
 8549 qualified pursuant to s. 721.05 and deposit into such account
 8550 all payments received by the managing entity from time to time
 8551 from the developer and purchasers of the plan that relate to
 8552 common expenses and real estate taxes due with respect to any
 8553 component site. The managing entity of the multisite timeshare
 8554 plan shall not be required to escrow payments received from the
 8555 developer or purchasers that relate to other plan expenses,
 8556 including those pertaining to the compensation of the managing
 8557 entity of the multisite timeshare plan and pertaining to the
 8558 operation of the reservation system.

8559 (b) Funds may only be disbursed from the escrow account
 8560 described in paragraph (a) by the escrow agent upon receipt of
 8561 an affidavit from the managing entity of the multisite timeshare
 8562 plan specifying the purpose for which the disbursement is
 8563 requested and making reference to the budgetary source of
 8564 authority for such disbursement. The escrow agent shall only

HB 5005

2011

8565 disburse moneys from escrow relating to a particular component
 8566 site directly to the managing entity of that component site.
 8567 Real estate tax payments shall only be disbursed from the escrow
 8568 account to the component site managing entity or to the
 8569 appropriate tax collection authority pursuant to applicable law.

8570 (c) The escrow agent shall be entitled to rely upon the
 8571 affidavit of the managing entity and shall have no obligation to
 8572 independently ascertain the propriety of the requested
 8573 disbursement so long as the escrow agent has no actual knowledge
 8574 that the affidavit is false in any respect.

8575 ~~(d) An escrow agent shall maintain the account called for~~
 8576 ~~in this section only in such a manner as to be under the direct~~
 8577 ~~supervision and control of the escrow agent. The escrow agent~~
 8578 ~~shall have a fiduciary duty to each purchaser to maintain the~~
 8579 ~~escrow account in accordance with good accounting principles and~~
 8580 ~~to release funds from escrow only in accordance with this~~
 8581 ~~subsection. The escrow agent shall retain all affidavits~~
 8582 ~~received pursuant to this subsection for a period of 5 years.~~
 8583 ~~Should the escrow agent receive conflicting demands for the~~
 8584 ~~escrowed funds, the escrow agent shall immediately notify the~~
 8585 ~~division of the dispute and either promptly submit the matter to~~
 8586 ~~arbitration or, by interpleader or otherwise, seek an~~
 8587 ~~adjudication of the matter by court.~~

8588 (d) ~~(e)~~ Any managing entity or escrow agent who
 8589 intentionally fails to comply with the provisions of this
 8590 subsection concerning the establishment of an escrow account,
 8591 deposit of funds into escrow, and withdrawal therefrom commits a
 8592 felony of the third degree, punishable as provided in s.

8593 775.082, s. 775.083, or s. 775.084, or the successor thereof.
 8594 The failure to establish an escrow account or to place funds
 8595 therein as required in this subsection is prima facie evidence
 8596 of an intentional and purposeful violation of this subsection.

8597 ~~(f) In lieu of the escrow required by this subsection, the~~
 8598 ~~director of the division shall have the discretion to accept~~
 8599 ~~other assurances in accordance with s. 721.08, provided that~~
 8600 ~~such other assurances are maintained at a minimum amount equal~~
 8601 ~~to the total common expense assessment payments for the then-~~
 8602 ~~current fiscal year.~~

8603 (e) ~~(g)~~ The provisions of this subsection shall not apply
 8604 to any payments made directly to a component site managing
 8605 entity by the developer or a purchaser of a multisite timeshare
 8606 plan.

8607 Section 198. Section 721.58, Florida Statutes, is
 8608 repealed.

8609 Section 199. Subsections (4) and (14) of section 721.82,
 8610 Florida Statutes, are amended to read:

8611 721.82 Definitions.—As used in this part, the term:

8612 (4) "Lienholder" means a holder of an assessment lien or a
 8613 holder of a mortgage lien, as applicable. ~~A receiver appointed~~
 8614 ~~under s. 721.26 is a lienholder for purposes of foreclosure of~~
 8615 ~~assessment liens under this part.~~

8616 (14) "Trustee" means an attorney who is a member in good
 8617 standing of The Florida Bar and who has been practicing law for
 8618 at least 5 years or that attorney's law firm, or a title insurer
 8619 authorized to transact business in this state under s. 624.401
 8620 and who has been authorized to transact business for at least 5

HB 5005

2011

8621 | years, appointed as trustee or as substitute trustee in
 8622 | accordance with s. 721.855 or s. 721.856. ~~A receiver appointed~~
 8623 | ~~under s. 721.26 may act as a trustee under s. 721.855.~~ A trustee
 8624 | must be independent as defined in s. 721.05 (18) ~~(20)~~.

8625 | Section 200. Section 721.98, Florida Statutes, is
 8626 | repealed.

