

Tab 1	SB 252 by Stewart (CO-INTRODUCERS) Torres, Gibson; (Identical to H 01287) Child Care Facilities					
Tab 2	SB 346 by Rodriguez (CO-INTRODUCERS) Hutson; (Similar to CS/H 00491) Florida Real Estate Appraisal Board					
Tab 3	SB 534 by Gibson (CO-INTRODUCERS) Thurston; (Identical to H 00467) Insurance Representative Examination Requirements					
Tab 4	CS/SB 630 by RI, Baxley (CO-INTRODUCERS) Hutson, Rodriguez; (Similar to CS/CS/H 00867) Community Associations					
686078	A	S	RCS	RC, Hutson	btw L.2493 - 2494:	03/31 12:47 PM
Tab 5	CS/SB 912 by EN, Albritton; (Similar to H 00859) Tolling and Extension of Permits and Other Authorizations During States of Emergency					
647342	A	S	RCS	RC, Albritton	Delete L.32 - 36:	03/31 12:52 PM
Tab 6	CS/SB 1018 by EN, Boyd (CO-INTRODUCERS) Perry; (Compare to CS/H 00669) Sale of Aquaculture Products					
303308	D	S	RCS	RC, Boyd	Delete everything after	03/31 12:54 PM
Tab 7	SB 1134 by Harrell; (Compare to CS/H 01151) Department of Highway Safety and Motor Vehicles					
Tab 8	SB 1850 by Perry; (Identical to CS/H 00921) Electronic Threats					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Wednesday, March 31, 2021

TIME: 11:00 a.m.—12:30 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Passidomo, Chair; Senator Garcia, Vice Chair; Senators Albritton, Baxley, Bean, Book, Bracy, Brandes, Diaz, Farmer, Gibson, Gruters, Hutson, Mayfield, Powell, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 252 Stewart (Identical H 1287)	Child Care Facilities; Citing this act as the "Child Safety Alarm Act"; requiring certain vehicles, by a specified date, to be equipped with a reliable alarm system that meets specified criteria; requiring the Department of Children and Families to adopt by rule minimum safety standards for such systems and to maintain a list of approved alarm manufacturers and alarm systems, etc. CF 02/03/2021 Favorable TR 03/03/2021 Favorable RC 03/31/2021 Favorable	Favorable Yeas 14 Nays 1
2	SB 346 Rodriguez (Similar CS/H 491)	Florida Real Estate Appraisal Board; Revising the composition of the board, etc. RI 03/01/2021 Favorable CM 03/09/2021 Favorable RC 03/31/2021 Favorable	Favorable Yeas 14 Nays 0
3	SB 534 Gibson (Identical H 467)	Insurance Representative Examination Requirements; Exempting certain applicants for licensure as an all lines adjuster from a required examination, etc. BI 03/10/2021 Favorable JU 03/22/2021 Favorable RC 03/31/2021 Favorable	Favorable Yeas 14 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 31, 2021, 11:00 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 630 Regulated Industries / Baxley (Similar CS/CS/H 867, Compare CS/H 615, CS/H 665, H 1005, H 1259, CS/H 1517, CS/CS/S 56, S 872, CS/S 1490, S 1688, S 1966, S 1998)	Community Associations; Prohibiting insurance policies from providing specified rights of subrogation under certain circumstances; authorizing a condominium association to extinguish discriminatory restrictions; providing requirements for natural gas fuel stations on property governed by condominium associations; authorizing parties to initiate presuit mediation under certain circumstances; revising the allowable uses of certain escrow funds withdrawn by developers, etc. RI 02/16/2021 Fav/CS CA 03/16/2021 Favorable RC 03/31/2021 Fav/CS	Fav/CS Yeas 14 Nays 1
5	CS/SB 912 Environment and Natural Resources / 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 03/22/2021 Fav/CS RC 03/31/2021 Fav/CS	Fav/CS Yeas 15 Nays 0
6	CS/SB 1018 Environment and Natural Resources / Boyd (Similar S 1098, Compare CS/H 669)	Sale of Aquaculture Products; Authorizing certified aquaculture producers and certain licensed dealers to sell Florida largemouth bass without restriction under certain circumstances; making technical changes, etc. AG 03/03/2021 Favorable EN 03/22/2021 Fav/CS RC 03/31/2021 Fav/CS	Fav/CS Yeas 15 Nays 0
7	SB 1134 Harrell (Compare CS/H 1151, H 1359)	Department of Highway Safety and Motor Vehicles; Revising regulations applicable to owners and drivers of commercial motor vehicles; revising the length of time within which an officer is authorized to give written notice requiring correction of an unduly hazardous operating condition; requiring the Department of Highway Safety and Motor Vehicles, rather than the Department of Transportation, to establish and revise standards to ensure the safe operation of nonpublic sector buses; providing that vehicles that meet certain conditions are exempt from odometer disclosure after specified periods of time, etc. TR 03/03/2021 Favorable GO 03/17/2021 Favorable RC 03/31/2021 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 31, 2021, 11:00 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1850 Perry (Identical CS/H 921)	Electronic Threats; Prohibiting a person from sending, posting, or transmitting, or from procuring the sending, posting, or transmission of a written or electronic record when in such record the person makes a threat to kill or to do bodily harm to another person or to conduct a mass shooting or an act of terrorism; providing criminal penalties, etc. CJ 03/16/2021 Favorable RC 03/31/2021 Favorable	Favorable Yeas 13 Nays 3

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 Rules

BILL: SB 252

INTRODUCER: Senator Stewart

SUBJECT: Child Care Facilities

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Favorable
2.	Proctor	Vickers	TR	Favorable
3.	Delia	Phelps	RC	Favorable

I. Summary:

SB 252 creates the “Child Safety Alarm Act” and requires that after January 1, 2022, vehicles used by child care facilities to transport children must be equipped with an approved alarm system that prompts the driver to inspect the vehicle for the presence of children before leaving the area. This change is in response to reported deaths of small children who are left in vehicles during periods of hot weather.

The bill requires the Department of Children and Families (DCF) to adopt minimum safety standards for reliable alarm systems and maintain a list of alarm manufacturers and alarm systems that are approved to be installed in vehicles.

The bill also provides rulemaking authority.

The bill is expected to have a significant fiscal impact on private entities. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

II. Present Situation:

Death by hyperthermia, or vehicular heat stroke deaths, have become more prevalent since federal law required that children ride in the backseat due to the danger of front passenger seat airbags.¹ The national average number of these deaths is 39 per year.² Fifty-five percent of hyperthermia deaths involve children under the age of one, and eighty-eight percent involve

¹ See Gene Weingarten, *Fatal Distraction: Forgetting a Child in the Backseat of a Car is a Horrifying Mistake. Is it a Crime?*, The Washington Post, Mar. 8, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022701549.html> (last visited January 27, 2021).

² See Kids and Cars.org, *Children Vehicular Heatstroke Deaths by Year*, available at <https://www.kidsandcars.org/how-kids-get-hurt/heat-stroke/> (last visited January 27, 2021).

children under the age of three.³ Between 1998 and 2021, Florida has the second highest number of child deaths from vehicular heat stroke.⁴ In 2020, 24 children fell victim to vehicular heat stroke deaths nationwide.⁵ Three of these 24 deaths in 2020 occurred in Florida.⁶

Technology Based Prevention

Automobile Manufacturers

The auto industry has been aware of the problem for years and has researched ways to solve this problem. General Motors (GM) tried over ten years ago to find a solution, but found the results were unreliable. At the 2002 New York Auto Show, GM revealed a new mechanism capable of identifying the heartbeat of a child left in a car and measure the temperature of the vehicle. Once the heartbeat was detected, the mechanism prompted the car to activate its horn to alert individuals nearby. GM later reported that the system was abandoned after it was found "not reliable enough to put into production."⁷

Ford was another automaker who attempted to develop such a system. However, a decade after starting, the technology isn't available on any automobile as a factory standard feature or option. Auto safety groups have called for manufacturers to do more, but for several reasons including cost, technology, liability and privacy issues, there is still no foolproof way of preventing overheating deaths or warning of the possibility before they happen.⁸

In 2016, GM announced it would introduce a new safety system to remind drivers to check for children in the rear seats and that features could be developed later to detect forgotten children.⁹ Later that same year, the National Highway Traffic Safety Administration (NHTSA) said it didn't plan to require automakers to add in-vehicle technology that would alert those who leave young children behind in hot cars.¹⁰

Aftermarket Systems

There are numerous aftermarket warning systems that alert a parent to a child left in a safety seat, shopping cart, or elsewhere, but federal regulators have questioned their efficacy.¹¹

³ See Kids and Cars.org, *Fact Sheet*, available at <https://www.kidsandcars.org/wp-content/uploads/2020/01/Heatstroke-fact-sheet.pdf> (last visited January 27, 2021).

⁴ National Safety Council, *Hot Car Deaths*, available at <https://injuryfacts.nsc.org/motor-vehicle/motor-vehicle-safety-issues/hotcars/> (last visited January 27, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ Paul Eisenstein, *Death in Hot Cars: Why Can't the Automakers Prevent the Danger?* July 14, 2014, available at <http://www.nbcnews.com/storyline/hot-cars-and-kids/death-hot-cars-why-cant-automakers-prevent-danger-n152911> (last visited January 27, 2021).

⁸ *Id.*

⁹ David Shepardson, *GM has a way to help prevent drivers from forgetting children in the back seat*, Business Insider, January 12, 2016, available at <https://www.businessinsider.com/r-gm-unveils-technology-to-help-avoid-child-heatstroke-deaths-2016-1> (last visited January 27, 2021).

¹⁰ *Id.*

¹¹ Ryan Jaslow, *Gov't study: Devices that alert parents they left a child in a car deemed unreliable*, CBS News, July 31, 2012, available at <https://www.cbsnews.com/news/govt-study-devices-that-alert-parents-they-left-a-child-in-car-deemed-unreliable/> (last visited February 1, 2021).

A preliminary assessment performed on technology devices aimed at helping to prevent a child from being unintentionally left in a hot car concluded that they are not reliable and limited in their effectiveness, according to a study by NHTSA and the Children's Hospital of Philadelphia.¹²

The study revealed as number of potential issues, including inconsistent sensitivity in the arming of the device, discrepancies in the distance of the warning signal, potential electronic interference from other devices, children accidentally disarming the alarm by slumping over or sleeping out of position, and other common scenarios, such as a spilled beverage.¹³ Installation was complex and extensive for several of the products tested. Moreover, since the devices are restraint-based, the 20 to 40 percent of children who are killed after entering a vehicle without adult permission would not be helped by these products.¹⁴

Licensing Standards for Child Care Facilities and Large Family Child Care Homes

The DCF establishes licensing standards that each licensed child care facility¹⁵ in the state must meet.¹⁶ Statutory licensing standards for child care facilities are extensive and reference transportation and vehicles, including, in part, the requirement that minimum standards include accountability for children being transported.¹⁷ The Florida Administrative Code provides requirements for licensed child care facilities and large family child care homes¹⁸ to follow in relation to vehicles that are owned, operated, or regularly used by the facility or home, as well as vehicles that provide transportation through a contract or agreement with an outside entity.¹⁹

For example, providers are required to maintain a driver's log for all children being transported. This log must include the child's name, date, time of departure, time of arrival, signature of driver, and signature of second staff member to verify the driver's log and that all children have left the vehicle.²⁰ Upon arrival at the destination, the driver of the vehicle must mark each child off the log as the child departs the vehicle, conduct a physical inspection and visual sweep of the vehicle, and sign, date, and record the driver's log immediately to verify all children were accounted for and that the sweep was conducted.²¹ Upon arrival at the destination, a second staff member must also conduct a physical inspection and visual sweep of the vehicle and sign, date,

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 402.302(2), F.S., defines a "child care facility" as "any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit." Exceptions to this definition include public and nonpublic schools and their integral programs, summer camps with children in full-time residence, summer day camps, bible schools normally conducted during vacation periods, and operators of transient establishments under certain conditions.

¹⁶ See Section 402.305, F.S.

¹⁷ *Id.*

¹⁸ Section 402.302(11), F.S., defines a "large family child care home", in part, as an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation.

¹⁹ See 65C-22.001(6), F.A.C.

²⁰ *Id.*

²¹ *Id.*

and record the driver's log to verify all children were accounted for and that the driver's log is complete.²²

As of December 14, 2020, approximately 1,566 child care providers licensed by the DCF offer transportation services.²³ Current standards for child care facilities and large family child care homes do not address alarm systems in vehicles. However, Palm Beach County and Broward County have requirements similar to the one proposed in the bill.²⁴

III. Effect of Proposed Changes:

The bill provides that the act may be cited as the "Child Safety Alarm Act."

The bill amends s. 402.305, F.S., in part, to require that on or after January 1, 2022, vehicles used by child care facilities and large family child care homes to transport children must have an approved alarm system that prompts the driver to inspect the vehicle for the presence of children before leaving the area. The bill requires the DCF to adopt by rule minimum safety standards for reliable alarm systems and maintain a list of alarm manufacturers and alarm systems that are approved to be installed in vehicles.

The bill also modifies existing minimum safety standards pertaining to transportation for child care facilities. Specifically, the bill amends certain standards in s. 402.305(10), F.S., to:

- Clarify that the limitations on the number of children is related to how many may be transported within each vehicle;
- Provide that the standards must include procedures to ensure that children are not inadvertently left in vehicles when transported by the facility, rather than just procedures to avoid leaving children in vehicles; and
- Require that systems are in place to ensure accountability measures for each facility.

The bill also clarifies that child care facilities and large family child care homes are not responsible for the safe transport of children when they are being transported by a parent or guardian.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²² *Id.*

²³ The DCF, Agency Analysis of Senate Bill 252, p. 6 (December 14, 2020) (on file with the Senate Committee on Children, Families, and Elder Affairs)(hereinafter cited as, "The DCF Analysis").

²⁴ The DCF Analysis, p. 7.

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 DCF anticipates that all of the 1,566 licensed providers offering transportation services will need to purchase at least one of the alarm systems required by the bill.²⁵ The DCF estimates that the lowest cost for one of the alarms would be \$130, plus \$100 for installation for a total of \$230 and the highest cost would be \$156 plus \$450 for installation for a total of \$606.²⁶

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 402.305 of the Florida Statutes.

²⁵ The DCF Analysis, p. 6.

²⁶ *Id.*

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.

