Tab 1	**SB 56** by **Rodriguez**; (Identical to H 00615) Community Association Assessment Notices

812912	A	S	RCS	CA, Rodriguez	Delete L.296 - 917:	03/04 02:14 PM

Tab 2	**SB 972** by **Rodriguez**; (Identical to H 01019) Administrative Entity Telecommunication Meetings

Tab 3	**CS/SB 64** by **EN, Albritton**; (Similar to H 00263) Reclaimed Water

Tab 4	**SB 912** by **Albritton**; (Similar to H 00859) Tolling and Extension of Permits and Other Authorizations During States of Emergency

Tab 5	**SB 376** by **Gibson**; (Identical to H 06015) Jacksonville Transportation Authority Leases

Tab 6	**SB 496** by **Perry**; (Similar to CS/CS/H 00059) Growth Management

752852	A	S	RCS	CA, Perry	Delete L.40 - 85:	03/03 03:47 PM
135832	AA	S	RCS	CA, Perry	Delete L.51:	03/03 03:47 PM

Tab 7	**SB 688** by **Berman**; (Similar to H 00715) Waivers of Exemptions of Applicable Assets

Tab 8	**SB 904** by **Diaz**; (Identical to H 06053) Doorstep Refuse and Recycling Collection Containers

Tab 9	**SB 360** by **Hooper**; (Identical to H 00415) Fire Prevention and Control

202414	A	S	RCS	CA, Hooper	Delete L.25 - 27:	03/03 02:04 PM

Tab 10	**SB 970** by **Hooper**; (Similar to CS/H 00313) Firefighters' Bill of Rights

Tab 11	**SPB 7050** by **CA**; OGSR/Unsolicited Proposals

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bradley, Chair
Senator Garcia, Vice Chair

MEETING DATE: Wednesday, March 3, 2021
TIME: 9:30—11:30 a.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

MEMBERS: Senator Bradley, Chair; Senator Garcia, Vice Chair; Senators Baxley, Brodeur, Cruz, Hooper, Hutson, Polsky, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, 32301		
1	**SB 56** Rodriguez (Identical H 615, Compare H 867, H 1005, CS/S 630, S 1490)	Community Association Assessment Notices; Requiring condominium associations to maintain specified affirmative acknowledgments as official records of the association; revising timeframes for foreclosure judgments; requiring condominium associations to deliver certain statements of account to unit owners in a specified manner; requiring condominium associations to give notice to unit owners before changing the method of delivery for the statements of account; requiring cooperative associations to maintain specified affirmative acknowledgments as official records of the association, etc. RI 01/26/2021 Favorable CA 03/03/2021 Fav/CS RC	Fav/CS Yeas 9 Nays 0
2	**SB 972** Rodriguez (Identical H 1019)	Administrative Entity Telecommunication Meetings; Authorizing certain legal or administrative entities to conduct public meetings and workshops by means of communications media technology; revising criteria under which legal entities may conduct public meetings and workshops, etc. CA 03/03/2021 Favorable GO RC	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 64** Environment and Natural Resources / Albritton (Similar H 263)	Reclaimed Water; Requiring certain domestic wastewater utilities to submit to the Department of Environmental Protection by a specified date a plan for eliminating nonbeneficial surface water discharge within a specified timeframe; requiring domestic wastewater utilities applying for permits for new or expanded surface water discharges to prepare a specified plan for eliminating nonbeneficial discharges as part of its permit application; providing that potable reuse is an alternative water supply and that projects relating to such reuse are eligible for alternative water supply funding; requiring counties, municipalities, and special districts to authorize graywater technologies under certain circumstances and to provide incentives for the implementation of such technologies, etc. EN 02/01/2021 Fav/CS CA 03/03/2021 Favorable AP	Favorable Yeas 9 Nays 0
4	**SB 912** Albritton (Similar H 859)	Tolling and Extension of Permits and Other Authorizations During States of Emergency; Adding consumptive use permits issued under part II of ch. 373, F.S., and specified development permits and development agreements to the list of permits and other authorizations that are tolled and extended during a state of emergency declared by the Governor for a natural emergency; providing for retroactive application, etc. CA 03/03/2021 Favorable EN RC	Favorable Yeas 9 Nays 0
5	**SB 376** Gibson (Identical H 6015)	Jacksonville Transportation Authority Leases; Removing a limitation on the term of a lease into which the authority may enter, etc. TR 01/26/2021 Favorable CA 03/03/2021 Favorable RC	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 496** Perry (Similar CS/CS/H 59)	Growth Management; Specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; requiring local governments to include a property rights element in their comprehensive plans; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances, etc. CA 03/03/2021 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0
7	**SB 688** Berman (Similar H 715)	Waivers of Exemptions of Applicable Assets; Providing that certain exemptions of certain assets may not be waived unless certain conditions are met; specifying references that are insufficient to pledge a security interest in certain assets or to waive certain protections; providing that a description of certain accounts and entitlements by certain type of collateral is insufficient, etc. CA 03/03/2021 Favorable FT AP	Favorable Yeas 9 Nays 0
8	**SB 904** Diaz (Identical H 6053)	Doorstep Refuse and Recycling Collection Containers; Deleting an obsolete provision; removing the scheduled repeal of certain provisions regulating the use of containers in exit access corridors, etc. CA 03/03/2021 Favorable EN RC	Favorable Yeas 9 Nays 0
9	**SB 360** Hooper (Identical H 415, Compare H 587, H 1209, S 1408, S 1902)	Fire Prevention and Control; Requiring the authority having jurisdiction to determine certain minimum radio signal strength requirements for all new and existing buildings; authorizing the use of radio communication enhancement systems to comply with minimum radio signal strength requirements; providing an exception to the prohibition against installing or transporting certain radio equipment using law enforcement or fire rescue frequencies, etc. CA 03/03/2021 Fav/CS BI AP	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 970** Hooper (Similar CS/H 313)	Firefighters' Bill of Rights; Expanding the rights of firefighters to include informal inquiries; prohibiting firefighters from being threatened with transfer, dismissal, or disciplinary action during an interrogation, etc. CA 03/03/2021 Favorable GO RC	Favorable Yeas 9 Nays 0
	Consideration of proposed bill:		
11	**SPB 7050**	OGSR/Unsolicited Proposals; Amending a provision relating to an exemption from public records requirements for unsolicited proposals and meetings discussing such proposals; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 56
INTRODUCER:	Community Affairs Committee and Senator Rodriguez
SUBJECT:	Community Association Assessment Notices
DATE:	March 3, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Paglialonga	Ryon	CA	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 56 provides additional notice requirements for condominium, cooperative, and homeowners' associations when collecting assessments.

For community associations that send out invoices for assessments or statements of the account to unit or parcel owners, the bill revises how an association may deliver and change its method of delivery:

- Requires any invoice for assessments or statement of account to be sent by first-class mail or electronic transmission to the owner's email address maintained in the association's official records.
- Requires the association, before changing the method of delivery for any invoice for assessment or statement of account, to deliver the written notice of such change to the owner.
- Requires the notice to be sent by first-class mail and delivered to the owner's address maintained in the association's official records at least 30 days before the delivery method is changed.
- Requires the owner to affirmatively acknowledge his or her understanding that the association has changed its method of delivering the invoice for assessment or statement of account to delivery by electronic transmission.
- Requires the owner's affirmative acknowledgment to be maintained by the association as an official record, but such record is not accessible to other owners as an official record.
- Authorizes the use of an affidavit as the method for associations to provide a rebuttable presumption that the association complied with these notice and delivery requirements.

The bill provides that community associations may not require the payment of attorney fees related to past due assessments without first delivering a written notice of the late assessment to the unit or parcel owners. The written notice must specify the amount owed and allow the owner to pay past due assessments without paying additional attorney fees. The bill provides the form of this written notice.

The bill also increases the period of time a condominium or cooperative unit owner has to pay a monetary obligation after receiving an association's Notice of Intent to Record a Claim of Lien. This period is increased from 30 days to 45 days. The bill revises the timeframe for condominium and cooperative unit owners to conform to current law's 45-day payment period to parcel owners in a homeowners' association.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., for associations that are still under developer control.[1] The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.[2] After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records.[3] For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.[4]

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers, associations, and association board members.[5]

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and take affirmative action to carry out the applicable chapter's purposes. Also, Florida law authorizes the division to petition a

[1] Sections 718.501(1) and 719.501(1), F.S.
[2] *Id.*
[3] Section 718.501(1), F.S.
[4] Section 719.501(1), F.S.
[5] Sections 718.501(1) and 719.501(1), F.S.

court to appoint a receiver or conservator to implement a court order or enforce an injunction or temporary restraining order. The division may also impose civil penalties.[6]

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

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

For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.[7]

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

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,[8] recordkeeping requirements, including which records are accessible to the association members,[9] and financial reporting.[10] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Condominium

A condominium is a "form of ownership of real property created under ch. 718, F.S."[11] Condominium unit owners are in a unique legal position because they are exclusive owners of

[6] *Id.*
[7] *See* s. 720.306(9)(c), F.S.
[8] *See* ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[9] *See* ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[10] *See* ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[11] Section 718.103(11), F.S.

property within a community, joint owners of community common elements, and members of the condominium association.[12] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[13] A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.[14] A declaration is similar to a constitution in that it:

> [S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[15]

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.[16] Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."[17] The board of administration comprises individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements, owned in undivided shares by unit owners.[18] In litigation, an association's board of administration is in charge of directing attorney actions.[19]

Cooperative Associations

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

> [T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely because of

[12] *See* s. 718.103, F.S.
[13] *Id.*
[14] Section 718.104(2), F.S.
[15] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[16] Section 718.303(3), F.S.
[17] Section 718.103(4), F.S.
[18] Section 718.103(2), F.S.
[19] Section 718.103(30), F.S.

ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.[20] The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[21]

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing such associations' ability to perform their functions.[22]

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[23] Unless expressly stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.[24]

Homeowners' associations are administered by a board of directors whose members are elected.[25] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.[26] The officers and members of a homeowners' association have a fiduciary relationship with the members who the association serves.[27]

Homeowners associations mainly differ from condominiums in the type of property individually owned. Condominium unit owners essentially own airspace within a building, whereas homeowner association members own a parcel of real property or land.

Collection of Assessment Debts

Members of community associations may receive a document, i.e., a statement of the account, designating the due date and amount of each assessment, the amount paid on the account, and the owner's balance owed to the association. Current law does not specify how the statement of account must be transmitted to members of the association, e.g., by regular mail or electronic transmission (email). If an association alters its method of delivering the statement of account,

[20] *See Walters v. Agency for Health Care Administration*, 2019 WL 6691513, 44 Fla. L. Weekly D2898 (Fla. 3rd DCA 2019)
[21] *See* ss. 719.106(1)(g) and 719.107, F.S.
[22] *See* s. 720.302(1), F.S.
[23] Section 720.301(9), F.S.
[24] Section 720.302(5), F.S.
[25] *See* ss. 720.303 and 720.307, F.S.
[26] *See* ss. 720.301 and 720.303, F.S.
[27] Section 720.303(1), F.S.

current law does not provide a process to provide the unit or parcel owner notice that the method of delivering the statement of account has changed.

Community associations may file a lien on a unit or parcel for unpaid assessments, also known as maintenance amounts.[28] Before filing a claim of lien, the association must give the unit or parcel owner a Notice of Intent to Record a Claim of Lien that provides the unit or parcel owner with an opportunity to remit the past due amount before the association files a claim of a lien.[29] In a homeowners' association, the notice provides the parcel owner 45 days after receipt of the notice to pay the past due amount. Condominium and cooperative unit owners are provided 30 days after receipt of the notice to pay the past due amount. The past due amount includes the maintenance amount, any applicable late fee, interest, certified mail charges, and other costs, possibly including attorney fees.[30]

Official Records – Condominium, Cooperative, and Homeowners' Associations

Florida law specifies the official records that condominium, cooperative, and homeowners' associations must maintain.[31] Generally, the official records must be maintained in Florida for at least seven years.[32] Certain records must be accessible to the members of an association.[33] Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.[34] Community associations must maintain a copy of each unit or parcel owner's statement of the account, designating each assessment's due date and amount, the amount paid on the account, and the balance due.[35]

III. Effect of Proposed Changes:

The bill provides additional notice requirements for condominium, cooperative, and homeowners' associations relating to the collection of assessments.

For community associations that send out invoices for assessments or statements of the account to unit or parcel owners, the bill revises how an association may deliver and change its methods of delivery:

- Requires any invoice for assessments or statement of account to be sent by first-class mail, or electronic transmission to the owner's email address in the association's official records.

[28] *See* ss. 718.116(5)(a), 719.108(4), and 720.3085(1), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[29] *See* ss. 718.121(4), 719.108(4), and 720.3085(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[30] *Id.*
[31] See ss. 718.111(12), 719.104(2), 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.
[32] See ss. 718.111(12)(b), 719.104(2)(b), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.
[33] *See* ss. 718.111(12)(a), 719.104(2)(a), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners' associations, respectively.
[34] *See* ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.
[35] *See* ss. 718.111(12)(a)11.b., 719.104(2)(a)9.b., and 720.303(4)(j)2., F.S., relating to condominium, cooperative, and homeowners' associations, respectively.

- Requires the association, before changing the method of delivery for any invoice for assessments or statement of account, to deliver the written notice of such change to the owner.
- Requires the notice to be sent by first-class mail and delivered to the owner's address maintained in the association's official records at least 30 days before the delivery method is changed.
- Requires the owner to affirmatively acknowledge his or her understanding that the association has changed its method of delivering the invoice for assessments or statement of account to delivery by electronic transmission.
- Requires the owner's affirmative acknowledgment to be maintained by the association as an official record, but such record is not accessible to other unit or parcel owners as an official record.
- Authorizes the use of an affidavit as the method for associations to provide a rebuttable presumption that the association complied with these notice and delivery requirements.

The bill provides that community associations may not require the payment of attorney fees related to past due assessments without first delivering a written notice of the late assessment to the unit or parcel owners, which specifies the amount owed and provides an opportunity to pay past due assessments without payment of additional attorney fees. It provides the form of the notice.

The bill also increases the period of time a condominium or cooperative unit owner has to pay a monetary obligation from 30 days to 45 days after receiving an association's Notice of Intent to Record a Claim of Lien. If the obligation is paid within this timeframe, the unit or parcel owner will avoid the associations' filing of a claim of lien. The bill revises the timeframe for condominium and cooperative unit owners to conform to current law's 45-day payment period for parcel owners in a homeowners' association.[36]

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[36] *See* s. 720.3085(4), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a nominal fiscal impact on community associations. The additional notice and delivery requirements, restrictions on attorney fees, and increased notice period for a claim of lien may provide a net positive fiscal impact for community residents and a net negative fiscal impact for community associations.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.116, 718.121, 719.104, 719.108, 720.303, and 720.3085.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 3, 2021:
The committee substitute makes the following revisions for all three types of community associations addressed by the bill (i.e., condominium, cooperative, and homeowners'):

- Adds "invoice for assessments" to clarify and further capture the types of documents sent by associations to property owners notifying them of a monetary obligation.

- Makes the requirements related to an association's delivery of a property owner's statement of account or invoice for assessment applicable only to associations that send out statements of account or invoices for assessment.
- Authorizes the use of an affidavit as the method for associations to provide a rebuttable presumption that the association complied with the bill's notice and delivery requirements.

B. Amendments:

None.

812912

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2021	.	
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	.	
	.	

The Committee on Community Affairs (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 296 - 917

and insert:

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s. 718.111(12), the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official

812912

records.

(b) Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this paragraph.

(c) A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(5) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must also be sent by first-class United States mail to the unit address.

812912

Notice is deemed to have been delivered upon mailing as required by this subsection. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice of its intent to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

(6) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until

812912

45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, ~~and~~ by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the unit address, by first-class United States mail to the unit address ~~of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient~~. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

Section 4. Paragraphs (a) and (c) of subsection (2) of section 719.104, Florida Statutes, are amended to read:

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

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain

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the e-mail addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to


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be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association’s willful failure to comply. The minimum damages are $50 per

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calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a

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member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

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

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice

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requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

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

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

Section 5. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

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(3)(a) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 719.303(4).

(b)1. If an association sends out an invoice for assessments or a unit's statement of the account described in s. 719.104(2)(a)9.b., the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each unit owner.

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The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering the invoice for assessments or the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(c) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must also be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this paragraph. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a

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board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the

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rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)... $.....

Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay

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resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...:

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of

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the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE

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PUBLIC RECORDS OF .... COUNTY, FLORIDA.

...(Signature of Authorized Agent)... ...(Signature of Witness)...
...(Print Name)... ...(Print Name)...

...(Signature of Witness)...
...(Print Name)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....
...(Signature of Notary Public)...
...(Print, type, or stamp commissioned name of Notary Public)...
Personally Known .... OR Produced .... as identification.

Section 6. Present paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m), a new paragraph (l) is added to that subsection, and paragraph (c) of subsection (5) of that section is amended, to read:

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

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(l) All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and

shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover

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the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

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


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

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

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided

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by an owner and not requested by the association.

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

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

8. All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

Section 7. Paragraphs (c) and (d) are added to subsection (3) of section 720.3085, Florida Statutes, to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(c)1. If an association sends out an invoice for assessments or a parcel's statement of the account described in s. 720.303(4)(j)2., the invoice for assessments or the parcel's statement of account must be delivered to the parcel owner by first-class United States mail or by electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice such change to each parcel owner. The written notice must be delivered to the parcel owner at

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least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the statement of the account before the association may change the method of delivering the statement of the account. The parcel owner may make the affirmative acknowledgment electronically or in writing.

(d) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the parcel owner which specifies the amount owed the association and provides the parcel owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must also be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this paragraph. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a board member, officer, or agent of the association, or a manager

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649 licensed under part VIII of chapter 468, provides a sworn
650 affidavit attesting to such mailing. The notice must be in
651 substantially the following
652
653 ================ T I T L E A M E N D M E N T ================
654 And the title is amended as follows:
655 Delete lines 11 - 60
656 and insert:
657 associations to deliver certain invoices for
658 assessments or statements of account to unit owners in
659 a specified manner; requiring condominium associations
660 to give notice to unit owners before changing the
661 method of delivery for the invoices for assessments or
662 statements of account; providing requirements for the
663 notice; requiring unit owners to affirmatively
664 acknowledge the changes in delivery methods;
665 prohibiting condominium associations from requiring
666 the payment of attorney fees relating to past due
667 assessments without first providing a specified notice
668 to unit owners; providing requirements for the notice;
669 establishing a rebuttable presumption relating to
670 mailing the notice if a certain requirement is met;
671 revising the timeframe for condominium associations to
672 file liens against condominium units; conforming
673 provisions to changes made by the act; amending s.
674 719.104, F.S.; requiring cooperative associations to
675 maintain specified affirmative acknowledgments as
676 official records of the association; specifying that
677 such acknowledgments are not accessible to unit

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owners; amending s. 719.108, F.S.; requiring cooperative associations to deliver certain invoices for assessments or statements of account to unit owners in a specified manner; requiring cooperative associations to give notice to unit owners before changing the method of delivery for the invoices for assessments or statements of account; providing requirements for the notice; requiring unit owners to affirmatively acknowledge the changes in delivery methods; prohibiting cooperative associations from requiring the payment of attorney fees relating to past due assessments without first providing specified notice to unit owners; providing requirements for the notice; establishing a rebuttable presumption relating to mailing the notice if a certain requirement is met; revising the timeframe for cooperative associations to file liens against cooperative parcels; conforming provisions to changes made by the act; amending s. 720.303, F.S.; requiring homeowners' associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to parcel owners; amending s. 720.3085, F.S.; requiring homeowners' associations to deliver certain invoices for assessments or statements of account to parcel owners in a specified manner; requiring homeowners' associations to give notice to parcel owners before changing the method of delivery for the invoices for assessments or statements of account; providing

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requirements for the notice; requiring parcel owners to affirmatively acknowledge the changes in delivery methods; prohibiting homeowners' associations from requiring the payment of attorney fees relating to past due assessments without first providing specified notice to parcel owners; providing requirements for the notice; establishing a rebuttable presumption relating to mailing the notice if a certain requirement is met; providing an effective date.

By Senator Rodriguez

39-00390C-21 202156__

A bill to be entitled

An act relating to community association assessment notices; amending s. 718.111, F.S.; requiring condominium associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to unit owners; amending s. 718.116, F.S.; revising timeframes for foreclosure judgments; conforming provisions to changes made by the act; amending s. 718.121, F.S.; requiring condominium associations to deliver certain statements of account to unit owners in a specified manner; requiring condominium associations to give notice to unit owners before changing the method of delivery for the statements of account; providing requirements for the notice; requiring unit owners to affirmatively acknowledge the changes in delivery methods; prohibiting condominium associations from requiring the payment of attorney fees relating to past due assessments without first providing a specified notice to unit owners; providing requirements for the notice; revising the timeframe for condominium associations to file liens against condominium units; conforming provisions to changes made by the act; amending s. 719.104, F.S.; requiring cooperative associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to unit owners; amending s. 719.108, F.S.; requiring

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cooperative associations to deliver certain statements of account to unit owners in a specified manner; requiring cooperative associations to give notice to unit owners before changing the method of delivery for the statements of account; providing requirements for the notice; requiring unit owners to affirmatively acknowledge the changes in delivery methods; prohibiting cooperative associations from requiring the payment of attorney fees relating to past due assessments without first providing specified notice to unit owners; providing requirements for the notice; revising the timeframe for cooperative associations to file liens against cooperative parcels; conforming provisions to changes made by the act; amending s. 720.303, F.S.; requiring homeowners' associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to parcel owners; amending s. 720.3085, F.S.; requiring homeowners' associations to deliver certain statements of account to parcel owners in a specified manner; requiring homeowners' associations to give notice to parcel owners before changing the method of delivery for the statements of account; providing requirements for the notice; requiring parcel owners to affirmatively acknowledge the changes in delivery methods; prohibiting homeowners' associations from requiring the payment of attorney fees relating to past due assessments without first providing specified

notice to parcel owners; providing requirements for the notice; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain

the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of

the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. ~~All other written records of the association not specifically included in the foregoing which are related to the operation of the association.~~

~~16.~~ A copy of the inspection report as described in s. 718.301(4)(p).

16.~~17.~~ Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c)1. The official records of the association are open to inspection by any association member or the authorized

representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of

copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a

unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the

association.

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

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

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

Section 2. Paragraph (b) of subsection (6) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(6)

(b) No foreclosure judgment may be entered until at least 45 ~~30~~ days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the following form:

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the ...(type of assessment)... assessment to ...(name of association).... The association intends to foreclose the lien and collect the unpaid amount within 45 ~~30~~ days of this letter being provided to you.

You owe the interest accruing from ...(month/year)... to the present. As of the date of this letter, the total amount due with interest is $..... All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to ...(insert name, addresses, and telephone numbers of association representative)....

If this notice is not given at least 45 ~~30~~ days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney ~~attorney's~~ fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney ~~attorney's~~ fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute

service of process has been made on the unit owner.

Section 3. Subsection (4) of section 718.121, Florida Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

718.121 Liens.—

(4)(a) The association must deliver a unit's statement of the account described in s. 718.111(12)(a)11.b. to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

(b) Before changing the method of delivery for the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been given upon mailing as required by this paragraph.

(c) A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the statement of the account before the association may change the method of delivering the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(5) An association may not require payment of attorney fees related to a past due assessment without first delivering a

written notice of late assessment to the unit owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice of its intent to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

(6) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, ~~and~~ by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the unit address, by first-class United States mail to the unit address ~~of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient~~. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's

notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

Section 4. Paragraphs (a) and (c) of subsection (2) of section 719.104, Florida Statutes, are amended to read:

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

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit

owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the

amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the

association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology

capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

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

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

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

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

Section 5. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3)(a) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 719.303(4).

(b)1. The association must deliver a unit's statement of the account described in s. 719.104(2)(a)9.b. to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for the statement

of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been given upon mailing as required by this subparagraph.

3. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the statement of the account before the association may change the method of delivering the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(c) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been given upon mailing as required by this paragraph. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as

otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and

all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...:

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the

association has 90 days in which to file an action to enforce the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

...(Signature of Authorized Agent)... ...(Signature of Witness)...

...(Print Name)... ...(Print Name)...

...(Signature of Witness)...
...(Print Name)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....
...(Signature of Notary Public)...
...(Print, type, or stamp commissioned name of Notary Public)...
Personally Known .... OR Produced .... as identification.

Section 6. Present paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m), a new paragraph (l) is added to that subsection, and paragraph (c) of subsection (5) of that section is amended, to read:

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

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(l) All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy

of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be

charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

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

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

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll,

health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

7. The software and operating system used by the association which allows the manipulation of data, even if the

owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

Section 7. Paragraphs (c) and (d) are added to subsection (3) of section 720.3085, Florida Statutes, to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(c)1. The association must deliver a parcel owner's periodic statement of the account described in s. 720.303(4)(j)2. to the parcel owner by first-class United States mail or by electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for the statement of the account, the association must deliver a written notice such change to each parcel owner. The written notice must be delivered to the parcel owner at least 30 days before the association sends the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been given upon mailing as required by this subparagraph.

3. A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the statement of the account before the association may change the method of delivering the statement of the account. The parcel owner may make the affirmative acknowledgment electronically or in writing.

(d) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the parcel owner which specifies the amount owed the association and provides the parcel owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been given upon mailing as required by this paragraph. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Parcel .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your

property no sooner than 30 days after the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

Section 8. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 972
INTRODUCER:	Senator Rodriguez
SUBJECT:	Administrative Entity Telecommunication Meetings
DATE:	March 1, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Favorable**
2.			GO	
3.			RC	

I. Summary:

SB 972 provides that any separate administrative entity created by interlocal agreement, which has member public agencies in four contiguous counties, may conduct public meetings and workshops using communication media technology. Currently, only separate legal entities established by interlocal agreement, which have member public agencies located in at least five counties, of which at least three are not contiguous, may conduct public meetings and workshops using communications media technology.

This change allows administrative entities, such as the Southeast Florida Regional Climate Change Compact committee, to conduct meetings and workshops via communication media technologies.

The bill takes effect on July 1, 2021.