8627 | Section 201. Subsection (2) of section 723.002, Florida
 8628 | Statutes, is amended to read:

8629 | 723.002 Application of chapter.—

8630 | (2) The provisions of ss. 723.035, 723.037, ~~723.038,~~
 8631 | 723.054, 723.055, 723.056, 723.058, and 723.068 are applicable
 8632 | to mobile home subdivision developers and the owners of lots in
 8633 | mobile home subdivisions.

8634 | Section 202. Subsections (2) through (15) of section
 8635 | 723.003, Florida Statutes, are renumbered as subsections (1)
 8636 | through (14), respectively, and present subsections (1) and (11)
 8637 | of that section are amended to read:

8638 | 723.003 Definitions.—As used in this chapter, the
 8639 | following words and terms have the following meanings unless
 8640 | clearly indicated otherwise:

8641 | ~~(1) The term "division" means the Division of Florida~~
 8642 | ~~Condominiums, Timeshares, and Mobile Homes of the Department of~~
 8643 | ~~Business and Professional Regulation.~~

8644 | (10) ~~(11)~~ The term "proportionate share" as used in
 8645 | subsection (9) ~~(10)~~ means an amount calculated by dividing
 8646 | equally among the affected developed lots in the park the total
 8647 | costs for the necessary and actual direct costs and impact or
 8648 | hookup fees incurred for governmentally mandated capital

HB 5005

2011

8649 improvements serving the recreational and common areas and all
 8650 affected developed lots in the park.

8651 Section 203. Subsection (5) of section 723.004, Florida
 8652 Statutes, is amended to read:

8653 723.004 Legislative intent; preemption of subject matter.—

8654 (5) Nothing in this chapter shall be construed to prevent
 8655 the enforcement of a right or duty under this section, s.

8656 723.022, s. 723.023, s. 723.031, s. 723.032, s. 723.033, s.

8657 723.035, s. 723.037, ~~s. 723.038~~, s. 723.061, s. 723.0615, s.

8658 723.062, s. 723.063, or s. 723.081 by civil action after the

8659 party has exhausted its administrative remedies, if any.

8660 Section 204. Sections 723.005, 723.007, 723.008, 723.009,
 8661 723.011, 723.012, 723.013, and 723.016, Florida Statutes, are
 8662 repealed.

8663 Section 205. Paragraph (b) of subsection (5) and
 8664 subsection (7) of section 723.031, Florida Statutes, are amended
 8665 to read:

8666 723.031 Mobile home lot rental agreements.—

8667 (5) The rental agreement shall contain the lot rental
 8668 amount and services included. An increase in lot rental amount
 8669 upon expiration of the term of the lot rental agreement shall be
 8670 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),
 8671 whichever is applicable, provided that, pursuant to s.

8672 723.059(4), the amount of the lot rental increase is disclosed

8673 and agreed to by the purchaser, in writing. An increase in lot

8674 rental amount shall not be arbitrary or discriminatory between

8675 similarly situated tenants in the park. No lot rental amount may

8676 be increased during the term of the lot rental agreement,

HB 5005

2011

8677 | except:

8678 | (b) For pass-through charges as defined in s.
8679 | 723.003 (9) ~~(10)~~.

8680 | (7) A ~~No~~ park owner may not increase the lot rental amount
8681 | until an approved prospectus is ~~has been~~ delivered if one is
8682 | required. This subsection does ~~shall~~ not ~~be construed to~~
8683 | prohibit those increases in lot rental amount for those lot
8684 | rental agreements for which an approved prospectus was required
8685 | to be delivered and which was delivered on or before July 1,
8686 | 1986, if the mobile home park owner had:

8687 | (a) Filed a prospectus with the former Division of Florida
8688 | Condominiums, Timeshares, and Mobile Homes of the Department of
8689 | Business and Professional Regulation before ~~prior to~~ entering
8690 | into the lot rental agreement;

8691 | (b) Made a good faith effort to correct deficiencies cited
8692 | by the former division by responding within the time limit set
8693 | by the former division, if one was set; and

8694 | (c) Delivered the approved prospectus to the mobile home
8695 | owner within 45 days of approval by the former division.

8696 |
8697 | This subsection does ~~shall~~ not preclude the finding that a lot
8698 | rental increase is invalid on other grounds and does ~~shall~~ not
8699 | ~~be construed to~~ limit any rights of a mobile home owner or to
8700 | preclude a mobile home owner from seeking any remedies allowed
8701 | by this chapter, including a determination that the lot rental
8702 | agreement or any part thereof is unreasonable.

8703 | Section 206. Subsection (7) of section 723.033, Florida
8704 | Statutes, is amended to read:

HB 5005

2011

8705 | 723.033 Unreasonable lot rental agreements; increases,
8706 | changes.—

8707 | (7) An arbitrator or mediator under s. ss. 723.037~~7~~
8708 | ~~723.038~~, and ~~723.0381~~ shall employ the same standards as set
8709 | forth in this section.