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

By Senator Stewart

13-00124-21

2021252__

A bill to be entitled

An act relating to child care facilities; providing a short title; amending s. 402.305, F.S.; requiring certain vehicles, by a specified date, to be equipped with a reliable alarm system that meets specified criteria; requiring the Department of Children and Families to adopt by rule minimum safety standards for such systems and to maintain a list of approved alarm manufacturers and alarm systems; making technical changes; providing an effective date.

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

Section 1. This act may be cited as the "Child Safety Alarm Act."

Section 2. Subsection (10) of section 402.305, Florida Statutes, is amended to read:

402.305 Licensing standards; child care facilities.—

(10) TRANSPORTATION SAFETY.—

(a) Minimum standards shall include all of the following:

1. Requirements for child restraints or seat belts in vehicles used by child care facilities and large family child care homes to transport children.

2. Requirements for annual inspections of such the vehicles.

3. Limitations on the number of children that may be transported in such the vehicles.

4. Procedures to ensure that avoid leaving children are not inadvertently left in vehicles when transported by the facility

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13-00124-21

2021252__

~~or home,~~ and that systems are in place to ensure accountability for children transported by such facilities and homes ~~the child care facility.~~

(b) By January 1, 2022, all vehicles used by child care facilities and large family child care homes to transport children must be equipped with a reliable alarm system approved by the department which prompts the driver to inspect the vehicle for children before exiting the vehicle. The department shall adopt by rule minimum safety standards for such systems and shall maintain a list of approved alarm manufacturers and alarm systems that meet or exceed those standards.

(c) A child care facility or large family child care home is not responsible for the safe transport of children when they are being transported by a parent or guardian.

Section 3. This act shall take effect October 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 4, 2021

I respectfully request that **Senate Bill #252**, relating to Child Care Facilities, be placed on the:

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

The bill seeks to solve the tragic problem of a child being left unattended in a child care vehicle by requiring the installation of a safety alarm that would prompt the driver to check the vehicle upon exiting.

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

Rules 1/AM

APPEARANCE RECORD

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

03-31-21

SB 252

Meeting Date

Bill Number (if applicable)

Topic Child Care Facility

Amendment Barcode (if applicable)

Name Dannie McMillon

Job Title Legislation Committee Member

Address 1747 Orlando Central Pkwy

Phone 407-855-7604

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Orlando

FL

32809

City

State

Zip

Email mcmillonactivist@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

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.

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

THE FLORIDA SENATE

APPEARANCE RECORD

03/31/2021

Meeting Date

252

Bill Number (if applicable)

Topic Child Care Facilities

Amendment Barcode (if applicable)

Name Andrew S. Kalel

Job Title Legislative Affairs Director

Address 227 N Bronough, Suite 1125

Phone (850)999-4655

Street

Tallahassee

FL

32301

Email andrew.kalel@regionalcounsels.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of Criminal Conflict and Civil Regional Counsel, 5th region

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
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 Rules

BILL: SB 346

INTRODUCER: Senators Rodriguez and Hutson

SUBJECT: Florida Real Estate Appraisal Board

DATE: March 29, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof	RI	Favorable
2. McKay	McKay	CM	Favorable
3. Oxamendi	Phelps	RC	Favorable

I. Summary:

SB 346 reduces the number of board members sitting on the Florida Real Estate Appraisal Board (board) from nine to seven members. The bill removes from the board one of the two current members representing the appraisal management industry, and one of the two current members who represents the general public and is not connected in any way with the practice of real estate appraisal.

The effective date of the bill is November 1, 2021.

II. Present Situation:

The Florida Real Estate Appraisal Board (board) within the Department of Business and Professional Regulation (DBPR) regulates real estate appraisers under part II of ch. 475, F.S. The board, through its rules, is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and
- Establish standards for and regulate supervisory appraisers.

The board consists of nine members.¹ The members of the board are all appointed by the Governor, subject to confirmation by the Senate. The Governor may remove any member for cause.² The membership of the board must consist of:

¹ Section 475.613(1), F.S.

² Section 475.613(1)(a), F.S.

- Four members who are real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment;
- Two members who represent the appraisal management industry;
- One member who represents organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance; and
- Two members who represent the general public and are not connected in any way with the practice of real estate appraisal.³

Members of the board are appointed for 4-year terms, and may not be appointed for more than two consecutive terms.⁴ The headquarters of the board is in Orlando, Florida.⁵ The board must meet at least once each calendar quarter to conduct its business.⁶ Members must elect a chairperson at the first meeting each year.⁷

Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.⁸

Currently there are 6,891 active certified real estate appraisers.⁹ In comparison, the seven-member Real Estate Commission, which regulates real estate agents, associates, and schools, has 305,298 active licensees.¹⁰

In 2010, the membership of the board was increased from seven members to nine members with the addition of two members representing the appraisal management industry.¹¹

There is currently one vacancy on the board.¹² There are two members with current appointments expiring October 31, 2021 and six continue to hold office through the expiration of their term, including both public members and both appraisal management industry representatives.¹³

III. Effect of Proposed Changes:

The bill amends s. 475.613, F.S., to reduce the number of board members sitting on the board from nine members to seven members. The bill removes from the board one of the two current members representing the appraisal management industry, and one of the two current members

³ *Id.*

⁴ Section 475.613(1)(a), F.S.

⁵ Section 475.613(1)(b), F.S.

⁶ Section 475.613(1)(c), F.S.

⁷ Section 475.613(1)(d), F.S.

⁸ Section 475.613(1)(e), F.S.

⁹ See Department of Business and Professional Regulation, *Annual Report, Divisions of Professions, Division Certified Public Accounting, Division of Real Estate, and Division of Regulation, Fiscal Year 2019-2020*, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf, at page 20 (last visited March 8, 2021).

¹⁰ *Id.*

¹¹ Chapter 2010-84, s. 2, Laws of Fla.

¹² It is an appointment of a certified real estate appraiser. [Real Estate Appraisal – Board Information – MyFloridaLicense.com](http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf) (last visited March 8, 2021).

¹³ *Id.*

who represents the general public and is not connected in any way with the practice of real estate appraisal.

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:

The DBPR estimates that the bill will reduce travel expenses for the board by \$5,200 per year.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁴ See Department of Business and Professional Regulation, *SB 346 Bill Analysis*, p. 3 (Jan. 26, 2021) (on file with the Senate Committee on Regulated Industries).

VIII. Statutes Affected:

This bill substantially amends the following section 475.613 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.

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

By Senator Rodriguez

39-00677-21

2021346__

A bill to be entitled

An act relating to the Florida Real Estate Appraisal Board; amending s. 475.613, F.S.; revising the composition of the board; providing an effective date.

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

Section 1. Subsection (1) of section 475.613, Florida Statutes, is amended to read:

475.613 Florida Real Estate Appraisal Board.—

(1) There is created the Florida Real Estate Appraisal Board, which shall consist of seven ~~nine~~ members appointed by the Governor, subject to confirmation by the Senate. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment. In appointing real estate appraisers to the board, while not excluding other appraisers, the Governor shall give preference to real estate appraisers who are not primarily engaged in real estate brokerage or mortgage lending activities. One member ~~Two members~~ of the board must represent the appraisal management industry. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. One member ~~Two members~~ of the board must be a representative ~~shall be representatives~~ of the general public and ~~may shall~~ not be connected in any way with the practice of real estate appraisal. The appraiser members shall be as representative of the entire industry as possible, and

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membership in a nationally recognized or state-recognized appraisal organization ~~may shall~~ not be a prerequisite to membership on the board. To the extent possible, no more than two members of the board shall be primarily affiliated with any one particular national or state appraisal association. Two of the members must be licensed or certified residential real estate appraisers and two of the members must be certified general real estate appraisers at the time of their appointment.

(a) Members of the board shall be appointed for 4-year terms. Any vacancy occurring in the membership of the board shall be filled by appointment by the Governor for the unexpired term. Upon expiration of her or his term, a member of the board shall continue to hold office until the appointment and qualification of the member's successor. A member may not be appointed for more than two consecutive terms. The Governor may remove any member for cause.

(b) The headquarters for the board shall be in Orlando.

(c) The board shall meet at least once each calendar quarter to conduct its business.

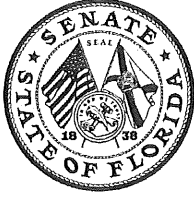
(d) The members of the board shall elect a chairperson at the first meeting each year.

(e) Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #346**, relating to Florida Real Estate Appraisal Board, be placed on the:

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

The intent of this bill is to return the Florida Real Estate Appraisal Board from nine members to its previous seven-member size.

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez", is written over a horizontal line.

Senator Ana Maria Rodriguez
Florida Senate, District 39

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/31/21

Meeting Date

346

Bill Number (if applicable)

Topic Florida Real Estate Appraisal Board

Amendment Barcode (if applicable)

Name Andy Gonzalez

Job Title Public Policy Representative

Address 200 S. Monroe St

Phone 850-225-1400

Street

Tallahassee

City

FL

State

32301

Zip

Email andy.g@floridarealtors.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Realtors

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
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 Rules

BILL: SB 534

INTRODUCER: Senators Gibson and Thurston

SUBJECT: Insurance Representative Examination Requirements

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	Favorable
2.	Davis	Cibula	JU	Favorable
3.	Schrader	Phelps	RC	Favorable

I. Summary:

SB 534 amends s. 626.221, F.S., to add a category of persons to the list of individuals who are not required to take the examination to become an all-lines insurance adjuster—namely a person certified as an Accredited Insurance Claims Specialist (AICS) from Encore Claim Services (Encore).

II. Present Situation:

An adjuster is “an individual employed by a property/casualty insurer to evaluate losses and settle policyholder claims.”¹ An adjuster may be licensed as either an “all-lines adjuster” or a “public adjuster.”² An all-lines adjuster “is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage.”³ Subject to certain exceptions, a public adjuster is someone who is paid by an insured to prepare and file a claim for the insured against his or her insurer.⁴

Among other requirements, an applicant must pass an examination to obtain an adjuster’s license; however, the examination requirement is waived if the applicant has attained certain professional designations that document his or her successful completion of professional education coursework.⁵

¹ INSURANCE INFORMATION INSTITUTE, GLOSSARY (defining “adjuster”), <https://www.iii.org/resource-center/iii-glossary/A> (last visited March 16, 2021).

² Section 626.864, F.S.

³ Sections 626.015(2) and 626.8548, F.S.

⁴ Section 626.854, F.S.

⁵ Section 626.221, F.S.

An examination is not required for all-lines adjuster applicants having one of the following professional designations:

- Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state.
- Associate in Claims (AIC) from the Insurance Institute of America.
- Professional Claims Adjuster (PCA) from the Professional Career Institute.
- Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy.
- Certified Adjuster (CA) from ALL LINES Training.
- Certified Claims Adjuster (CCA) from AE21 Incorporated.
- Claims Adjuster Certified Professional (CACP) from WebCE, Inc.
- Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM).⁶

The DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license.⁷ The DFS rules state that the curriculum must include at least 40 hours of instruction covering all of the topics in the all-lines adjuster Examination Content Outline adopted by the DFS.⁸

Encore Claims Services provides training for individuals in the insurance industry⁹ and offers a 40-hour online course to assist individuals applying for all-lines adjuster licenses.¹⁰ Encore is a subsidiary of JYM Associates Group Inc., a Florida for-profit corporation based in Jacksonville.¹¹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 626.221, F.S., to exempt an applicant who receives an Accredited Insurance Claims Specialist (AICS) designation from Encore Claim Services, from the all-lines adjuster licensing exam requirement. However, Encore's curriculum still must be approved by the DFS, pursuant to s. 626.221(2)(j), F.S., and Rule 69B-227.320, F.A.C., before the exemption would apply.

Section 2 of the bill reenacts s. 626.8734, F.S., to incorporate the amendment made to s. 626.221, F.S.

Section 3 of the bill provides an effective date of July 1, 2021.

⁶ Section 626.221(2)(j), F.S.

⁷ *Id.*

⁸ Rule 69B-227.320, F.A.C.

⁹ About us, Encore Claim Services, <https://encoreclaimservices.com/aboutus/#> (last visited March 16, 2021).

¹⁰ Encore Claim Services 40-hour Online Claim Adjuster Training, Encore Claim Services, <https://encoreclaimservices.teachable.com/p/florida-all-lines-adjuster-final-exam> (last visited March 16, 2021).

¹¹ *Supra* note 9; Detail by Entity Name: JYM Associates Group Inc., Division of Corporations: Sunbiz.org, <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=JYMASSOCIATESGROUP%20P190000278530&aggregateId=domp-p19000027853-2eb71327-7ed7-4dea-9b5c-0c37bbe3e227&searchTerm=JYM%20ASSOCIATES%20GROUP%20INC.&listNameOrder=JYMASSOCIATESGROUP%20P190000278530> (last visited March 16, 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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

SB 534 may reduce licensure fees for some applicants who have the AICS designation by eliminating their need to pay the examination fee.

C. Government Sector Impact:

The bill may cause the DFS to incur some cost in reviewing and approving the AICS curriculum offered by Encore to confirm that said curriculum comports with the requirements of Section 626.221(2)(j), F.S., and Rule 69B-227.320, F.A.C.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 626.221 of the Florida Statutes.

This bill reenacts s. 626.8734 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.

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

By Senator Gibson

6-00285-21

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1 A bill to be entitled
 2 An act relating to insurance representative
 3 examination requirements; amending s. 626.221, F.S.;
 4 exempting certain applicants for licensure as an all-
 5 lines adjuster from a required examination; reenacting
 6 s. 626.8734, F.S., relating to nonresident all-lines
 7 adjuster license qualifications, to incorporate the
 8 amendment made to s. 626.221, F.S., in a reference
 9 thereto; providing an effective date.

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

11
 12 Section 1. Paragraph (j) of subsection (2) of section
 13 626.221, Florida Statutes, is amended to read:
 14 626.221 Examination requirement; exemptions.—
 15 (2) However, an examination is not necessary for any of the
 16 following:
 17 (j) An applicant for license as an all-lines adjuster who
 18 has the designation of Accredited Claims Adjuster (ACA) from a
 19 regionally accredited postsecondary institution in this state,
 20 Associate in Claims (AIC) from the Insurance Institute of
 21 America, Professional Claims Adjuster (PCA) from the
 22 Professional Career Institute, Professional Property Insurance
 23 Adjuster (PPIA) from the HurriClaim Training Academy, Certified
 24 Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster
 25 (CCA) from AE21 Incorporated, Claims Adjuster Certified
 26 Professional (CACP) from WebCE, Inc., Accredited Insurance
 27 Claims Specialist (AICS) from Encore Claim Services, or
 28 Universal Claims Certification (UCC) from Claims and Litigation
 29

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30 Management Alliance (CLM) whose curriculum has been approved by
 31 the department and which includes comprehensive analysis of
 32 basic property and casualty lines of insurance and testing at
 33 least equal to that of standard department testing for the all-
 34 lines adjuster license. The department shall adopt rules
 35 establishing standards for the approval of curriculum.