II. Present Situation:

Open Government Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.[1] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[2] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[3]

[1] FLA CONST., art. I, s. 24(b).
[2] *Id*.
[3] FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the "Government in the Sunshine Law,"[4] or the "Sunshine Law,"[5] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[6] The board or commission must provide the public reasonable notice of such meetings.[7] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[8] Minutes of a public meeting must be promptly recorded and open to public inspection.[9] Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.[10] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[11]

Use of Electronic Media and Public Meetings

Section 120.54(5)(b)2, F.S., requires the Administration Commission[12] to promulgate rules to create uniform rules of procedure for state agencies to use when conducting public meetings, hearings or workshops, including procedures for conducting meetings in person and by means of communications media technology.[13] The agency must state in the notice that the public meeting, hearing, or workshop will be conducted by means of communications media technology, or if attendance may be provided by such means.[14] The notice must also state how individuals interested in attending may do so.[15] Notwithstanding the use of electronic media technology, all evidence, testimony, and argument presented at the public meeting must be afforded equal consideration, regardless of the method of communication.[16] In addition to state agencies required to comply with ch. 120, F.S., certain entities created by an interlocal agreement may conduct public meetings and workshops via communications media technology.[17] Additionally, current law allows a voting member of a regional planning council that covers three or more counties to appear via telephone, real-time videoconferencing, or similar real-time electronic

representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

[4] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

[5] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

[6] Section 286.011(1)-(2), F.S.

[7] *Id.*

[8] Section 286.011(6), F.S.

[9] Section 286.011(2), F.S.

[10] Section 286.011(1), F.S.

[11] Section 286.011(3), F.S. Penalties include a fine of up to $500 or a second degree misdemeanor.

[12] Section 14.202, F.S. The Administration Commission is composed of the Governor and the Cabinet (The Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet. Section 20.03(1), F.S.).

[13] Section 120.54(5)(b)2, F.S. The term "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] Section 163.01(18), F.S. (Allowing public agencies located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of communications media technology).

video communication if at least one-third of the voting members of the regional planning council are physically present at the meeting location.[18]

While current law allows state agencies and certain regional planning councils and entities created by an interlocal agreement to conduct meetings and vote by means of communications media technology, there has been a question over whether or not local boards or agencies may conduct meetings in the same fashion.[19] The Office of Attorney General has opined that only state agencies can conduct meetings and vote via communications media technology, thus rejecting a school board's request to conduct board meetings via electronic means.[20] The Attorney General reasoned that s. 120.54(5)(b)2, F.S., limits its terms only to uniform rules that apply to state agencies.[21] The Attorney General explained that "allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission."[22]

The Attorney General reasoned that a similar rationale is not applicable to local boards and commissions even though it may be convenient and save money since the representation on these boards and commissions are local thus, "such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting."[23] However, if a quorum of a local board is physically present at the public meeting, a board may allow a member who is unavailable to physically attend the meeting due to extraordinary circumstances such as illness, to participate and vote at the meeting via communications media technology.[24]

Interlocal Agreements

The Florida Interlocal Cooperation Act of 1969 allows local governmental units to enter into mutually advantageous agreements to provide services or facilities to other localities.[25] This section of the law allows the state's public agencies to exercise joint governmental powers with any other public agency of the state, of any other state, or the United States Government.[26] To effectuate interlocal cooperation under this section, local governmental units jointly exercising power must form and execute a contract detailing the relationship's terms and conditions.[27]

Separate Legal Entity

Under s. 163.01(7), F.S., an interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement.

[18] Section 120.525(4), F.S.
[19] Robert Eschenfelder, *Modern Sunshine: Attending Public Meetings in the Digital Age*, 84 Fla. B.J. 28 (2010).
[20] Op. Att'y Gen. Fla. 98-28 (1998).
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *See* s. 163.01, F.S.
[26] *Id.* at (4)
[27] *Id.* at (5)

A separate legal or administrative entity created by an interlocal agreement is authorized to:

- Make and enter into contracts;
- Employ agencies or employees;
- Acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- Acquire, hold, or dispose of property; and
- Incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.[28]

Meetings

Florida courts have held that the Sunshine Law extends to discussions and deliberations as well as formal actions taken by a public board or commission.[29] Consequently, meetings of a separate legal or administrative entity and its governing board are subject to Florida's public meeting requirements.[30]

Communications Media Technology

Section 163.01(18), F.S., of the Florida Interlocal Cooperation Act provides that any separate legal entity created by interlocal agreement may conduct public meetings, hearings, and workshops by means of communications media technology if the legal entity includes public agencies located in at least five counties, of which at least three are not contiguous.[31] The communications media technology provision was added to s. 163.01, F.S., in 2012.[32]

The notice for any public meeting or workshop conducted by communications media technology must state that the meeting will be conducted through communications media technology; specify how persons interested in attending may do so; and provide a location where communications media technology facilities are available. The participation by an officer, board member, or other representatives of a member public agency in a meeting conducted through communications media technology constitutes that individual's presence at such meeting. The term "communications media technology" means conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.[33]

[28] Section 163.01(7)(b), F.S.
[29] *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973) (Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter upon which foreseeable action will be taken by the board or commission).
[30] Op. Att'y Gen. Fla. 82-66 (1982).
[31] "Being in actual contact: touching along a boundary or at a point" *Contiguous*, Merriam Webster Dictionary.
[32] ch. 2012-164, Laws of Florida. The effort to normalize the use of communications media technology largely started in 2006 when the Legislature approved a one-year "test program" that allowed county commissioners in Monroe County, spread apart by a 120-mile chain of islands, to use teleconferencing equipment for special meetings and be deemed in attendance for purposes of establishing a quorum. *See* ch. 2006-350, Laws of Florida.
[33] Section 163.01(18), F.S.

The Southeast Florida Regional Climate Change Compact

The four contiguous counties of Broward, Miami-Dade, Monroe, and Palm Beach formally adopted the Southeast Florida Regional Climate Change Compact ("Compact") in 2009.[34] The Compact advances climate mitigation and adaptation strategies. A component of the Compact includes the establishment of the Compact Leadership Committee, which is a separate legal entity established pursuant to the Florida Interlocal Cooperation Act.[35] Each of the four counties has one representative that serves on the Committee and may select an alternate, both of whom must have experience and knowledge in the area of resilience and climate change and must have a leadership position related to the area of resilience and climate change in the respective county's government.[36]

III. Effect of Proposed Changes:

The bill amends s. 163.01, F.S., to provide that any separate administrative entity created by interlocal agreement, which has member public agencies in four contiguous counties, may conduct public meetings and workshops by means of communication media technology. This change allow administrative entities, such as the Southeast Florida Regional Climate Change Compact committee, to conduct meetings and workshops via communication media technologies.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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[34] A White House Climate Action Champions Case Study, *Southeast Florida Regional Climate Change Compact*, *available at:* https://www.energy.gov/sites/prod/files/2016/03/f30/Southeast%20Florida%20Case%20Study.pdf (last visited Feb. 25, 2021).

[35] Miami-Dade Legislative Item, File Number: 202455 (Dec. 15, 2020), *available at:* http://www.miamidade.gov/govaction/legistarfiles/Matters/Y2020/202455.pdf (last visited Feb. 25, 2021) (the most recent renewal of interlocal agreement provisions related to the Southeast Florida Regional Climate Change Compact).

[36] *Id.* at p.3.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Conducting public meetings and workshops via communication media technology may provide applicable entities nominal cost savings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.01 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3-3-2021
Meeting Date

SB 972
Bill Number (if applicable)

Topic Administrative Entity Telecommunication Meetings

Amendment Barcode (if applicable)

Name Natalie Fausel

Job Title Partner

Address 201 West Park Avenue
Street

Phone 561-317-0889

Tallahassee FL
City *State* *Zip*

Email natalie@anfieldflorida.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Broward County and Palm Beach County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

By Senator Rodriguez

39-01181A-21 2021972__

A bill to be entitled

An act relating to administrative entity telecommunication meetings; amending s. 163.01, F.S.; authorizing certain legal or administrative entities to conduct public meetings and workshops by means of communications media technology; revising criteria under which legal entities may conduct public meetings and workshops; providing an effective date.

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

Section 1. Subsection (18) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(18) Any separate legal or administrative entity created under subsection (7) which has member public agencies located in at least five counties, of which at least three are not contiguous, or which has member public agencies located in four contiguous counties, may conduct public meetings and workshops by means of communications media technology. The notice for any such public meeting or workshop shall state that the meeting or workshop will be conducted through the use of communications media technology; specify how persons interested in attending may do so; and provide a location where communications media technology facilities are available. The participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop. As used in this

Florida Senate - 2021 **SB 972**

39-01181A-21 2021972__

subsection, the term "communications media technology" means conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.

Section 2. This act shall take effect July 1, 2021.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 64
INTRODUCER:	Environment and Natural Resources Committee and Senator Albritton
SUBJECT:	Reclaimed Water
DATE:	February 22, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Fav/CS**
2.	Paglialonga	Ryon	CA	**Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 64 creates a timeline and plan to eliminate nonbeneficial surface water discharge within 5 years. It contains a series of conditions authorizing discharges that are being beneficially used or otherwise regulated, and for specified hardships. The bill requires domestic wastewater utilities that dispose of effluent, reclaimed water or reuse water by surface water discharge to submit a 5-year plan to eliminate nonbeneficial surface water discharge to the Department of Environmental Protection (DEP). The plan must be:

- Submitted by November 1, 2021; and
- Implemented by January 1, 2028 (January 1, 2030, for potable reuse projects).

The bill also:

- Specifies that potable reuse is an alternative water supply, for purposes of making reuse projects eligible for alternative water supply funding;
- Incentivizes the development of potable reuse projects;
- Incentivizes residential developments that use graywater technologies; and
- Specifies the total dissolved solids allowable in aquifer storage and recovery in certain circumstances.

II. Present Situation:

Floridians currently use an estimated 6.4 billion gallons of water per day.[1] Between 2020 and 2040, Florida's population is expected to increase by 4.8 million to 26.4 million people, while water demands are expected to grow from 1 billion gallons per day (bgd) to 7.4 bgd.[2] For some regions of the state, there is enough water to meet future needs through existing sources, but others require additional water to be developed.[3] Alternative water supply projects currently provide an estimated 1.019 bgd with an additional estimated capacity of 1.651 bgd that will be available when all projects are fully completed and implemented.[4]

Water Reuse

Water reuse is an essential component of both wastewater management and water resource management in Florida. Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.[5] Whereas reclaimed water is defined as water from a domestic wastewater[6] treatment facility that has received at least secondary treatment[7] and basic disinfection[8] for reuse.[9]

Florida has approximately 2,000 permitted domestic wastewater treatment facilities.[10] These facilities may require state and federal permits for discharges to surface waters,[11] although federal requirements for most facilities or activities are incorporated into a state-issued permit.[12] The Department of Environmental Protection (DEP) also regulates the construction and operation of domestic wastewater treatment facilities and establishes disinfection requirements for the reuse of reclaimed water.[13]

Reusing water helps conserve drinking water supplies by replacing drinking quality water for non-drinking water purposes, such as irrigation, industrial cooling, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.[14] Water reuse also provides

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[1] Department of Environmental Protection (DEP), *Annual Regional Water Supply Planning Report* (2019), *available at* https://fdep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3.
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] Fla. Admin. Code R. 62-610.200(52).
[6] Section 367.021(5), F.S., defines the term "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.
[7] Fla. Admin. Code R. 62-610.200(54) defines the term "secondary treatment" to mean "wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C."
[8] Fla. Admin. Code R. 62-600.440(5) provides the requirements for basic disinfection.
[9] Section 373.019(17), F.S.; Fla. Admin. Code R. 62-610.200(48).
[10] DEP, *General Facts and Statistics about Wastewater in Florida*, https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 21, 2021).
[11] For required state permits, *see* Section 403.087, F.S.; *see also* DEP, *Wastewater Permitting*, available at https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last visited Jan. 26, 2021). For federal permits, *see* 33 U.S.C. s. 1342.
[12] Sections 403.061 and 403.087, F.S.
[13] Fla. Admin. Code R. 62-600.
[14] Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida's Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), *available at* https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.590.5063&rep=rep1&type=pdf.

environmental benefits, including reduced groundwater withdrawals, reduced needs for new drinking water supplies and infrastructure, and improved water quality of the natural environment by reducing the number of nutrients that are discharged directly to surface water and groundwater by wastewater treatment facilities.[15] The use of reclaimed water also provides for the recovery of water that would otherwise be lost to tide and evaporation.

In its rules, DEP requires the promotion of reuse of reclaimed water, recycling of stormwater for irrigation and other beneficial uses, recycling of industrial wastewater, and encourages local governments to create programs for reuse.[16] Water conservation and the promotion of water reuse have also been established as formal state objectives by the Legislature.[17] State law further provides that the use of reclaimed water provided by wastewater treatment plants permitted and operated under a reuse program by DEP are considered environmentally acceptable and are not a threat to public health and safety.[18]

Florida tracks its reuse inventory in an annual report compiled by DEP.[19] In 2019, a total of 476 domestic wastewater treatment facilities reported making reclaimed water available for reuse.[20] Approximately 820 million gallons per day (mgd) of reclaimed water were used for beneficial purposes in 2019,[21] representing approximately 48 percent of the state's total domestic wastewater flow.[22] The total reuse capacity associated with reuse systems was 1,757 mgd,[23] representing approximately 67 percent of the state's total domestic wastewater treatment capacity.[24]

Reclaimed Water as Alternative Water Supply

When traditional water supplies are constrained, alternative water supplies must be developed in addition to water conservation efforts. Alternative water supply can include reclaimed water, brackish groundwater, surface water, and excess surface water captured and stored in reservoirs or aquifer storage and recovery wells.[25]

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[15] *Id*.
[16] Fla. Admin. Code R. 62-40.416.
[17] Sections 403.064(1) and 373.250(1), F.S.
[18] *Id*.
[19] *See* DEP, *2019 Reuse Inventory Report* (2020), *available at* https://floridadep.gov/sites/default/files/2019_Reuse_Inventory_Report.pdf; compiled from reports collected pursuant to chapter 62-610 of the Florida Administrative Code.
[20] The number of treatment facilities providing reuse broken down by water management districts is as follows: Northwest Florida – 62, South Florida – 109, St. Johns River – 143, Suwannee River – 28, and Southwest Florida – 134; DEP, *2019 Reuse Inventory Report*, 2 (2020), *available at* https://floridadep.gov/sites/default/files/2019_Reuse_Inventory_Report.pdf.
[21] This represents an average per capita reuse of 38.66 gallons per day per person. DEP, *Florida's Reuse Activities*, https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities (last visited Jan. 21, 2021).
[22] *Id*. at 2, 3.
[23] *Id*. at 2.
[24] *Id*.
[25] DEP, *Annual Regional Water Supply Planning Report* (2019), *available at* https://fdep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3.

Reclaimed water is a type of alternative water supply as defined in s. 373.019(1), F.S., and is eligible to receive alternative water supply funding.[26] Reclaimed water can be used for many purposes to meet water demand, including:

- Irrigation of golf courses, parks, residential properties, and landscaped areas;
- Urban uses, such as toilet flushing, car washing, and aesthetic purposes;
- Agricultural uses, such as irrigation of food crops, pasture lands, and at nurseries;
- Wetlands creation, restoration, and enhancement;
- Recharging groundwater through rapid infiltration basins, absorption fields, and direct injection;
- Augmentation of surface waters used for drinking water supplies; and
- Industrial uses such as processing and cooling water.[27]

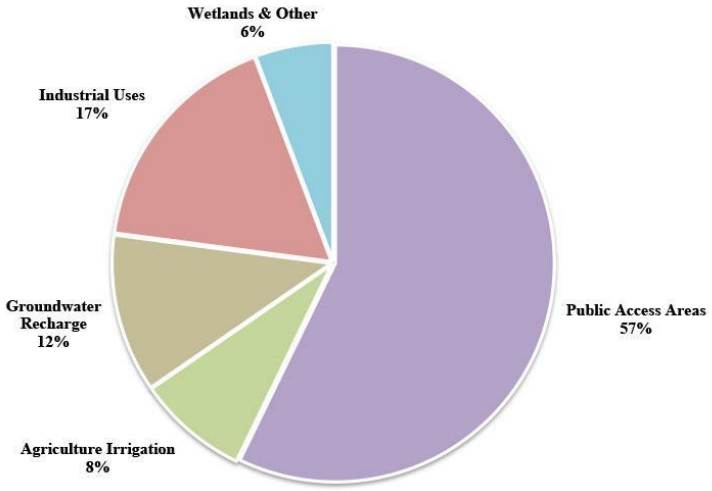
Reclaimed Water Use in Florida

Communities in Florida have been using reclaimed water for landscape irrigation and industrial uses since the early 1970s.[28] Today, Florida is the national leader in water reuse, utilizing 48 percent of the total domestic wastewater in the state for nonpotable uses.[29] Reclaimed water is estimated to have avoided the use of over 158 billion gallons of potable quality water while serving to add more than 94 billion gallons back to available groundwater supplies.[30] Reclaimed water projects make up 35% of all water supply projects.[31]

According to DEP's reuse inventory report, over the past 30 years, Florida has made great strides in the expansion of reclaimed water systems, and reuse is now an integral part of wastewater management, water resource management, and ecosystem management in the state.[32] The chart below shows the percentage of reclaimed water utilization by flow for each reuse type.[33]

[26] Section 373.250(2), F.S.
[27] DEP, *Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water (last visited Jan. 21, 2021).
[28] Florida Potable Reuse Commission, *Framework for the Implementation of Potable Reuse in Florida*, xxiii, (Jan. 2020), *available at* https://watereuse.org/wp-content/uploads/2020/01/Framework-for-Potable-Reuse-in-Florida.pdf.
[29] *Id*; Florida Water Environment Association Utility Council, *Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida*, 16 (Jan. 2020), *available at* http://fweauc.org/wp-content/uploads/2013/02/Evaluation-of-the-Impacts-of-Eliminating-Surface-Water-Discharges-from-Domestic-Wastewater-Facilities-in-Florida-January-2020.pdf.
[30] DEP, *Florida's Reuse Activities*, https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities (last visited Jan. 21, 2021).
[31] DEP, *Annual Regional Water Supply Planning Report*, (2019), *available at* https://fdep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3.
[32] DEP, *2019 Reuse Inventory Report*, 2 (2020), *available at* https://floridadep.gov/sites/default/files/2019_Reuse_Inventory_Report.pdf; *see also* DEP, *Florida's Reuse Activities*, https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities (last visited Jan. 21, 2021).
[33] *Id*.

Figure 1: Reclaimed Water Utilization by Flow



Note: Agriculture irrigation includes edible crops (e.g., citrus) as well as feed and fodder crops (e.g., spray fields).

Regulation of Reclaimed Water

Both DEP and the water management districts play a regulatory role in the use of reclaimed water. DEP regulations focus on water quality and ensure that reclaimed water is appropriately treated for its intended use to protect public health and the environment. Water management districts work with local utilities and water users to maximize the beneficial use of reclaimed water as an alternative water supply. The districts include alternative water supply projects in their regional water supply plans[34] and implement cost-share programs to help communities develop reclaimed water systems.[35]

In its rules, DEP provides detailed reclaimed water treatment requirements depending upon how the reclaimed water will be used, including groundwater recharge, surface water discharge, or to protect water quality.[36] These rules also require owners of domestic wastewater facilities having permitted capacities of 0.1 million gallons per day and above that provide reclaimed water for reuse to submit annual reuse reports to DEP. To be reused as reclaimed water, domestic wastewater must meet, at minimum, a treatment standard of secondary treatment, basic disinfection, and pH control.[37] The regulations also include requirements for groundwater monitoring at reuse and land application sites.[38]

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[34] Section 373.036(2), F.S.
[35] DEP, *Annual Regional Water Supply Planning Report* (2019), *available at* https://fdep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3; *see also* DEP, *Water Management District Reuse Programs*, https://floridadep.gov/water/domestic-wastewater/content/water-management-district-reuse-programs (last visited Jan. 26, 2021).
[36] Fla. Admin. Code R. 62-610.
[37] Fla. Admin. Code R. 62-600.530, 62-600.440.
[38] Fla. Admin. Code R. 62-601.

Water management districts are responsible for administering water resources at a regional level, including programs to protect the water supply, water quality, and natural systems.[39] Water management districts issue consumptive use permits (CUPs) to manage the use of water. A CUP allows the holder to withdraw a specified amount of water from surface water and groundwater sources for reasonable and beneficial use.[40] CUPs require water conservation to prevent wasteful uses, require the reuse of reclaimed water instead of higher-quality groundwater where appropriate, and set limits on the amount of water that can be withdrawn.[41] Water management districts may not require CUPs for reclaimed water.[42]

Districts also implement minimum flows and minimum water levels (MFLs) to balance public water supply needs with protecting the state's natural systems.[43] For water bodies below or that are projected to fall below their MFL, the districts must implement a recovery or prevention strategy to ensure the MFL is maintained.[44] Alternative water supply can be used as a recovery strategy when existing water sources are not adequate to supply water for all existing and future reasonable beneficial uses or as a prevention strategy to sustain the water resources and related natural systems.[45]

Potable Reuse

Potable reuse is the process of using treated wastewater for drinking water.[46] It involves the use of reclaimed water to directly or indirectly augment drinking water supplies.[47] Indirect potable reuse is the planned discharge of reclaimed water to ground or surface waters to develop supplement potable water supply. Direct potable reuse introduces advanced treated reclaimed water into a raw water supply immediately upstream of a drinking water treatment facility or directly into a potable water distribution system.[48]

Although regulations currently exist in Florida for using reclaimed water for indirect potable reuse for augmenting surface water, there are no regulations that address using reclaimed water for indirect potable reuse involving groundwater replenishment or direct potable reuse.[49]

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[39] DEP, *Water Management Districts*, https://floridadep.gov/water-policy/water-policy/content/water-management-districts (last visited Jan. 23, 2021).
[40] South Florida Water Management District, *Consumptive Water Use Permits*, https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits (last visited Jan. 23, 2021).
[41] DEP, *2021 Florida Water Plan*, *available at* https://fdep.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c.
[42] Section 373.250, F.S.
[43] DEP, *Minimum Flows and Minimum Water Levels and Reservations*, https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations (last visited Jan. 23, 2021); *see also* section 373.042(1), F.S. Minimum flows and minimum water levels are the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.
[44] *Id*.
[45] DEP, *Annual Regional Water Supply Planning Report*, (2019), *available at* https://fdep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3.
[46] U.S. Environmental Protection Agency, *Potable Water Reuse and Drinking Water*, https://www.epa.gov/ground-water-and-drinking-water/potable-water-reuse-and-drinking-water (last visited Jan. 21, 2021).
[47] Florida Potable Reuse Commission (PRC), *Framework for the Implementation of Potable Reuse in Florida*, xxiv, (Jan. 2020), *available at* https://watereuse.org/wp-content/uploads/2020/01/Framework-for-Potable-Reuse-in-Florida.pdf.
[48] *Id*.
[49] *Id*.

The Potable Reuse Commission (PRC) was organized to develop a framework for advancing the implementation of potable reuse in Florida as a water supply alternative to meet future supply needs while also protecting public health and the environment through an engagement process involving stakeholders with technical and scientific expertise.[50] In its report, the PRC identified a number of proposed regulatory changes that would require the Florida Legislature to enact legislation to provide authority and would require DEP to revise existing rules or adopt new rules to advance potable reuse within the state while ensuring the protection of public health and the environment.

Chapter 2020-150, Laws of Florida, required DEP to revise its rules based on the recommendations of the PRC's 2020 report. Specifically, the Legislature required DEP to address contaminants of emerging concern and meet or exceed federal and state drinking water quality standards and other applicable water quality standards in its rule.[51] The law also explicitly deemed reclaimed water as a water source for public supply systems.[52] DEP is currently in the rulemaking process to revise existing rules to create a framework for potable reuse.[53]

In addition to the recommendations related to drinking water regulations, the PRC recommended:

- Designating reclaimed water as a water supply source;
- Requiring DEP and the water management districts to enter into a memorandum of agreement to coordinate permitting for indirect potable water projects;
- Continuing the exemption of direct potable reuse from consumptive use permit or water use permit requirements;
- Implementing regulatory recommendations collectively and through Technical Advisory Committees;
- Incentivizing and protecting public investments in potable reuse; and
- Continuing public education and outreach.[54]

Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters. There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties that discharge or previously discharged approximately 300 mgd of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.[55]

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[50] *Id*.
[51] Section 12, Ch. 2020-150.
[52] *Id*.
[53] Florida Administrative Register, Notice of Proposed Rule 62-610, Volume 46, Number 242 at 5468 (Dec. 15, 2020), *available at* https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2020/46242/46242doc.pdf; DEP, *Water Reuse News & Rulemaking Information*, https://floridadep.gov/water/domestic-wastewater/content/water-reuse-news-rulemaking-information (last visited Jan. 15, 2021).
[54] PRC, *Framework for the Implementation of Potable Reuse in Florida*, xxvii-xxxi, (Jan. 2020), *available at* https://watereuse.org/wp-content/uploads/2020/01/Framework-for-Potable-Reuse-in-Florida.pdf.
[55] DEP, *Ocean Outfall Study Final Report* ES-1 (Apr. 18, 2006), *available at* https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf.

However, state law prohibits the construction of new ocean outfalls and requires all six ocean outfalls in Florida to cease discharging wastewater by December 31, 2025.[56] Also, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008, are required to install a reuse system no later than December 31, 2025.[57] Existing discharges through ocean outfalls must meet advanced waste treatment requirements[58] by December 31, 2018.[59]

Backup Discharges

A backup discharge is a surface water discharge that occurs as part of a functioning reuse system permitted by DEP and provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or industrial cooling, or other acceptable reuse purposes.[60] Backup discharges of reclaimed water that meet advanced waste treatment requirements are presumed to be allowable and are permitted in all waters in the state at a reasonably accessible point where such discharge results in a minimal negative impact unless the discharge is to waters that are subject to additional protections.[61]

Fiscally Constrained Counties and Rural Areas of Opportunity

A fiscally constrained county is a county that is entirely within a rural area of opportunity (RAO) or a county for which the value of a mill will raise no more than $5 million in revenue.[62]

An RAO is a rural community or a region composed of rural communities designated by the Governor that presents a unique economic development opportunity of regional impact or has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[63] The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the Cities of Pahokee, Belle Glade, South Bay, and Immokalee; and
- North Central RAO includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.[64]

Graywater/Residential Systems/Development Incentives

Graywater is the part of domestic sewage that is not carried off by toilets, urinals, and kitchen drains. It includes waste from the bath, lavatory, laundry, and sink, except for kitchen sink

[56] Section 403.086(10), F.S.; chapter 2008-232, Laws of Fla.
[57] Section 403.086(10)(c), F.S.
[58] Section 403.086(4), F.S.
[59] Section 403.086(10)(b), F.S.
[60] Section 403.086(8)(a), F.S.
[61] Section 403.086(8)(b), F.S.
[62] Section 218.67(1), F.S.
[63] Section 288.0656(2)(d), F.S.
[64] Florida Department of Economic Opportunity, *RAO, available at* http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity (last visited Jan. 8, 2021).

waste.[65] Graywater installations occur in residential and non-residential installations, and the capture, treatment, and reuse of graywater yield usable water that would otherwise be directed to the sewer.[66] Reusing graywater also reduces the use of potable water for non-potable needs and conserves fresh water.[67]

The Florida Building Code specifies that graywater may only be used for flushing toilets and urinals. Any discharge from the building must be connected to a public sewer or an onsite sewage treatment and disposal system in accordance with Department of Health regulations in chapter 64E-6 of the Florida Administrative Code.[68] Graywater systems in Florida have several requirements: the graywater must be filtered, disinfected, dyed, and storage reservoirs must have drains and overflow pipes, which must be indirectly connected to the sanitary drainage system.[69]

There are barriers to the widespread adoption of residential graywater reuse, including system cost, knowledge and experience of contractors and local officials, homeowner acceptance, and limited permitted uses.[70]

Aquifer Storage and Recovery (ASR)

ASR is the underground injection and storage of water into a subsurface formation to withdraw the water for beneficial purposes later.[71] It refers to the process of recharge, storage, and recovery of water in an aquifer. ASR provides for the storage of large quantities of water for seasonal and long-term storage and ultimate recovery that would otherwise be unavailable due to land limitations, loss to the tide, or evaporation.[72]

ASR facilities have been used in Florida and throughout the United States for about 40 years.[73] ASR systems are currently used to store potable drinking water, partially treated surface water, groundwater, and reclaimed water.[74] Water can be stored and subsequently recovered and distributed for purposes such as water supply or ecosystem restoration.[75] For ASR, the aquifer acts as an underground reservoir for the recharged water.