8710 | Section 207. Subsection (2) of section 723.035, Florida
8711 | Statutes, is amended to read:

8712 | 723.035 Rules and regulations.—

8713 | (2) No rule or regulation shall provide for payment of any
8714 | fee, fine, assessment, or charge, except as otherwise provided
8715 | in the prospectus or offering circular ~~filed under s. 723.012~~,
8716 | if one is required to be provided, and until after the park
8717 | owner has complied with the procedure set forth in s. 723.037.

8718 | Section 208. Subsections (3), (4), (5), and (6) of section
8719 | 723.037, Florida Statutes, are amended to read:

8720 | 723.037 Lot rental increases; reduction in services or
8721 | utilities; change in rules and regulations; ~~mediation.~~—

8722 | ~~(3) The park owner shall file annually with the division a~~
8723 | ~~copy of any notice of a lot rental amount increase. The notice~~
8724 | ~~shall be filed on or before January 1 of each year for any~~
8725 | ~~notice given during the preceding year. If the actual increase~~
8726 | ~~is an amount less than the proposed amount stated in the notice,~~
8727 | ~~the park owner shall notify the division of the actual amount of~~
8728 | ~~the increase within 30 days of the effective date of the~~
8729 | ~~increase or at the time of filing, whichever is later.~~

8730 | (3)-(4)(a) A committee, not to exceed five in number,
8731 | designated by a majority of the affected mobile home owners or
8732 | by the board of directors of the homeowners' association, if

HB 5005

2011

8733 applicable, and the park owner shall meet, at a mutually
8734 convenient time and place within 30 days after receipt by the
8735 homeowners of the notice of change, to discuss the reasons for
8736 the increase in lot rental amount, reduction in services or
8737 utilities, or change in rules and regulations.

8738 (b)1. At the meeting, the park owner or subdivision
8739 developer shall in good faith disclose and explain all material
8740 factors resulting in the decision to increase the lot rental
8741 amount, reduce services or utilities, or change rules and
8742 regulations, including how those factors justify the specific
8743 change proposed. The park owner or subdivision developer may not
8744 limit the discussion of the reasons for the change to
8745 generalities only, such as, but not limited to, increases in
8746 operational costs, changes in economic conditions, or rents
8747 charged by comparable mobile home parks. For example, if the
8748 reason for an increase in lot rental amount is an increase in
8749 operational costs, the park owner must disclose the item or
8750 items which have increased, the amount of the increase, any
8751 similar item or items which have decreased, and the amount of
8752 the decrease. If an increase is based upon the lot rental amount
8753 charged by comparable mobile home parks, the park owner shall
8754 disclose, and provide in writing to the committee at or before
8755 the meeting, the name, address, lot rental amount, and any other
8756 relevant factors relied upon by the park owner, such as
8757 facilities, services, and amenities, concerning the comparable
8758 mobile home parks. The information concerning comparable mobile
8759 home parks to be exchanged by the parties is to encourage a
8760 dialogue concerning the reasons used by the park owner for the

8761 increase in lot rental amount and to encourage the home owners
 8762 to evaluate and discuss the reasons for those changes with the
 8763 park owner. The park owner shall prepare a written summary of
 8764 the material factors and retain a copy for 3 years. The park
 8765 owner shall provide the committee a copy of the summary at or
 8766 before the meeting.

8767 2. The park owner shall not limit the comparable mobile
 8768 home park disclosure to those mobile home parks that are owned
 8769 or operated by the same owner or operator as the subject park,
 8770 except in certain circumstances, which include, but are not
 8771 limited to:

8772 a. That the market area for comparable mobile home parks
 8773 includes mobile home parks owned or operated by the same entity
 8774 that have similar facilities, services, and amenities;

8775 b. That the subject mobile home park has unique attributes
 8776 that are shared with similar mobile home parks;

8777 c. That the mobile home park is located in a geographic or
 8778 market area that contains few comparable mobile home parks; or

8779 d. That there are similar considerations or factors that
 8780 would be considered in such a market analysis by a competent
 8781 professional and would be considered in determining the
 8782 valuation of the market rent.

8783 (c) If the committee disagrees with a park owner's lot
 8784 rental amount increase based upon comparable mobile home parks,
 8785 the committee shall disclose to the park owner the name,
 8786 address, lot rental amount, and any other relevant factors
 8787 relied upon by the committee, such as facilities, services, and
 8788 amenities, concerning the comparable mobile home parks. The

HB 5005

2011

8789 | committee shall provide to the park owner the disclosure, in
 8790 | writing, within 15 days after the meeting with the park owner,
 8791 | together with a request for a second meeting. The park owner
 8792 | shall meet with the committee at a mutually convenient time and
 8793 | place within 30 days after receipt by the park owner of the
 8794 | request from the committee to discuss the disclosure provided by
 8795 | the committee. At the second meeting, the park owner may take
 8796 | into account the information on comparable parks provided by the
 8797 | committee, may supplement the information provided to the
 8798 | committee at the first meeting, and may modify his or her
 8799 | position, but the park owner may not change the information
 8800 | provided to the committee at the first meeting.