36 Section 2. For the purpose of incorporating the amendment
 37 made by this act to section 626.221, Florida Statutes, in a
 38 reference thereto, paragraph (b) of subsection (1) of section
 39 626.8734, Florida Statutes, is reenacted to read:
 40 626.8734 Nonresident all-lines adjuster license
 41 qualifications.—
 42 (1) The department shall issue a license to an applicant
 43 for a nonresident all-lines adjuster license upon determining
 44 that the applicant has paid the applicable license fees required
 45 under s. 624.501 and:
 46 (b) Has passed to the satisfaction of the department a
 47 written Florida all-lines adjuster examination of the scope
 48 prescribed in s. 626.241(6); however, the requirement for the
 49 examination does not apply to:
 50 1. An applicant who is licensed as an all-lines adjuster in
 51 his or her home state if that state has entered into a
 52 reciprocal agreement with the department;
 53 2. An applicant who is licensed as a nonresident all-lines
 54 adjuster in a state other than his or her home state and a
 55 reciprocal agreement with the appropriate official of the state
 56 of licensure has been entered into with the department; or
 57 3. An applicant who holds a certification set forth in s.
 58 626.221(2)(j).

Page 2 of 3

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59

Section 3. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Military and Veterans Affairs, Space,
and Domestic Security
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR AUDREY GIBSON
6th District

March 22, 2021

Senator Kathleen Passidomo, Chair
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Passidomo:

I respectfully request that SB 534, be placed on the next committee agenda.

SB 534, allows high school students the opportunity to have a profession in the insurance industry by completing a 40-hour curriculum and exempting them from sitting the state exam which reduces barriers to become a licensed adjuster. This bill passed unanimously in the first and second committees.

Thank you for your kind and consideration.

Sincerely,

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

Audrey Gibson
State Senator
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

+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 Rules

BILL: CS/CS/SB 630

INTRODUCER: Rules Committee; Regulated Industries Committee; and Senator Baxley and others

SUBJECT: Community Associations

DATE: March 31, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 630 revises the regulation and governance of condominium, cooperative, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively. The bill authorizes condominium, cooperative, and homeowners' associations to extinguish discriminatory restrictions in recorded title transactions.

For condominium associations, the bill:

- Prohibits a unit owner's insurance policy from including rights of subrogation against the association if the association's policy does not provide subrogation rights against the unit owner;
- Provides for the operation of more than one condominium by a condominium association (multicondominium).
- Reduces the time period an association must maintain official records of bids for work, equipment, or services to be performed from seven years to one year after receipt of the bid;
- Permits associations with 150 or more units to make official records available for inspection through an application that can be downloaded to a mobile device;
- Provides that only a board member's service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit;
- Permits associations to electronically transmit the written notice of a meeting;
- Increases the maximum permissible fee an association may charge for the transfer of a unit from \$100 to \$150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period;

- Removes the prohibition against an association employing or contracting with any service provider that is owned or operated by a board member or person who has a financial relationship with a board member or officer;
- Permits unit owners to install a charging station for an electric vehicle or a natural gas fuel vehicle on a parking area exclusively designated for use by the unit owner. The unit owner is required to be responsible for the costs related to the installation, maintenance, and removal of the charging station for an electric vehicle or a natural gas fuel vehicle;
- Provides that a condominium developer may expend escrow funds to satisfy actual costs of construction and development, but exclude other specified costs, such as marketing costs;
- Repeals the requirement that the condominium ombudsman must maintain his or her office in Leon County.

For cooperative associations, the bill:

- Provides that an interest in a cooperative unit is an interest in real property; and
- Permits board or committee members to appear and vote by telephone, real-time video conferencing, or similar real-time electronic or video communication.

For homeowners' associations, the bill:

- Permits an association to adopt, by rule, procedures for posting meeting notices and agendas on a website and emailing members meeting notices and agendas;
- Requires sign-in sheets, voting proxies, ballots, and all other papers related to voting to be maintained as official records;
- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community;
- Clarifies the situations in which an association is obligated to create or fund association reserve accounts;
- Specifies the types of expenses the developer is not obligated to pay.
- Provides for the prospective application of an amendment to the governing documents that restricts the right to rent a parcel;
- Provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner; and
- Revises the conditions under which non-developer members of a homeowners' association are entitled to elect the majority of the board, to consistently distinguish between developer members and non-developer members.

For condominium and cooperative associations, the bill:

- Prohibits an association from requiring members to demonstrate any purpose or state any reason for inspecting official records; and
- Provides a process to resolve disputes by initiating presuit mediation as an alternative to mandatory nonbinding arbitration by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation.

For condominium, cooperative, and homeowners' associations, the bill:

- Provides that recall and election disputes are not eligible for mediation and must be arbitrated by the division or filed in court;
- Provides additional emergency powers to respond to injury and to an anticipated declared state of emergency; and
- Clarifies that payment of a fine is due five days after notice of the fine is provided to the unit owner, tenant, or invitee of the unit owner.

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

II. Present Situation:

Condominium

A condominium is a “form of ownership of real property created under ch. 718, F.S.”¹ Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.² For unit owners, membership in the association is an unalienable right and required condition of unit ownership.³ A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.⁴ 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.⁵

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.⁶ 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.”⁷ The board of administrators comprised of 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 which are owned in undivided shares by unit owners.⁸ In litigation, an association's board of directors is in charge of directing attorney actions.⁹

¹ Section 718.103(11), F.S.

² See s. 718.103, F.S.

³ *Id.*

⁴ Section 718.104(2), F.S.

⁵ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁶ Section 718.303(3), F.S.

⁷ Section 718.103(4), F.S.

⁸ Section 718.103(2), F.S.

⁹ Section 718.103(30), F.S.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over condominiums.¹⁰

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 by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.¹¹ 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.¹²

The division has limited regulatory authority over cooperatives, including the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.¹³

Homeowners’ Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹⁴

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.”¹⁵ Unless specifically stated to the contrary in the articles of

¹⁰ See s. 718.501, F.S. See *infra*, the *Present Situation* for the proposed revisions to the division’s authority set forth in s. 718.501, F.S.

¹¹ See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), *review denied* 2020 WL 3442763 (Fla. 2020).

¹² See ss. 719.106(1)(g) and 719.107, F.S.

¹³ Section 719.501(1), F.S.

¹⁴ See s. 720.302(1), F.S.

¹⁵ Section 720.301(9), F.S.

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.¹⁶

Homeowners' associations are administered by a board of directors whose members are elected.¹⁷ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹⁸ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁹

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.

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.²⁰

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

¹⁶ Section 720.302(5), F.S.

¹⁷ See ss. 720.303 and 720.307, F.S.

¹⁸ See ss. 720.301 and 720.303, F.S.

¹⁹ Section 720.303(1), F.S.

²⁰ See s. 720.306(9)(c), F.S.

associations. The chapters delineate requirements for notices of meetings,²¹ recordkeeping requirements, including which records are accessible to the members of the association,²² and financial reporting.²³ Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

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 an associated section detailing the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Condominium Unit Insurance

Present Situation

A condominium association is required to use its best efforts to maintain insurance for the association, the association property, the common elements, and the condominium property.²⁴ Insurance coverage for the association must insure the condominium property as originally installed and all alterations or additions made to the condominium property.²⁵

Condominium association insurance coverage does not include personal property within a unit or a unit’s limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Such property and insurance is the responsibility of the unit owner.²⁶

A condominium unit owner’s insurance policy must conform to s. 627.714, F.S.,²⁷ which requires that an individual unit owner’s residential property insurance policy must state that the coverage afforded by the policy is excess coverage over the amount recoverable under any policy covering the same property.²⁸

An association is not obligated to pay for reconstruction or repairs to an improvement, benefiting a specific unit and installed by a unit owner.²⁹

Alternatively, s. 718.111(11)(j), F.S., provides that any portion of the condominium property that must be insured by the association against property loss under s. 718.111(11)(f), F.S., which is damaged by an insurable event, shall be reconstructed, repaired, or replaced as necessary by the association as a common expense to the association. Under s. 718.111(j)1., F.S., the

²¹ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²² See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²³ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²⁴ Section 718.111(11), F.S.

²⁵ Section 718.111(11)(f), F.S.

²⁶ Section 718.111(11)(f)3., F.S.

²⁷ Section 718.111(11)(g), F.S.

²⁸ Section 627.714(4), F.S.

²⁹ Section 718.111(11)(n), F.S.

subrogation³⁰ rights of an insurer are not compromised if the unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by an association's insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees.

Section 718.111(11)(j)3., F.S., provides that an association may reimburse the unit owner without the waiver of any subrogation rights, if:

- The cost of repair or reconstruction is the unit owner's responsibility;
- The association has collected the cost of such repair or reconstruction from the unit owner; and
- The association from insurance proceeds reimburses the unit owner.

Section 718.111(j), F.S., does not provide a condominium unit owner or their insurer a private right of action against another unit owner or their insurer for property damage caused by the latter's intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association.³¹

In 2010, the Legislature repealed a prohibition against an insurance policy issued to an individual unit owner providing rights against the condominium association.³²

Fannie Mae mortgage lending guidelines require that the insurance policy for a condominium project waive the right of subrogation against unit owners.³³

Effect of Proposed Changes

The bill amends s. 627.714(4), F.S., to provide that a condominium unit owner's insurance policy may not provide subrogation rights against the association operating the condominium in which the property is located if the association's insurance policy does not provide a subrogation right against the unit owners.

Multicondominiums

Present Situation

Section 718.103(20), F.S., defines the term "multicondominium" to mean ~~a real-estate development~~ containing two or more condominiums, all of which are operated by the same association.

³⁰ The term "subrogation" is described as a legal right held by insurance carriers to legally pursue a third party that caused an insurance loss to the insured. This is done in order to recover the amount of the claim paid by the insurance carrier to the insured for the loss. See Investopedia.com, *Subrogation*, at <https://www.investopedia.com/terms/s/subrogation.asp> (last visited Feb. 3, 2021).

³¹ See *Universal Property & Casualty Insurance Company v. Loftus*, 276 So.3d 849 (Fla. 4th DCA 2019).

³² Chapter 2010-174, s. 9, Laws of Fla. (amending s. 718.111(1)(g), F.S.)

³³ Fannie Mae, Selling Guide, Fannie Mae Single Family, Special Requirements for Condo Projects, p. 903, Dec. 4, 2019, available at <https://www.fanniemae.com/content/guide/sell120419.pdf> (last visited Feb. 16, 2021).

Section 718.405, F.S., provides for the operation of more than one condominium by a condominium association.

Effect of Proposed Changes

The bill amends s. 718.103(20), F.S., to revise the definition of the term “multicondominium” to provide that the property is “real property” instead of “a real estate development.”

The bill creates s. 718.405(5), F.S., to provide that a multicondominium association may adopt a consolidated or combined declaration of condominium if such declaration complies with the requirements for the creation of a condominium, does not merge the condominiums, or change the legal descriptions of the condominium parcels, unless accomplished in accordance with law. The bill provides that this section is intended to clarify existing law and applies to associations existing on July 1, 2021.

Official Records – Condominium, Cooperative, and Homeowners’ Associations

Present Situation

Florida law specifies the official records that condominium, cooperative, and homeowners’ associations must maintain.³⁴ Generally, the official records must be maintained in Florida for at least seven years.³⁵ Certain of these records must be accessible to the members of an association.³⁶ 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.³⁷

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website.³⁸

Effect of Proposed Changes

The bill amends ss. 718.111(12), 718.501, 719.104(2)(c), and 720.303(5), F.S., to revise the official records requirements for condominiums, cooperatives, and homeowners’ associations.

For condominium associations, the bill:

- Reduces the time period bids for work performed and bids for materials, equipment, or services must be maintained by associations to one year after receipt. Under current law, such records must be maintained for seven years.³⁹

³⁴ See ss. 718.111(12), 719.104(2), 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁵ See ss. 718.111(12)(b), 719.104(2)(b), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁶ See ss. 718.111(12)(a), 719.104(2)(a), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁷ See ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁸ Section 718.111(12)(g), F.S.

³⁹ Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., provide an identical provision for cooperative and homeowners’ associations, respectively.

- Permits condominium associations with 150 or more to post digital copies of specified documents on an application that can be downloaded on a mobile device.
- Permits a renter of a condominium to inspect and copy the declaration of condominium. Current law only permits a renter to inspect and copy the association's bylaws and rules.
- Clarifies that a renter only has the right to inspect copies of the declaration of condominium, association bylaws, and rules.

The bill amends s. 718.111(12)(g), F.S., to permit condominium associations managing an association with 150 or more units, which do not contain timeshare units, to make digital copies of specified documents available to members through an application that may be downloaded to a mobile device as an alternative to the requirement posting copies of the documents on a website.

Regarding the official records requirements for condominium and cooperative associations, the bill prohibits condominium and cooperative associations from requiring a unit owner to demonstrate a purpose or state a reason for the inspection.⁴⁰

Regarding homeowners' associations, the bill amends s. 720.303(4), F.S., to:

- Designate as an official record all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the association's official records.⁴¹ Under the bill, these records must be maintained for one year after the date of the election, vote, or meeting to which the document relates.
- Make confidential any information an association obtains in connection to guests visiting homeowners in a gated community.

Extinguishment of Discriminatory Restrictions

Present Situation

Section 712.065(2), F.S., provides that a discriminatory restriction is not enforceable in this state. All discriminatory restrictions contained in any title transaction recorded in this state are unlawful, are unenforceable, and are declared null and void. Any discriminatory restriction contained in a previously recorded title transaction is extinguished and severed from the recorded title transaction, and the remainder of the title transaction remains enforceable and effective.

Section 712.065(1), F.S., defines the term "discriminatory restriction" to mean: a provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held, or is held after September 4, 2020, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.

⁴⁰ Section 720.303(5)(c), F.S., provides a comparable provision for homeowners' associations.

⁴¹ Sections 718.111(12)(a)12. and 719.104(2)(a)10., F.S., provide an identical provision for condominium and cooperative associations, respectively.

A discriminatory restriction appearing in a covenant or restriction affecting the parcel in a property owners' association⁴² may be removed by an amendment approved by a majority vote of the board of directors of the respective property owners' association or an owners' association in which all owners may voluntarily join, notwithstanding any other requirements for approval of an amendment of the covenant or restriction.⁴³

Effect of Proposed Changes

The bill amends ss. 718.112(1), 719.106(3), and 720.3075, F.S., relating to the bylaws of condominium, cooperative, and homeowners' associations, respectively, to authorize these associations to extinguish a discriminatory restriction in the manner provided under s. 712.065, F.S.