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[65] Section 381.0065(2)(e), F.S.
[66] Alliance for Water Efficiency, *Graywater Systems*, https://www.allianceforwaterefficiency.org/resources/topic/graywater-systems (last visited Jan. 8, 2021).
[67] Martinez, Christopher J., *Gray Water Reuse in Florida*, University of Florida IFAS Extension, https://edis.ifas.ufl.edu/ae453#:~:text=Gray%20water%20must%20be%20filtered,to%20the%20sanitary%20drainage%20system (last visited Jan. 12, 2021).
[68] 2020 Florida Building Code – Plumbing, Seventh Edition (Dec. 2020), *available at* https://codes.iccsafe.org/content/FLPC2020P1.
[69] *Id*.
[70] Martinez, Christopher J., *Gray Water Reuse in Florida*, University of Florida IFAS Extension, https://edis.ifas.ufl.edu/ae453#:~:text=Gray%20water%20must%20be%20filtered,to%20the%20sanitary%20drainage%20system (last visited Jan. 12, 2021).
[71] DEP, Office of Water Policy, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 83 (December 1, 2015) *available at* https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf.
[72] *Id*.
[73] South Florida Water Management District, *Aquifer Storage and Recovery*, https://www.sfwmd.gov/our-work/alternative-water-supply/asr (last visited Jan. 12, 2021).
[74] *Id*.
[75] *Id*.

Through its Aquifer Protection Program, DEP regulates the disposal of appropriately treated fluids, such as reclaimed water, through underground injection wells while also protecting underground sources of drinking water.[76] The program is aimed at preventing the degradation of the quality of aquifers adjacent to the injection zone.[77] ASR wells are regulated as Class V injection wells, including all wells that inject non-hazardous fluids into or above formations containing underground sources of drinking water.[78]

DEP rules regulating ASR require that reclaimed water injected into receiving groundwater with 3,000 mg/L or less of total dissolved solids must meet the treatment and disinfection criteria requirements[79] for groundwater recharge projects.[80] If receiving groundwater contains between 1,000 and 3,000 mg/L of total dissolved solids and the applicant for an underground injection control permit provides an affirmative demonstration that the receiving groundwater is not currently used as a source of public water supply and is not reasonably expected to be used for public water supply in the future, certain modifications to the treatment and disinfection requirements are available.[81] Reclaimed water recovered from groundwaters containing 3,000 mg/L or less of total dissolved solids must meet full treatment and disinfection requirements and drinking water standards.[82]

III. Effect of Proposed Changes:

Plan to Eliminate Nonbeneficial Surface Water Discharge

Section 1 amends s. 403.064, F.S., to create a timeline and plan to eliminate nonbeneficial surface water discharge within 5 years and contains a series of conditions for authorizing discharges that are being beneficially used or are otherwise regulated, or for various hardships (*see discussions on discharge conditions and hardship conditions below*).

The bill requires domestic wastewater utilities that dispose of effluent, reclaimed water, or reuse water by surface water discharge to submit a 5-year plan to eliminate nonbeneficial surface water discharge to the Department of Environmental Protection (DEP). The plan must be:

- Submitted by November 1, 2021, and
- Implemented by January 1, 2028 (January 1, 2030, for potable reuse projects).

Domestic wastewater utilities applying for a permit for new or expanded surface water discharge must also submit a discharge elimination plan.

The plan must include:

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[76] Fla. Admin. Code R. 62-528.200(66), defines the term "underground source of drinking water" to mean aquifer. DEP, *Aquifer Protection Program – UIC*, https://floridadep.gov/water/aquifer-protection (last visited Jan. 12, 2021).
[77] DEP, *Aquifer Protection Program -UIC*, https://floridadep.gov/water/aquifer-protection (last visited Jan. 12, 2021); *see* ch. 62-528, F.A.C., for underground injection control permitting requirements.
[78] Fla. Admin. Code R. 62-528.300(1)(e).
[79] Fla. Admin. Code R. 62-610.563. Full treatment and disinfection criteria require meeting all primary and secondary drinking water standards and limits total organic carbon and halogen.
[80] Fla. Admin. Code R. 62-610.466(9)(a).
[81] Fla. Admin. Code R. 62-610.466(9)(b).
[82] Fla. Admin. Code R. 62-610.563(3).

- The average gallons per day of effluent, reclaimed water, or reuse water which will no longer be discharged into surface waters and the date of such elimination;
- The average gallons per day of surface water discharge which will continue in accordance with the requirements for the elimination of ocean outfalls, one of the discharge conditions specified in the bill (*see discussion below*), or one of the hardship conditions (*see discussion below*); and
- The level of treatment which the effluent, reclaimed water, or reuse water will receive before being discharged into surface water by each alternative.

To be approved, the plan must:
- Result in eliminating surface water discharge;
- Result in meeting statutory requirements regarding the discharge of domestic wastewater through ocean outfall; or
- Meet one of the discharge conditions (*see discussion below*) if the plan does not provide complete elimination of surface water discharge.

DISCHARGE CONDITIONS: DEP will approve a plan even if it does not provide for complete elimination of surface water discharge if:
- The discharge is associated with an indirect potable reuse project;
- The discharge is a permitted wet weather discharge;
- The discharge is into a stormwater management system and is subsequently withdrawn for irrigation purposes;
- The utility operates domestic wastewater treatment facilities with reuse systems that reuse a minimum of 90% of a facility's annual average flow, as determined by DEP using monitoring data for the prior 5 consecutive years, for reuse purposes authorized by DEP; or
- The discharge provides direct ecological or public water supply benefits, such as rehydrating wetlands or implementing the requirements of minimum flows and minimum water levels or recovery or prevention strategies for a waterbody.

A plan may include conceptual plans for indirect potable reuse projects or projects that provide direct ecological or public water supply. However, the inclusion of conceptual plans for such projects may not extend the timeline for implementing the plan.

HARDSHIP CONDITIONS: DEP must also approve the plan if a utility demonstrates that:
- It is technically, economically, or environmentally infeasible for the utility to meet the conditions above within 5 years after submitting the plan to DEP;
- Implementing such alternatives would create a severe undue economic hardship on the community served by the utility, as demonstrated by the impact to utility ratepayers, a lack of reasonable return on investment, and the unaffordability of implementing any combination of the alternatives; and
- The plan provides a means to eliminate the discharge to the extent feasible.

If a utility demonstrates hardship conditions, the utility must update its plan annually to demonstrate that it continues to meet the hardship conditions until it can eliminate the discharge. DEP must review updated plans to verify that a utility continues to meet the hardship conditions. If DEP determines that the utility no longer meets hardship conditions, the utility must submit a

plan within 9 months of receiving notice from DEP and must fully implement the plan within 5 years of receiving approval of the plan by DEP.

The bill provisions also do not apply to domestic wastewater treatment facilities that are located in a:

- Fiscally constrained county;
- Municipality that is entirely within a rural area of opportunity; and
- Municipality with less than $10 million in total revenue, as determined by the municipality's most recent annual financial report submitted to the Department of Financial Services.

The bill requires DEP to approve a plan within 9 months after receiving the plan, including all of the information required under the bill. If a plan is approved, DEP must incorporate the plan into a utility's operating permit. A utility may modify its plan by an amendment to the permit, but the permit may not be amended such that the permit no longer meets the bill's requirements. DEP may not extend the time within which a plan must be implemented.

If a plan is not timely submitted by a utility or approved by DEP, the utility's domestic wastewater treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface discharge after January 1, 2028. A violation subjects a utility to administrative and civil penalties.

The bill requires DEP to submit a report by December 31 annually to the President of the Senate and the Speaker of the House of Representatives, which provides:

- The average gallons per day of effluent, reclaimed water, or reuse water which will no longer be discharged into surface waters by the utility and the dates of such elimination;
- The average gallons per day of surface water discharge which will continue in accordance with the requirements for the elimination of ocean outfalls, one of the discharge conditions, or one of the hardship conditions; and
- Any modified or new plans submitted by a utility since the last report.

The bill provides that the requirement for a plan to eliminate nonbeneficial surface water discharges does not prohibit the inclusion of a plan for backup discharges and may not exempt a utility from requirements that prohibit the causing of or contributing to violations of water quality standards in surface waters, including groundwater discharges that affect water quality in surface waters.

The bill provides a legislative statement that sufficient water supply is imperative to this state's future and that potable reuse is a source of water that may assist in meeting future demand for water supply.

The bill authorizes DEP to convene and lead one or more technical advisory groups to coordinate rulemaking and review rules for potable reuse. The technical advisory group must consist of knowledgeable representatives of stakeholders, including, but not limited to, representatives from the:

- Water management districts;
- Wastewater utility industry;

- Water utility industry;
- Environmental community;
- Business community;
- Public health community;
- Agricultural community; and
- Consumers.

The bill specifies that potable reuse is an alternative water supply to make reuse projects eligible for alternative water supply funding. The bill also specifies that potable reuse water may not be excluded from regional water supply planning.

The bill requires DEP and the water management districts to develop and execute, by December 31, 2023, a memorandum of agreement (MOU) to conduct a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The MOU must provide that the review will occur only if requested by a permittee. The bill states that the purpose of the coordinated review is to share information, avoid redundancies, and ensure consistency in the permit to protect public health and the environment.

The bill incentivizes the development of potable reuse projects by private entities through eligibility for expedited permitting, beginning January 1, 2026, and eligibility for priority funding from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

The bill does not supersede existing requirements relating to the use of reclaimed water.

Graywater Incentives

Section 2 creates s. 403.892, F.S., to provide incentives for the use of graywater technologies.

The bill defines the term "developer" to mean any person, including a governmental agency, undertaking any development.[83] The bill defines "graywater" to mean the part of domestic sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.[84]

The bill requires a county, municipality, and special district to promote the beneficial reuse of water in this state by:

- Authorizing graywater technologies in their respective jurisdictions that meet the requirement for residential use of graywater systems and technologies, the Florida Building Code, and applicable requirements of the Florida Department of Health and have received all applicable regulatory permits or authorizations; and
- Providing density and intensity bonuses to developers and homebuilders to fully offset the capital costs of the technology and installation costs.

[83] Section 380.031, F.S.
[84] Section 381.0065, F.S.

To qualify for the incentives, the bill requires the developer or homebuilder to certify to the applicable governmental entity as part of its application for development approval or amendment of a development order that all of the following conditions are met:

- The proposed or existing development has at least 25 single-family residential homes that are either detached or multifamily dwellings, but the development must not be over 5 stories in height;
- Each single-family residential home or residence has its own residential graywater system that is dedicated for its use;
- The developer has submitted a manufacturer's warranty or data providing reasonable assurance that the residential graywater system will function as designed and includes an estimate of anticipated potable water savings for each system. A submission from a building code official, government entity, or research institute that has monitored or measured the residential graywater system that is proposed to be installed for such development is acceptable as reasonable assurance; and
- The required maintenance of the graywater system is the responsibility of the residential homeowner or manufacturer; and
- An operation and maintenance manual for the system must be supplied to the initial residential property owner, along with a method of contacting the installer or manufacturer and directions to the homeowner that the manual must remain with the residence throughout the life cycle of the system.

The bill provides that if the requirements to qualify for incentives are met, the county or municipality must include the incentives when it approves the development or amendment of a development order. The approval must also provide for the process that the developer or homebuilder will follow to verify that graywater systems have been purchased. Proof of purchase must be provided within 180 days from the issuance of a certificate of occupancy for single-family residential homes that are either detached or multifamily projects under five stories.

Under the bill, the installation of graywater systems in a county or municipality qualifies as a water conservation measure in a public water utility's water conservation plan. The measures' efficiency is commensurate with the amount of potable water savings estimated for each system provided by the developer or homebuilder.

Aquifer Storage and Recovery

Section 3 provides, to further promote the reuse of reclaimed water for irrigation purposes, that the rules that apply when reclaimed water is injected into a receiving groundwater that has 1,000 to 3,000 mg/L total dissolved solids are applicable to reclaimed water aquifer storage and recovery wells injecting into a receiving groundwater that has less than 1,000 mg/L total dissolved solids if the applicant demonstrates that:

- It is injecting into a confined aquifer;
- There are no potable water supply wells within 3,500 feet of the aquifer storage and recovery wells;
- It has implemented institutional controls to prevent the future construction of public supply wells within 3,500 feet of the aquifer storage and recovery wells; and
- The recovered water is being used for irrigation purposes.

The bill specifies that the injection of reclaimed water that meets these requirements is not potable reuse.

The bill specifies that this section may not be construed to exempt the reclaimed water aquifer storage and recovery wells from requirements that prohibit the causing of or contribution to violations of water quality standards in surface water, including groundwater discharges that flow by interflow and affect water quality in surface water.

Declaration of Important State Interest

Section 4 provides a declaratory statement by the Legislature that the act fulfills an important state interest.

Effective Date

Section 5 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of a state tax shared with counties and municipalities.

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that no county or municipality shall be bound by any general law requiring the county or municipality to spend funds or take action requiring the expenditure of funds unless the legislature determines that the law fulfills an important state interest and meets one of the exceptions specified in that subsection: provision of funding or a funding mechanism, enactment by a vote of two-thirds of the membership in each house, the expenditure is required to comply with a law that applies to all persons similarly situated, or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

The bill's provisions appear to apply to all similarly situated domestic wastewater treatment facilities, and all are required to comply unless the utility is eligible for an exemption. Section 4 of the bill contains a statement that the act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The total statewide cost of compliance with the requirement to eliminate surface water discharge is indeterminate.

C. Government Sector Impact:

Some of the costs of implementation of the bill will likely be borne by municipal utilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.064 of the Florida Statutes.

This bill creates section 403.892 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on February 1, 2021:

- Authorizes utilities to include conceptual plans for potable reuse projects or projects that provide direct ecological or public water supply.
- Provides that the inclusion of conceptual plans for such projects may not extend the timeline for implementing the plan.

- Revises the provisions describing when the rules for the total dissolved solids allowable in aquifer storage and recovery apply to include that the recovered water is used for irrigation purposes.

Provides a statement that injection of reclaimed water meeting certain requirements is not potable reuse.

B. Amendments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/21
Meeting Date

CY
Bill Number (if applicable)

Topic Reclaimed Water

Amendment Barcode (if applicable)

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Job Title

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing LEAGUE OF WOMEN VOTERS FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3-3-2021
Meeting Date

SB64
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Reclaimed Water

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Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Polk County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21
Meeting Date

64
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Reclaimed Water

Name Edward Briggs

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Highland Homes

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21
Meeting Date

64
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Reclaimed Water

Name Edward Briggs

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Email edward@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Homes by WestBay

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/21
Meeting Date

64
Bill Number (if applicable)

Topic Reclaimed Water

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Braden River Utilities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/21
Meeting Date

SB 64
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Reclaimed Water

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Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Lennar Ventures

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21 9:30 CA A2
Meeting Date

64
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Reclaimed Water

Name David Cullen

Job Title

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Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

By the Committee on Environment and Natural Resources; and Senator Albritton

592-01945-21 202164c1

A bill to be entitled

An act relating to reclaimed water; amending s. 403.064, F.S.; requiring certain domestic wastewater utilities to submit to the Department of Environmental Protection by a specified date a plan for eliminating nonbeneficial surface water discharge within a specified timeframe; providing requirements for the plan; requiring the department to approve plans that meet certain requirements; requiring the department to make a determination regarding a plan within a specified timeframe; requiring the utilities to implement approved plans by specified dates; providing for administrative and civil penalties; requiring certain utilities to submit updated annual plans until certain conditions are met; requiring domestic wastewater utilities applying for permits for new or expanded surface water discharges to prepare a specified plan for eliminating nonbeneficial discharges as part of its permit application; requiring the department to submit an annual report to the Legislature by a specified date; providing applicability; providing construction; authorizing the department to convene and lead one or more technical advisory groups; providing that potable reuse is an alternative water supply and that projects relating to such reuse are eligible for alternative water supply funding; requiring the department and the water management districts to develop and execute, by a specified date, a memorandum of agreement for the

592-01945-21 202164c1

coordinated review of specified permits; providing that potable reuse projects are eligible for certain expedited permitting and priority funding; providing construction; creating s. 403.892, F.S.; defining terms; requiring counties, municipalities, and special districts to authorize graywater technologies under certain circumstances and to provide incentives for the implementation of such technologies; providing requirements for the use of graywater technologies; providing that the installation of residential graywater systems meets certain public utility water conservation measure requirements; providing for the applicability of specified reclaimed water aquifer storage and recovery well requirements; providing a declaration of important state interest; providing an effective date.

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

Section 1. Present subsection (17) of section 403.064, Florida Statutes, is redesignated as subsection (18) and amended, and a new subsection (17) is added to that section, to read:

403.064 Reuse of reclaimed water.—

(17) By November 1, 2021, domestic wastewater utilities that dispose of effluent, reclaimed water, or reuse water by surface water discharge shall submit to the department for review and approval a plan for eliminating nonbeneficial surface water discharge within 5 years, subject to the requirements of

this section. The plan must include the average gallons per day of effluent, reclaimed water, or reuse water which will no longer be discharged into surface waters and the date of such elimination; the average gallons per day of surface water discharge which will continue in accordance with the alternatives provided for in subparagraphs (a)2. and 3., or, if applicable to the utility, under paragraph (b); and the level of treatment which the effluent, reclaimed water, or reuse water will receive before being discharged into a surface water by each alternative.

(a) The department shall approve a plan that includes all of the information required under this subsection as meeting the requirements of this section if one or more of the following conditions are met:

1. The plan will result in eliminating the surface water discharge.

2. The plan will result in meeting the requirements of s. 403.086(10).

3. The plan does not provide for a complete elimination of the surface water discharge but does provide an affirmative demonstration that any of the following conditions apply to the remaining discharge:

a. The discharge is associated with an indirect potable reuse project;

b. The discharge is a wet weather discharge that occurs in accordance with an applicable department permit;

c. The discharge is into a stormwater management system and is subsequently withdrawn by a user for irrigation purposes;

d. The utility operates domestic wastewater treatment

facilities with reuse systems that reuse a minimum of 90 percent of a facility's annual average flow, as determined by the department using monitoring data for the prior 5 consecutive years, for reuse purposes authorized by the department; or

e. The discharge provides direct ecological or public water supply benefits, such as rehydrating wetlands or implementing the requirements of minimum flows and minimum water levels or recovery or prevention strategies for a waterbody.

The plan may include conceptual projects under sub-subparagraphs 3.a. and 3.e.; however, such inclusion does not extend the time within which the plan must be implemented.

(b) The department shall also approve a plan if a utility demonstrates that it is technically, economically, or environmentally infeasible for the utility to meet any of the conditions provided in paragraph (a) for the discharge within 5 years after submitting the plan to the department; that implementing such alternatives would create a severe undue economic hardship on the community served by the utility, as demonstrated by the impact to utility ratepayers, a lack of a reasonable return on investment, and the unaffordability of implementing any combination of the alternatives; and that the plan provides a means to eliminate the discharge to the extent feasible.

(c) The department shall approve or deny a plan within 9 months after receiving the plan and, if a plan is approved, must incorporate it in the utility's operating permit issued under s. 403.087. Any applicable environmental and public health protection requirements provided by law or department rule

governing the implementation of the plan must also be incorporated into the permit. A utility may modify the plan by amendment to the permit; however, the plan may not be modified such that the requirements of this subsection are not met, and the department may not extend the time within which a plan will be implemented.

(d) Upon approval of a plan by the department, a utility shall fully implement the approved plan by January 1, 2028; however, if the utility proposes to implement a potable reuse project, provided that the utility has implemented all other components of the plan, the utility has until January 1, 2030, to implement the potable reuse project component of the plan.

(e) If a plan is not timely submitted by a utility or approved by the department, the utility's domestic wastewater treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface water discharge after January 1, 2028. A violation of this paragraph is subject to administrative and civil penalties pursuant to ss. 403.121, 403.131, and 403.141.

(f) A utility that has had a plan approved by the department pursuant to paragraph (b) shall update the plan annually until the utility is able to meet one or more of the conditions provided in paragraph (a). The updated annual plan must affirmatively demonstrate that the utility continues to be unable to meet any of the conditions provided in paragraph (a) because it is infeasible to do so and a severe undue economic hardship still exists as provided in paragraph (b). The department shall review the updated plans to verify that the utility is unable to meet any of the conditions provided in

paragraph (a) and that the utility continues to meet the conditions of paragraph (b). If the department determines that the utility is able to meet any of the conditions and the utility is no longer eligible for approval under paragraph (b), the utility must submit a plan in accordance with paragraph (a) within 9 months after receiving notice of such a determination from the department, and the utility must fully implement such plan within 5 years after receiving an approval by the department.

(g) A domestic wastewater utility applying for a permit for a new or expanded surface water discharge shall prepare a plan in accordance with this subsection as part of that permit application. The department may not approve a permit for a new or expanded surface water discharge unless the plan meets one or more of the conditions provided in paragraph (a).

(h) By December 31, 2021, and annually thereafter, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives which provides the average gallons per day of effluent, reclaimed water, or reuse water which will no longer be discharged into surface waters by the utility and the dates of such elimination; the average gallons per day of surface water discharges which will continue in accordance with the alternatives provided in subparagraphs (a)2. and 3., and the level of treatment which the effluent, reclaimed water, or reuse water will receive before being discharged into a surface water by each alternative and utility; the average gallons per day of effluent, reclaimed water, or reuse water which is proposed to continue to be discharged under paragraph (b) and the level of treatment which

the effluent, reclaimed water, or reuse water will receive before being discharged into a surface water by the utility; and any modified or new plans submitted by a utility since the last report.

(i) This subsection does not apply to any of the following:

1. A domestic wastewater treatment facility that is located in a fiscally constrained county as described in s. 218.67(1).

2. A domestic wastewater treatment facility that is located in a municipality that is entirely within a rural area of opportunity as designated pursuant to s. 288.0656.

3. A domestic wastewater treatment facility that is located in a municipality that has less than $10 million in total revenue, as determined by the municipality's most recent annual financial report submitted to the Department of Financial Services in accordance with s. 218.32.

(j) This subsection does not prohibit the inclusion of a plan for backup discharges pursuant to s. 403.086(8)(a).

(k) This subsection may not be deemed to exempt a utility from requirements that prohibit the causing of or contributing to violations of water quality standards in surface waters, including groundwater discharges that affect water quality in surface waters.

(18)(a) ~~(17)~~ By December 31, 2020, the department shall initiate rule revisions based on the recommendations of the Potable Reuse Commission's 2020 report "Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida." Rules for potable reuse projects must address contaminants of emerging concern and meet or exceed federal and state drinking water quality standards and other applicable

water quality standards. Reclaimed water is deemed a water source for public water supply systems.

(b) The Legislature recognizes that sufficient water supply is imperative to the future of this state and that potable reuse is a source of water which may assist in meeting future demand for water supply.

(c) The department may convene and lead one or more technical advisory groups to coordinate the rulemaking and review of rules for potable reuse as required under this section. The technical advisory group, which shall assist in the development of such rules, must be composed of knowledgeable representatives of a broad group of interested stakeholders, including, but not limited to, representatives from the water management districts, the wastewater utility industry, the water utility industry, the environmental community, the business community, the public health community, the agricultural community, and the consumers.

(d) Potable reuse is an alternative water supply as defined in s. 373.019, and potable reuse projects are eligible for alternative water supply funding. The use of potable reuse water may not be excluded from regional water supply planning under s. 373.709.

(e) The department and the water management districts shall develop and execute, by December 31, 2023, a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The purpose

of the coordinated review is to share information, avoid the redundancy of information requested from the permittee, and ensure consistency in the permit for the protection of the public health and the environment.

(f) To encourage investment in the development of potable reuse projects by private entities, a potable reuse project developed as a qualifying project pursuant to s. 255.065 is:

1. Beginning January 1, 2026, eligible for expedited permitting under s. 403.973.

2. Consistent with s. 373.707, eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

(g) This subsection is not intended and may not be construed to supersede s. 373.250(3).

Section 2. Section 403.892, Florida Statutes, is created to read:

403.892 Incentives for the use of graywater technologies.—

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

(a) "Developer" has the same meaning as in s. 380.031(2).

(b) "Graywater" has the same meaning as in s. 381.0065(2)(e).

(2) To promote the beneficial reuse of water in this state, a county, municipality, or special district shall:

(a) Authorize the use of residential graywater technologies in their respective jurisdictions which meet the requirements of this section, the Florida Building Code, and applicable requirements of the Florida Department of Health and have

received all applicable regulatory permits or authorizations; and

(b) Provide density or intensity bonuses to the developer or homebuilder to fully offset the capital costs of the technology and installation costs.

(3) To qualify for the incentives, the developer or homebuilder must certify to the applicable government entity as part of its application for development approval or amendment of a development order that all of the following conditions are met:

(a) The proposed or existing development has at least 25 single-family residential homes that are either detached or multifamily dwellings. This paragraph does not apply to multifamily projects over five stories in height.

(b) Each single-family residential home or residence will have its own residential graywater system that is dedicated for its use.

(c) It has submitted a manufacturer's warranty or data providing reasonable assurance that the residential graywater system will function as designed and includes an estimate of anticipated potable water savings for each system. A submission of the manufacturer's warranty or data from a building code official, government entity, or research institute that has monitored or measured the residential graywater system that is proposed to be installed for such development shall be accepted as reasonable assurance and no further information or assurance is needed.

(d) The required maintenance of the graywater system will be the responsibility of the residential homeowner or

manufacturer.

(e) An operation and maintenance manual for the graywater system will be supplied to the initial homeowner of each home. The manual shall provide a method of contacting the installer or manufacturer and shall include directions to the residential homeowner that the manual shall remain with the residence throughout the life cycle of the system.