8801 | (d) The committee and the park owner may mutually agree,
 8802 | in writing, to extend or continue any meetings required by this
 8803 | section.

8804 | (e) Either party may prepare and use additional
 8805 | information to support its position during or subsequent to the
 8806 | meetings required by this section.

8807 |
 8808 | This subsection is not intended to be enforced by civil or
 8809 | administrative action. Rather, the meetings and discussions are
 8810 | intended to be in the nature of settlement discussions ~~prior to~~
 8811 | ~~the parties proceeding to mediation of any dispute.~~

8812 | ~~(5) (a) Within 30 days after the date of the last scheduled~~
 8813 | ~~meeting described in subsection (4), the homeowners may petition~~
 8814 | ~~the division to initiate mediation of the dispute pursuant to s.~~
 8815 | ~~723.038 if a majority of the affected homeowners have~~
 8816 | ~~designated, in writing, that:~~

8817 ~~1. The rental increase is unreasonable;~~
 8818 ~~2. The rental increase has made the lot rental amount~~
 8819 ~~unreasonable;~~
 8820 ~~3. The decrease in services or utilities is not~~
 8821 ~~accompanied by a corresponding decrease in rent or is otherwise~~
 8822 ~~unreasonable; or~~
 8823 ~~4. The change in the rules and regulations is~~
 8824 ~~unreasonable.~~

8825 ~~(b) A park owner, within the same time period, may also~~
 8826 ~~petition the division to initiate mediation of the dispute.~~

8827 ~~(c) When a dispute involves a rental increase for~~
 8828 ~~different home owners and there are different rates or different~~
 8829 ~~rental terms for those home owners, all such rent increases in a~~
 8830 ~~calendar year for one mobile home park may be considered in one~~
 8831 ~~mediation proceeding.~~

8832 ~~(d) At mediation, the park owner and the homeowners~~
 8833 ~~committee may supplement the information provided to each other~~
 8834 ~~at the meetings described in subsection (4) and may modify their~~
 8835 ~~position, but they may not change the information provided to~~
 8836 ~~each other at the first and second meetings.~~

8837

8838 ~~The purpose of this subsection is to encourage discussion and~~
 8839 ~~evaluation by the parties of the comparable mobile home parks in~~
 8840 ~~the competitive market area. The requirements of this subsection~~
 8841 ~~are not intended to be enforced by civil or administrative~~
 8842 ~~action. Rather, the meetings and discussions are intended to be~~
 8843 ~~in the nature of settlement discussions prior to the parties~~
 8844 ~~proceeding to litigation of any dispute.~~

8845 ~~(6) If a party requests mediation and the opposing party~~
 8846 ~~refuses to agree to mediate upon proper request, the party~~
 8847 ~~refusing to mediate shall not be entitled to attorney's fees in~~
 8848 ~~any action relating to a dispute described in this section.~~

8849 Section 209. Sections 723.038 and 723.0381, Florida
 8850 Statutes, are repealed.

8851 Section 210. Section 723.042, Florida Statutes, is amended
 8852 to read:

8853 723.042 Provision of improvements.—No person shall be
 8854 required by a mobile home park owner or developer, as a
 8855 condition of residence in the mobile home park, to provide any
 8856 improvement unless the requirement is disclosed pursuant to s.
 8857 ~~723.011~~ prior to occupancy in the mobile home park.

8858 Section 211. Subsection (1) of section 723.06115, Florida
 8859 Statutes, is amended to read:

8860 723.06115 Florida Mobile Home Relocation Trust Fund.—

8861 (1) There is established within the Department of Business
 8862 and Professional Regulation the Florida Mobile Home Relocation
 8863 Trust Fund, to be used by the department for the purpose of
 8864 funding the administration and operations of the Florida Mobile
 8865 Home Relocation Corporation. All interest earned from the
 8866 investment or deposit of moneys in the trust fund shall be
 8867 deposited in the trust fund. The trust fund shall be funded from
 8868 the moneys collected by the department under s. 723.06116 from
 8869 mobile home park owners who change the use of their mobile home
 8870 parks; ~~the surcharge collected by the department under s.~~
 8871 ~~723.007(2);~~ the surcharge collected by the Department of Highway
 8872 Safety and Motor Vehicles; and by other appropriated funds.

HB 5005

2011

8873

Section 212. This act shall take effect July 1, 2011.