Condominiums Term Limits for Board Members

Present Situation

The terms of all condominium association board members expire at the annual meeting, unless:

- It is a timeshare or nonresidential condominium;
- The staggered term of a board member does not expire until a later annual meeting; or
- All members' terms would otherwise expire but there are no candidates.

Board members may serve terms longer than one year if permitted by the bylaws or articles of incorporation. A board member may not serve more than eight consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.⁴⁴

Section 718.112(2)(d)2., F.S., was amended by ch. 2018-96, s. 2, Laws of Fla., to allow board members to serve longer than one year if permitted by the bylaws or article of incorporation, but provided that the board members could not serve more than eight consecutive years. The effective date of the change was July 1, 2018. The division issued a declaratory statement on September 12, 2018, that:

If at the time of the next scheduled election the current board member has served on the association board for eight consecutive years, the board member would be ineligible to serve unless there are fewer eligible candidates than vacant seats on the board or unless that candidate is

⁴² Section 712.01(5), F.S., defines the term "property owners' association" to mean "a homeowners' association as defined in s. 720.301, [F.S.] a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels."

⁴³ Section 712.065(3), F.S.

⁴⁴ *Id.*

approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election.⁴⁵

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2., F.S., to provide that only service on the board of a condominium association that occurs on or after July 1, 2018, may be used when calculating a board member's term limit.

Condominium Meeting Notices

Present Situation

A condominium association must provide written notice for the annual meeting of the unit owners. The notice must include an agenda. Current law does not specify whether the requirement to include an agenda applies to all meetings of unit owners, including the annual meeting. The notice must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on the condominium property for at least 14 continuous days before the annual meeting. Instead of posting the notice in a conspicuous place, a condominium may repeatedly broadcast the notice and agenda on a closed-circuit cable television system serving the association.⁴⁶

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)3., F.S., to extend the notice and agenda requirements to all meetings of the unit owners.

Condominium Voting Process

Present Situation

At least 60 days before a scheduled election, a condominium association must mail, deliver, or electronically transmit to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda for the unit owner meeting, the association must mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates.⁴⁷

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4.a., F.S., to require the second notice of the election be sent to all unit owners entitled to vote not less than 14 days, or more than 34 days, before the date of the election.

⁴⁵ *In re: Petition for Declaratory Statement, Apollo Condominium Association, Inc.*, DS 2018-035, Division of Florida Condominiums, Timeshares, and Mobile Homes, September 12, 2018.

⁴⁶ Section 718.112(2)(d)3., F.S.

⁴⁷ Section 718.112(2)(d)4., F.S.

Condominium Transfer Fees

Present Situation

Condominium associations may charge unit owners costs or fees in connection with the sale, mortgage, lease, sublease, or other transfer of a unit, if:

- The fee is limited to \$100 or less;
- The fee is authorized in the association's governing documents; and
- The association is required to approve the transfer.⁴⁸

For example, if a unit owner utilizes their property as a vacation rental and has three separate guest leases during a month, the condominium may charge up to \$300 in transfer fees if the above requirements are met under s. 718.112(2)(i), F.S.

Also, condominium associations may require a potential renter to provide the association with a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.⁴⁹

Effect of Proposed Changes

The bill amends s. 718.112(2)(i), F.S., to increase the maximum permissible transfer fee from \$100 to \$150. The bill provides that spouses, or a parent or parents and any dependent children, are considered one applicant for transfer purposes. The bill requires that a transfer fee must be adjusted every five years in an amount equal to the total annual increases occurring in the Consumer Price Index during that five-year period. Under the bill, the DBPR must periodically calculate the fees, rounded to the nearest dollar, and publish the adjusted amounts on its website.

Condominium Boards and Conflicts of Interest

Present Situation

Section 718.3027, F.S., requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. Section 718.3027(2), F.S., requires the board of a condominium association to approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present.

Section 718.112(2)(p), F.S., also prohibits an association (that is not a timeshare condominium association) from employing or contracting with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity⁵⁰ by blood or marriage of a board member or officer. This prohibition does not apply to a service provider in which a board

⁴⁸ Section 718.112(2)(i), F.S.

⁴⁹ *Id.*

⁵⁰ Relatives of the third degree of consanguinity include great grandparent, aunt/uncle, niece/nephew, and great grandchild. See:

https://www.uab.edu/humanresources/home/images/M_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf (last visited Feb. 11, 2021).

member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.

Section 718.112(2)(p), F.S., appears to conflict with ss. 718.3027 and 720.3033, F.S., because those sections permit financial relationships that may create a conflict of interest when the financial interests are disclosed, and the contract or transaction is approved by the board or the members, as appropriate. However, s. 718.112(2)(p), F.S., expressly prohibits such potential conflicts of interest even if the financial interest is disclosed or approved by the board or the members.

Effect of Proposed Changes

The bill repeals s. 718.112(2)(p), F.S., relating to conflicts of interests between officers or directors of a condominium association and service providers. This revision does not prevent certain financial interests from being considered a conflict of interest under s. 718.3027, F.S.

Condominium Alternative Fuel Charging Station

Present Situation

A condominium association may not prohibit a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered and payable by the unit owner.⁵¹ Current law does not expressly permit a unit owner to install a natural gas fuel station.

Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or a combination of these products used in a motor vehicle.⁵² The term includes all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.⁵³ However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electricity generation.⁵⁴

Effect of Proposed Changes

The bill amends s. 718.113(8), F.S., to include an exclusively designated parking area as a location where the association may not prohibit a unit owner from installing an electric vehicle charging station.

The bill also amends s. 718.113(8), F.S., to permit a unit owner to install a natural gas fuel station. A unit owner installing a natural gas fuel station is subject to the same requirements as an owner installing an electric vehicle charging station. The unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of an electric vehicle charging or natural gas charging station. The unit owner, or his or

⁵¹ Section 718.113(8), F.S.

⁵² Section 206.9951(2), F.S.

⁵³ *Id.*

⁵⁴ *Id.*

her successor, who installs a natural gas fuel station, is responsible for the cost for the supply and storage of the natural gas fuel station.

The bill also allows a unit owner to use an embedded meter to separately meter the fuel used on an electric vehicle or natural gas fuel vehicle charging station.

The bill also amends s. 718.121, F.S., to include a natural gas stations in the prohibition against filing a lien against a condominium association for labor or materials related to the installation of an electric vehicle charging station.

Alternative Dispute Resolution

Present Situation

Condominiums

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration. Section 718.1255, F.S., states that the purpose of mandatory nonbinding arbitration is to provide efficient, equitable, and inexpensive decisions when disputes arise between owners and associations. An arbitrator's final order is not binding unless the parties agree to be bound, or the parties fail to file a petition for a trial de novo in the circuit court within 30 days after the mailing of the arbitrator's final order. A petition for arbitration tolls any applicable statute of limitations for the dispute, and, if there is a trial de novo, an arbitrator's decision is admissible as evidence.⁵⁵

Non-binding arbitration is required for disagreements that involve the authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements.⁵⁶ Additionally, disputes pertaining to the board of directors' failure to properly conduct elections, give adequate notice of meetings, properly conduct meetings and provide access to association books and records must also be litigated in non-binding arbitration before Florida law grants unit owners access to the court system.⁵⁷ These types of disputes can be characterized as enforcement actions because they involve enforcing the terms and conditions of the condominium governing documents.

The division does not have jurisdiction to arbitrate the following disputes between a unit owner and an association that involve:⁵⁸

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or another removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or

⁵⁵ Section 718.1225(4), F.S.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The filing fee for an arbitration petition is \$50.⁵⁹

As a component of mandatory non-binding arbitration, any party may petition the arbitrator to refer the case to mediation.⁶⁰ The purpose of mediation is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.⁶¹ The dispute remains in arbitration, but the parties can select a mediator from a list of paid and volunteer mediators provided by the arbitrator.⁶² The parties must share equally in the cost of the mediation.⁶³ If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates unless all parties agree in writing to continuing the arbitration proceedings, in which case the arbitrator's decision will be binding or nonbinding as the parties have agreed.⁶⁴

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center as provided in s. 44.201, F.S.

Cooperatives

In cooperative associations, disputes, including recall election disputes, are subject the alternative dispute resolution requirements and procedures applicable to condominiums in s. 718.1255, F.S.⁶⁵

Homeowners' Associations

Section 720.311, F.S., provides an alternative dispute resolution program for certain homeowner association disputes. An aggrieved party in a homeowners' association dispute initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.⁶⁶

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees.

⁵⁹ Section 718.1255(4)(a), F.S.

⁶⁰ Section 718.1255(4)(e), F.S.

⁶¹ Section 718.1255(4)(g), F.S.

⁶² Section 718.1255(4)(e), F.S.

⁶³ Section 718.1255(4)(h), F.S.

⁶⁴ *Id.*

⁶⁵ Sections 719.1255 and 719.106(1)(f), F.S.

⁶⁶ *Id.*

Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.⁶⁷

If mediation is not successful in resolving all the disputed issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration.⁶⁸

Effect of Proposed Changes

The bill amends s. 718.1255(4)(a), F.S., to provide that prior to court litigation, a party to a condominium dispute may either initiate presuit mediation as provided above or may petition the division for nonbinding arbitration. This provision also states that arbitration shall be binding on the parties if all parties agree in a writing filed in arbitration.

The bill also creates s. 718.1255(5), F.S., to require a party to a condominium dispute to initiate either arbitration or presuit mediation following the procedure for the mediation of homeowners' association disputes in s. 720.311, F.S., before beginning court litigation. Under the bill, parties in a condominium dispute may use the mediation process to resolve a dispute without first initiating the arbitration process.

Under the bill, recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.

The bill amends ss. 718.112(2)(k) and 719.106(1)(l), F.S., to require that a condominium association's bylaws provide for mandatory dispute resolution. It deletes the requirement that an association's bylaws must provide for mandatory nonbinding arbitration.

Emergency Powers – Condominiums and Cooperatives

Present Situation

Unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, ss. 718.1265(1), 719.128(1), and 720.316(10), F.S., provide the emergency powers of condominium, cooperative, and homeowners' association boards, respectively, in response to damage for which a state of emergency declared pursuant to s. 252.36, F.S.,⁶⁹ in the locale in which the community association is located. The emergency powers include the authority to give meeting notices by any practical means, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on association property.

The current emergency authority does not apply to a condominium, cooperative, and homeowners' association board's response to injury or to an anticipated declared state of emergency.

⁶⁷ Section 720.311(2)(b), F.S.

⁶⁸ Section 720.311(2)(c), F.S.

⁶⁹ Section 252.36, F.S., provides the Governor's emergency management powers, including the power to issue executive orders and proclamations.

Condominium, cooperative, and homeowners' association boards are also authorized to implement a disaster plan, determine whether any portions of the condominium property are unavailable for entry or occupancy, and to consult with emergency management officials. The associations are also authorized to mitigate damages.

Effect of Proposed Changes

The bill amends ss. 718.1265(1), 719.128(1), and 720.316(10), F.S., to the extent that a condominium, cooperative, and homeowners' association board's emergency authority, respectively, to apply its response to injury and to an anticipated declared state of emergency. The bill also authorizes these boards to conduct board meetings, committee meetings, membership meetings, and elections, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication. The bill also authorizes these associations to give meeting notices by electronic transmission.

The bill also clarifies the term "emergency" to have the same meaning as in s. 252.34(4), F.S., which defines emergency to mean "any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

The bill authorizes condominium and cooperative associations to consult with public health officials when determining whether any portions of the condominium property are unavailable for entry or occupancy.

The bill creates ss. 718.1265(3), 719.128(3), and 720.306(3), F.S., to provide that condominium, cooperative, or homeowners' associations, respectively, may not during a declared state of emergency prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements for the purposes of ingress to and egress from the unit. In addition, these associations may not prohibit access that is necessary for the sale, lease, or other transfer of title of a unit; or the habitability of the unit or for the health and safety of such persons.

However, these associations may deny access based on a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention prohibiting access to the unit. Any access is subject to reasonable restrictions adopted by the association.

Pre-Closing Sales and Reservation Deposits

Present Situation

Under s. 718.202(3), F.S., if the contract for sale of the condominium unit provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the escrow account for use in the actual construction and development of the condominium property. However, the escrow funds may not be used for salaries, commissions, or expenses of salespersons, or for advertising purposes.

Effect of Proposed Changes

The bill amends s. 718.202(3), F.S., to provide that escrow funds may be used for the actual costs incurred by the developer in construction and development of the condominium property. The bill defines the term “actual costs” to include, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. The bill prohibits the use of the escrow funds for marketing or promotional purposes, loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.

Condominium and Homeowners’ Associations Fines***Present Situation***

Condominium, cooperative, and homeowners’ associations may levy fines against an owner, occupant, or a guest of an owner for failing to comply with any provision in the association’s declaration, bylaws, or rules. A fine imposed by a condominium or cooperative association may not exceed \$100 per violation, and the total amount of a fine may not exceed \$1,000.⁷⁰ However, a fine imposed by a homeowners’ association may exceed \$1,000 in the aggregate if the association’s governing documents authorize the fine.⁷¹ A fine imposed by a condominium or cooperative may not become a lien against the unit.⁷² A fine by a homeowners’ association of less than \$1,000 may not become a lien against the parcel.⁷³

An association’s board may not impose a fine or suspension unless it gives at least 14 days written notice of the fine or suspension, and an opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board member’s household. The role of the committee is to determine whether to confirm or reject the fine or suspension.⁷⁴

A fine approved by the committee is due five days after the date of the committee meeting. The condominium or cooperative must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.⁷⁵

Effect of Proposed Changes

The bill amends ss. 718.303(3) and 720.305(2), F.S., to provide that a fine imposed by a condominium or homeowners’ association, respectively, is due five days after notice of an approved fine is sent to the unit or parcel owner and if applicable, to any tenant, licensee, or invitee of the owner. Current law provides that payment of the fine is due five days after the committee meeting at which the fine is approved.

⁷⁰ Sections 718.303(3) and 719.303(3), F.S.

⁷¹ Section 720.305(2), F.S.

⁷² Sections 718.303(3) and 719.303(3), F.S.

⁷³ Sections 720.305(2), F.S.

⁷⁴ Sections 718.303(3)(b) and (c), 719.303(3)(b) and (c), and 720.305(2)(b) and (c), F.S.