(4) If the requirements of subsection (3) have been met, the county or municipality must include the incentives provided for in subsection (2) when it approves the development or amendment of a development order. The approval must also provide for the process that the developer or homebuilder will follow to verify that such systems have been purchased. Proof of purchase must be provided within 180 days from the issuance of a certificate of occupancy for single-family residential homes that are either detached or multifamily projects under five stories.

(5) The installation of residential graywater systems in a county or municipality in accordance with this section shall qualify as a water conservation measure in a public water utility's water conservation plan pursuant to s. 373.227. The efficiency of such measures shall be commensurate with the amount of potable water savings estimated for each system provided by the developer or homebuilder pursuant to paragraph (3)(c).

Section 3. To further promote the reuse of reclaimed water for irrigation purposes, the rules that apply when reclaimed water is injected into a receiving groundwater that has 1,000 to 3,000 mg/L total dissolved solids are applicable to reclaimed

water aquifer storage and recovery wells injecting into a receiving groundwater of less than 1,000 mg/L total dissolved solids if the applicant demonstrates that it is injecting into a confined aquifer, that there are no potable water supply wells within 3,500 feet of the aquifer storage and recovery wells, that it has implemented institutional controls to prevent the future construction of potable water supply wells within 3,500 feet of the aquifer storage and recovery wells, and that the recovered water is being used for irrigation purposes. The injection of reclaimed water that meets the requirements of this section is not potable reuse. This section may not be construed to exempt the reclaimed water aquifer storage and recovery wells from requirements that prohibit the causing of or contribution to violations of water quality standards in surface waters, including groundwater discharges that flow by interflow and affect water quality in surface waters.

Section 4. The Legislature determines and declares that this act fulfills an important state interest.

Section 5. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 912
INTRODUCER:	Senator Albritton
SUBJECT:	Tolling and Extension of Permits and Other Authorizations During States of Emergency
DATE:	March 1, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Favorable**
2.			EN	
3.			RC	

I. Summary:

Section 252.363, F.S., of the State Emergency Management Act, provides that a state of emergency issued by the Governor for a natural emergency tolls[1] the period remaining for a party to exercise rights under certain permits and other authorization. The period remaining to exercise such rights is suspended for the duration of the state of emergency, plus an additional six months. The emergency tolling and extension afforded by this statute currently applies to the expiration of a development order issued by a local government, a building permit, and a water resource permit issued pursuant to Part IV of ch. 373, F.S.

SB 912 specifies additional permits and authorizations that may be tolled and extended during a state of emergency. These include consumptive use of water permits issued under Part II of ch. 373, F.S., and development permits and development agreements.

The bill applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020. Under this retroactive application, existing permits and authorizations added by the bill may receive the emergency tolling and extension for the state of emergency declared in response to the COVID-19 pandemic.

II. Present Situation:

The State Emergency Management Act

The State Emergency Management Act in ch. 252, F.S., describes how Florida prepares, responds, recovers, and mitigates emergencies. Chiefly, this Act endows the Governor with authority to declare a state of emergency.[2] In a state of emergency, the Governor and local

[1] "[t]o suspend or stop temporarily as the statute of limitations is tolled during the defendant's absence from the jurisdiction and during the plaintiff's minority." *Toll*, Black's Law Dictionary (6th ed. 1990).

[2] Section 252.36(2), F.S.

governments have broad power to perform necessary actions to ensure the health, safety, and welfare of Floridians.[3] A state of emergency grants the Governor with additional statutory authority to perform actions not otherwise allowed by law, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation. To facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.[4] The Governor may delegate this and other emergency powers to executive agencies and local governments.[5]

Declaration and Duration of a State of Emergency

Florida law does not condition the Governor's ability to declare a state of emergency on any specific prerequisite other than the existence of an actual or impending "emergency."[6] The Governor declares a state of emergency by issuing an executive order to that effect. The declaration of a state of emergency activates local emergency management plans, which allow for state and intergovernmental assistance such as the distribution of necessary supplies and equipment,[7] and vests authority in the Governor as commander in chief of the Florida National Guard and "other forces available for emergency duty."[8]

The State Emergency Management Act does not provide a statutory limit on the duration of a state of emergency. Section 252.36(2), F.S., states that "[t]he state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor." Alternatively, a state of emergency may also be terminated by concurrent resolution of the Florida Legislature.[9]

Emergency Tolling and Extension of Permits and Other Authorizations

Under s. 252.363 F.S., when the Governor declares a state of emergency for a natural emergency,[10] the period to exercise rights under a permit or other authorization is tolled (expiration date extended) for the duration of the emergency. The period remaining to exercise such rights is extended for six months in addition to the tolled period.

The emergency tolling and extension expressly applies to the following permits and authorizations:

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[3] *Id* at (5)(g). *See also Miami-Dade County v. Miami Gardens Square One, Inc.*, --- So.3d ----, 2020 WL 6472542 (Fla. 3rd DCA Nov. 4, 2020).
[4] *Id* at (1)(b).
[5] Section 252.35(2)(v), F.S.
[6] Section 252.36(2), F.S. An “emergency” is defined as “any occurrence, or threat thereof, . . . which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.”
[7] *Id.* at (3)(b).
[8] *Id.* at (4).
[9] *Id.* at (2).
[10] The Florida Supreme Court has ruled that a pandemic is a “natural emergency” within the meaning of s. 252.34(8), F.S. (“Natural emergency” means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake.) *See Abramson v. DeSantis*, Case No.: SC20-646, 202 WL 3464376 (Fla. June 25, 2020).

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of a permit issued by the Department of Environmental Protection or a water management district under ch. 373, part IV, F.S.; or
- Buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.[11]

To receive the tolling and extension of a permit, the holder must follow the procedure outlined in s. 252.363(1)(b), F.S. Specifically, within 90 days after the emergency declaration's termination, the holder must provide written notice, identifying the specific authorizations qualifying for the extension, to the issuing authority. Once the holder has satisfied this procedure, the tolling and extension are granted as a matter of law, and no further action on the part of the issuing authority is needed.[12]

Section 252.363(1)(d), F.S., expressly provides that the tolling and extension of permits and other authorizations does not apply to the following grants:

- A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies;
- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers;
- The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action; and
- A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted in this section.

The COVID-19 State of Emergency

In response to the COVID-19 pandemic, Governor DeSantis officially declared a state of emergency on March 9, 2020, via Executive Order 20-52.[13] The state of emergency declared by Executive Order 20-52 has been continuously renewed by Governor DeSantis since the initial declaration. The next expiration date by which the state of emergency must be renewed is April 26, 2021.[14]

[11] Section 252.363(1)(a), F.S.

[12] "Nothing in the statute imposes an obligation on the municipality to take any action extending development orders, rather, it appears that the Legislature intended to place that burden on the holder of the permit who must provide written notification to the issuing authority of his or her intent to exercise the tolling and extension of the statute." *See* AGO 2012-13, *available at:* http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDBEC852579EB00743D48 (last visited Feb. 22, 2021).

[13] Executive Order 20-52 (Mar. 9, 2020), *available at:* https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited Feb. 23, 2021).

[14] The state of emergency declared in Executive Order 20-52, as extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, and 20-316 will be extended for 60 days following the issuance of this order for the entire State of Florida. *See* Executive Order 21-45 (Feb. 26, 2021), *available at:* https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-45.pdf (last visited Mar. 1, 2021).

The Florida Water Resources Act

Florida law addresses water resources in ch. 373, F.S. This area of law creates a comprehensive regulatory system that provides more certainty in water rights, water uses, planning, and regulation to protect the quality and quantity of Florida's water resources. The Florida Department of Environmental Protection (DEP) and the state's five water management districts[15] are provided statutory authority to ensure effective implementation of Florida's water resource laws.[16] These statutory responsibilities include various aspects of the statewide permitting system relating to water resources.

Permitting of Consumptive Uses of Water, Part II of ch. 373, F.S.

Part II of ch. 373, F.S., establishes the permitting system for consumptive uses of water. The DEP and Florida's five water management districts are tasked with various aspects of the consumptive use permit (CUP) system.

A CUP allows the holder to withdraw a specified amount of water from the ground (aquifers) or a canal, lake, or river (surface water) for reasonable-beneficial uses. [17] The water can be used for public supply (drinking water), agricultural and nursery plant irrigation, golf course irrigation, commercial use, dewatering/mining activities, and power. Water uses not covered by CUPs include domestic uses, home irrigation, and water used for fighting fires. CUPs require water conservation to prevent wasteful uses, require reclaimed water instead of higher-quality groundwater where appropriate, and set limits on the amount of water that can be withdrawn.[18]

The precise duration of a CUP largely depends on circumstances and facts related to the specific water resource and water use.[19] Notwithstanding, s. 373.236(1), F.S., provides in part that CUPs "shall be granted for a period of 20 years[.]" Under s. 373.239(3), F.S., all CUP "renewal applications shall be treated under this part in the same manner as the initial permit application."

Some activities requiring a CUP cannot be issued until an applicable permit under Part IV of ch. 373, F.S., is complete and receives staff recommendations for approval.[20]

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[15] Florida's five districts are the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District. *See* Florida Department of Environmental Protection, *Water Management Districts*, *available at:* https://floridadep.gov/water-policy/water-policy/content/water-management-districts (last visited Feb. 23, 2021).
[16] Section 373.056, F.S.
[17] *See* South Florida Water Management District, *Consumptive Water Use Permits*, https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits (last visited Jan. 23, 2021).
[18] Florida Department of Environmental Protection, *2021 Florida Water Plan*, *available at:* https://fdep.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c. (last visited Feb. 23, 2021).
[19] *See* s. 373.236, F.S.
[20] Florida Department of Environmental Protection, *2021 Florida Water Plan*, *available at:* https://fdep.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c. (last visited Feb. 23, 2021).

Management and Storage of Surface Water, Part IV of ch. 373, F.S.

Part IV of ch. 373, F.S., provides DEP and Florida's five water management districts with the statutory authority to collectively regulate structures or construction affecting surface water resources. The DEP and water management districts proscribe rules and regulations related to the management and storage of surface water and administer surface water permitting.[21]

Surface water management and storage addressed in Part IV of ch. 373, F.S., includes the construction, alteration, operation, maintenance, abandonment, and removal of water management systems, such as dams, impoundments, reservoirs, works, and appurtenant works.[22] Furthermore, projects which involve dredging, filling, and activities that create canals, ditches, culverts, impoundments, fill roads, buildings, and other impervious surfaces affecting surface water are subject to the requirements of Part IV of ch. 373, F.S., and are within the oversight of the DEP and water management districts.[23]

Permitting thresholds and requirements may vary between water management districts. Water quality and quantity considerations and general environmental concerns will be addressed in the permit application process. Permit revocation or modification of a permit may occur if the permit conditions or the statutory mandates are not met. Permit duration will vary depending on the project.[24]

Community Planning and Development

The Community Planning Act[25] largely governs community planning and development in Florida. The Community Planning Act details how local governments create, adopt, and maintain their local comprehensive plans, which address a broad array of property rights, land use, and planning aspects of the land area within their jurisdiction.[26] A crucial aspect of a local government's community planning activities involves the granting and denying of rights related to the use and development of real property.

Development Permits and Orders

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."[27] When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of

[21] *See* Florida Department of Environmental Protection, *Division of Water Resource Management*, *available at:* https://floridadep.gov/water (last visited Feb. 23, 2021).
[22] *See* Environmental Resource Permit Applicant's Handbook, *available at:* https://www.flrules.org/gateway/readRefFile.asp?filename=010_4a--AHI_thruAppendix_D_ADA_3-5-14.doc&refId=3174 (last visited Feb. 23, 2021).
[23] *Id.*
[24] *Id.*
[25] Part II of ch. 163, F.S.
[26] Section 163.3167(1)(b), F.S.
[27] Section 163.3164(14), F.S.

permitting the development of land."[28] Once a local government has officially granted or denied a development permit, the official action constitutes a development order.[29]

The Florida Local Government Development Agreement Act

In furtherance of community planning and development, the Legislature enacted the Florida Local Government Development Agreement Act.[30] This Act standardizes the procedures and requirements needed for a local government to enter into a development agreement.[31] A development agreement is a contract between a local government and a property owner/developer. These agreements provide a property owner/developer with vested rights applicable to a property. Typically, local governments provide these vested rights in exchange for public benefits provided by the property owner/developer.[32] Under s. 163.3229, F.S., a development agreement's duration may not exceed 30 years unless the local government and property owner/developer mutually consent to extend the agreement.

III. Effect of Proposed Changes:

Section 1 amends s. 252.363, F.S., to provide additional permits and authorizations subject to tolling and extension during a state of emergency. Under the bill, permits issued by the DEP or a water management district under Part II of ch. 373, F.S., may be tolled and extended during a state of emergency. Additionally, the bill provides that development permits and development agreements authorized by state law, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental entity, may be tolled and extended during a state of emergency.

Section 2 provides that the bill's amendments apply retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020. Thus, permits or authorizations added to the statute may receive tolling and extension for the state of emergency Governor DeSantis declared on March 9, 2020, in response to the COVID-19 pandemic.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[28] *Id.* at (16).
[29] *See id.* at (15).
[30] *See* s. 163.3220, F.S.
[31] *Id.*
[32] *See Preserve Palm Beach Political Action Committee v. Town of Palm Beach*, 50 So.3d 1176 (Fla. 4th DCA 2010).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The holders of permits added to the emergency tolling and extension statute may realize a nominal net positive fiscal impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 252.363 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/03/2021
Meeting Date

912
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 912

Name Jeffrey Woodburn

Job Title

Address 204 South Monroe Street
Street

Phone 850-222-8900

Tallahassee FL 32301
City *State* *Zip*

Email jw@cardenaspartners.com

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

By Senator Albritton

26-00403A-21 2021912__

A bill to be entitled

An act relating to the tolling and extension of permits and other authorizations during states of emergency; amending s. 252.363, F.S.; adding consumptive use permits issued under part II of ch. 373, F.S., and specified development permits and development agreements to the list of permits and other authorizations that are tolled and extended during a state of emergency declared by the Governor for a natural emergency; providing for retroactive application; providing an effective date.

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

Section 1. Subsection (1) of section 252.363, Florida Statutes, is amended to read:

252.363 Tolling and extension of permits and other authorizations.—

(1)(a) The declaration of a state of emergency issued by the Governor for a natural emergency tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the tolled period. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.

2. The expiration of a building permit.

26-00403A-21 2021912__

3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part II or part IV of chapter 373.

4. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).

5. Development permits and development agreements authorized by state law, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental agency.

(b) Within 90 days after the termination of the emergency declaration, the holder of the permit or other authorization shall notify the issuing authority of the intent to exercise the tolling and extension granted under paragraph (a). The notice must be in writing and identify the specific permit or other authorization qualifying for extension.

(c) If the permit or other authorization for a phased construction project is extended, the commencement and completion dates for any required mitigation are extended such that the mitigation activities occur in the same timeframe relative to the phase as originally permitted.

(d) This subsection does not apply to:

1. A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies.

2. A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

3. The holder of a permit or other authorization who is

determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action.

4. A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would be in conflict with the extensions granted in this section.

Section 2. The amendments made to s. 252.363, Florida Statutes, by this act shall apply retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 376
INTRODUCER:	Senator Gibson
SUBJECT:	Jacksonville Transportation Authority Leases
DATE:	February 22, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	Paglialonga	Ryon	CA	**Favorable**
3.			RC	

I. Summary:

SB 376 addresses the authorization of the Jacksonville Transportation Authority (JTA) to enter into lease agreements. The JTA is currently authorized to enter into various lease agreements, including leases involving real property. Unlike other transportation and expressway authorities, JTA is restricted to real property leases with a term or duration of 40 years or less. The bill removes this 40-year limitation on the term of a lease agreement into which the JTA is authorized to enter.

The bill presents no immediate fiscal impact to the JTA or state or local revenues. See Section V., "Fiscal Impact Statement."

The bill takes effect July 1, 2021.

II. Present Situation:

Jacksonville Transportation Authority

Chapter 349, F.S., creates the JTA as a body politic and corporate and an agency of the state.[1] The governing body of the JTA consists of seven members: three appointed by the Governor and confirmed by the Senate; three appointed by the City of Jacksonville Mayor, subject to confirmation by the City of Jacksonville Council; and a seventh member who is the Florida Department of Transportation District 2 Secretary. The six appointed members must be residents and qualified electors of Duval County and generally serve for four-year terms.[2]

[1] Section 349.03(1), F.S.
[2] Section 349.03(2), F.S.

The JTA is authorized to acquire, hold, construct, improve, maintain, operate, and own the Jacksonville Expressway System,[3] but the authority also has multi-modal responsibilities. The JTA designs and constructs bridges and highways[4] and provides varied mass transit services including, but not limited to, express and regular bus service;[5] a downtown Skyway Monorail;[6] the St. Johns River Ferry;[7] the Gameday Xpress for various sporting events;[8] inter-county service between points in Baker, Clay, Nassau, Putnam, and St. Johns Counties;[9] and paratransit service.[10]

JTA Leasing Authority

Current law authorizes the JTA to enter into lease agreements, including, but not limited to the authority to lease:

- As a lessor, the Jacksonville Expressway System;[11] a mass transit system employing motor cars or buses, street railway systems beneath the surface, on the surface, or above the surface, or any other means determined useful to the rapid transfer of large numbers of people among the locations of residence, commerce, industry, and education in Duval County.[12]
- Public transportation projects, such as express bus services; bus rapid transit services; light rail, commuter rail, heavy rail, or other transit services; ferry services; transit stations; park-and-ride lots; transit-oriented development nodes; or feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities, that are intended to address critical transportation needs or concerns in the Jacksonville, Duval County, metropolitan area.[13]
- As lessee or lessor, and use any franchise or any property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it, including, without limitation, land, buildings, and other facilities located within or comprising transit-oriented developments which enhance the use or utility of transportation facilities owned or constructed by the authority and administrative and other buildings for the use of the authority in carrying out its powers and obligations.[14]

---

[3] Section 349.04(1)(a), F.S.
[4] *See* the JTA website for a list of projects, available at JTA Mobility Works - Projects (jtafla.com) (retrieved January 15, 2021).
[5] *See* the JTA website, *Riding JTA*, available at Jacksonville Transportation Authority - Riding JTA (jtafla.com) (retrieved January 15, 2021).
[6] *See* the JTA website, *Skyway*, available at Jacksonville Transportation Authority - Skyway (jtafla.com) (retrieved January 15, 2021).
[7] *See* the JTA website, *St. Johns River Ferry*, available at JTA Ferry - St. John's River Ferry | Schedule, Costs, Information, Directions | JTA (jtafla.com) (retrieved January 15, 2021).
[8] *See* the JTA website, *Gameday Xpress*, available at Jacksonville Transportation Authority - Gameday Xpress (jtafla.com) (retrieved January 15, 2021).
[9] *See* the JTA website, *Regional Services*, available at Jacksonville Transportation Authority - Regional Services (jtafla.com) (retrieved January 15, 2021).
[10] *See* the JTA website, *Paratransit*, available at Jacksonville Transportation Authority - Paratransit (jtafla.com) (retrieved January 15, 2021). Some of the JTA services listed have been modified or suspended due to the COVID virus.
[11] Section 349.04(1)(a), F.S.
[12] Section 349.04(1)(b), F.S.
[13] Section 349.04(1)(e), F.S.
[14] Section 349.04(2)(c), F.S.

Various transportation, bridge, and expressway authorities are granted the power under current law to enter into agreements for similar or other types of leases, such as the South Florida Regional Transportation Authority,[15] the Central Florida Regional Transportation Authority,[16] the Tampa Bay Area Regional Transit Authority,[17] the Tampa-Hillsborough Expressway Authority,[18] and the Santa Rosa Bay Bridge Authority.[19] The authorization in each of these instances, however, is open-ended and not limited in duration. The duration for which the Central Florida Expressway Authority is authorized to enter into lease agreements is for a term not exceeding 99 years.[20]

Standing alone among these various transportation, bridge, and expressway authorities, the JTA is the only such entity with leasing authority limited to a duration of 40 years.

The JTA advises removal of the 40-year limitation is needed "to be able to move forward with advancing properties that will impact the economy in a positive way, by giving [the JTA] the authority to enter into what is a standard lease term [99 years] across the investment industry in order to secure financing for projects."[21]

III. Effect of Proposed Changes:

The bill amends s. 349.04(2)(d), F.S., to remove the 40-year limitation on the term of a lease into which the Jacksonville Transportation Authority (JTA) is authorized to enter. With the exception of the Central Florida Expressway Authority, the bill grants to the JTA the same authority currently granted to various other transportation, expressway, and bridge authorities with respect to leasing.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[15] Section 343.54(1)(b) and (3)(d), (e), and (i), F.S.
[16] Section 343.64(1)(b) and (3)(d), (e), and (i), F.S.
[17] Section 343.922(5)(d), (e), and (i), F.S.
[18] Section 348.54(3), F.S.
[19] Section 348.968(2)(c), and (d), F.S.
[20] Section 348.754(1)(a) and (2)(c), F.S.
[21] *See* email to committee staff, January 14, 2021. (On file in the Senate Transportation Committee.)

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unknown.

C. Government Sector Impact:

The bill presents no immediate fiscal impact to the JTA; rather, the bill removes the 40-year limitation on the term of leases into which the JTA may enter. The details and terms of any potential lease are currently unknown. The bill otherwise presents no immediate fiscal impact on state or local revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 349.04(2)(d) of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

Price, Cindy

From: Jim Boxold <Jim@cccfla.com>
Sent: Thursday, January 14, 2021 5:18 PM
To: Price, Cindy
Subject: Re: SB 376 - Jacksonville Transportation Authority leases
Attachments: Quick Facts - Amendment 349.04(2)(d).docx

Cindy-

Good talking with you. See the document attached. Happy to provide whatever additional I formation that would be helpful. Thank you!

Jim Boxold | Capital City Consulting

> On Jan 14, 2021, at 4:05 PM, Price, Cindy <PRICE.CINDY@flsenate.gov> wrote:
>
> Hello – I hope you're doing well and uneventfully sliding past the COVID crisis. I left a message for you at your office yesterday but thought I should also send an email. I am working on the referenced bill and need some information. Would you please give me a call at your earliest convenience or direct me to an appropriate person?
>
> Thank you!
> Cindy
>
> Cindy Price
> Chief Legislative Analyst
> Senate Transportation Committee
> 850-487-5223

Amendment to Florida Statute 349.04(2)(d)

Proposed Amendment

SECTION 349.04(2)(d) – Purposes and Powers.

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the right and power:

(a) ...
[...]
(d) To enter into and make leases ~~for terms not exceeding 40 years,~~ as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

Justification

- This provision has stood unchanged since it was created, and is not contemporary with the powers and duties given to JTA peer agencies in the State of Florida.

- The Florida Statutes that governs public transit, regional transportation, and expressway authorities all include similar provisions giving the agency the authority to enter and/or make leases with either no restrictions as to terms, or when a limit is mentioned it is up to 99-years.

    - In fact, other public bodies that the government has oversight over have in their statutes lease term provisions of 99-year, such as the Metropolitan Planning Organizations and Universities.

- The JTA needs this amendment to be able to move forward with advancing properties that will impact the economy in a positive way, by giving us the authority to enter into what is a standard lease term across the investment industry in order to secure financing for projects.

- Eliminating this requirements, puts JTA at par with the industry. This is consistent with what has been given to other agencies that function in the same service space as JTA.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/21
Meeting Date

SB 376
Bill Number (if applicable)

Topic Jacksonville Transportation Authority

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Consultant

Address 124 W. Jefferson St.
Street

Phone 222-9875

Tallahassee FL 32303
City *State* *Zip*

Email Andrew@ccfla.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Jacksonville Transportation Authority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

By Senator Gibson

6-00696-21 2021376__

A bill to be entitled

An act relating to Jacksonville Transportation Authority leases; amending s. 349.04, F.S.; removing a limitation on the term of a lease into which the authority may enter; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section 349.04, Florida Statutes, is amended to read:

349.04 Purposes and powers.—

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the right and power:

(d) To enter into and make leases ~~for terms not exceeding 40 years~~, as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

Section 2. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 496
INTRODUCER:	Community Affairs Committee and Senator Perry
SUBJECT:	Growth Management
DATE:	March 3, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 496 amends various sections of Florida law concerning growth management. The bill makes the following changes to current law:

- Provides that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, must incorporate development orders existing before the plan's effective date. The plan may not impair the completion of a development with such a development order and must vest the density and intensity approved by the development order.
- Requires a local comprehensive plan to have a property rights element, which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during the next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, F.S.
- Specifies that a party, or its successor in interest, may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, as long as the amendment or cancellation does not directly modify the allowable uses or entitlements of such owner's property.
- Requires the Florida Department of Transportation, when selling a parcel of land, to provide a right of first refusal to the prior owner of the land and provides a process for implementing this right of first refusal.

- Allows agreements pertaining to existing developments of regional impact that are classified as essentially built out, and were valid on or before April 6, 2018, to be amended, including amendments exchanging land uses under certain circumstances.

The bill provides a declaration that the act fulfills an important state interest.

The effective date of this bill is July 1, 2021.

II. Present Situation:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by the corresponding Effect of Proposed Changes. The below discussion tracks the order of sections contained in the bill.

III. Effect of Proposed Changes:

Comprehensive Plans and Preexisting Development Orders (Section 1)

Present Situation

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.[1] The Community Planning Act governs how local governments create and adopt their local comprehensive plans. A comprehensive plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.[2]

Local comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the comprehensive plan's effective date.[3] The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[4] and intensity[5] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[6]

Effect of Proposed Changes

The bill amends s. 163.3167, F.S., to provide that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, and all land development regulations adopted to implement the plan, must incorporate development orders existing before

[1] *See* ch. 2011-139, s. 4, Laws of Fla.
[2] *Payne v. City of Miami*, 52 So. 3d 707, 737 (Fla. 3rd DCA 2010)
[3] *See* ch. 2019-165, s. 3, Laws of Fla.
[4] Section 163.3164(12), F.S., defines the term "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.
[5] Section 163.3164(22), F.S., defines the term "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.
[6] Sections 163.3167(3) and 163.3203, F.S.

the plan's effective date, may not impair the completion of a development with such a development order, and must vest the density and intensity approved by such a development order.