⁷⁵ *Id.*

The bill also changes the term “occupant” to “tenant.”

Division of Florida Condominiums, Timeshares, and Mobile Homes

Present Situation

The division administers the provisions of ch. 718, for condominium associations. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control.⁷⁶ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.⁷⁷ 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.⁷⁸

Section 718.501(1)(j), F.S., requires the division to provide training and educational programs to condominium association board members and unit owners. The division may review and approve education and training programs offered by providers and is required to maintain a current list of approved programs and providers and make the list available to board members and unit owners in a reasonable and cost-effective manner.

Effect of Proposed Changes

The bill amends s. 718.501, F.S., to expand the division’s authority to include the maintenance of the association’s official records. The division’s current authority is limited to issues related to the unit owner’s access to records.

Condominium Ombudsman

Present Situation

The office of the ombudsman within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. Also, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁷⁹

The ombudsman also acts as a liaison between the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.⁸⁰

The ombudsman is required to maintain his or her principal office in Leon County.⁸¹

⁷⁶ Sections 718.501(1), F.S.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Sections 718.5011 and 718.5012, F.S.

⁸⁰ *Id.*

⁸¹ Section 718.5014, F.S.

Effect of Proposed Changes

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Cooperative Property

Present Situation

A corporation owns the building and land comprising a cooperative. A person who buys into a cooperative does not receive title to a unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.⁸² Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁸³ Real property is anything permanent, fixed, and immovable, such as land or a building. At common law, a 99-year leasehold was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so case law commonly declares long-term leaseholds to be an interest in real property for taxation purposes.⁸⁴

In Florida, a cooperative is treated as real property for some homestead purposes. Although the general definition of a homestead, including for taxation purposes, follows the common-law rule that requires an interest in real property, the Florida Constitution specifically extends the exemption to a cooperative unit.⁸⁵ Florida's homestead laws apply to a cooperative the exemption from forced sale by creditors⁸⁶ and the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections on devise and descent.⁸⁷

The Condominium Act in ch. 718, F.S., specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property, but there is no corresponding provision in the Cooperative Act.⁸⁸ The Third District Court of Appeal has recognized a need for clarification of this type of ownership interest.⁸⁹ In 2019, the Third District Court of Appeal certified a question of great public importance to the Florida Supreme Court concerning homestead protections for

⁸² *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)

⁸³ Am. Jur. 2d Property § 18.

⁸⁴ *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); *See generally*, The Florida Bar, *Practice Under Florida Probate Code Chapter 19* (9th ed. 2017).

⁸⁵ FLA. CONST. art. VII, s. 6(a) provides: "The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years."

⁸⁶ Sections 222.01, and 222.05, F.S.

⁸⁷ *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978).

⁸⁸ Section 718.106(1), F.S.

⁸⁹ *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)

devise and descent of cooperative property. However, the Florida Supreme Court denied the appeal because the lower court had not declared invalid a state statute or a provision of the State Constitution.⁹⁰

Effect of the Proposed Changes

The bill amends the definition of “unit” in s. 719.103(25), F.S., to provide that an interest in a cooperative unit is an interest in real property.

Cooperative Association Meetings

Present Situation

When a board or committee member of a cooperative association participates in a meeting by telephone conference, that board or committee member’s participation by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by unit owners present at a meeting.⁹¹

Effect of Proposed Changes

The bill amends s. 719.106(1)(b)5., F.S., to provide that a cooperative association board member or committee member who attends a meeting by telephone, real time video conferencing, or similar real-time electronic or video communication counts toward a quorum and may vote as if physically present.⁹²

Governing Documents – Homeowners’ Associations

Present Situation

Section 720.301(8), F.S., defines the term “governing documents” to mean:

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto;
- The articles of incorporation and bylaws of the homeowners’ association and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Effect of Proposed Changes

The bill amends s. 720.301(8), to revise the definition of the term “governing documents” to remove rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

⁹⁰ *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), review denied 2020 WL 3442763 (Fla. 2020).

⁹¹ Section 719.106(1)(b)5., F.S.

⁹² Section 718.112(2)(b)5., F.S., provides a comparable provision for condominium associations.

Homeowners' Associations Electronic Meeting Notices

Present Situation

A homeowners' association is required to notify all board members at least 48 hours before the meeting by posting a meeting notice in a conspicuous place on the association's property. Alternatively, the notice may be mailed, hand-delivered, or electronically transmitted at least seven days before the meeting.⁹³

Meeting notices must be posted 14 days before any meeting where a nonemergency special assessment or an amendment to the rules regarding unit use is to be considered.⁹⁴

Instead of posting or mailing notices, a homeowners' association with more than 100 members may broadcast notices on a closed-circuit cable television system for at least four times every broadcast hour of each day that a posted notice is otherwise required.⁹⁵

Effect of Proposed Changes

The bill amends s. 720.303(2), F.S., to authorize an additional method for homeowners' associations with more than 100 members to provide meeting notices by authorizing the board to adopt, by rule, a procedure for conspicuously posting a meeting notice and agenda on a website serving the association or an application on a mobile device. The rule must:

- Require the association to send an electronic notice to members with a hypertext link to the website where the notice is posted or the mobile device application; and
- Require the notice on the association's website or mobile device application to be posted for at least as long as the physical posting of a meeting notice is required.⁹⁶

Homeowners' Association Developers and Reserve Accounts

Present Situation

Under s. 720.303(6)(a), F.S., homeowners' associations are required to prepare an annual budget that sets out the annual operating expenses and reflects the estimated revenues, expenses, and surplus or deficit associations anticipate for the fiscal year. The annual budget must also set out separately all fees or charges paid for by the association for recreational amenities. The association must provide members with a copy of the annual budget.⁹⁷

In addition to annual operating expenses, the budget may include reserve accounts. The reserve accounts are maintained for capital expenditures and deferred maintenance costs the association is responsible for paying. If reserve accounts are not funded adequately and an association is liable for paying the costs of repair or maintenance of a capital improvement, the deficit may

⁹³ Section 720.303(2)(c), F.S. Sections 718.112(2) and 719.106(1), F.S., provide comparable notice requirements for condominium and cooperative associations.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Sections 718.112(2)(c) and 719.106(1)(c), F.S., provide comparable notice requirements for meetings in condominium and cooperative associations, respectively.

⁹⁷ Section 720.303(6)(a), F.S.

result in a special assessment imposed on members.⁹⁸ A statement in conspicuous type must be included in each financial state indicating that budget does not provide for reserve accounts.

During the development of a community to be governed by a homeowners' association, the developer may be obligated to pay operating expenses and association assessments on lots the developer owns when the developer controls the association board. However, under s. 720.308(1)(b), F.S., a developer has the right to avoid paying these expenses and assessments if the developer elects to fund the difference between assessments received from lot owners and the operating expenses incurred that exceed the assessment receivable. This is referred to as deficit funding.

In the 2016 case, *Mackenzie v. Centex Homes*,⁹⁹ Florida's Fifth District Court of Appeal (Fifth DCA) ruled that it was unclear whether s. 720.308(1)(b), F.S., excuses a developer from paying only its share of association operating expenses and assessments or excuses the developer from paying all other contributions including reserve funds. Although the governing documents of an association may specify whether reserve funds are included in operating expenses and assessment, the Fifth DCA found that the developer's governing documents were ambiguous on the matter.

Relying on canons of statutory interpretation, the Fifth DCA ruled that Centex (the developer) was liable for funding the reserve accounts of the association because the developer-controlled association initially established a reserve account and did not defund or waive the reserve accounts according to the procedure outlined in s. 720.303(6), F.S. To comply with s. 720.303(6), F.S., a developer choosing to provide deficit funding to an association, instead of funding reserve accounts, must waive reserve funding at a properly noticed meeting of the homeowners' association and note the absence of reserve funds in a conspicuous location in the financial reports and annual budgets provided to homeowners and prospective buyers.

Effect of Proposed Changes

The bill amends ss. 720.303(6)(c) and (d), F.S., to clarify the conditions in which a developer is obligated to fund the reserve accounts of a homeowners' association.

The bill revises the requirement that the statement that must be included in each financial report if the budget does not fund reserve accounts to also state that the budget does not "fully fund" reserve accounts.

The bill includes the declaration of covenants, articles, or bylaws of an association as one of the basis for the funding of reserve accounts.

The bill also removes language that deems an association to have provided for reserve accounts funds if the developer initially establishes the accounts. The bill provides that the developer is not obligated to establish reserve accounts while in control of the association. If the developer includes reserves in the budget, the developer may determine the amount of reserves included.

⁹⁸ *Id.* at (b)

⁹⁹ *Mackenzie v. Centex Homes*, 208 So.3d 790 (Fla. 5th DCA 2016).

Under the bill, the developer is not obligated to pay the following:

- Contributions to reserve accounts for capital expenditures and deferred maintenance other reserves the association is required to fund pursuant to any state, municipal, county, or other governmental statute or ordinance;
- Operating expenses; and
- Assessments related to the developer's parcels for any period of time the declaration requires the developer to only pay the deficit, if any, between the total amount of the assessments receivable from other members plus any other association income and the lesser of the budgeted or actual expenses incurred by the association during such fiscal year.

The provisions in the bill specifying the obligations of the developer to establish and fund reserve account and specifying the expenses the developer is obligated to pay apply to all homeowners' associations existing on or created after July 1, 2021.

Homeowners' Associations Governing Document Amendments

Present Situation

Amendment Notices

Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents. If a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted.¹⁰⁰

A written notice must also be sent to certain mortgage holders or assignees to obtain consent or joinder for the proposed amendment.¹⁰¹

Notices related to amendments to the governing documents must be mailed or delivered to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the parcel is located.¹⁰²

Amendment Affecting Rental Rights

Current law does not prevent a homeowners' association from adopting an amendment to its governing documents to restrict members from renting parcels. If such a provision was adopted by an association, the restriction would apply to all parcel owners regardless of when they obtained title to their property or whether they voted against the restriction. This differs from current law relating to rental restrictions in condominium associations. In a condominium association, a prohibition against the rental of units or that alters the duration of the rental term, or specifies or limits the number of times a unit owner is entitled to rent their unit during a

¹⁰⁰ See s. 720.306(1)(b), F.S. The consent of mortgage holder and assignees is required for any mortgage recorded before July 1, 2013.

¹⁰¹ See s. 720.306(1)(d), F.S.

¹⁰² Section 720.306(1)(g), F.S.

specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the restrictions' effective date.¹⁰³

Effect of Proposed Changes

Amendment Notices

The bill amends s. 720.306(1)(g), F.S., to require notices related to amendments to the governing documents be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association. The bill removes the requirement that the address on the property appraiser's website for the county in which the parcel is located is to be used for notices.

Amendment Affecting Rental Rights

The bill amends s. 720.306(1)(g), F.S., to provide that an amendment to the governing documents, rule, or regulation enacted after July 1, 2021 prohibiting a parcel owner from renting the parcel, altering the authorized duration of a rental term, or specifying or limiting the number of times a parcel owner may rent his or her parcel during a specified term applies only to a parcel owner who acquires title to the parcel after the amendment's effective date or to a parcel owner who consents to the amendment.

The bill creates s. 720.306(1)(h), F.S., to permit an association to adopt an amendment prohibiting or regulating rentals for less than six months or prohibiting rentals more than three times in a calendar year applies to all parcel owners, regardless of when the parcel owner acquired title to their parcel or whether they consented to the amendment.

The bill exempts homeowners' associations with 15 or fewer parcel owners from the provisions in the bill related to an amendment affecting the rental of parcels.¹⁰⁴

The bill also provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner.

The bill defines "affiliated entity" to mean an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity through a transfer, merger, consolidation, public offering, reorganization, dissolution of sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as being made to an affiliated entity, the entity must give the homeowners' association a document certifying that the exception applies and any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

¹⁰³ Section 718.110(13), F.S.

¹⁰⁴ Section 720.303(1), F.S., provides that an association with 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner.

Transition of Homeowners' Association Control

Present Situation

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

- Three months after 90 percent of the parcels that will be operated ultimately by the association have been conveyed to purchasers;
- When such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity for the mortgage financing of parcels;
- When the developer has abandoned or deserted his or her responsibility to maintain and complete the amenities or infrastructure disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308, F.S., for a period of more than two years;
- When the developer files a petition seeking protection in bankruptcy under chapter 7 of the federal Bankruptcy Code;
- When the developer loses title to the property either through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

Section 720.307(2), F.S., provides that non-developer parcel owners are entitled to elect at least one member of the board of directors when 50 percent of the parcels in all phases of the community have been conveyed to members.

Builders, contractors, or others who purchase a parcel for the purpose of constructing improvements on the parcel for resale are not considered to be members other than the developer.¹⁰⁵

Effect of Proposed Changes

The bill amends s. 720.307, F.S., to revise the conditions under which the non-developer members of a homeowners' association are entitled to elect the majority of the board by adding the term "other than the developer" in order to consistently distinguish between developer members and non-developer members.

Effective Date

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

¹⁰⁵ Section 720.307(1), 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:

The bill Increases the maximum permissible fee an association may charge for the transfer of a unit from \$100 to \$150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulation noted:

Arbitration is an efficient and cost-effective option to mediation and court litigation. When the parties do not both elect arbitration, the first to file with either the [Division of Condominiums, Timeshares, and Mobile Homes] arbitration unit or with circuit court would determine the course

of action for both parties. The proposal appears to contradict the legislative findings in s. 718.1255(3)(a), F.S., which provides that the Legislature finds that unit owners are frequently at a disadvantage when litigating against an association as the association is better able to bear the costs and expenses of litigation than a unit owner who must rely their own financial resources.¹⁰⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.714, 718.103, 718.111, 718.112, 718.113, 718.117, 718.121, 718.1255, 718.1265, 718.202, 718.303, 718.405, 718.501, 718.5014, 719.103, 719.104, 719.106, 719.128, 720.301, 720.303, 720.305, 720.306, 720.307, 720.311, 720.3075, and 720.316.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Rules on March 31, 2021:

The committee substitute amends s. 720.303(6)(d), F.S., revise the financial obligations of the developer in a homeowners' association by:

- Providing that the developer is not obligated to establish reserve accounts while in control of the association.
- Providing that the developer may determine the amount of reserves if the developer includes reserves in the budget.
- Specifying the types of expenses the developer is not obligated to pay.