Private Property Rights and the Community Planning Act (Section 2)

Present Situation

Constitutional Private Property Rights

Under Article I, section 2 of the Florida Constitution's Declaration of Rights, individuals are guaranteed the right "*to acquire, possess, and protect property*."[7] Although these property rights are enshrined in the Florida Constitution, the state and local governments may curtail these rights through sovereign police powers. State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers "not delegated to the United States."[8] Under this provision, states have police powers to establish and enforce laws protecting the welfare, safety, and health of the public.[9] Regarding private property rights, courts have continuously held that "even constitutionally protected property rights are not absolute, and 'are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are necessary to secure the health, safety, good order, [and] general welfare.'"[10]

When a state or political subdivision exercises police powers to affect property rights, citizens are provided two constitutional challenges to oppose the governmental act. The first challenge is that the government may have acted arbitrarily in violation of due process.[11] In the *City of Coral Gables v. Wood*, the court ruled that "[a] zoning ordinance will be upheld unless it is clearly shown that it has no foundation in reason and is a mere arbitrary exercise of power without reference to public health, morals, safety or welfare."[12] In the first constitutional challenge, government action is simply invalid under the Constitution's due process clause.[13]

The second challenge is whether the government so intrusively regulated the use of property in pursuit of legitimate police power objectives to take the property without compensation in violation of the just compensation clause (takings clause).[14] When reasoning whether a regulation or land use plan constitutes a taking of a landowner's property, the operative inquiry is whether the landowner has been deprived of all or substantially all economic, beneficial or

[7] FLA. CONST. art. I s. 2.
[8] U.S. CONST. amend. X.
[9] "The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power." *See NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).
[10] *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64, 68 (Fla. 1990) (quoting *Golden v. McCarthy*, 337 So.2d 388, 390 (Fla. 1976)).
[11] *See* U.S. CONST. amend. V, XIV, s. 1; FLA. CONST. art. I s. 9; *see also Fox v. Town of Bay Harbor Islands*, 450 So.2d 559, 560 (Fla. 3rd DCA 1984).
[12] *City of Coral Gables v. Wood*, 305 So.2d 261, 263 (Fla. 3rd DCA 1974).
[13] *See Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).
[14] *See* FLA. CONST. art X, s. 6.

productive use of the property.[15] In the second constitutional challenge, the government action is invalid absent compensation. So the government may either abandon its regulation or validate its action by payment of appropriate compensation to the landowner.[16]

Since these constitutional protections were enacted, the scale of government and land use regulation has considerably expanded. Still, courts have been reluctant to afford relief to property owners under these constitutional challenges.[17] Thus, property owners who experienced property devaluation or economic loss caused by government regulation were seldom compensated.[18]

In 1995, the Legislature addressed the ineffectiveness of these constitutional challenges to government regulation by enacting ch. 70, F.S., which is known as the "Bert J. Harris, Jr., Private Property Rights Protection Act" (hereinafter the "Harris Act").[19]

The Bert J. Harris, Jr., Private Property Rights Protection Act

The Harris Act[20] entitles private property owners to relief when a governmental entity's specific action inordinately burdens the owner's existing use of the real property or a vested right to a specific use of the real property.[21] The Harris Act recognizes that the excessive burden, restriction, or limitation on private property rights as applied may fall short of a taking or due process violation under the State Constitution or the U.S. Constitution.[22] The law does not apply to the U.S. government, federal agencies, or state or local government entities exercising delegated U.S. or federal agency powers.[23]

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity's development order or enforcement action is unreasonable or unfairly burdens the use of the owner's real property,[24] or when a government entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[25] A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.[26]

The Community Planning Act

The Harris Act is balanced against the state's sovereign rights. The state needs to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth

[15] *See Taylor v. Village of North Pam Beach*, 659 So.2d 1167 (Fla. 4th DCA 1995).
[16] *See Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).
[17] *See* Cooper, Weaver, and ‘Connor, The Florida Bar, Florida Real Property Litigation, *Statutory Private Property Rights Protection*, s.13.1 (2018).
[18] *Id.*
[19] *Id.*
[20] Section 70.001(1), F.S.
[21] Section 70.001(2), F.S.
[22] Section 70.001(1), F.S.
[23] Section 70.001(3)(c), F.S.
[24] Section 70.51(3), F.S.
[25] Section 70.45(2), F.S.
[26] Section 70.45(1)(c), F.S.

and development.[27] Statutes govern how the state and local governments direct land development[28] with the State Comprehensive Plan and local comprehensive plans adopted by counties and municipalities as required by statute.[29]

The Legislature expressly intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.[30] The authority provided by the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and leave property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.[31]

The State Comprehensive Plan must provide long-range policy guidance for the state's orderly social, economic, and physical growth.[32] The State Comprehensive Plan's goals and policies must be consistent with the protection of private property rights.[33] The State Comprehensive Plan must be reviewed every two years by the Legislature, and legislative action is required to implement its policies unless specifically authorized otherwise in the Constitution or law.[34]

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development that reflects community commitments to implement the plan and its elements.[35] Plans are also required to identify procedures for monitoring, evaluating, and appraising the plan's implementation.[36] Plans may include optional elements[37] but must include the following nine elements:

- Capital improvements;[38]
- Future land use plan;[39]
- Intergovernmental coordination;[40]
- Conservation;[41]
- Transportation;[42]

[27] *See* s. 186.002(1)(b), F.S.
[28] *See* ch. 186, 187, and 163, part II, F.S.
[29] Section 163.3167(1)(b), F.S.
[30] *See* s. 163.3161(10), F.S.; *see also* s. 187.101(3), F.S.
[31] *Id*.
[32] Section 187.101(1), F.S.
[33] Section 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.
[34] Section 187.101(1), F.S.
[35] Section 163.3177(1), F.S.
[36] Section 163.3177(1)(d), F.S.
[37] Section 163.3177(1)(a), F.S.
[38] Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.
[39] Section 163.3177(6)(a), F.S.
[40] Section 163.3177(6)(h), F.S.
[41] Section 163.3177(6)(d), F.S.
[42] Section 163.3177(6)(b), F.S.

- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;[43]
- Recreation and open space;[44]
- Housing;[45] and
- Coastal management (for coastal local governments).[46]

All local government land development regulations must be consistent with the local comprehensive plan.[47] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[48] However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.[49]

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every 7 years to reflect any changes in state requirements.[50] Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[51] A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[52]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[53] Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process to adopt comprehensive plans.[54] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[55] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[56]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[57] about the proposed amendment before sending it in for comment from several reviewing agencies,[58] including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of Transportation.[59] Local governments or government agencies within the state filing a written request with the governing

[43] Section 163.3177(6)(c), F.S.
[44] Section 163.3177(6)(e), F.S.
[45] Section 163.3177(6)(f), F.S.
[46] Section 163.3177(6)(g), F.S.
[47] Section 163.3194(1)(b), F.S.
[48] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[49] Section 189.081(1)(b), F.S.
[50] Section 163.3191(1), F.S.
[51] Section 163.3191(2), F.S.
[52] Section 163.3161(12), F.S.
[53] Section 163.3184(3)(a), F.S.
[54] Section 163.3184(2)(c), F.S.
[55] Section 163.3184(4)(a), F.S.
[56] Section 163.3164(44), F.S.
[57] Sections 163.3184(4)(b) and (11)(b)1., F.S.
[58] *See* s. 163.3184(1)(c), F.S., for a complete list of all reviewing agencies.
[59] Section 163.3184(4)(b) and (c), F.S.

body are also entitled to copies of the amendment.[60] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[61]

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.[62] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[63] Within 180 days of receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.[64] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the second public hearing.[65]

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law[66] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[67] A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.[68] Unless the local comprehensive plan amendment is challenged, it may go into effect pursuant to the notice of intent.[69] If there is a timely challenge, then the plan amendment will not take effect until DEO or the Administration Commission[70] enters a final order determining whether the adopted amendment complies with the law.[71]

Effect of Proposed Changes

The bill amends s. 163.3177(6), F.S., to require local governments to incorporate a private property rights element into their comprehensive plans and respect private property rights in local decision making.

The bill provides a model statement of property rights, and local governments may incorporate the suggested language directly into their comprehensive plan. The property rights provided in

[60] Section 163.3184(4)(b), F.S.
[61] Section 163.3184(4)(c), F.S.
[62] Section 163.3184(4)(d)1., F.S.
[63] Section 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. *See* s. 163.3184(4)(d)2., F.S.
[64] Sections 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. *See* s. 163.3184(4)(e)1., F.S.
[65] Section 163.3184(4)(e)2., F.S.
[66] Section 163.3184(4)(e)3. and 4., F.S.
[67] Section 163.3184(4)(e)4., F.S.
[68] *Id*.
[69] Section 163.3184(4)(e)5., F.S.
[70] Section 14.202, F.S., provides that the Administration Commission is composed of the Governor and the Cabinet (Section 20.03, F.S., provides that "Cabinet" means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture).
[71] *Id*.

the bill include the following five acknowledgments that a local government should consider in the decision-making process:

- The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights;
- The right of the property owner to the quiet enjoyment of the property, to the exclusion of all others;
- The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances;
- The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property; and
- The right of the property owner to dispose of his or her property through sale or gift.

Each local government must adopt its own property rights element in its comprehensive plan by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, F.S. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in the bill.

Local Government Development Agreements (Section 3)

Present Situation

Local governments may enter into development agreements with developers.[72] A "development agreement" is a "contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[73]

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[74] A development agreement must include the following:[75]

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;
- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who will provide such facilities, the date that any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;

[72] Section 163.3220(4), F.S.; *see also* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[73] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[74] Section 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[75] Section 163.3227(1), F.S.

- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

A development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.[76] Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the circuit court clerk in the county where the local government is located. A development agreement will not be effective until properly recorded in the public records of the county.[77]

The requirements and benefits in a development agreement are binding and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,[78] also known as a successor in interest.[79] A development agreement may be amended or canceled by the parties' mutual consent to the agreement or by their successors in interest.[80]

Effect of Proposed Changes

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property that were originally subject to the development agreement unless the amendment, modification, or termination directly modifies the allowable uses or entitlements of an owner's property.

Department of Transportation Disposal of Real Property (Section 4)

Present Situation

The Florida Department of Transportation ("DOT") is authorized to convey any land, building, or other real or personal property it acquired if it determines the property is not needed for a transportation facility.[81] In such cases, DOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means it deems to be in its best interest and must advertise the disposal of any property valued over $10,000.[82]

[76] Section 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[77] Section 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[78] Section 163.3239, F.S.
[79] A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. BLACK'S LAW DICTIONARY 1473 (8th ed. 2004).
[80] Section 163.3237, F.S.
[81] Section 337.25(4), F.S.
[82] *Id.*

DOT may not sell an unneeded property for a price less than DOT's current estimate of value, unless:

- The property was donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, then a governmental entity in whose jurisdiction the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.[83]
- The property is to be used for a public purpose, then the property may be conveyed without consideration to a governmental entity.[84]
- The property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, then DOT may negotiate to sell such property as replacement housing.[85]
- DOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes DOT to significant liability risks, then DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.[86]

If, in DOT's discretion, a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.[87] Further, in cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, DOT may first offer the property ("right of first refusal") to the local government or other political subdivision in whose jurisdiction the property is situated.[88]

Effect of Proposed Changes

Notwithstanding any provision of s. 337.25, F.S., to the contrary, the bill requires DOT to afford a right of first refusal to the previous property owner from whom DOT originally acquired the property for DOT's current estimate of value if the property is to be used for a public purpose, requires significant costs to be incurred, or exposes DOT to significant liability risks, or if DOT determines that a sale to any person other than an abutting property owner would be inequitable. Such an offer must be made in writing, by certified mail or hand delivery, and is effective upon receipt by the previous property owner. DOT must provide the previous property owner with at least 30 days to exercise the right of first refusal. If the previous property owner wants to purchase the property, he or she must send notice to DOT by certified mail or hand delivery, and such acceptance is effective upon dispatch. Once the right is exercised, the previous property owner has at least 90 days to close on the property.

[83] Section 337.25(4), F.S.
[84] Section 337.25(4)(b), F.S.
[85] Section 337.25(4)(c), F.S.
[86] Section 337.25(4)(d), F.S.
[87] Section 337.25(4)(e), F.S.
[88] Section 337.25(4), F.S.

Developments of Regional Impact (Section 5)

Present Situation

A Development of Regional Impact (DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[89]

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[90] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[91]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[92] until the repeal of the requirements for state and regional reviews in 2018.[93] Local governments where a DRI is located are responsible for implementing and amending existing DRI agreements and development orders.[94]

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date, the date to which the local government had agreed not to impose downzoning, unit density reduction, or intensity reduction, unless:[95]

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or
- The change is clearly established by the local government to be essential to the public health, safety, or welfare.

The local government must review any proposed change to a previously approved DRI based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[96] The local government must review a proposed change reducing the originally approved height, density, or intensity of the development based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change

[89] Section 380.06(1), F.S.
[90] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).
[91] Chapter 72-317, s. 6, Laws of Fla.
[92] *See* ch. 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).
[93] Chapter 2018-158, Laws of Fla.
[94] Sections 380.06(4)(a) and (7), F.S.
[95] Section 380.06(4)(a), F.S.
[96] Section 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.

would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.[97]

DRI agreements classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses were eliminated.[98]

For such agreements, a DRI is essentially built out if:[99]

- All the mitigation requirements in the development order were satisfied, all developers complied with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or
- The project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of Proposed Changes

The bill authorizes the amendment of any DRI agreement previously classified as (or officially determined to be) essentially built out, and entered into on or before April 6, 2018, including amendments authorizing the developer to exchange approved land uses. Subject to the developer demonstrating that the exchange will not increase impacts to public facilities, amendments are made pursuant to the local government's processes for amending development orders.

Important State Interest (Section 6)

The bill states that the Legislature finds and declares that this act fulfills an important state interest.

Effective Date (Section 7)

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution states in part that no county or municipality shall be bound by a general law requiring the county or municipality to spend funds or take an action that requires the expenditure of funds. The bill may implicate this constitutional restriction by potentially causing counties and municipalities to incur some costs amending their comprehensive plans to add a private property rights element by July 1, 2023.

[97] Section 380.06(7)(a), F.S.
[98] Chapter 2018-158, s. 1, Laws of Fla.
[99] Sections 380.06(15)(g)3. and 4., F.S. (2017).

Notwithstanding, Article VII, section 18(d), of the Florida Constitution provides eight exemptions to the mandate restrictions. The mandate exemption relevant to this bill is the exemption for "laws having insignificant fiscal impact[.]"[100] For the Fiscal Year 2021-2022 the Senate's forecast for laws having a state-wide insignificant fiscal impact is $2,189,391.90.[101] Thus, if Florida's 67 counties and 411 municipalities spend on average $4,580.31 or less on the comprehensive plan amendment, the bill would be deemed to have an insignificant fiscal impact.

Complying with the bill may not necessitate a local government to expend additional funds beyond those already allocated to general government activities. Thus, the fiscal impact may be insignificant.

Still, if the judiciary determines that the bill is a mandate and no exemption or exception applies, the bill must have been approved by two-thirds of the membership of each house of the Legislature to be binding on local governments. The bill has the necessary determination that it fulfills an important state interest to be passed in this manner.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[100] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Feb. 24, 2021)

[101] Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is *available at*: http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited Feb. 24, 2021).

C. Government Sector Impact:

Section 2 of the bill may have a negative fiscal impact on local governments by requiring each county and municipality to adopt a private property rights element into its comprehensive plan by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan. However, the minimum costs associated with amending a comprehensive plan may be absorbed by a local government's budgetary allocations for general government activities. Thus, the fiscal impact may be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 163.3177, 163.3237, 337.25, and 380.06.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 3, 2021:
The committee substitute:

- Provides that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, instead of January 1, 2019, must incorporate development orders existing before the comprehensive plan's effective date, may not impair the completion of a development an existing development order, and must vest the density and intensity approved by such development order.
- Revises the timeframe within which a local government must adopt a property rights element in its comprehensive plan. Instead of the July 1, 2023, deadline, the bill now requires local governments to adopt a property rights element by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan.

B. Amendments:

None.

752852

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 40 - 85

and insert:

act. A comprehensive plan <u>for a newly incorporated municipality which becomes effective</u> ~~adopted~~ after January 1, <u>2016</u> ~~2019~~, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such

752852

existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state

752852

law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of its adoption of its next proposed plan amendment or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191. If a local government

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

And the title is amended as follows:

Delete line 11

and insert:

rights element by the earlier of its adoption of its next proposed plan amendment or the next scheduled evaluation and appraisal of its comprehensive plan; prohibiting a

135832

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment to Amendment (752852) (with title amendment)

Delete line 51
and insert:
of its next proposed plan amendment that is initiated after the effective date of this act or the next scheduled

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

135832

Delete line 60

and insert:

next proposed plan amendment initiated after a certain date or the next scheduled

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 March 2021
Meeting Date

SB 496
Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address 200 W College Ave
Street

Phone

TLH FL
City *State* *Zip*

Email decheverri@afphq.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21 9:30 CA A2
Meeting Date

496
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Growth Management

Name David Cullen

Job Title

Address 1934 Shelby Ct
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Tallahassee FL 32308
City *State* *Zip*

Phone 941-323-2404

Email cullenasea@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/3/21
Meeting Date

496
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 496

Name Gary Hunter

Job Title

Address 119 S Monroe Suite 300
Street

Tall FL 32301
City *State* *Zip*

Phone 222 7500

Email ghunter@hgslaw

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Association of Florida Community Developers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/21
Meeting Date

SB 496
Bill Number (if applicable)

Topic GROWTH MANAGEMENT

Amendment Barcode (if applicable)

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Waive Speaking: ☒ ~~In Support~~ ☑ Against
(The Chair will read this information into the record.)

Representing FLORIDA LEAGUE OF WOMEN VOTERS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

By Senator Perry

8-00438-21 2021496__

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; amending s. 163.3177, F.S.; requiring local governments to include a property rights element in their comprehensive plans; providing a statement of rights which a local government may use; requiring a local government to adopt a property rights element by a specified date; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; amending s. 163.3237, F.S.; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; providing an exception; amending s. 337.25, F.S.; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances; providing requirements and procedures for the right of first refusal; amending s. 380.06, F.S.; authorizing certain developments of regional impact agreements to be amended under certain circumstances; providing retroactive applicability; providing a declaration of important state interest; providing an effective date.

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

8-00438-21 2021496__

Section 1. Subsection (3) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of this act shall, within 1 year after incorporation, establish a local planning agency, pursuant to s. 163.3174, and prepare and adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan in accordance with this act. A comprehensive plan effective ~~adopted~~ after January 1, 2019, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in

its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of its next proposed plan amendment or July 1, 2023. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. A party or its designated successor in interest to a development agreement and a local government may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or cancellation directly modifies the allowable uses or entitlements of such owners' property.

Section 4. Subsection (4) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(4) The department may convey, in the name of the state, any land, building, or other property, real or personal, which was acquired under subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than $10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first

refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). Notwithstanding any provision of this section to the contrary, before any conveyance under this subsection may be made, except a conveyance under paragraph (a) or paragraph (c), the department shall first afford a right of first refusal to the previous property owner for the department's current estimate of value of the property. The right of first refusal must be made in writing and sent to the previous owner via certified mail or hand delivery, effective upon receipt. The right of first refusal must provide the previous owner with a minimum of 30 days to exercise the right in writing and must be sent to the originator of the offer by certified mail or hand delivery, effective upon dispatch. If the previous owner exercises his or her right of first refusal, the previous owner has a minimum of 90 days to close on the property.

(a) If the property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.

(b) If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.

(c) If the property was originally acquired specifically to

provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive at least its investment in such property or the department's current estimate of value, whichever is lower. It is expressly intended that this benefit be extended only to persons actually displaced by the project. Dispositions to any other person must be for at least the department's current estimate of value.

(d) If the department determines that the property requires significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.

(e) If, at the discretion of the department, a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the department's current estimate of value.

Section 5. Paragraph (d) of subsection (4) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially

built out, remains valid unless it expired on or before April 6, 2018, and may be amended pursuant to the processes adopted by the local government for amending development orders. Any such agreement or amendment may authorize the developer to exchange approved land uses, subject to demonstrating that the exchange will not increase impacts to public facilities. This paragraph applies to all such agreements and amendments effective on or after April 6, 2018.

Section 6. The Legislature finds and declares that this act fulfills an important state interest.

Section 7. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 688
INTRODUCER:	Senator Berman
SUBJECT:	Waivers of Exemptions of Applicable Assets
DATE:	March 1, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.			FT	
3.			AP	

I. Summary:

Certain assets, such as a person's homestead property and retirement accounts, are statutorily exempt from the reach of creditors. SB 688 prescribes the method by which an individual may waive that protection and use such assets as collateral. The bill provides that such protection can only be waived by specifically identifying the asset in a contract. The bill provides that language referring to "all of a person's" assets and rights, wherever located, whether now owned or after acquired, and all proceeds thereof," or of similar nature is not sufficient to waive the exemption. Similarly, references only to the type of collateral are insufficient under the bill to waive such protection.

These changes are in response to a recent court case which held that mere contractual reference to "all assets" included certain property previously understood to be excluded from such an agreement.

The bill takes effect October 1, 2021, and applies only to security interests created after the effective date.

II. Present Situation:

Asset Protection From Legal Process

A creditor can collect money owed by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, such as a debt. The creditor may then use that judgment to collect assets from the debtor. Chapter 222, F.S., contains exemptions that protect certain assets from legal process under Florida law. Florida has protected the following assets from creditor claims:

- Homestead property (ss. 222.01-222.05, F.S.).
- Certain items of personal property (s. 222.061, F.S.).

- Certain disposable earnings of head of family (s. 222.11, F.S.).
- The proceeds of a life insurance policy (s. 222.13, F.S.).
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract (s. 222.14, F.S.).
- Disability benefits payable from any insurance (s. 222.18, F.S.).
- Certain pension, retirement, or profit sharing benefits (s. 222.21, F.S.).
- Prepaid College Trust Fund moneys and Medical Savings Account funds (s. 222.22, F.S.).
- A debtor's interest in a motor vehicle, up to $1,000 in value (s. 222.25, F.S.).
- The debtor's interest in any professionally prescribed health aids (s. 222.25, F.S.).
- Social security benefits, unemployment compensation, or public assistance benefits; veterans' benefits; disability, illness, or unemployment benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances (s. 222.201, F.S.).

Exemptions throughout ch. 222, F.S., have historically been construed liberally in favor of protecting the consumer against creditors' claims to exempt property.[1] When a consumer enters a security agreement – a contract in which a debtor offers assets as collateral ("security") to guarantee repayment – the contract describes what assets are offered as security. Historically, a contract's blanket offering of "all assets" as security has not been interpreted to include assets subject to ch. 222, F.S., exemptions.

An individual must take additional steps in order to offer certain exempt assets as collateral. For example, in the case of homestead exemptions, which in Florida stem from a constitutional right, a contractual waiver of those rights must be "knowing, voluntary, and intelligent" to have any effect.[2] As another example, wages are exempt from legal process under s. 222.11, F.S., and such exemption may only be waived in writing, in a separate document attached to the security agreement, and must contain mandatory waiver language in at least 14-point font. This protection ensures the consumer understands they are waiving a statutory exemption. If a consumer waives their asset's protection, they are agreeing to allow a creditor to claim that asset to satisfy debts.

Sufficiency of Description for Collateral in Security Agreements

Under Florida's Uniform Commercial Code, an effective description of collateral in a security agreement identifies the asset by:

- Specific listing;
- Category;
- Type of collateral;
- Quantity, computational or allocational formula; or
- Any method under which the identity of the collateral is objectively determinable.[3]

[1] *See e.g. Havoco of Am. Ltd. v. Hill*, 790 So.2d 1018 (Fla. 2001); *Connor v. Seaside National Bank*, 135 So.3d 508 (Fla. 5th DCA 2014); *Killian v. Lawson*, 387 So.2d 960 (Fla. 1980).
[2] *See e.g. Chames v. DeMayo*, 972 So.2d 850, 861 (Fla. 2007) (citing State v. Upton, 658 So.2d 86, 87 (Fla.1995)).
[3] Section 679.1081(2), F.S.

Further, current law provides that a description of collateral as "all the debtor's assets" or "all the debtor's personal property" does not reasonably identify collateral.[4]

Finally, current law also provides that a description defined by "type" of collateral alone of a commercial tort claim or, in a consumer transaction, of a security entitlement, securities account, or commodity account, is not sufficient.[5] For example, "all existing and after-acquired investment property" or "all existing and after-acquired security entitlements," without more, would be insufficient in a consumer transaction to describe a security entitlement, securities account, or commodity account.[6]

Kearney Construction Co, LLC v. Travelers Casualty & Surety Company of America

A recent federal court case brought doubt to Floridians' assumption that general, broad offers of "all assets" do not waive ch. 222, F.S., protections.[7] In this case, *Kearney Construction Company, LLC v. Travelers Casualty and Surety Company of America*,[8] the debtor obtained a line of credit and pledged collateral as security as provided for in a contract. The contract stated the collateral as:

> all assets and rights of the Pledgor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all goods (including inventory, equipment and any accessories thereto), instruments (including promissory notes)[,] documents, accounts, chattel paper, deposit accounts, letters of credit, rights, securities and all other investment property, supporting obligation[s], any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and general intangibles.[9]

The Eleventh Circuit considered whether this language included assets held in the debtor's Individual Retirement Account (IRA). The debtor argued that the IRA should not have been included in all assets and was never intended to have been offered as collateral.[10] The court found that the security agreement's language constituted an "unambiguous pledge" of all assets, which does include those exempt under ch 222, F.S.[11] Kearney's IRA was not specifically listed in the agreement, but the court concluded that the broad language of the contract "encompassed potential retirement accounts or funds, such as the [IRA] at issue here."[12] The court did not engage substantively with whether ch 222, F.S., exemptions or ch. 679, F.S., description requirements should have any weight in determining the breadth of the contract. Additionally, the Magistrate Judge failed to explain what part of the security agreement did encompass the

[4] Section 679.1081(3), F.S.
[5] Section 679.1081(5), F.S.
[6] Section 679.1081(5), F.S.; Official Comment 5 to U.C.C. s. 9-108 (s. 679.1081(5), F.S.).
[7] These concerns were raised by the Florida Bar's Real Property, Probate, and Trust Law Section, which formed a "Kearney Subcommittee" within its Asset Protection Committee. *See* the Kearney Subcommittee's White Paper (Jan. 26, 2021) (on file with the Senate Community Affairs Committee).
[8] 795 Fed.Appx. 671 (Fla. 11th Cir. Nov. 13, 2019).
[9] *Id.*
[10] *Id*. at 673.
[11] *Id.*
[12] Magistrate Judge's Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 865, at 28.

IRA, whether it fell into the category "deposit account," "investment property," "general intangible," or another category entirely.[13]

Importantly, federal law prohibits the use of any funds inside a tax-advantaged retirement account from being used as security on a loan. Using such funds as security is treated as a taxable distribution from a consumer's retirement account.[14]

III. Effect of Proposed Changes:

Section 1 creates s. 222.105, F.S., which prescribes the method by which an individual may waive statutory exemptions protecting certain assets and accounts from reach of creditors. The bill provides that such protection can only be waived by specifically identifying the "applicable asset," as defined in the bill, in a security agreement, rather than by general reference to "all assets" or to the general category of assets. The bill provides that language referring to all of a person's "assets and rights, wherever located, whether now owned or after acquired, and all proceeds thereof," or of similar nature is not sufficient to waive the protections provided for in ch. 222, F.S. References only to the type of collateral, similarly, are insufficient under the bill to waive such an exemption.

The bill defines "applicable assets" as those accounts and entitlements described in ss. 222.13-222.16, s. 222.18, and ss. 22.201-222.22, F.S., which include life insurance policies, cash surrender value of life insurance policies and annuity contracts; wages or reemployment assistance or unemployment compensation payments due deceased employees; disability income benefits; certain payments protected by the federal Bankruptcy Reform Act of 1978; pension money and tax exempt retirement accounts; and assets in qualified tuition programs, medical savings accounts, Coverdell education savings accounts, and hurricane savings accounts. These accounts and entitlements, deemed "applicable assets," are currently exempt under current law from the reach of creditors.

Section 2 amends s. 679.1081(5), F.S., to provide that the accounts and entitlements identified in section 1 of the bill are not adequately described by general reference to the type of collateral. In order to include such an asset in a security agreement the asset must be described by specific reference to the individual asset as provided in s. 679.1081, F.S. For example, "all existing and after-acquired retirement accounts," without more, would be insufficient in a consumer transaction to describe an IRA.

Section 3 provides that the bill applies to security interests created after the effective date of the act.

Section 4 provides the bill takes effect October 1, 2021.

[13] *Id.*
[14] I.R.C. 408(e)(4).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 222.105 of the Florida Statutes.
This bill substantially amends section 679.1081 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

WHITE PAPER

PROTECTION OF FLORIDA RESIDENTS FROM UNINTENTIONALLY ASSIGNING, PLEDGING, OR WAIVING RIGHTS TO ASSETS THAT OTHERWISE ARE EXEMPT FROM LEGAL PROCESS UNDER CHAPTER 222 OF THE FLORIDA STATUTES BY IMPLEMENTING CLEARLY DEFINED REQUIREMENTS FOR WAIVING THE PROTECTION OF SUCH EXEMPTIONS

I. SUMMARY

This legislation protects Florida residents from unintentionally assigning, pledging, or waiving rights to, retirement accounts, annuities, certain life insurance policies and certain other assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by requiring that a Security Agreement purporting to pledge such asset specifically identify the exempt asset, such as in a manner consistent with Fla. Stat. § 679.1081 (Florida's Uniform Commercial Code), in order to constitute a valid and intentional assignment, pledge, or waiver. Because of the adverse economic impact of Covid-19, it is imperative to protect citizens from unknowing forfeiture of assets and potentially disastrous tax consequences. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

A. <u>Current Florida Statutes</u>

Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. Florida Statutes § 222.21(2)(a) allows Florida Consumers to claim an exemption from creditors for funds held in individual retirement accounts ("**IRAs**"), 401(k) retirement accounts, and other tax-exempt accounts. Florida Statutes § 222.14 provides that the cash surrender values of life insurance policies and the proceeds of annuity contracts issued to citizens or residents of the State of Florida are exempt from creditor attachment. Florida Statutes § 222.22 and Fla. Stat. § 222.25 state that funds held in qualified tuition programs and other qualifying accounts and certain individual property are also protected from creditors.

Under Fla. Stat. § 222.11, wages are exempt from attachment or garnishment unless the Florida Consumer agrees to waive the protection from wage garnishment in a writing complying with the requirements set forth in Fla. Stat. § 222.11(2)(b). Florida Statutes § 222.11(2)(b) provides that the agreement to waive the protection from wage garnishment must be in writing and be written in the same language as the contract to which the waiver relates, be contained in a separate document attached to the contract, and contain the mandatory waiver language specified in Fla. Stat. § 222.11(2)(b) in at least 14-point type. This writing ensures the Consumer understands they are waiving a statutory exemption.

It has been standard result for any asset which is exempt under Chapter 222 of the Florida Statutes to remain exempt from the reach of creditors, if the exempt asset is not specifically pledged. Long standing public policy of the Florida legislature promotes the financial independence of the retired and elderly by protecting their IRAs and pensions plans with an

exemption, thus reducing the need for public financial assistance. This consumer protection built into the framework of the existing law protecting Florida Consumers from overreaching creditors, unfair transactions, and retirement poverty was recently cast aside in the decision of *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 795 Fed. Appx. 671 (11th Cir. 2019). The *Kearney* result flies in the face of the intent of the Florida legislature and the current statutory framework which requires a Florida Consumer to understand and acknowledge any waiver of a statutory exemption under Florida law.

B. Kearney Holding

On October 27, 2011, the United States District Court Middle District of Florida, Tampa Division granted a motion for entry of final judgment in favor of Travelers Casualty & Surety Company of America and against Bing Charles W. Kearney ("**Kearney**") and others in the amount of $3,750,000. Magistrate Judge's Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 711, at 1-2 (March 17, 2016). On March 1, 2012, Kearney executed a Revolving Line of Credit Promissory Note (the "**Promissory Note**") in favor of Moose Investments of Tampa, LLC ("**Moose Investments**"), which was an entity owned by Kearney's son. Magistrate Judge's Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 865, at 9 (August 16, 2017). The Promissory Note was collateralized by a security agreement (the "**Security Agreement**"), in which Kearney pledged a security interest in

> **all assets and rights of the Pledgor,** wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all good (including inventory, equipment and any accessories thereto), instruments (including promissory notes), documents, accounts, chattel paper, **deposit accounts**, letters of credit, rights, securities and all other **investment property**, supporting obligation, any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and **general intangibles** (the "Collateral"). *Id.* at 9-10 (emphasis added).

On October 25, 2012, Kearney deposited funds into an IRA at USAmeriBank. *Id.* at 10. On July 23, 2015, the Magistrate Judge granted Travelers' motion for a writ of garnishment directed to USAmeriBank. Magistrate Judge's Report and Recommendation, Docket 711, at 2.

Magistrate Judge McCoun III submitted a Report and Recommendation on March 17, 2016 (Docket 711) and a Report and Recommendation on August 16, 2017 (Docket 865) addressing the numerous summary judgment motions related to the writ of garnishment directed to USAmeriBank. In the Report and Recommendation submitted on August 16, 2017, Magistrate Judge McCoun III issued a recommendation on three summary judgment motions related to determining whether the funds deposited into Kearney's IRA at USAmeriBank lost the exempt status because of Kearney's pledge of collateral in the Security Agreement with Moose Investments. Docket 865, at 7. Kearney argued the funds held in his IRA were exempt from garnishment under Fla. Stat. § 221.21(2). *Id.* at 8. Travelers countered that Kearney pledged the IRA as security to Moose Investments pursuant to the Promissory Note and Security Agreement, and such pledge of the IRA as collateral caused the funds in the IRA to both lose its tax-exempt status and its exempt status from garnishment. *Id.* at 8-9. Kearney responded that the Promissory

Note and Security Agreement did not specify the IRA was intended to be pledged as a "deposit account" as part of the collateral under the Security Agreement. *Id.* at 22- 23.

The Magistrate Judge determined that Kearney pledged all of his assets and rights in the Security Agreement securing the Promissory Note. *Id.* at 22. Thus, the funds held in Kearney's IRA lost their tax-exempt status and were not protected by Fla. Stat. § 221.21(2) or any other statutory exemption. *Id.* at 29. In arriving at this conclusion, the Magistrate Judge determined the language of the Security Agreement was "clear, unambiguous, and without exception." *Id.* at 26. Although Kearney's IRA was not specifically identified as part of the collateral, the Magistrate Judge noted that the broad language of the Security Agreement "encompassed potential retirement accounts or funds, such as the [IRA] at issue here." *Id.* at 28. The Magistrate Judge did not identify the collateral category in the Security Agreement that purportedly covered the IRA. The Magistrate Judge did not explain whether the IRA was a "deposit account," "investment property," a "general intangible," or something else. Furthermore, the Magistrate Judge did not reference Fla. Stat. § 679.1081(3), which provides that a description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. The Magistrate Judge did not cite any Florida case law or the Florida Statutes in support of the Magistrate Judge's position that a pledge of IRA funds causes such funds to lose their creditor exempt status in Florida. In fact, the Magistrate Judge only cited cases from the United States Bankruptcy Court for the Southern District of Ohio and the Eastern District Court of Virginia to support the conclusion. *Id.* at 21-22 (citing *In re Roberts*, 326 B.R. 424, 426 (Bankr. S.D. Ohio 2004), and *XL Specialty Ins. Co. v. Truland*, 2015 WL 2195181, at *11–13 (E.D. Va., May 11, 2015)).

The United States District Court Middle District of Florida, Tampa Division adopted, confirmed, and approved in all respects the Reports and Recommendations submitted by Magistrate Judge McCoun III in Docket 711 and Docket 865. *Kearney Construction Company, LLC v. Travelers Casualty & Surety Company of America*, 2016 WL 1394372 at *1; *Kearney Construction Company, LLC v. Travelers Casualty & Surety Company of America,* 2017 WL 4244390 at *1. In 2019, the United States Court of Appeals for the Eleventh Circuit reexamined whether Kearney pledged his IRA as collateral under the Security Agreement. *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 795 Fed. Appx. 671, 673 (11th Cir. 2019). The Eleventh Circuit agreed with the United States District Court Middle District of Florida, Tampa Division, and determined the language in the Security Agreement "constitutes an unambiguous pledge of 'all assets and rights of the Pledgor,' including his IRA Account . . . ." *Id.* at 674. The Eleventh Circuit concluded the District Court properly held the IRA was pledged as security for Kearney's loan with Moose Investments and "therefore was not exempt under § 222.21." *Id.* at 675. As with the Magistrate Judge, the Eleventh Circuit did not identify the collateral category in the Security Agreement that purportedly covered the IRA and did not reference how Fla. Stat. § 679.1081(3) provides that general descriptions of collateral are legally inadequate to create a valid lien.

As discussed in Footnote 7, the Eleventh Circuit rejected Kearney's argument that the IRA was protected by Fla. Stat. §§ 222.21(2)(a) 1 and 2 even if it was determined that the IRA was pledged under the Security Agreement. *Id.* at 674, n.7. The Eleventh Circuit asserted Fla. Stat. §

222.21(2)(a)(1) can be applied only if the Internal Revenue Service ("**IRS**") "pre-approved" the IRA as exempt from taxation. *Id.* The Eleventh Circuit also stated Fla. Stat. § 222.21(2)(a)(2) can be applied only if the IRS has "determined" an IRA is exempt from taxation. *Id.* The Eleventh Circuit concluded Kearney provided no evidence the IRS "pre-approved" Kearney's IRA as exempt from taxation, or that the IRS made a "determination" that Kearney's IRA was exempt from taxation. *Id.* Since Kearney had the burden of proving such "pre-approval" or "determination," the Eleventh Circuit concluded the funds held in Kearney's IRA lost their tax-exempt status and were not protected by Fla. Stat. § 221.21(2) or any other statutory exemption. *Id.* Although there is a procedure for obtaining a determination letter from the IRS for a qualified plan, employers who sponsor retirement plans are generally not required to apply for a determination letter from the IRS. Furthermore, effective January 1, 2017, Revenue Procedure 2016-37 provides the limited circumstances under which plan sponsors may submit determination letter applications to the IRS. In general, a sponsor of an individually designed plan may submit a determination letter application only for initial plan qualification and for qualification upon plan termination. Thus, the custodians of IRAs rarely seek determination of tax-exempt status from the IRS. Furthermore, it is both absurd and impossible to require all Florida Consumers owning IRAs to obtain the IRS's approval regarding the status of their IRAs as exempt in order to be protected by Florida's statutory exemption.

C. Issues Resulting from Kearney Holding

Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. The Magistrate Judge, the District Court, and the Eleventh Circuit concluded that Kearney forfeited the exempt status of the funds held in the IRA by pledging the funds as collateral because the Security Agreement provided Kearney pledged all of his "assets and rights." In arriving at this conclusion, the three courts ignored Fla. Stat. § 679.1081(3), which provides that a description of collateral as "all the debtor's assets" or words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. The Security Agreement did not specifically identify the IRA as part of the collateral. It has been standard practice for any asset which is exempt under Chapter 222 of the Florida Statutes to remain exempt from the reach of creditors, if the exempt asset is not specifically pledged. The three courts did not identify the collateral category in the Security Agreement that purportedly covered the IRA, and never explained whether the IRA was a "deposit account," "investment property," a "general intangible," or something else.

The three courts did not cite any Florida case law or relevant statute in the Florida Statutes to support the conclusion that Kearney waived his exemption from creditors for funds held in the IRA by signing the Security Agreement containing a broadly worded security interest provision. The Magistrate Judge cited cases from the United States Bankruptcy Court for the Southern District of Ohio and the Eastern District Court of Virginia to support the conclusion that a pledge of IRA funds causes such funds to lose their creditor exempt status. However, those cases were not decided under Florida law, are not binding on a Florida court, and rest in jurisdictions that do not necessarily have state law creditor exemptions similar to Florida for IRAs.

The Eleventh Circuit, in the *Kearney* decision, without citing any Florida case law supporting its conclusion:

- blind-sides millions of Florida Consumers by rendering moot numerous statutory exemptions from creditors under Florida law for anyone who has signed a contract containing a blanket security interest provision that includes deposit accounts, general intangibles, and/or investment property;
- causes citizens to unintentionally remove the exempt protection they have from their IRAs and qualified retirement plans which may cause them to become so destitute they must become wards of the state;
- creates a toxic environment for business because all business loans requiring a general pledge of assets would force business owners to give their creditors total access to their retirement savings, children's college funds and life insurance cash surrender values; and
- potentially triggers a ruinous immediate financial result for Florida Consumers by causing the loss of the pledged amount of a Consumer's IRAs and qualified retirement plans, plus up to 40% of the full value to taxes and penalties upon making a general pledge of assets.

1. Forfeiture of Exempt Status for Pledged Assets: Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. For example, Fla. Stat. § 222.21(2)(a) allows Florida Consumers to claim an exemption from creditors for funds held in IRAs, 401(k) retirement accounts, and other tax-exempt accounts. Florida Consumers have long operated under the belief any asset which is exempt under Chapter 222 of the Florida Statutes is exempt from the reach of creditors unless such exempt asset is specifically pledged in a security agreement. The Magistrate Judge, the District Court, and the Eleventh Circuit cast aside this widely held belief in concluding that Kearney forfeited the exempt status of the funds held in the IRA by pledging the funds as collateral because the Security Agreement provided Kearney pledged all of his "assets and rights." In arriving at this conclusion, the three courts ignored Fla. Stat. § 679.1081(3), which provides that a description of collateral as "all the debtor's assets" or words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. Furthermore, the Security Agreement at issue in *Kearney* did not specifically identify Kearney's IRA as part of the collateral. The three courts did not identify the collateral category in the Security Agreement that purportedly covered the IRA, and never explained whether the IRA was a "deposit account," "investment property," a "general intangible," or something else. A long standing public policy of the Florida legislature is the promotion of the financial independence of the retired and elderly through the protection of their IRAs and pensions plans with an exemption, thus reducing the need for public financial assistance. However, the *Kearney* decision may result in Florida Consumers unintentionally removing the exempt protection they have from their IRAs and qualified retirement plans, which could then cause them to become so destitute they must become wards of the state.

2. Application of *Kearney* Decision Beyond IRAs: The *Kearney* decision creates a dangerous precedent by permitting funds held in an IRA or other qualified plans to be garnished by creditors without a Consumer making an express and knowing waiver of the Fla. Stat. § 222.21(2)(a) exemption. The holding in *Kearney* appears to be in contravention with the intent of the Florida legislature to protect the assets of IRAs and pension plans from creditors. *See Dunn v.*

Doskocz, 590 So. 2d 521, 522, n.2 (Fla. Dist. Ct. App. 1991) ("It appears the legislature has made the policy decision that it should protect the assets of IRA's and pension plans, thereby promoting the financial independence of IRA and pension plan beneficiaries in their retirement years—in turn reducing the incidence and amount of requests for public financial assistance"). The ripple effects of the *Kearney* decision go beyond the loss of the statutory exemption for funds held in IRAs or other qualified retirement plans. In *Kearney*, the Eleventh Circuit only examined whether Kearney waived the statutory exemption for his IRA. However, the *Kearney* holding is not necessarily limited to the waiver of the statutory exemption for IRAs. The *Kearney* decision can be used by creditors to pursue other purportedly exempt assets. *Kearney* potentially renders moot numerous statutory exemptions from creditors under Florida law for anyone who has signed a contract containing a broadly worded security interest provision that includes a general reference to deposit accounts, general intangibles, and/or investment property. For example, funds in other tax-exempt accounts protected under Fla. Stat. § 222.21(2)(a), such as 401(k) retirement accounts, are potentially vulnerable to creditors. Since the Eleventh Circuit did not identify which collateral category in the Security Agreement covered the IRA in *Kearney*, it is not unreasonable to believe that the cash surrender values of life insurance policies and the proceeds of annuity contracts protected under Fla. Stat. § 222.14 could be classified as "deposit accounts" or "investment property" in a different security agreement, and thus, potentially accessible to creditors. A similar analysis applies to other assets exempt under Chapter 222, such as funds held in qualified tuition programs and other qualifying accounts and certain individual property currently protected by Fla. Stat. § 222.22 and Fla. Stat. § 222.25, respectively.

3. Creates a toxic environment for new business: Mortgages, credit card applications, home equity line of credit agreements, security agreements, financing statements, and personal guarantees on business loans are only a few examples of documents that typically include a general pledge of assets as collateral similar to the provision at issue in *Kearney*. Millions of Florida Consumers are parties to at least one (if not more) of these contracts secured by their assets, which may now, unbeknownst to them, include a pledge of their exempt assets. The *Kearney* holding creates a toxic environment for business because almost all business loans require a general pledge of assets, which forces business owners to unknowingly give their creditors total access to their retirement savings, children's college funds, life insurance cash surrender values, and coin collections as collateral.

4. Triggers early distribution taxes and penalties of up to 40%: The tax result of the *Kearney* decision makes it even worse. Under federal law, if an IRA owner uses the account or any portion of such account as security for a loan, the portion used as security is deemed distributed to the owner. IRC § 408(e)(4). The IRA owner is required to include any amount paid or distributed out of the IRA in gross income and to pay federal income taxes on such gross income. IRC § 408(d)(1). The same adverse federal income tax results will occur if a Consumer pledges an interest in a qualified employer plan. Pursuant to § 72(p)(1)(B) of the Code, if a Consumer "pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan." IRC § 72(p)(1)(B). A loan from a qualified employer plan is treated as being received as a deemed distribution for purposes of § 72. IRC § 72(p)(1). Additionally, the Code imposes penalties depending on when the deemed distribution from an IRA or qualified employer plan is made. Like an actual distribution, a deemed distribution is subject to the 10% additional tax on certain early distributions

under § 72(t). Treas. Reg. § 1.72(p)-1, Q&A 11(b). For example, if a Consumer is under the age of 59 ½ and not disabled, the deemed distribution under § 408(e)(4) is also subject to the 10% penalty tax under § 72(t). IRC § 72(t).

The *Kearney* holding generates a calamitous financial result for Florida Consumers. If a Consumer signs a document containing a broadly worded security interest provision that includes a general reference to deposit accounts, general intangibles, and/or investment property, that Consumer, under *Kearney*, has arguably pledged the entirety of all such funds owned in an IRA, as well as their other exempt assets, such as cash surrender values of life insurance policies and the proceeds of annuity contracts. If a Consumer pledges an IRA, potentially the entirety of the pledged funds held in the IRA will be treated as a loan to the Consumer and thus taxable as a deemed distribution. If a creditor can garnish the funds held in an IRA, the debtor Consumer would, in addition to losing the pledged funds, be required to pay federal income taxes on all of the funds along with possibly the additional tax penalty for making an early distribution of the IRA!

D. Legislative Fix Needed

The Eleventh Circuit, without citing any Florida case law supporting its conclusion, potentially rendered moot numerous statutory exemptions from creditors contained in Chapter 222 of the Florida Statutes for any Florida Consumer who has signed any contract containing a blanket security interest provision that includes deposit accounts, general intangibles, and/or investment property. The *Kearney* result flies in the face of the current statutory framework requiring a Consumer to be made aware of, understand, and acknowledge that such Consumer is waiving a statutory exemption under Florida law. In light of the serious issues resulting from the *Kearney* holding, Chapter 222 requires a legislative fix. In the absence of legislative action, a Consumer, by signing a document containing a broadly worded security interest provision, unknowingly places their IRA, pension plan, annuity or life insurance contract at risk of forfeiture and confiscatory taxation. Because of the protection afforded to the ownership of homestead property under Article X Section 4 of the Florida Constitution as well as the Florida Supreme Court's holding in *Havoco of America, Ltd. V. Hill, 790 So. 2d 1018 (Fla. 2001)* and its progeny, no change is necessary with respect to the exemption related to homestead property. The proposed legislative changes described in Section III below therefore are not intended to apply to, or alter the existing protections afforded to, homestead property in any manner.

III. EFFECT OF PROPOSED CHANGES

Florida Statutes § 222.105

Current Situation: Under Fla. Stat. § 222.11(2)(b), for a Consumer to waive protection from wage garnishment, the Consumer must consent to garnishment of such Consumer's wages in writing. This written waiver document must be written in the same language as the contract to which the waiver relates, be contained in a separate document attached to the contract, and contain the mandatory waiver language specified in Fla. Stat. § 222.11(2)(b) in at least 14-point type. Pursuant to Fla. Stat. § 732.702, a surviving spouse can waive his or her homestead rights by a written contract, agreement, or waiver, signed by two subscribing witnesses, that contains a waiver of "all

rights," or equivalent language in the homestead property. There is currently no law in the Florida Statutes that discusses when and how a Consumer can waive the statutory exemptions from garnishment set forth in Fla. Stat. § 222.13, Fla. Stat. § 222.14, Fla. Stat. § 222.15, Fla. Stat. § 222.16, Fla. Stat. § 222.18, Fla. Stat. § 222.21, Fla. Stat. § 222.22, and Fla. Stat. § 222.25.

Effect of Proposed Changes: The Committee proposes the insertion of proposed Fla. Stat. § 222.105, which will clarify a Consumer can only waive the exemptions afforded to funds held in an IRA or other qualified retirement accounts (Fla. Stat. § 222.21), funds held in qualified tuition programs and other qualified accounts (Fla. Stat. § 222.22), proceeds from an annuity or life insurance contract (Fla. Stats. §§ 222.13 and 222.14), benefits under unemployment compensation (Fla. Stats. §§ 222.15 and 222.16) and disability insurance (Fla. Stat. § 222.18) by specifically identifying the exempt asset in a security agreement, such as in a manner consistent with Fla. Stat. § 679.1081 (Florida's Uniform Commercial Code). The proposed legislation protects Florida residents from unintentionally assigning, pledging or waiving rights to, assets that are exempt under Chapter 222 of the Florida Statutes. A general pledge of assets should not allow a creditor to attach those assets otherwise exempt under Florida law without a written waiver that clearly and specifically identifies the exempt asset being pledged. This ensures that the Consumer understands they are waiving their statutory exemptions.

Florida Statutes § 679.1081

Florida Statutes § 679.1081 is part of Florida's Uniform Commercial Code. Florida Statutes § 679.1081 sets forth the requirements for the description of collateral in order to perfect a valid security interest in an asset. Specifically, Fla. Stat. § 679.1081(3) currently states that "[a] description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or using words of similar import does not reasonably identify the collateral for purposes of the security agreement" and, therefore, would not create a valid security interest. Because security interests in assets are largely governed by Florida's Uniform Commercial Code, coordinating the proposed changes to Chapter 222 with Fla. Stat. § 679.1081 by adding a new subsection (d) to Fla. Stat. § 679.1081 to reference accounts and other Chapter 222 exemptions is essential for consistency and clarity.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Millions of Florida Consumers are parties to at least one (if not more) contracts secured by their assets, which may now, unbeknownst to them, include a pledge of their exempt assets. Today, especially given the devastating economic hardships caused by Covid-19, citizens of the state of Florida have but few assets which they can rely upon for a modicum of financial security. The proposed Fla. Stat. § 222.105 protects Florida residents from unintentionally assigning, pledging, or waiving rights to, certain assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by requiring that a Security Agreement purporting to pledge such asset

specifically identify the exempt asset in a manner consistent with Fla. Stat. § 679.1081 in order to constitute a valid and intentional assignment, pledge, or waiver.

The *Kearney* decision unknowingly places a Consumer's IRA, pension plan, annuity or life insurance contract at risk of forfeiture and confiscatory taxation. For example, if a Consumer pledges the funds held in an IRA, the portion used as security is deemed distributed to the Consumer. The Consumer must pay federal income taxes on this deemed distribution. The Consumer may also be required to pay a 10% additional tax for making an early distribution of the IRA. This proposal saves Florida Consumers from unknowingly losing the pledged funds and incurring federal income taxes on the total balance of the pledged funds.

VI. CONSTITUTIONAL ISSUES

There are no constitutional issues that may arise as a result of the proposal.

VII. OTHER INTERESTED PARTIES

Tax Section of The Florida Bar
Name:
Contact Information:
Support, Oppose or No Position: Support pending finalization of language

Business Law Section of The Florida Bar
Name:
Contact Information:
Support, Oppose or No Position: Support pending finalization of language

Florida Bankers Association
Name:
Contact Information:
Support, Oppose or No Position: Pending

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THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21
Meeting Date

688
Bill Number (if applicable)

Topic Support SB 688 (Community Affairs Committee)

Amendment Barcode (if applicable)

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Job Title

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City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

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

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

By Senator Berman

31-00573C-21 2021688__

A bill to be entitled

An act relating to waivers of exemptions of applicable assets; creating s. 222.105, F.S.; providing that certain exemptions of certain assets may not be waived unless certain conditions are met; specifying references that are insufficient to pledge a security interest in certain assets or to waive certain protections; defining the term "applicable assets"; amending s. 679.1081, F.S.; providing that a description of certain accounts and entitlements by certain type of collateral is insufficient; providing applicability; providing an effective date.

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

Section 1. Section 222.105, Florida Statutes, is created to read:

222.105 Waiver of exemptions; requirements.—

(1) The exemptions set forth in this chapter with respect to applicable assets may not be waived unless the person who is entitled to such exemption has specifically pledged a security interest in the applicable asset in a security agreement, as defined in s. 679.1021, that identifies the asset by specific reference to the applicable asset.

(2) The following references in a security agreement purporting to pledge a security interest are insufficient to pledge applicable assets or to waive the protections afforded to applicable assets by this chapter:

(a) All of a person's "assets and rights, wherever located,

31-00573C-21 2021688__

whether now owned or after acquired, and all proceeds thereof," or other words of similar import, including, but not limited to, those described in s. 679.1081(3); or

(b) References only to the type of collateral, as described in s. 679.1081(5).