CS by Regulated Industries on February 16, 2021:

The committee substitute removes provisions from the bill:

- Requiring condominium associations to maintain all official records in the manner and format determined by rules of the Florida Division of Condominium, Timeshares, and Timeshares, and Mobile Homes.
- Requiring condominium associations provide an itemized list of all records made available for inspection and copying in response to a written request, and requiring that the list be accompanied by a sworn affidavit attesting to the accuracy of the list.
- Expanding the division's regulatory authority over financial issues and defining the term "financial issues."
- Authorizing the division to adopt rules to establish requirements for the training and education programs for condominium board members and unit owners.

The committee substitute also:

- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community.
- Provides that a change of ownership affecting rental rights does not occur when an heir becomes the parcel owner.

¹⁰⁶ Department of Business & Professional Regulation, *2021 Agency Legislative Bill Analysis for SB 630*, at page 8, (Feb. 4, 2021).

- Revises the conditions under which the non-developer members of a homeowners' association are entitled to elect the majority of the board by adding the term "other than the developer" in order to consistently distinguish between developer members and non-developer members.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2021	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 2493 and 2494
insert:

(i)1. While a developer is in control of a homeowners' association, the developer may, but is not required to, include reserves in the budget. If the developer includes reserves in the budget, the developer may determine the amount of reserves included. The developer is not obligated to pay for:

a. Contributions to reserve accounts for capital expenditures and deferred maintenance, as well as any other



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reserves that the homeowners' association or the developer may
be required to fund pursuant to any state, municipal, county, or
other governmental statute or ordinance;

b. Operating expenses; or

c. Any other assessments related to the developer's parcels
for any period of time for which the developer has provided in
the declaration that in lieu of paying any assessments imposed
on any parcel owned by the developer, the developer need only
pay the deficit, if any, in any fiscal year of the association,
between the total amount of the assessments receivable from
other members plus any other association income and the lesser
of the budgeted or actual expenses incurred by the association
during such fiscal year.

2. This paragraph applies to all homeowners' associations
existing on or created after July 1, 2021.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 2255 - 2257

and insert:

subsection, paragraph (i) is added to subsection (6) of that
section, and paragraph (c) of subsection (2), paragraph (c) of
subsection (5), paragraphs (c) and (d) of subsection (6), and
paragraphs (b), (d), (g), (k), and (l) of subsection (10) of
that section are

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

And the title is amended as follows:

Delete line 84



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41 and insert:
42 reserve accounts; authorizing certain developers to
43 include reserves in the budget; specifying the
44 developers are not obligated to pay for certain
45 expenses; providing applicability; revising the
46 procedure to challenge

By the Committee on Regulated Industries; and Senators Baxley,
Hutson, and Rodriguez

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1 A bill to be entitled
2 An act relating to community associations; amending s.
3 627.714, F.S.; prohibiting insurance policies from
4 providing specified rights of subrogation under
5 certain circumstances; amending s. 718.103, F.S.;
6 revising the definition of the terms
7 "multicondominium," "operation," and "operation of the
8 condominium"; amending s. 718.111, F.S.; requiring
9 that certain records be maintained for a specified
10 time; prohibiting an association from requiring
11 certain actions relating to the inspection of records;
12 revising requirements relating to the posting of
13 digital copies of certain documents by certain
14 condominium associations; amending s. 718.112, F.S.;
15 authorizing a condominium association to extinguish
16 discriminatory restrictions; revising the calculation
17 used in determining a board member's term limit;
18 providing requirements for certain notices; revising
19 the fees that an association may charge for transfers;
20 deleting a prohibition against employing or
21 contracting with certain service providers; amending
22 s. 718.113, F.S.; revising legislative findings;
23 defining the terms "natural gas fuel" and "natural gas
24 fuel vehicle"; revising requirements for electric
25 vehicle charging stations; providing requirements for
26 natural gas fuel stations on property governed by
27 condominium associations; amending s. 718.117, F.S.;
28 conforming provisions to changes made by the act;
29 amending s. 718.121, F.S.; providing that labor and

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

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30 materials associated with the installation of a
31 natural gas fuel station may not serve as the basis
32 for filing a lien against an association but may serve
33 as the basis for filing a lien against a unit owner;
34 requiring that notices of intent to record a claim of
35 lien specify certain dates; amending s. 718.1255,
36 F.S.; authorizing parties to initiate presuit
37 mediation under certain circumstances; specifying the
38 circumstances under which arbitration is binding on
39 the parties; providing requirements for presuit
40 mediation; making technical changes; amending s.
41 718.1265, F.S.; revising the emergency powers of
42 condominium associations; prohibiting condominium
43 associations from taking certain actions during a
44 declared state of emergency; amending s. 718.202,
45 F.S.; revising the allowable uses of certain escrow
46 funds withdrawn by developers; defining the term
47 "actual costs"; amending s. 718.303, F.S.; revising
48 requirements for certain actions for failure to comply
49 with specified provisions relating to condominium
50 associations; revising requirements for certain fines;
51 amending s. 718.405, F.S.; providing clarifying
52 language relating to certain multicondominium
53 declarations; providing applicability; amending s.
54 718.501, F.S.; conforming provisions to changes made
55 by the act; amending s. 718.5014, F.S.; revising a
56 requirement regarding the location of the principal
57 office of the Office of the Condominium Ombudsman;
58 amending s. 719.103, F.S.; revising the definition of

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59 the term "unit" to specify that an interest in a
 60 cooperative unit is an interest in real property;
 61 amending s. 719.104, F.S.; prohibiting an association
 62 from requiring certain actions relating to the
 63 inspection of records; amending s. 719.106, F.S.;
 64 revising provisions relating to a quorum and voting
 65 rights for members remotely participating in meetings;
 66 revising the procedure to challenge a board member
 67 recall; authorizing cooperative associations to
 68 extinguish discriminatory restrictions; amending s.
 69 719.128, F.S.; revising emergency powers for
 70 cooperative associations; prohibiting cooperative
 71 associations from taking certain actions during a
 72 declared state of emergency; amending s. 720.301,
 73 F.S.; revising the definition of the term "governing
 74 documents"; amending s. 720.303, F.S.; authorizing an
 75 association to adopt procedures for electronic meeting
 76 notices; revising the documents that constitute the
 77 official records of an association; revising the types
 78 of records that are not accessible to members or
 79 parcel owners; revising the circumstances under which
 80 a specified statement must be included in an
 81 association's financial report; revising requirements
 82 for such statement; revising the circumstances under
 83 which an association is deemed to have provided for
 84 reserve accounts; revising the procedure to challenge
 85 a board member recall; amending s. 720.305, F.S.;
 86 providing requirements for certain fines levied by a
 87 board of administration; amending s. 720.306, F.S.;

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88 revising requirements for providing certain notices;
 89 providing limitations on associations when a parcel
 90 owner attempts to rent or lease his or her parcel;
 91 defining the term "affiliated entity"; amending the
 92 procedure for election disputes; amending s. 720.307,
 93 F.S.; revising the circumstances under which members
 94 other than the developer are entitled to elect members
 95 to the board of directors of the homeowners'
 96 association; amending s. 720.311, F.S.; revising the
 97 dispute resolution requirements for election disputes
 98 and recall disputes; amending s. 720.3075, F.S.;
 99 authorizing homeowners' associations to extinguish
 100 discriminatory restrictions; amending s. 720.316,
 101 F.S.; revising emergency powers of homeowners'
 102 associations; prohibiting homeowners' associations
 103 from taking certain actions during a declared state of
 104 emergency; providing an effective date.

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

108 Section 1. Subsection (4) of section 627.714, Florida
 109 Statutes, is amended to read:

110 627.714 Residential condominium unit owner coverage; loss
 111 assessment coverage required.—

112 (4) Every individual unit owner's residential property
 113 policy must contain a provision stating that the coverage
 114 afforded by such policy is excess coverage over the amount
 115 recoverable under any other policy covering the same property.
 116 If a condominium association's insurance policy does not provide

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rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner in the association may not provide rights of subrogation against the condominium association.

Section 2. Subsections (20) and (21) of section 718.103, Florida Statutes, are amended to read:

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

(20) "Multicondominium" means real property ~~a real estate development~~ containing two or more condominiums, all of which are operated by the same association.

(21) "Operation" or "operation of the condominium" includes the administration and management of the condominium property and the association.

Section 3. Paragraphs (a), (b), (c), and (g) 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 under ~~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

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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

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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 for at least 1 year after receipt of the bid.

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.

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718.301(4)(p).

~~16.17.~~ Bids for materials, equipment, or services.

17. All other written records of the association not specified in subparagraphs 1.-16. which are related to the operation of the association.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in pursuant to the compliance with requirements of this chapter unless the association has an affirmative duty not to disclose such

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information ~~under~~ pursuant to this chapter.

(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 only the declaration of condominium and 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, but may not require a member to demonstrate any purpose or state any reason for the inspection. 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

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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

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291 adversarial administrative proceedings, or which was prepared in
292 anticipation of such litigation or proceedings until the
293 conclusion of the litigation or proceedings.

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

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

304 d. Medical records of unit owners.

305 e. Social security numbers, driver license numbers, credit
306 card numbers, e-mail addresses, telephone numbers, facsimile
307 numbers, emergency contact information, addresses of a unit
308 owner other than as provided to fulfill the association's notice
309 requirements, and other personal identifying information of any
310 person, excluding the person's name, unit designation, mailing
311 address, property address, and any address, e-mail address, or
312 facsimile number provided to the association to fulfill the
313 association's notice requirements. Notwithstanding the
314 restrictions in this sub-subparagraph, an association may print
315 and distribute to unit ~~parcel~~ owners a directory containing the
316 name, unit ~~parcel~~ address, and all telephone numbers of each
317 unit ~~parcel~~ owner. However, an owner may exclude his or her
318 telephone numbers from the directory by so requesting in writing
319 to the association. An owner may consent in writing to the

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320 disclosure of other contact information described in this sub-
321 subparagraph. The association is not liable for the inadvertent
322 disclosure of information that is protected under this sub-
323 subparagraph if the information is included in an official
324 record of the association and is voluntarily provided by an
325 owner and not requested by the association.

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

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

332 (g)1. By January 1, 2019, an association managing a
333 condominium with 150 or more units which does not contain
334 timeshare units shall post digital copies of the documents
335 specified in subparagraph 2. on its website or make such
336 documents available through an application that can be
337 downloaded on a mobile device.

338 a. The association's website or application must be:

339 (I) An independent website, application, or web portal
340 wholly owned and operated by the association; or

341 (II) A website, application, or web portal operated by a
342 third-party provider with whom the association owns, leases,
343 rents, or otherwise obtains the right to operate a web page,
344 subpage, web portal, ~~or~~ collection of subpages or web portals,
345 or an application which is dedicated to the association's
346 activities and on which required notices, records, and documents
347 may be posted or made available by the association.

348 b. The association's website or application must be

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accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which ~~that~~ contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or

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services which exceed \$500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

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1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice ~~under pursuant to~~ s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents online. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted ~~under pursuant to~~ this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 4. Paragraphs (d), (i), (j), (k), and (p) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (c) is added to subsection (1) of that section, to read:

718.112 Bylaws.—

(1) GENERALLY.—

(c) The association may extinguish a discriminatory restriction as provided under s. 712.065.

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

(d) *Unit owner meetings*.—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough

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465 eligible candidates to fill the vacancies on the board at the
 466 time of the vacancy. Only board service that occurs on or after
 467 July 1, 2018, may be used when calculating a board member's term
 468 limit. If the number of board members whose terms expire at the
 469 annual meeting equals or exceeds the number of candidates, the
 470 candidates become members of the board effective upon the
 471 adjournment of the annual meeting. Unless the bylaws provide
 472 otherwise, any remaining vacancies shall be filled by the
 473 affirmative vote of the majority of the directors making up the
 474 newly constituted board even if the directors constitute less
 475 than a quorum or there is only one director. In a residential
 476 condominium association of more than 10 units or in a
 477 residential condominium association that does not include
 478 timeshare units or timeshare interests, co-owners of a unit may
 479 not serve as members of the board of directors at the same time
 480 unless they own more than one unit or unless there are not
 481 enough eligible candidates to fill the vacancies on the board at
 482 the time of the vacancy. A unit owner in a residential
 483 condominium desiring to be a candidate for board membership must
 484 comply with sub-subparagraph 4.a. and must be eligible to be a
 485 candidate to serve on the board of directors at the time of the
 486 deadline for submitting a notice of intent to run in order to
 487 have his or her name listed as a proper candidate on the ballot
 488 or to serve on the board. A person who has been suspended or
 489 removed by the division under this chapter, or who is delinquent
 490 in the payment of any monetary obligation due to the
 491 association, is not eligible to be a candidate for board
 492 membership and may not be listed on the ballot. A person who has
 493 been convicted of any felony in this state or in a United States

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494 District or Territorial Court, or who has been convicted of any
 495 offense in another jurisdiction which would be considered a
 496 felony if committed in this state, is not eligible for board
 497 membership unless such felon's civil rights have been restored
 498 for at least 5 years as of the date such person seeks election
 499 to the board. The validity of an action by the board is not
 500 affected if it is later determined that a board member is
 501 ineligible for board membership due to having been convicted of
 502 a felony. This subparagraph does not limit the term of a member
 503 of the board of a nonresidential or timeshare condominium.