(3) For purposes of this section, "applicable assets" means those assets described in ss. 222.13-222.16, s. 222.18, and ss. 222.201-222.22.

Section 2. Subsection (5) of section 679.1081, Florida Statutes, is amended to read:

679.1081 Sufficiency of description.—

(5) A description only by type of collateral defined in this chapter is an insufficient description of:

(a) A commercial tort claim;

(b) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account; ~~or~~

(c) An account consisting of a right to payment of a monetary obligation for the sale of real property that is the debtor's homestead under the laws of this state; or~~.~~

(d) Accounts and other entitlements set forth in ss. 222.13-222.16, s. 222.18, and ss. 222.201-222.22.

Section 3. This act applies to security interests created after the effective date of this act.

Section 4. This act shall take effect October 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 904
INTRODUCER:	Senator Diaz
SUBJECT:	Doorstep Refuse and Recycling Collection Containers
DATE:	February 25, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.			EN	
3.			RC	

I. Summary:

SB 904 saves from repeal the statutory provisions regulating doorstep refuse and recycling collection containers in apartment corridors. Retaining these provisions preserves statutory differences with Florida Fire Prevention Code regulations, specifically in terms of allowable container sizes and the ability of the local fire authorities to approve alternative containers and storage arrangements for doorstep refuse and recycling collection.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Fire Prevention Code

The State Fire Marshal, by rule,[1] adopts the Florida Fire Prevention Code (Florida Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules. The State Fire Marshal adopts a new edition of the Florida Fire Code every three years.[2] The 7th edition of the Florida Fire Code took effect on December 31, 2020.[3]

The Florida Fire Code is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.[4] Municipalities, counties, and

[1] Chapter 69A-60, F.A.C.
[2] Section 633.202, F.S.
[3] Florida Fire Prevention Code (7th ed.), effective Dec. 31, 2020. Available at; https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited February 23, 2020).
[4] Section 633.208, F.S., and 69A-60.002(1), F.A.C.

special districts with firesafety responsibilities may supplement the Florida Fire Code with more stringent standards adopted in accordance with s. 633.208, F.S.[5]

Doorstep Refuse and Recycling – Statutory Provisions

Prior to 2018, the State Fire Marshal determined that apartments were prohibited from allowing residents to place waste containers outside their front doors regardless of the size of the container or if the waste was removed daily. The State Fire Marshal determined that the Florida Fire Code prohibited apartment residents from placing any type of waste container outside their door because of the obstruction to means of egress.[6]

In 2018, the Legislature enacted s. 633.202(20), F.S.,[7] to provide that residents of apartment buildings may place combustible waste and refuse[8] in exit access corridors in apartment buildings if the following conditions are met:

- Doorstep refuse and recycling collection containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Waste, which is in a doorstep refuse and recycling collection container, is not placed in an exit access corridor for a single period greater than five hours;
- Doorstep refuse and recycling collection containers are not in an exit access[9] corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Doorstep refuse and recycling collection containers are able to stand upright on their own and may not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request.[10]

[5] Section 633.208(3), F.S., and 69A-60.002(2), F.A.C.
[6] See *In the matter of: William Harrison, Fire Marshal Clermont Fire Department*, Case No.: 188696-16-DS (Fla. DFS) (June 21, 2016); *In the matter of: Steve Strong, Fire Marshal Clearwater Fire & Rescue*, Case No.: 196979-16-DS (Fla. DFS) (Dec. 23, 2016)
[7] Chapter 2018-152, Laws of Fla.
[8] The Fire Code defines combustible waste as any "combustible or loose waste material that is generated by an establishment or process and, if salvageable, is retained for scrap or reprocessing on the premises where generated or transported to a plant for processing," and combustible refuse as "a combustible or loose rubbish, litter, or waste materials generated by an occupancy that are refused, rejected, or considered worthless and are disposed of by incineration on the premises where generated or periodically transported from the premises." Sections 3.3.63 and 3.3.64, Florida Fire Prevention Code (7th Ed.).
[9] Defined as "that portion of a means of egress that leads to an exit," Florida Fire Prevention Code (7th ed.) s. 3.3.106.
[10] Section 633.202(20), F.S.

Additionally, the local authority having jurisdiction[11] may approve alternative containers and storage arrangements that are demonstrated to provide the same level of safety.[12]

Apartment occupancies were allowed a phase-in period to comply with the provisions in s. 633.202(20), F.S., by December 31, 2020.[13]

Section 633.202(20), F.S., is set to expire on July 1, 2021.[14]

Doorstep Refuse and Recycling – Florida Fire Code Provisions

The 7th edition of the Florida Fire Code, effective December 31, 2020, contained amendments that substantially conform to the substance of s. 633.202(20), F.S., relating to doorstep refuse and recycling regulations. However, the new Florida Fire Code provisions differ from the statutory provisions in that a doorstep refuse and recycling container in a corridor may not exceed *15 gallons*[15] and such containers may not be placed in an exit corridor for more than *15 hours*.[16] Additionally, the Florida Fire Code does not contain provisions allowing local authorities to approve alternative containers and storage arrangements as Florida Statutes allow.

Further, the Florida Fire Code provides technical guidance for the maximum rate of heat release for refuse containers and lids, with stricter guidelines for those placed in areas not protected by fire sprinklers.[17] The Florida Fire Code regulations govern to the extent they do not directly conflict with statutory provisions.[18]

III. Effect of Proposed Changes:

The bill amends s. 633.202(20), F.S., to remove the current July 1, 2021, expiration of provisions that allow doorstep refuse and recycling collection containers in apartment corridors under certain circumstances. This preserves statutory differences from the Florida Fire Code regulations, specifically the difference in allowed container size and allowing the local fire authorities to approve alternative containers and storage arrangements.

The bill takes effect July 1, 2021.

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[11] The "authority having jurisdiction" is typically the designated head fire and rescue officer of the county, municipality, or special district with fire safety responsibilities over an area. The Fire Code defines this term as "an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure," section 3.2.2.
[12] Section 633.202(20)(c), F.S.
[13] Section 633.202(20)(d), F.S.
[14] Section 633.202(20)(e), F.S.
[15] Florida Fire Prevention Code (7th ed.) s. 10.18.4.1(1)
[16] Florida Fire Prevention Code (7th ed.) s. 10.18.4.1(3)
[17] Florida Fire Prevention Code (7th ed.) s. 10.18.4.1.1
[18] The Florida Fire Code is adopted by the Department of Financial Services by rule (s. 633.202(1), F.S.); rulemaking authority is limited to interpreting the specific powers and duties conferred by the enabling statute (s. 120.536, F.S.). The Fire Marshal's duty and rulemaking authority is granted specifically to enforce the laws and provisions of ch. 633, F.S. (s. 633.104, F.S.). Therefore, to the extent the Fire Code and ch. 633, F.S. directly conflict, the Fire Marshal's duty is to enforce ch. 633, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.202 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/21
Meeting Date

904
Bill Number (if applicable)

Topic Doorstep refuse & recycling

Amendment Barcode (if applicable)

Name Justin Frost

Job Title CEO

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Phone 407 808-0550

Sanford FL 32773
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Email jfrost@dinitywastesolutions.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21
Meeting Date

904
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Doorstep Refuse and Recycling Collection Containers

Name John Pasqualone

Job Title Executive Director

Address PO Box 325
Street

Hobe Sound FL 33475
City *State* *Zip*

Phone 772-349-1507

Email john.pasqualone@ffmia.org

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Fire Marshalls and Inspectors Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/21
Meeting Date

904
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Doorstop Refuse & Recycling

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Job Title

Address 104 West Jefferson St
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City *State* *Zip*

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Email kelly@rlbodepa.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Affinity Waste Solutions

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/14/14)

By Senator Diaz

36-00752-21 2021904__

A bill to be entitled

An act relating to doorstep refuse and recycling collection containers; amending s. 633.202, F.S.; deleting an obsolete provision; removing the scheduled repeal of certain provisions regulating the use of containers in exit access corridors; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (20) of section 633.202, Florida Statutes, are amended to read:

633.202 Florida Fire Prevention Code.—

(20)

~~(d) The authority having jurisdiction shall allow apartment occupancies a phase-in period until December 31, 2020, to comply with this subsection.~~

~~(e) This subsection is repealed on July 1, 2021.~~

Section 2. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 360
INTRODUCER:	Community Affairs Committee and Senator Hooper
SUBJECT:	Fire Prevention and Control
DATE:	March 3, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Fav/CS**
2.			BI	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Local fire authorities set minimum standards for radio signal strength throughout buildings within their jurisdictions in order to ensure consistent fire and rescue communication capabilities. CS/SB 360 extends the grace periods during which high-rise buildings are not required to comply with a local authority's minimum radio signal strength standards by five years.

The bill also provides that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements, but may not be required by local fire authorities in buildings that are four stories or less in height.

Finally, the bill clarifies that the prohibition against installing and transporting radio equipment that utilizes law enforcement frequencies does not preclude the installation of two-way radio communication enhancement systems.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Fire Prevention Code

The State Fire Marshal, by rule,[1] adopts the Florida Fire Prevention Code (Florida Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules. The State Fire Marshal adopts a new edition of the Florida Fire Code every three years.[2] The 7th edition of the Florida Fire Code took effect on December 31, 2020.[3] The Florida Fire Code is largely based on the *National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code*, along with the current edition of the *NFPA's Life Safety Code*, *NFPA 101*.[4]

The Florida Fire Code is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.[5] Municipalities, counties, and special districts with firesafety responsibilities may supplement the Florida Fire Code with more stringent standards adopted in accordance with s. 633.208, F.S.[6]

Radio Signal Strength for Fire Department Communications

The life safety of firefighters and citizens depends on reliable, functional communication tools that work in the harshest and most hostile of environments. [7] All firefighters, professional and volunteer, operate in extreme environments that are markedly different from those of any other radio users.[8] The radio is the lifeline that connects the firefighters to command and outside assistance when in the most desperate of situations.[9]

Modern focus on radio signal strength stems from difficulties experienced by firefighters attempting rescue operations on September 11, 2001, in the World Trade Towers, who found that in certain areas of the building their radio signal degraded, making live communication difficult or impossible.[10]

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[1] Chapter 69A-60, F.A.C.
[2] Section 633.202, F.S.
[3] Florida Fire Prevention Code (7th ed.), effective Dec. 31, 2020. Available at; https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited February 23, 2020).
[4] Section 633.202(2).
[5] Section 633.208, F.S., and 69A-60.002(1), F.A.C.
[6] Section 633.208(3), F.S., and 69A-60.002(2), F.A.C.
[7] FEMA, U.S. Fire Administration. Voice Radio Communications Guide for the Fire Service (June 2016), p. 1, *available at:* https://www.usfa.fema.gov/downloads/pdf/publications/Voice_Radio_Communications_Guide_for_the_Fire_Service.pdf (last visited February 23, 2021).
[8] Id.
[9] Id.
[10] *See Assessment of Total Evacuation Systems for Tall Buildings: Literature Review,* NFPA, available at https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Executive-summaries/evacsystemstallbuildingsliteraturereviewexecsum.ashx#:~:text=According%20to%20the%20definition%20of,floor%20of%20the%20highest%20occupiable (last visited February 20, 2021).

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept and then amplify radio signals used by first responders. A Radio Frequency site survey may be conducted in a building to determine areas where radio signal strength drops due to materials used in construction, such as thick walls, metal construction, underground structures, and low-emissivity glass windows. The generally desired effect is that radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. These include bi-directional amplifiers and networks of indoor antennae, referred to collectively as a distributed antenna system.[11]

Florida Fire Code Minimum Radio Signal Strength

Amendments to the Florida Fire Code, effective January 1, 2018, provided that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction (local fire authorities).[12] Where required by a local fire authority, two-way radio communication enhancement systems must comply with federal standards for installation and upkeep.[13] Additionally, if a two-way radio communication enhancement system would have a negative impact on the operations of a facility, the local fire authority may accept an automatically activated emergency responder radio coverage system in the alternative.[14]

Minimum Radio Signal Strength for High-rise Buildings

Section 633.202(18), F.S., enacted in 2016,[15] provides that local fire authorities shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. A high-rise building is defined in the Florida Fire Code as a building greater than 75 feet in height where the building height is measured from the lowest level of fire department vehicle access to the floor of the highest occupiable story.[16] Existing high-rise buildings are not required to comply with a local authority's minimum radio strength requirements until January 1, 2022. However, an existing high-rise building must have applied for the appropriate permit for installation of equipment meeting the local authority's standards by December 31, 2019. Existing high-rise apartment buildings are not required to comply until January 1, 2025, and must apply for permits to reach compliance by December 31, 2022.

A 2018 declaratory statement from the Department of Financial Services clarified that the compliance timeframes provided in s. 633.202(18), F.S., apply only to high-rise buildings and do

[11] See *High-Rise Public Safety System Integrators,* Treasure Island Fire Department (available at https://www.mytreasureisland.org/residents/departments/fire_dept/local_high-rise_public_safety_system_integrators.php, last accessed February 20, 2021); *Information Bulletin: Two-Way Radio Communication Enhancement System Requirements,* East Lake Tarpon Special Fire Control District (available at https://www.elfr.org/files/e2eae3cb2/Bulletin+East+Lake+Two+Way+Communications.pdf, last visited February 20,2021).
[12] Florida Fire Prevention Code (7th ed.) s. 11.10.1. The "authority having jurisdiction" is typically the designated head fire and rescue officer of the county, municipality, or special district with fire safety responsibilities over an area.
[13] Florida Fire Prevention Code (7th ed.) s. 11.10.2.
[14] Florida Fire Prevention Code (7th ed.) s. 11.10.3. an automatically activated emergency responder radio coverage system
[15] Chapter 2016-129, s. 27, Laws of Fla.
[16] NFPA 101, Life Safety Code, 2015 edition - Ch. 3.29.6.

not apply to buildings less than 75 feet in height.[17] Thus, compliance with minimum radio signal strength requirements for non-high-rise buildings is controlled by s. 11.10 of the Florida Fire Code, which provides no grace periods or acceptable timeframes for compliance.

Radio Equipment Receiving Law Enforcement Frequencies

Section 843.16, F.S. makes it unlawful to install or transport any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to law enforcement or fire rescue personnel.

III. Effect of Proposed Changes:

Section 1 amends s. 633.202(18), F.S., to extend the date by which high-rise buildings must comply with a local authority's minimum radio signal strength requirements by five years. It provides that existing buildings are not required to meet these standards until January 1, 2027 (from January 1, 2022), and must apply for permits to install required devices to meet the standards by December 31, 2024 (from December 31, 2019). For apartment buildings the same dates are extended from January 1, 2025, to January 1, 2030, and from December 31, 2022, to December 31, 2027, respectively.

This section further provides that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements, but may not be required by local fire authorities in buildings four stories or less in height.

Section 2 amends s. 843.16, F.S., to clarify that its provisions do not apply to the installation of two-way radio communication enhancement systems for compliance with s. 633.202(18), F.S.

Section 3 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[17] Department of Financial Services Declaratory Statement, *In the Matter of Charles B. Parks, Chief Florida Fire Code Official of Broward County,* April 18, 2018, available at https://www.doah.state.fl.us/FLAID/DFS/2018/DFS_217787-17-DS_12042019_013047.pdf (last visited February 26, 2021).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private building owners may experience a positive fiscal impact due to not being required to retrofit out-of-compliance buildings for an additional five years.

C. Government Sector Impact:

Government building owners may experience a positive fiscal impact due to not being required to retrofit out-of-compliance buildings for an additional five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 633.202, 843.16.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 3, 2021:
The committee substitute:

- Preserves the term "high-rise" in the bill, maintaining the requirement that only high-rise buildings are subject to the statutory timeframes for compliance with a local authority's minimum radio signal strength requirements; and
- Provides that two-way radio communication enhancement systems and similar systems may not be required in buildings that are four stories or less in height.

B. Amendments:

None.

202414

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 27

and insert:

in all new high-rise and existing high-rise buildings. Two-way radio communication enhancement systems may be used to comply with minimum radio signal strength requirements. However, two-way radio communication enhancement systems and similar systems may not be required in apartments or buildings that are four stories or less in height. Existing

202414

11
12 ================ T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete lines 3 - 8
15 and insert:
16 amending s. 633.202, F.S.; authorizing the use of
17 radio communication enhancement systems to comply with
18 minimum radio signal strength requirements;
19 prohibiting the authority having jurisdiction from
20 requiring certain radio communication enhancement
21 systems in apartments or buildings of a certain
22 height; revising the transitory

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21
Meeting Date

360
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fire Prevention and Control

Name John Pasqualone

Job Title Executive Director

Address PO Box 325
Street

Hobe Sound FL 33475
City *State* *Zip*

Phone 772-349-1507

Email john.pasqualone@ffmia.org

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Fire Marshalls and Inspectors Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21
Meeting Date

360
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fire Prevention and Control

Name Ray Colburn

Job Title President

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Street

Phone 850-900-5180

Tallahassee FL 32303
City *State* *Zip*

Email ray@ffca.org

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

By Senator Hooper

16-00569-21 2021360__

A bill to be entitled

An act relating to fire prevention and control; amending s. 633.202, F.S.; requiring the authority having jurisdiction to determine certain minimum radio signal strength requirements for all new and existing buildings; authorizing the use of radio communication enhancement systems to comply with minimum radio signal strength requirements; revising the transitory period for compliance; revising the date by which existing apartment buildings that are not in compliance must initiate an application for an appropriate permit; amending s. 843.16, F.S.; providing an exception to the prohibition against installing or transporting certain radio equipment using law enforcement or fire rescue frequencies; providing an effective date.

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

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new ~~high-rise~~ and existing ~~high-rise~~ buildings. Two-way radio communication enhancement systems may be used to comply with minimum radio signal strength requirements. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system

16-00569-21 2021360__

enhancement communications as required by the Florida Fire Prevention Code until January 1, 2027 ~~2022~~. However, by December 31, 2024 ~~2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2027 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2030 ~~2025~~. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by December 31, 2027 ~~2022~~.

Section 2. Paragraph (f) is added to subsection (3) of section 843.16, Florida Statutes, to read:

843.16 Unlawful to install or transport radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.—

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

(f) The installation of a two-way radio communication enhancement system to comply with the requirements of s. 633.202(18).

Section 3. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 970
INTRODUCER:	Senator Hooper
SUBJECT:	Firefighters' Bill of Rights
DATE:	February 25, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.			GO	
3.			RC	

I. Summary:

SB 970 amends the Firefighters' Bill of Rights, which provides specific rights to a firefighter under investigation and when subject to interrogation for alleged misconduct that could lead to disciplinary action. The bill expands the rights given to a firefighter during questioning conducted under an informal inquiry. Currently, questioning pursuant to an informal inquiry is not subject to the Firefighters' Bill of Rights.

The bill requires that an informal inquiry be conducted at a reasonable time and for a reasonable duration, allowing reasonable periods of rest for the firefighter. A representative of an employee organization of which the firefighter is a member may represent the firefighter and be present during the informal inquiry.

The bill also provides that during an interrogation (formal investigation) a firefighter may not be threatened with transfer, dismissal, or disciplinary action as inducement to answer any questions.

The bill revises the definition of the term "informal inquiry" to exclude certain routine work-related discussions.

The bill takes effect on July 1, 2021.

II. Present Situation:

Chapter 633, F.S., provides state law on fire prevention and control. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).[1] Under this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;[2]
- Investigates the causes of fires;[3]
- Enforces arson laws;[4]
- Regulates the installation and maintenance of fire equipment;[5]
- Conducts firesafety inspections of state buildings;[6]
- Develops firesafety standards;[7]
- Provides facilities for the analysis of fire debris;[8] and
- Operates the Florida State Fire College.[9]

Additionally, the Division adopts by rule the Florida Fire Prevention Code, which contains or references all fire safety laws and rules regarding public and private buildings.[10]

Firefighters' Bill of Rights

The Firefighters' Bill of Rights provides specific rights when a firefighter[11] is under investigation and subject to interrogation for a reason which could lead to disciplinary action, including reprimand, suspension, or dismissal.[12] There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.[13]

Currently, when an employing agency[14] receives an allegation of misconduct regarding a firefighter, management may conduct an informal inquiry[15] to determine whether a formal

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[1] The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* s. 20.121, F.S.
[2] Section 633.128(1), F.S. *See also* ch. 633, part IV: Fire Standards and Training, F.S.
[3] Section 633.104(2)(e), F.S.
[4] *Id.*
[5] Section 633.104(2)(b), F.S. *See also* s. 633.104(2)(c), F.S., and ch. 633, part III: Fire Protection and Suppression, F.S.
[6] Section 633.218, F.S.
[7] Chapter 633, part II: Fire Safety and Prevention, F.S.
[8] Section 633.432, F.S.
[9] Section 633.128(1)(h)–(q), F.S. *See also* ss. 633.428–633.434, F.S.
[10] Section 633.202(1), F.S.
[11] "Firefighter" means a person who is certified in compliance with s. 633.408, F.S., and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires. Section 112.81(1), F.S.
[12] Part VIII, ch. 112, F.S.
[13] Part VI, ch. 112, F.S.
[14] "Employing agency" means any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters. Section 112.81(2), F.S.
[15] "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced. Section 112.81(3), F.S.

investigation[16] is appropriate. Informal inquiries are not subject to the requirements of the Firefighters' Bill of Rights. Only after a formal investigation has begun do the requirements have effect, when questioning related to the investigation is called an interrogation.[17]

Under the Firefighters' Bill of Rights, an interrogation of a firefighter must be conducted according to the following terms:[18]

- The interrogation shall take place at the facility where the investigating officer is assigned or at the facility that has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.
- No firefighter shall be subjected to interrogation without first receiving written notice in sufficient detail of the investigation to reasonably apprise the firefighter of the nature of the investigation. The firefighter shall be informed beforehand of the names of all complainants.
- All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter is on duty unless the importance of the interrogation or investigation is of such a nature that immediate action is required.
- The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.
- Interrogation sessions shall be of reasonable duration, and the firefighter shall be permitted reasonable periods for rest and personal necessities.
- The firefighter being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.
- A complete record of any interrogation shall be made, and if a transcript of such interrogation is made, the firefighter under investigation shall be entitled to a copy without charge. Such records may be electronically recorded.
- An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation in any proceeding to which this part applies. If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit during investigations or interrogations, such representative shall be allowed to be present.
- No firefighter shall be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason solely of his or her exercise of any of the rights granted or protected by this part.

III. Effect of Proposed Changes:

Section 1 amends s. 112.81, F.S., to revise the definitions of "informal inquiry" and "formal investigation." "Informal inquiry" is revised to exclude certain discussions between supervisory

[16] "Formal investigation" means the process of an investigation ordered by supervisory personnel, after the supervisory personnel has previously determined that the firefighter shall be reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted to gather evidence of misconduct. 112.81(4), F.S.

[17] "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but shall not include arbitration or civil service proceedings. Questioning during an informal inquiry shall not be deemed to be an interrogation. 112.81(5), F.S.

[18] Section 112.82, F.S.

and management personnel and firefighters, such as safety sessions, normal operational fire debriefings, and routine work-related discussions.

The term "formal investigation" is revised to mean an investigation undertaken to determine whether a firefighter will be disciplined, reprimanded, suspended, or removed. A formal investigation may be initiated by management personnel as well as supervisory personnel.

Section 2 amends s. 112.82, F.S., to expand the rights given to a firefighter during questioning conducted under an informal inquiry. Namely, the following requirements are applied to an informal inquiry:

- It must be conducted at a reasonable time of day, preferably when the firefighter is on duty;
- It must be conducted for a reasonable duration and the firefighter must be permitted reasonable periods for rest; and
- A representative of an employee organization of which the firefighter is a member may represent the firefighter and be present during the informal inquiry.

The bill further provides that during an interrogation a firefighter may not be threatened with transfer, dismissal, or disciplinary action as inducement to answer any questions.

Section 3 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An employing agency may need to amend its internal policies and procedures, which will likely be a minimal impact on its resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 112.81 and 112.82 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21
Meeting Date

970
Bill Number (if applicable)

Topic Firefighters' Bill of Rights

Amendment Barcode (if applicable)

Name Ray Colburn

Job Title President

Address 221 Pinewood Drive
Street

Phone 850-900-5180

Tallahassee FL 32303
City *State* *Zip*

Email ray@ffca.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-3-21
Meeting Date

0970
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Firefighters' Bill of Rights

Name Wayne "Bernie" Bernoska

Job Title President

Address 343 W. Madison Street
Street

Phone 321-231-9116

Tallahassee — Fl. — 32301
City — *State* — *Zip*

Email bernie@fpfp.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

By Senator Hooper

16-01012A-21 2021970__

A bill to be entitled

An act relating to the Firefighters' Bill of Rights; amending s. 112.81, F.S.; revising definitions; amending s. 112.82, F.S.; expanding the rights of firefighters to include informal inquiries; prohibiting firefighters from being threatened with transfer, dismissal, or disciplinary action during an interrogation; providing an effective date.

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

Section 1. Subsections (3) and (4) of section 112.81, Florida Statutes, are amended to read:

112.81 Definitions.—As used in this part:

(3) "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate the ~~a~~ complaint or discuss the facts to determine whether a formal investigation should commence ~~be commenced~~. The term does not include discussions such as safety sessions, normal operational fire debriefings, or routine work-related discussions.

(4) "Formal investigation" means the process of investigation ordered by supervisory or management personnel to determine whether a~~, after the supervisory personnel have previously determined that the~~ firefighter must ~~shall~~ be disciplined, reprimanded, suspended, or removed, during which ~~the~~ questioning of the ~~a~~ firefighter is conducted for the

16-01012A-21 2021970__

purpose of gathering evidence of misconduct.

Section 2. Section 112.82, Florida Statutes, is amended to read:

112.82 Rights of firefighters.—Whenever a firefighter is subjected to an interrogation or an informal inquiry, such process must ~~interrogation shall~~ be conducted in accordance with ~~pursuant to~~ the terms of this section.

(1) The interrogation must ~~shall~~ take place at the facility where the investigating officer is assigned, or at the facility that ~~which~~ has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.

(2) A ~~No~~ firefighter may not ~~shall~~ be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter of the nature of the investigation. The firefighter shall be informed beforehand of the names of all complainants.

(3) All interrogations and informal inquiries must ~~shall~~ be conducted at a reasonable time of day, preferably when the firefighter is on duty, unless the importance of the interrogation or investigation is of such a nature that immediate action is required.

(4) The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.

(5) Interrogation and informal inquiry sessions shall be of reasonable duration and the firefighter shall be permitted

reasonable periods for rest and personal necessities.

(6) The firefighter being interrogated may ~~shall~~ not be subjected to offensive language; threatened with transfer, dismissal, or disciplinary action; or offered any incentive as an inducement to answer any questions.

(7) A complete record of any interrogation shall be made, and if a transcript of such interrogation is made, the firefighter under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.

(8) An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation and be present ~~in any proceeding to which this part applies. If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit~~ during informal inquiries, or formal investigations or interrogations~~, such representative shall be allowed to be present~~.

(9) A ~~No~~ firefighter may not ~~shall~~ be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason solely of his or her exercise of any of the rights granted or protected by this part.

Section 3. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SPB 7050
INTRODUCER:	For Consideration by the Community Affairs Committee
SUBJECT:	OGSR/Unsolicited Proposals
DATE:	March 1, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon		**CA Submitted as Comm. Bill/Fav**

I. Summary:

SPB 7050 amends s. 255.065, F.S., to save from repeal the public records and public meeting exemptions relating to unsolicited proposals submitted by a private entity to a public entity seeking to establish a public-private partnership (P3).

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption contained in s. 255.065, F.S., is scheduled to repeal on October 2, 2021. This bill removes the scheduled repeal to continue the exempt status of unsolicited P3 proposals.

The bill takes effect on October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Competitive Solicitations and the Public Records Act

Section 119.071(1)(b), F.S., exempts from public disclosure sealed responses to a competitive solicitation.[16] Vendors' sealed responses are exempt until a governmental entity notices its intended decision or 30 days after the governmental entity unseals the responses. Sealed responses to a competitive solicitation may be exempt under certain circumstances if a competitive solicitation is withdrawn and reissued; however, such records remain exempt for no longer than 12 months after the governmental entity rejects the responses to the initial competitive solicitation.

Meetings where negotiations, presentations, and discussions concerning a competitive solicitation are held may be closed to the public, pursuant to s. 286.0113(2), F.S. Transcripts of these meetings and any records presented during such meetings are exempt from public disclosure. All meeting records become public when the governmental entity notices its intended decision or 30 days after the governmental entity unseals the vendors' responses.

Open Government Sunset Review Act

The Open Government Sunset Review Act[17] (the act) prescribes a legislative review process for newly created or substantially amended[18] public records or open meetings exemptions, with specified exceptions.[19] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[20]

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[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] "Competitive solicitation" is defined to mean the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.
[17] Section 119.15, F.S.
[18] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[19] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[20] Section 119.15(3), F.S.

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[21]

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[22]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[23] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[24]

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:[25]

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[26] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[27]

Public-private Partnerships – Section 255.065, F.S.

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects. Through the agreements, the skills and

[21] Section 119.15(6)(b), F.S.
[22] Section 119.15(6)(b)1., F.S.
[23] Section 119.15(6)(b)2., F.S.
[24] Section 119.15(6)(b)3., F.S.
[25] Section 119.15(6)(a), F.S.
[26] *See generally* s. 119.15, F.S.
[27] Section 119.15(7), F.S.

assets of each sector (public and private) are shared in delivering a service or facility for the use of the public. In addition to the sharing of resources, each party shares in the risk and reward potential in the delivery of the service and/or facility. Numerous Florida Statutes encourage and provide guidance for P3 projects including those for services and facilities specific to transportation,[28] housing,[29] and education[30].

Chapter 2013-223, L.O.F., created s. 287.05712, F.S., to authorize the use of public-private partnerships by local governments. The law also established the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to study the new P3 process outlined in law and make recommendations for the Legislature's consideration for purposes of creating a uniform process for establishing public-private partnerships.[31] Chapters 2016-153 and 2016-154, L.O.F., utilized the task force analysis to create the current provisions of s. 255.065, F.S.

Section 255.065, F.S., grants responsible public entities (RPEs) (e.g., counties, municipalities, school districts and special districts)[32] the authority to engage in P3 projects for the development of a wide range of public-use facilities or projects that serve a public purpose. Examples of qualifying projects include those for mass transit, vehicle parking, airports or seaports, educational facilities and courthouse or city hall public sector buildings or complexes.[33] The public-private partnerships law establishes requirements to which RPEs must adhere, including procedures for reviewing and approving proposals and public records and public meetings exemptions related to any unsolicited proposals submitted.

Procurement Procedures[34]

A responsible public entity (RPE) may receive unsolicited proposals or may solicit proposals for a qualifying public-private project. A reasonable application fee may be established to cover an RPE's costs of evaluating unsolicited proposal submissions.[35] If the RPE does not evaluate the unsolicited proposal, the RPE must return the application fee.

If the RPE intends to enter into a comprehensive agreement for a project as a result of an unsolicited proposal, the public entity must publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the public entity has received a proposal and will accept other proposals for the same project.

[28] *See* s. 334.30, F.S., on public-private transportation facilities.
[29] *See* s. 420.0003(3)(b), F.S., on the state housing strategy.
[30] *See* s. 1013.35, F.S., on school district educational facilities plans.
[31] The task force held 10 meetings to study the law, understand how governmental entities around the world have implemented public-private partnerships, and to hear from interested parties and stakeholders.
[32] Section 255.065(1)(j), F.S., defines "responsible public entity" to mean a county, municipality, school district, special district, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.
[33] *See* s. 255.065(1)(i)1.-4., F.S.
[34] *See* s. 255.065(3), F.S.
[35] Section 255.06(3)(a)3., F.S., allows an RPE to request additional review funds if the initial application fee does not cover the costs to evaluate an unsolicited proposal.

The timeframe within which the public entity accepts proposals is determined on a project-by-project basis based upon the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received. Certain benchmark timeframe parameters are, however, specified: receipt of other proposals must be for at least 21 days, but no more than 120 days, after the initial date of publication.[36]

Project Qualification and Approval[37]

In the case of an unsolicited proposal, after the public notification period has expired, the RPE ranks the proposals received in order of preference. The RPE may then begin negotiations for a comprehensive agreement with the highest-ranked firm.[38] Before approving a comprehensive agreement, the RPE must determine that the proposed project:

- Is in the public's best interest.
- Is for a facility that is owned by the RPE or for a facility for which ownership will be conveyed to the RPE.
- Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the RPE.
- Has adequate safeguards in place to ensure that the RPE or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
- Will be owned by the RPE upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

Public Records and Public Meetings Exemptions – Section 255.065(15), F.S.

Similar to the competitive solicitation governance in the Public Records Act, pursuant to s. 255.065(15)(b), F.S., an unsolicited proposal received by a RPE is exempt from the inspection and copying provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution until such time as the RPE provides notice of an intended decision for a qualifying project. If the RPE rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the RPE provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.

An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the RPE rejecting all proposals. If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.[39]

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[36] Section 255.065(3)(b), F.S

[37] *See* ss. 255.065(4)-(5), F.S.

[38] Section 225.065(5)(c), F.S., includes provisions for the RPE to consider subsequent-ranked firms or reject all proposers if negotiations results are unsatisfactory.

[39] These provisions echo the 2014 task force recommendation to consider establishing an exemption from public records requirements for proprietary and confidential and trade secret information provided in P3 proposals. The task force also recommended such an exemption be temporary, with the proposal becoming publicly accessible after a period of time.

In addition, s. 255.065(15)(d)1., F.S., provides that any portion of a meeting of a RPE during which an unsolicited proposal that is exempt is discussed is exempt from the public meetings governance found in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution until such time as the RPE provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the RPE if such entity does not issue a competitive solicitation for the project.

Staff Review of Exemption under Review

The Senate Committee on Community Affairs and the House Oversight, Transparency & Public Management Subcommittee disseminated a questionnaire to local governments surveying their experiences with the s. 255.065, F.S., P3 process since its adoption in 2016.[40] Ultimately, 16 local governments provided responses to the questionnaires.[41]

Responding local governments that actually engaged in s. 255.065, F.S., P3s roughly split between those recommending reenacting the exemptions as is and those recommending reenacting the exemptions with certain changes.[42] No respondents recommended repealing the exemptions. One local government cited litigation surrounding unsolicited P3 proposals under s. 255.065, F.S.[43] Additionally, Miami-Dade County and Seminole County have local administrative codes that supplement the statutory P3 process in their jurisdictions.[44]

Examples of suggested potential changes include extending the 180 day time limit that an unsolicited proposal remains exempt from public records requirements to give local governments more time to evaluate and review submissions. There was also mention of difficulty in creating a notice for other similar proposals based on an unsolicited proposal which complies with the

[40] Senate Committee on Community Affairs, *Open Government Sunset Review Questionnaire: Information related to unsolicited proposals for a public-private partnership* (Sep. 8, 2020) (on file with the Senate Committee on Community Affairs). The Florida League of Cities and the Florida Association of Counties assisted in the dissemination of these questionnaires to their respective memberships.

[41] Local governments included the following counties: Broward, Indian River, Miami-Dade, Monroe, Pasco, St. John's, Seminole; cities: Clarke Shores, Hialeah, Jacksonville Beach, Ocean Ridge, Pinellas Park, South Miami, Southwest Ranches, Venice; and special districts: Seminole Improvement District. Questionnaire on file with the Senate Committee on Community Affairs.

[42] There were four "as is" recommendations, four "with changes" recommendations, one "as is" that clarified they were not "averse to considering changes," and two that did not answer the recommendations queries. Five respondents signified having no experience with P3s and therefore did not opine on reenactment.

[43] *See AECOM Technical Services, Inc. v. Broward County, Florida*, No. CACE-19-025964 (Fla. 17th Cir. Ct., Broward County, filed December 19, 2019). The complaint contends that because the unsolicited proposal was not timely considered or accepted within 180 days, it should not be a public record. An Agreed Order to reschedule an April 6, 2020, Final Hearing was granted on March 20, 2020, which effectively suspends the case at the complaint stage.

[44] *See* Section 2-8.2.6, Public-private partnerships; unsolicited proposals, Code of Ordinances, Miami-Dade County; Section 3.56, Guidelines for Public/Private Partnerships, Unsolicited Proposals and Evaluation Process, Seminole County Administrative Code.

public records exemption but also generates commensurate and comparable scope and design submissions from additional entities.

III. Effect of Proposed Changes:

The bill amends s. 255.065, F.S., to save from repeal the current public records and public meeting exemptions relating to unsolicited proposals submitted by a private entity to a public entity seeking to establish a public-private partnership. This information will continue to be exempt from public disclosure beyond October 2, 2021.

The bill takes effect on October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require municipalities or counties to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of municipalities or counties to raise revenue.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption; therefore, it does not require a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The public records exemption appears to be a reasonable measure to prevent release of proprietary or trade secret information provided in unsolicited P3 proposals. Because the exemptions are temporary, proposals become publically accessible after a period of time.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 255.065 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

B. Amendments:

None.

The Senate Committee on Community Affairs
The House Oversight, Transparency & Administration Subcommittee
09/08/20

Open Government Sunset Review Questionnaire
(Information related to unsolicited proposals for a public-private partnership)

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 30, 2020, TO:

John Toman
Senate Committee on Community Affairs
Toman.John@flsenate.gov
(850) 487-5167

Lance Toliver
House Oversight, Transparency & Public Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects. Section 255.065, Florida Statues, governs public entity procurement processes for specified pubic property and publically owned buildings P3 projects for counties, municipalities, and special districts.

Section 255.065(15), Florida Statutes, effective July 1, 2016, provides a public record exemption for unsolicited proposals submitted by a private entity to a public entity seeking to establish a public-private partnership. Additionally, it provides a public meeting exemption for any portion of a meeting during which an unsolicited proposal is discussed. The public record and public meeting exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. The questionnaire is organized into three sections:

- Section I. concerning P3s generally and related unsolicited proposals;
- Section II. concerning the public record exemption; and
- Section III. concerning the public meeting exemption.

A copy of s. 255.065(15), Florida Statutes, is appended to the end of the questionnaire for your convenience.

Name of county, municipality or special district completing the questionnaire:
Name and Title of person completing the questionnaire:
Telephone number of person completing the questionnaire:
E-mail address of person completing the questionnaire:

I. Public-Private Partnerships (P3s)

1. Does your county, municipality, or special district enter into P3 agreements? If "*yes*,":

    a. Does your county, municipality, or special district use the process and procedures set forth in s. 255.065, Florida Statutes, or a different process? Please explain.

    b. Please provide examples of the types of P3 projects your county, municipality, or special district has undertaken.

2. Has your county, municipality, or special district ever received an **unsolicited proposal** for a P3 project submitted pursuant to the process and procedures set forth in s. 255.065, Florida Statutes? If "*yes*,":

    a. How many unsolicited proposals has your county, municipality, or special district received pursuant to s. 255.065, Florida Statutes, since 2016?

    b. Has your county, municipality, or special district ever formally evaluated an unsolicited proposal received by your county, municipality, or special district under s. 255.065, Florida Statutes?

    c. Section 255.065(1)(i)1., Florida Statutes, identifies the types of qualifying P3 facilities (e.g. Mass Transit, Vehicle Parking, Airport, Seaport, Recreational). Please briefly describe the types of P3 projects that have been the subject of the unsolicited proposal(s).

    d. Did your county, municipality, or special district begin a competitive solicitation in response to an unsolicited proposal pursuant to s. 255.065, Florida Statutes? If yes, please identify which one(s) and if the solicitation(s) resulted in an actual project.

If you answered "no" to questions 1 and 2, you may return this questionnaire immediately without completing the remainder of the questionnaire. If you answered "yes" to either question, please complete the remainder of the questionnaire before returning it.

II. Public Record Exemption under Review

Section 255.065(15), Florida Statutes, effective July 1, 2016, provides a public record exemption for unsolicited proposals submitted by a private entity to a public entity seeking to establish a public-private partnership. If the public entity receiving the unsolicited proposal does not issue a competitive solicitation for a project, the unsolicited proposal, and any records generated during a meeting discussing the proposal including the recording of such a meeting, ceases to be exempt 180 days after receipt of the proposal. However, if the public entity decides to issue a competitive solicitation for a public-private partnership project based on the unsolicited proposal and thereafter rejects all submitted proposals, the unsolicited proposal and any records generated during a meeting discussing the proposal including the recording of such a meeting is exempt for no longer than 90 days after the initial notice by the public entity rejecting all proposals. If a public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the public entity provides notice of an intended decision concerning the reissued competitive solicitation for the project or until the public entity withdraws the reissued competitive solicitation.

1. Has the public records exemption under review ever been the subject of litigation? If *"yes,"* please explain and provide the appropriate case citations.

2. Can the exempt information be readily obtained by the public using alternative means? If "yes," how?

3. Does any other state or federal law protect unsolicited proposals given by a private entity to a public entity for the purpose of initiating a public-private partnership? If *"yes":*

    a. Please provide the specific state or federal citation for each exemption.

    b. Please explain which exemption your county, municipality, or special district relies upon when responding to a public records request that would include the exempt information.

    c. Could the exemption under review be merged with the other exemption(s)?

4. Has your county, municipality, or special district received any complaints about the public record exemption? If *"yes,"* please explain.

5. Has your county, municipality, or special district had any difficulties interpreting or applying the public record exemption? Please explain.

6. Does your county, municipality, or special district think the exemption has accomplished its purpose of encouraging private entities to submit unsolicited proposals and ensuring that other private entities do not gain an unfair competitive advantage? Please explain.

7. Which of the following actions does your county, municipality, or special district recommend the Legislature take (Please select one):

   ☐ Repeal the public records exemption
   ☐ Reenact the public records exemption as is
   ☐ Reenact the public records exemption with changes

8. If you selected the "reenact the public records exemption with changes" option above, please explain what changes your county, municipality, or special district recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

9. Please provide any additional comments regarding the public record exemption under review.

III. Public Meeting Exemption

Section 255.065(15), Florida Statutes, provides a public meeting exemption for any portion of a meeting of a public entity during which an unsolicited proposal that is exempt from public record requirements is discussed. A complete recording must be made of any portion of an exempt meeting and no portion of the exempt meeting may be held off the record.

1. Has your county, municipality, or special district ever kept any portion of a meeting exempt from public meeting requirements under this statute? If "yes,":

   a. Please specify the number of such occurrences for each year, beginning in 2016.

   b. How does your county, municipality, or special district keep the portion of the proceeding exempt from public meeting requirements? For instance, does the committee conduct "*open*" and "*closed*" portions of the meeting? If "*closed*" proceedings are conducted, how are those proceedings "*closed*?"

   c. Are minutes or other records kept for those portions of the meeting?

2. Has the public meeting exemption under review ever been the subject of litigation? If *"yes,"* please explain and provide the appropriate case citations.

3. Can the information discussed in the exempt portion of a meeting be readily obtained by the public using alternative means? If "*yes*," how?

4. Does any other state or federal law protect a public meeting discussing unsolicited proposals given by a private entity to a public entity for the purpose of initiating a public-private partnership? If *"yes":*

    a. Please provide the specific state or federal citation for each exemption.

    b. Please explain which exemption your county, municipality, or special district relies upon when responding to a public records request that would include the exempt information.

    c. Could the exemption under review be merged with the other exemption(s)?

5. Has your county, municipality, or special district received any complaints about the public meeting exemption? If *"yes,"* please explain.

6. Has your county, municipality, or special district had any difficulties interpreting or applying the public meeting exemption? Please explain.

7. Does your county, municipality, or special district think the public meeting exemption has accomplished its purpose of encouraging private entities to submit unsolicited proposals and ensuring that other private entities do not gain an unfair competitive advantage? Please explain.

8. Which of the following actions does your county, municipality, or special district recommend the Legislature take (Please select one):

    ☐ Repeal the public meeting exemption
    ☐ Reenact the public meeting exemption as is
    ☐ Reenact the public meeting exemption with changes

9. If you selected the “reenact the public meeting exemption with changes” option above, please explain what changes your county, municipality, or special district recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

10. Please provide any additional comments regarding the public meeting exemption

255.065 Public-private partnerships; public records and public meetings exemptions.—

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—
(a) As used in this subsection, the term "competitive solicitation" has the same meaning as provided in s. 119.071(1).
(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.
2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.
3. An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.
(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.
(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.
2.a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.
b. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the responsible public entity if such entity does not issue a competitive solicitation for the project.
c. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.
d. A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.
(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

FOR CONSIDERATION By the Committee on Community Affairs

578-02220-21 20217050pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 255.065, F.S., relating to an exemption from public records requirements for unsolicited proposals and meetings discussing such proposals; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (15) of section 255.065, Florida Statutes, is amended to read:

255.065 Public-private partnerships; public records and public meetings exemptions.—

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

(a) As used in this subsection, the term "competitive solicitation" has the same meaning as provided in s. 119.071(1).

(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or

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until the responsible public entity withdraws the reissued competitive solicitation for such project.

3. An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.

(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2.a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

b. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the responsible public entity if such entity does not issue a competitive solicitation for the project.

c. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended

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

decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.

d. A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

CourtSmart Tag Report

Room: SB 37 **Case No.:** **Type:**
Caption: Senate Community Affairs **Judge:**

Started: 3/3/2021 9:31:26 AM
Ends: 3/3/2021 10:39:26 AM **Length: 01:08:01**

9:32:26 AM Comments by chair Bradley per the civic center
9:33:10 AM CS/SB 64 Reclaimed Water by Senator Albritton
9:34:04 AM Bill is explained
9:34:24 AM Questions none
9:34:36 AM Public appearance - none
9:34:44 AM Debate-none
9:34:51 AM Waives close
9:34:53 AM Roll call
9:35:02 AM CS/SB 64 is reported favorably
9:35:19 AM SB 912 Tolling and Extension of Permits and Other Authorizations During States of Emergency
9:35:48 AM Senator Albritton explains the bill
9:36:44 AM Senator Albritton explains the bill
9:36:46 AM Questions: Senator Powell
9:37:12 AM Senator Albritton answers on 60 day extension
9:42:01 AM Senator Powell
9:42:14 AM Public appearance
9:42:18 AM Jeffrey Woodburn waives in support
9:42:40 AM Sierra Club in opposition
9:44:08 AM David Cullen on SB64 Sierra Club in opposition
9:44:20 AM Debate: none
9:44:25 AM Waive close
9:44:27 AM Roll call on SB912
9:44:39 AM SB912 reported favorably
9:45:02 AM SB376 Jacksonville Transportation Authority Leases
9:45:38 AM Senator Gibson explains the bill
9:46:08 AM Questions: none
9:46:15 AM Public: Andrew Retchel in support
9:46:32 AM Debate: none
9:46:42 AM Roll Call on SB 376 reported favorably
9:47:12 AM SB 688 Waivers of Exemptions of Applicable Assets
9:47:34 AM Senator Berman explains the bill
9:49:11 AM Questions: none
9:50:10 AM Public - Martha Edenfield in support
9:50:32 AM Debate: none
9:50:37 AM Waive close
9:50:41 AM Roll call
9:50:42 AM SB688 is reported favorably
9:51:09 AM SB 904 doorstep Refuse and Recycling Collection Containers
9:51:43 AM Senator Diaz explains the bill
9:51:50 AM Questions: none
9:52:29 AM Public appearance forms
9:52:32 AM Kelly Mallette with Affinity Waste Solutions in support
9:53:31 AM Senator Cruz with question
9:53:39 AM Kelly in response on who they serve- senior housing is prominent
9:55:08 AM John Pasqualone – Florida Fire Marshalls and Inspectors Association
9:55:38 AM John Pasqualone –Florida Fire Marshall and Inspectors Association fire chief in opposition
9:56:41 AM Justin Frost CEO in support
9:57:23 AM Debate: none
9:57:36 AM Senator Diaz waive close
9:57:43 AM Roll Call
9:57:45 AM SB 904 is reported favorably
9:58:18 AM SPB 7050 OGSR-Unsolicited Proposals

9:58:55 AM Bill is presented
9:59:50 AM Bill is presented by committee attorney Jack Hackett
9:59:58 AM Questions: Senator Powell with question
10:00:14 AM Mr. Hackett explains the bill in simpler terms
10:01:12 AM Senator Powell with follow up question
10:01:24 AM Mr. Hackett responds
10:02:53 AM Public appearance: none
10:03:05 AM Anyone at Civic Center wishing to speak
10:03:09 AM Debate: none
10:03:14 AM Senator Garcia - moves bill
10:03:23 AM Roll call
10:03:27 AM SPB 7050 is reported favorably as Committee Bill
10:04:00 AM SB 360 Fire Prevention and Control
10:04:18 AM Senator Hooper explains the bill
10:04:42 AM Amendment 202414 by Senator Hooper
10:05:46 AM Amendment is explained
10:05:52 AM Questions: none
10:06:54 AM No public appearance on amendment
10:07:05 AM Debate: none
10:07:10 AM Senator Hooper waive close
10:07:13 AM Amendment is adopted
10:07:20 AM Back on the bill
10:07:24 AM Questions on bill as amended: none
10:07:34 AM Public appearance: John Pasqualone Fire Marshalls and Firefighter Association in opposition
10:08:38 AM Ray Colburn Fire Chief in opposition
10:09:17 AM Debate: none
10:09:24 AM Close on bill
10:10:37 AM Roll Call on SB 360
10:11:37 AM CS/SB 360 is reported favorably
10:12:04 AM SB 56 Community Association Assessment Notices
10:12:29 AM Senator Rodriguez presents the bill
10:12:43 AM Questions: none
10:12:58 AM Amendment 812912 by Senator Rodriguez
10:13:17 AM Questions on the amendment: none
10:13:29 AM No public appearance forms
10:13:42 AM Debate: none
10:13:48 AM Sen. Rodriguez waive close
10:13:54 AM Amendment is adopted
10:13:58 AM Back on the bill SB 56
10:14:07 AM No questions
10:14:09 AM No appearance
10:14:17 AM Debate: none
10:14:28 AM Waive close
10:14:33 AM Roll call
10:14:34 AM CS/SB 56 is reported favorably
10:14:58 AM SB 970 Firefighters Bill of Rights by Senator Hooper
10:15:18 AM Bill is explained
10:15:23 AM Questions: none
10:16:14 AM Public appearance
10:16:18 AM Ray Colburn, President of Fire Chiefs' Association in support
10:16:59 AM Bernie Bernoska with Florida Professional Firefighters in support
10:17:38 AM Debate: none
10:17:53 AM Sen. Hooper waive close
10:17:57 AM Roll call on SB970
10:17:59 AM SB 970 is reported favorably
10:18:20 AM Motion- Senator Hooper be shown for Tab 3, 4, 5, 7, 8 in affirmative for missed votes
10:18:47 AM Motion – SB 64, SB 912, SB 376, SB 904, SB 688, SPB 7050 Sen. Baxley moved to be shown in affirmative for missed votes
10:19:23 AM SB 972 Administrative entity Telecommunication Meetings
10:19:46 AM Senator Rodriguez explains the bill
10:19:58 AM Questions: none
10:20:05 AM Natalie Fausel Broward County and Palm Beach County waives in support

10:20:22 AM Debate: none
10:20:31 AM Sen. Rodriguez waive close
10:20:33 AM Roll call on SB 972
10:20:42 AM SB 972 is reported favorably
10:21:01 AM SB 496 Growth Management by Senator Perry
10:21:21 AM Bill is explained
10:21:28 AM Questions on the bill: none
10:21:54 AM Senator Powell with question - purpose of addition of property right portion
10:22:24 AM Senator Perry responds
10:22:32 AM Senator Powell with follow up
10:22:52 AM Senator Perry answers
10:25:25 AM Questions back and forth between Senator Powell and Senator Perry
10:25:49 AM Senator Perry explains it for clarity
10:26:35 AM Amendment 752852 by Senator Perry
10:26:57 AM Explanation of amendment 752852
10:27:21 AM 135832 A to A is explained
10:27:59 AM Questions on AA: none
10:28:05 AM No appearance on A to A
10:28:19 AM Sen. Perry waive close
10:28:27 AM Amendment 135832 is adopted
10:28:46 AM Amendment 752852 by Senator Perry
10:29:01 AM Debate by Senator Baxley on Amendment on property rights
10:31:50 AM Sen. Perry waive close
10:31:55 AM Amendment is adopted
10:32:03 AM Back on amended bill
10:32:10 AM No debate
10:32:16 AM Public appearance, Gary Hunter Association of Florida Community Developers
10:32:26 AM Gary Hunter in support
10:33:40 AM Mr. Hunter speaks to property rights
10:34:24 AM Senator Powell with question to Mr. Hunter
10:34:43 AM Mr. Hunter responds
10:35:41 AM David Cullen of Sierra Club of Florida has concerns on the bill
10:37:46 AM Diego Echeverri for American for Prosperity waives in support
10:38:02 AM Meta Calder, Florida League of Women Voters waives in against
10:38:14 AM Debate: none
10:38:23 AM Sen. Perry waive close
10:38:27 AM Roll call CS/SB 496
10:38:28 AM CS/SB 496 is reported favorably
10:38:51 AM Senator Hooper motion to be shown for Tab 2 voting in the affirmative
10:39:12 AM Senator Hooper be shown for Tab 2 affirmative
10:39:13 AM Move to adjourn by Senator Powell