504 3. The bylaws must provide the method of calling meetings
 505 of unit owners, including annual meetings. Written notice of an
 506 annual meeting must include an agenda; ~~it must~~ be mailed, hand
 507 delivered, or electronically transmitted to each unit owner at
 508 least 14 days before the annual meeting; ~~it must~~ be posted in
 509 a conspicuous place on the condominium property or association
 510 property at least 14 continuous days before the annual meeting.
 511 Written notice of a meeting other than an annual meeting must
 512 include an agenda; be mailed, hand delivered, or electronically
 513 transmitted to each unit owner; and be posted in a conspicuous
 514 place on the condominium property or association property within
 515 the timeframe specified in the bylaws. If the bylaws do not
 516 specify a timeframe for written notice of a meeting other than
 517 an annual meeting, notice must be provided at least 14
 518 continuous days before the meeting. Upon notice to the unit
 519 owners, the board shall, by duly adopted rule, designate a
 520 specific location on the condominium property or association
 521 property where all notices of unit owner meetings must be
 522 posted. This requirement does not apply if there is no

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523 condominium property for posting notices. In lieu of, or in
 524 addition to, the physical posting of meeting notices, the
 525 association may, by reasonable rule, adopt a procedure for
 526 conspicuously posting and repeatedly broadcasting the notice and
 527 the agenda on a closed-circuit cable television system serving
 528 the condominium association. However, if broadcast notice is
 529 used in lieu of a notice posted physically on the condominium
 530 property, the notice and agenda must be broadcast at least four
 531 times every broadcast hour of each day that a posted notice is
 532 otherwise required under this section. If broadcast notice is
 533 provided, the notice and agenda must be broadcast in a manner
 534 and for a sufficient continuous length of time so as to allow an
 535 average reader to observe the notice and read and comprehend the
 536 entire content of the notice and the agenda. In addition to any
 537 of the authorized means of providing notice of a meeting of the
 538 board, the association may, by rule, adopt a procedure for
 539 conspicuously posting the meeting notice and the agenda on a
 540 website serving the condominium association for at least the
 541 minimum period of time for which a notice of a meeting is also
 542 required to be physically posted on the condominium property.
 543 Any rule adopted shall, in addition to other matters, include a
 544 requirement that the association send an electronic notice in
 545 the same manner as a notice for a meeting of the members, which
 546 must include a hyperlink to the website where the notice is
 547 posted, to unit owners whose e-mail addresses are included in
 548 the association's official records. Unless a unit owner waives
 549 in writing the right to receive notice of the annual meeting,
 550 such notice must be hand delivered, mailed, or electronically
 551 transmitted to each unit owner. Notice for meetings and notice

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552 for all other purposes must be mailed to each unit owner at the
 553 address last furnished to the association by the unit owner, or
 554 hand delivered to each unit owner. However, if a unit is owned
 555 by more than one person, the association must provide notice to
 556 the address that the developer identifies for that purpose and
 557 thereafter as one or more of the owners of the unit advise the
 558 association in writing, or if no address is given or the owners
 559 of the unit do not agree, to the address provided on the deed of
 560 record. An officer of the association, or the manager or other
 561 person providing notice of the association meeting, must provide
 562 an affidavit or United States Postal Service certificate of
 563 mailing, to be included in the official records of the
 564 association affirming that the notice was mailed or hand
 565 delivered in accordance with this provision.

566 4. The members of the board of a residential condominium
 567 shall be elected by written ballot or voting machine. Proxies
 568 may not be used in electing the board in general elections or
 569 elections to fill vacancies caused by recall, resignation, or
 570 otherwise, unless otherwise provided in this chapter. This
 571 subparagraph does not apply to an association governing a
 572 timeshare condominium.

573 a. At least 60 days before a scheduled election, the
 574 association shall mail, deliver, or electronically transmit, by
 575 separate association mailing or included in another association
 576 mailing, delivery, or transmission, including regularly
 577 published newsletters, to each unit owner entitled to a vote, a
 578 first notice of the date of the election. A unit owner or other
 579 eligible person desiring to be a candidate for the board must
 580 give written notice of his or her intent to be a candidate to

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581 the association at least 40 days before a scheduled election.
 582 Together with the written notice and agenda as set forth in
 583 subparagraph 3., the association shall mail, deliver, or
 584 electronically transmit a second notice of the election to all
 585 unit owners entitled to vote, together with a ballot that lists
 586 all candidates not less than 14 days or more than 34 days before
 587 the date of the election. Upon request of a candidate, an
 588 information sheet, no larger than 8 1/2 inches by 11 inches,
 589 which must be furnished by the candidate at least 35 days before
 590 the election, must be included with the mailing, delivery, or
 591 transmission of the ballot, with the costs of mailing, delivery,
 592 or electronic transmission and copying to be borne by the
 593 association. The association is not liable for the contents of
 594 the information sheets prepared by the candidates. In order to
 595 reduce costs, the association may print or duplicate the
 596 information sheets on both sides of the paper. The division
 597 shall by rule establish voting procedures consistent with this
 598 sub-subparagraph, including rules establishing procedures for
 599 giving notice by electronic transmission and rules providing for
 600 the secrecy of ballots. Elections shall be decided by a
 601 plurality of ballots cast. There is no quorum requirement;
 602 however, at least 20 percent of the eligible voters must cast a
 603 ballot in order to have a valid election. A unit owner may not
 604 authorize any other person to vote his or her ballot, and any
 605 ballots improperly cast are invalid. A unit owner who violates
 606 this provision may be fined by the association in accordance
 607 with s. 718.303. A unit owner who needs assistance in casting
 608 the ballot for the reasons stated in s. 101.051 may obtain such
 609 assistance. The regular election must occur on the date of the

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610 annual meeting. Notwithstanding this sub-subparagraph, an
 611 election is not required unless more candidates file notices of
 612 intent to run or are nominated than board vacancies exist.
 613 b. Within 90 days after being elected or appointed to the
 614 board of an association of a residential condominium, each newly
 615 elected or appointed director shall certify in writing to the
 616 secretary of the association that he or she has read the
 617 association's declaration of condominium, articles of
 618 incorporation, bylaws, and current written policies; that he or
 619 she will work to uphold such documents and policies to the best
 620 of his or her ability; and that he or she will faithfully
 621 discharge his or her fiduciary responsibility to the
 622 association's members. In lieu of this written certification,
 623 within 90 days after being elected or appointed to the board,
 624 the newly elected or appointed director may submit a certificate
 625 of having satisfactorily completed the educational curriculum
 626 administered by a division-approved condominium education
 627 provider within 1 year before or 90 days after the date of
 628 election or appointment. The written certification or
 629 educational certificate is valid and does not have to be
 630 resubmitted as long as the director serves on the board without
 631 interruption. A director of an association of a residential
 632 condominium who fails to timely file the written certification
 633 or educational certificate is suspended from service on the
 634 board until he or she complies with this sub-subparagraph. The
 635 board may temporarily fill the vacancy during the period of
 636 suspension. The secretary shall cause the association to retain
 637 a director's written certification or educational certificate
 638 for inspection by the members for 5 years after a director's

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election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

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

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

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails ~~emails~~ sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items.

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However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

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

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

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

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different

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697 voting and election procedures in its bylaws, which may be by a
 698 proxy specifically delineating the different voting and election
 699 procedures. The different voting and election procedures may
 700 provide for elections to be conducted by limited or general
 701 proxy.

702 (i) *Transfer fees.*—~~An association may not~~ charge a fee
 703 ~~shall be made by the association or any body thereof in~~
 704 connection with the sale, mortgage, lease, sublease, or other
 705 transfer of a unit unless the association is required to approve
 706 such transfer and a fee for such approval is provided for in the
 707 declaration, articles, or bylaws. Any such fee may be preset,
 708 but may not in no event may such fee exceed \$150 \$100 per
 709 applicant. For the purpose of calculating the fee, spouses or a
 710 parent or parents and any dependent children other than
 711 husband/wife or parent/dependent child, which are considered one
 712 applicant. However, if the lease or sublease is a renewal of a
 713 lease or sublease with the same lessee or sublessee, a charge
 714 may not no charge shall be made. Such fees must be adjusted
 715 every 5 years in an amount equal to the total of the annual
 716 increases occurring in the Consumer Price Index for All Urban
 717 Consumers, U.S. City Average, All Items during that 5-year
 718 period. The Department of Business and Professional Regulation
 719 shall periodically calculate the fees, rounded to the nearest
 720 dollar, and publish the amounts, as adjusted, on its website.
 721 The foregoing notwithstanding, ~~an association may~~, if the
 722 authority to do so appears in the declaration, articles, or
 723 bylaws, an association may require that a prospective lessee
 724 place a security deposit, in an amount not to exceed the
 725 equivalent of 1 month's rent, into an escrow account maintained

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726 by the association. The security deposit shall protect against
 727 damages to the common elements or association property. Payment
 728 of interest, claims against the deposit, refunds, and disputes
 729 under this paragraph shall be handled in the same fashion as
 730 provided in part II of chapter 83.

731 (j) *Recall of board members.*—Subject to s. 718.301, any
 732 member of the board of administration may be recalled and
 733 removed from office with or without cause by the vote or
 734 agreement in writing by a majority of all the voting interests.
 735 A special meeting of the unit owners to recall a member or
 736 members of the board of administration may be called by 10
 737 percent of the voting interests giving notice of the meeting as
 738 required for a meeting of unit owners, and the notice shall
 739 state the purpose of the meeting. Electronic transmission may
 740 not be used as a method of giving notice of a meeting called in
 741 whole or in part for this purpose.

742 1. If the recall is approved by a majority of all voting
 743 interests by a vote at a meeting, the recall will be effective
 744 as provided in this paragraph. The board shall duly notice and
 745 hold a board meeting within 5 full business days after the
 746 adjournment of the unit owner meeting to recall one or more
 747 board members. Such member or members shall be recalled
 748 effective immediately upon conclusion of the board meeting,
 749 provided that the recall is facially valid. A recalled member
 750 must turn over to the board, within 10 full business days after
 751 the vote, any and all records and property of the association in
 752 their possession.

753 2. If the proposed recall is by an agreement in writing by
 754 a majority of all voting interests, the agreement in writing or

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a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. Such member or members shall be recalled effective immediately upon the conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days, any and all records and property of the association in their possession.

3. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall is ~~shall be~~ deemed effective and the board members so recalled shall turn over to the board within 10 full business days after the vote any and all records and property of the association.

4. If the board fails to duly notice and hold the required meeting or at the conclusion of the meeting determines that the recall is not facially valid, the unit owner representative may file a petition or court action under ~~pursuant to~~ s. 718.1255 challenging the board's failure to act or challenging the board's determination on facial validity. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

5. If a vacancy occurs on the board as a result of a recall

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or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6. A board member who has been recalled may file a petition or court action under ~~pursuant to~~ s. 718.1255 challenging the validity of the recall. The petition or action must be filed within 60 days after the recall. The association and the unit owner representative shall be named as the respondents. The petition or action may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator or court determines the recall was invalid, the petitioning board member shall immediately be reinstated and the recall is null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator or court may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator or court makes a finding that the petitioner's claim is frivolous.

7. The division or a court of competent jurisdiction may

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not accept for filing a recall petition or court action, whether filed ~~under pursuant to~~ subparagraph 1., subparagraph 2., subparagraph 4., or subparagraph 6., when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(k) ~~Alternative dispute resolution Arbitration.~~ There must ~~shall~~ be a provision for alternative dispute resolution ~~mandatory nonbinding arbitration~~ as provided for in s. 718.1255 for any residential condominium.

~~(p) Service providers; conflicts of interest. An association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.~~

Section 5. Subsection (8) of section 718.113, Florida Statutes, is amended to read:

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

(8) The Legislature finds that the use of electric and natural gas fuel vehicles conserves and protects the state's environmental resources, provides significant economic savings

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to drivers, and serves an important public interest. The participation of condominium associations is essential to the state's efforts to conserve and protect the state's environmental resources and provide economic savings to drivers. For purposes of this subsection, the term "natural gas fuel" has the same meaning as in s. 206.9951, and the term "natural gas fuel vehicle" means any motor vehicle, as defined in s. 320.01, that is powered by natural gas fuel. Therefore, the installation of an electric vehicle charging station or a natural gas fuel station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station or a natural gas fuel station within the boundaries of the unit owner's limited common element or exclusively designated parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01, or a natural gas fuel station for a natural gas fuel vehicle within the boundaries of his or her limited common element or exclusively designated parking area. The installation of such charging or fuel stations are subject to the provisions of this subsection.

(b) The installation may not cause irreparable damage to the condominium property.

(c) The electricity for the electric vehicle charging station or natural gas fuel station must be separately metered or metered by an embedded meter and payable by the unit owner installing such charging or fuel station or by his or her

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871 successor.

872 (d) The cost for supply and storage of the natural gas fuel
 873 must be paid by the unit owner installing the natural gas fuel
 874 station or by his or her successor.

875 (e) ~~(d)~~ The unit owner who is installing an electric vehicle
 876 charging station or a natural gas fuel station is responsible
 877 for the costs of installation, operation, maintenance, and
 878 repair, including, but not limited to, hazard and liability
 879 insurance. The association may enforce payment of such costs
 880 under ~~pursuant to~~ s. 718.116.

881 (f) ~~(e)~~ If the unit owner or his or her successor decides
 882 there is no longer a need for the electric ~~electronic~~ vehicle
 883 charging station or natural gas fuel station, such person is
 884 responsible for the cost of removal of such ~~the electronic~~
 885 vehicle charging or fuel station. The association may enforce
 886 payment of such costs under ~~pursuant to~~ s. 718.116.

887 (g) The unit owner installing, maintaining, or removing the
 888 electric vehicle charging station or natural gas fuel station is
 889 responsible for complying with all federal, state, or local laws
 890 and regulations applicable to such installation, maintenance, or
 891 removal.

892 (h) ~~(f)~~ The association may require the unit owner to:

893 1. Comply with bona fide safety requirements, consistent
 894 with applicable building codes or recognized safety standards,
 895 for the protection of persons and property.

896 2. Comply with reasonable architectural standards adopted
 897 by the association that govern the dimensions, placement, or
 898 external appearance of the electric vehicle charging station or
 899 natural gas fuel station, provided that such standards may not

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900 prohibit the installation of such charging or fuel station or
 901 substantially increase the cost thereof.

902 3. Engage the services of a licensed and registered firm
 903 ~~electrical contractor or engineer~~ familiar with the installation
 904 or removal and core requirements of an electric vehicle charging
 905 station or a natural gas fuel station.

906 4. Provide a certificate of insurance naming the
 907 association as an additional insured on the owner's insurance
 908 policy for any claim related to the installation, maintenance,
 909 or use of the electric vehicle charging station or natural gas
 910 fuel station within 14 days after receiving the association's
 911 approval to install such charging or fuel station or notice to
 912 provide such a certificate.

913 5. Reimburse the association for the actual cost of any
 914 increased insurance premium amount attributable to the electric
 915 vehicle charging station or natural gas fuel station within 14
 916 days after receiving the association's insurance premium
 917 invoice.

918 (i) ~~(g)~~ The association provides an implied easement across
 919 the common elements of the condominium property to the unit
 920 owner for purposes of ~~the installation of the~~ electric vehicle
 921 charging station or natural gas fuel station installation, and
 922 the furnishing of electrical power or natural gas fuel supply,
 923 including any necessary equipment, to such charging or fuel
 924 station, subject to the requirements of this subsection.

925 Section 6. Subsection (16) of section 718.117, Florida
 926 Statutes, is amended to read:

927 718.117 Termination of condominium.—

928 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a

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929 plan of termination by initiating a petition in accordance with
 930 ~~for mandatory nonbinding arbitration pursuant to s. 718.1255~~
 931 within 90 days after the date the plan is recorded. A unit owner
 932 or lienor may only contest the fairness and reasonableness of
 933 the apportionment of the proceeds from the sale among the unit
 934 owners, that the liens of the first mortgages of unit owners
 935 other than the bulk owner have not or will not be satisfied to
 936 the extent required by subsection (3), or that the required vote
 937 to approve the plan was not obtained. A unit owner or lienor who
 938 does not contest the plan within the 90-day period is barred
 939 from asserting or prosecuting a claim against the association,
 940 the termination trustee, any unit owner, or any successor in
 941 interest to the condominium property. In an action contesting a
 942 plan of termination, the person contesting the plan has the
 943 burden of pleading and proving that the apportionment of the
 944 proceeds from the sale among the unit owners was not fair and
 945 reasonable or that the required vote was not obtained. The
 946 apportionment of sale proceeds is presumed fair and reasonable
 947 if it was determined pursuant to the methods prescribed in
 948 subsection (12). If the petition is filed with the division for
 949 arbitration, the arbitrator shall determine the rights and
 950 interests of the parties in the apportionment of the sale
 951 proceeds. If the arbitrator determines that the apportionment of
 952 sales proceeds is not fair and reasonable, the arbitrator may
 953 void the plan or may modify the plan to apportion the proceeds
 954 in a fair and reasonable manner pursuant to this section based
 955 upon the proceedings and order the modified plan of termination
 956 to be implemented. If the arbitrator determines that the plan
 957 was not properly approved, or that the procedures to adopt the

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958 plan were not properly followed, the arbitrator may void the
 959 plan or grant other relief it deems just and proper. The
 960 arbitrator shall automatically void the plan upon a finding that
 961 any of the disclosures required in subparagraph (3)(c)5. are
 962 omitted, misleading, incomplete, or inaccurate. Any challenge to
 963 a plan, other than a challenge that the required vote was not
 964 obtained, does not affect title to the condominium property or
 965 the vesting of the condominium property in the trustee, but
 966 shall only be a claim against the proceeds of the plan. In any
 967 such action, the prevailing party shall recover reasonable
 968 attorney fees and costs.

969 Section 7. Subsections (2) and (4) of section 718.121,
 970 Florida Statutes, are amended to read:

971 718.121 Liens.—

972 (2) Labor performed on or materials furnished to a unit may
 973 ~~shall~~ not be the basis for the filing of a lien under pursuant
 974 ~~to~~ part I of chapter 713, the Construction Lien Law, against the
 975 unit or condominium parcel of any unit owner not expressly
 976 consenting to or requesting the labor or materials. Labor
 977 performed on or materials furnished for the installation of a
 978 natural gas fuel station or an electric electronic vehicle
 979 charging station under pursuant to s. 718.113(8) may not be the
 980 basis for filing a lien under part I of chapter 713 against the
 981 association, but such a lien may be filed against the unit
 982 owner. Labor performed on or materials furnished to the common
 983 elements are not the basis for a lien on the common elements,
 984 but if authorized by the association, the labor or materials are
 985 deemed to be performed or furnished with the express consent of
 986 each unit owner and may be the basis for the filing of a lien

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987 against all condominium parcels in the proportions for which the
 988 owners are liable for common expenses.

989 (4) Except as otherwise provided in this chapter, no lien
 990 may be filed by the association against a condominium unit until
 991 30 days after the date on which a notice of intent to file a
 992 lien has been delivered to the owner by registered or certified
 993 mail, return receipt requested, and by first-class United States
 994 mail to the owner at his or her last address as reflected in the
 995 records of the association, if the address is within the United
 996 States, and delivered to the owner at the address of the unit if
 997 the owner's address as reflected in the records of the
 998 association is not the unit address. If the address reflected in
 999 the records is outside the United States, sending the notice to
 1000 that address and to the unit address by first-class United
 1001 States mail is sufficient. ~~Delivery of the Notice is shall be~~
 1002 deemed to have been delivered given upon mailing as required by
 1003 this subsection, provided that it is. ~~The notice must be~~ in
 1004 substantially the following form:

1005 NOTICE OF INTENT
 1006 TO RECORD A CLAIM OF LIEN

1007 RE: Unit of ...(name of association)...

1008
 1009 The following amounts are currently due on your
 1010 account to ...(name of association)..., and must be
 1011 paid within 30 days after your receipt of this letter.
 1012 This letter shall serve as the association's notice of
 1013 intent to record a Claim of Lien against your property
 1014
 1015

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1016 no sooner than 30 days after your receipt of this
 1017 letter, unless you pay in full the amounts set forth
 1018 below:

1019

1020	Maintenance due ...(dates)...	\$.....
1021	Late fee, if applicable	\$.....
1022	Interest through ...(dates)...*	\$.....
1023	Certified mail charges <u>...(dates)...</u>	\$.....
1024	Other costs	\$.....
1025	TOTAL OUTSTANDING	\$.....
1026		
1027	*Interest accrues at the rate of percent per annum.	
1028	Section 8. Section 718.1255, Florida Statutes, is amended	
1029	to read:	
1030	718.1255 Alternative dispute resolution; voluntary	
1031	mediation; mandatory nonbinding arbitration; legislative	
1032	findings.—	
1033	(1) DEFINITIONS.—As used in this section, the term	
1034	"dispute" means any disagreement between two or more parties	
1035	that involves:	
1036	(a) The authority of the board of directors, under this	
1037	chapter or association document, to:	
1038	1. Require any owner to take any action, or not to take any	
1039	action, involving that owner's unit or the appurtenances	
1040	thereto.	
1041	2. Alter or add to a common area or element.	
1042	(b) The failure of a governing body, when required by this	
1043	chapter or an association document, to:	
1044	1. Properly conduct elections.	

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2. Give adequate notice of meetings or other actions.
3. Properly conduct meetings.
4. Allow inspection of books and records.
- (c) A plan of termination pursuant to s. 718.117.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(2) ~~VOLUNTARY MEDIATION.~~ Voluntary Mediation through Citizen Dispute Settlement Centers as provided for in s. 44.201 is encouraged.

(3) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

(b) The Legislature finds that alternative dispute resolution has been making progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to court litigation. However, the Legislature also finds

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that alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.

(c) There exists a need to develop a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution.

(d) The high cost and significant delay of circuit court litigation faced by unit owners in the state can be alleviated by requiring nonbinding arbitration and mediation in appropriate cases, thereby reducing delay and attorney ~~attorney's~~ fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law.

(4) ~~MANDATORY~~ NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter. A ~~No~~ person may not be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of

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1103 application, or attained board certification in real estate law
 1104 or condominium and planned development law from The Florida Bar.
 1105 Arbitrator certification is valid for 1 year. An arbitrator who
 1106 does not maintain the minimum qualifications for initial
 1107 certification may not have his or her certification renewed. The
 1108 department may not enter into a legal services contract for an
 1109 arbitration hearing under this chapter with an attorney who is
 1110 not a certified arbitrator unless a certified arbitrator is not
 1111 available within 50 miles of the dispute. The department shall
 1112 adopt rules of procedure to govern such arbitration hearings
 1113 including mediation incident thereto. The decision of an
 1114 arbitrator ~~is shall be~~ final; however, a decision ~~is shall~~ not
 1115 ~~be~~ deemed final agency action. Nothing in this provision shall
 1116 be construed to foreclose parties from proceeding in a trial de
 1117 novo unless the parties have agreed that the arbitration is
 1118 binding. If judicial proceedings are initiated, the final
 1119 decision of the arbitrator ~~is shall be~~ admissible in evidence in
 1120 the trial de novo.

1121 (a) ~~Before~~ Prior to the institution of court litigation, a
 1122 party to a dispute, other than an election or recall dispute,
 1123 shall either petition the division for nonbinding arbitration or
 1124 initiate presuit mediation as provided in subsection (5).
 1125 Arbitration is binding on the parties if all parties in
 1126 arbitration agree to be bound in a writing filed in arbitration.
 1127 The petition must be accompanied by a filing fee in the amount
 1128 of \$50. Filing fees collected under this section must be used to
 1129 defray the expenses of the alternative dispute resolution
 1130 program.

1131 (b) The petition must recite, and have attached thereto,

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1132 supporting proof that the petitioner gave the respondents:

1133 1. Advance written notice of the specific nature of the
 1134 dispute;

1135 2. A demand for relief, and a reasonable opportunity to
 1136 comply or to provide the relief; and

1137 3. Notice of the intention to file an arbitration petition
 1138 or other legal action in the absence of a resolution of the
 1139 dispute.

1140 Failure to include the allegations or proof of compliance with
 1141 these prerequisites requires dismissal of the petition without
 1142 prejudice.

1143 (c) Upon receipt, the petition shall be promptly reviewed
 1144 by the division to determine the existence of a dispute and
 1145 compliance with the requirements of paragraphs (a) and (b). If
 1146 emergency relief is required and is not available through
 1147 arbitration, a motion to stay the arbitration may be filed. The
 1148 motion must be accompanied by a verified petition alleging facts
 1149 that, if proven, would support entry of a temporary injunction,
 1150 and if an appropriate motion and supporting papers are filed,
 1151 the division may abate the arbitration pending a court hearing
 1152 and disposition of a motion for temporary injunction.

1153 (d) Upon determination by the division that a dispute
 1154 exists and that the petition substantially meets the
 1155 requirements of paragraphs (a) and (b) and any other applicable
 1156 rules, the division shall assign or enter into a contract with
 1157 an arbitrator and serve a copy of the petition upon all
 1158 respondents. The arbitrator shall conduct a hearing within 30
 1159 days after being assigned or entering into a contract unless the
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petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the

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physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal,

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and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located

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within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney fees incurred in the arbitration proceeding as well as the costs and reasonable attorney fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall

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1277 recover reasonable attorney fees and costs incurred in enforcing
 1278 the arbitration award. A mediation settlement may also be
 1279 enforced through the county or circuit court, as applicable, and
 1280 any costs and fees incurred in the enforcement of a settlement
 1281 agreement reached at mediation must be awarded to the prevailing
 1282 party in any enforcement action.

1283 (5) PRESUIT MEDIATION.—In lieu of the initiation of
 1284 nonbinding arbitration as provided in subsections (1)-(4), a
 1285 party may submit a dispute to presuit mediation in accordance
 1286 with s. 720.311; however, election and recall disputes are not
 1287 eligible for mediation and such disputes must be arbitrated by
 1288 the division or filed in a court of competent jurisdiction.

1289 (6) DISPUTES INVOLVING ELECTION IRREGULARITIES.—Every
 1290 arbitration petition received by the division and required to be
 1291 filed under this section challenging the legality of the
 1292 election of any director of the board of administration must be
 1293 handled on an expedited basis in the manner provided by the
 1294 division's rules for recall arbitration disputes.

1295 (7) ~~(6)~~ APPLICABILITY.—This section does not apply to a
 1296 nonresidential condominium unless otherwise specifically
 1297 provided for in the declaration of the nonresidential
 1298 condominium.

1299 Section 9. Section 718.1265, Florida Statutes, is amended
 1300 to read:

1301 718.1265 Association emergency powers.—

1302 (1) To the extent allowed by law, ~~and~~ unless specifically
 1303 prohibited by the declaration of condominium, the articles, or
 1304 the bylaws of an association, and consistent with ~~the provisions~~
 1305 of s. 617.0830, the board of administration, in response to

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1306 damage or injury caused by or anticipated in connection with an
 1307 emergency, as defined in s. 252.34(4), event for which a state
 1308 of emergency is declared pursuant to s. 252.36 in the locale in
 1309 which the condominium is located, may, ~~but is not required to,~~
 1310 exercise the following powers:

1311 (a) Conduct board meetings, committee meetings, elections,
 1312 and membership meetings, in whole or in part, by telephone,
 1313 real-time videoconferencing, or similar real-time electronic or
 1314 video communication with notice given as is practicable. Such
 1315 notice may be given in any practicable manner, including
 1316 publication, radio, United States mail, the Internet, electronic
 1317 transmission, public service announcements, and conspicuous
 1318 posting on the condominium property or association property or
 1319 any other means the board deems reasonable under the
 1320 circumstances. Notice of ~~board~~ decisions also may be
 1321 communicated as provided in this paragraph.

1322 (b) Cancel and reschedule any association meeting.

1323 (c) Name as assistant officers persons who are not
 1324 directors, which assistant officers shall have the same
 1325 authority as the executive officers to whom they are assistants
 1326 during the state of emergency to accommodate the incapacity or
 1327 unavailability of any officer of the association.

1328 (d) Relocate the association's principal office or
 1329 designate alternative principal offices.

1330 (e) Enter into agreements with local counties and
 1331 municipalities to assist counties and municipalities with debris
 1332 removal.

1333 (f) Implement a disaster plan or an emergency plan before,
 1334 during, or immediately following the event for which a state of

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emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.

(g) Based upon advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine any portion of the condominium property or association property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

(h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property or association property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.

(i) Based upon advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine whether the condominium property, association property, or any portion thereof can be safely inhabited, accessed, or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(j) Mitigate further damage, injury, or contagion, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus or contagion,

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including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage to the condominium property or association property. In such event, the unit owner or owners on whose behalf the board has contracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, ~~and~~ the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property, and the sanitizing of the condominium property or association property, as applicable.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general

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authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit;
or

(b) The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

Section 10. Subsection (3) of section 718.202, Florida Statutes, is amended to read:

718.202 Sales or reservation deposits prior to closing.-

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(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds for the actual costs incurred by the developer in the ~~actual~~ construction and development of the condominium property in which the unit to be sold is located. For purposes of this subsection, the term "actual costs" includes, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; ~~or~~ for advertising, marketing, or promotional purposes; or for loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

Section 11. Subsection (1) and paragraph (b) of subsection (3) of section 718.303, Florida Statutes, are amended to read:

718.303 Obligations of owners and occupants; remedies.-

(1) Each unit owner, ~~each~~ tenant and other invitee, and ~~each~~ association is governed by, and must comply with the

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provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which are ~~shall be deemed~~ expressly incorporated into any lease of a unit. Actions at law or in equity for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney ~~attorney's~~ fees. A unit owner prevailing in an action between the association and the unit owner under this subsection ~~section~~, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection are not considered ~~may not be deemed to be~~ actions for specific

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performance.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice to the unit owner and, if applicable, any tenant occupant, licensee, or invitee of the unit owner sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or

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hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Section 12. Subsection (5) is added to section 718.405, Florida Statutes, to read:

718.405 Multicondominiums; multicondominium associations.—

(5) This section does not prevent or restrict a multicondominium association from adopting a consolidated or combined declaration of condominium if such declaration complies with s. 718.104 and does not serve to merge the condominiums or change the legal descriptions of the condominium parcels as set forth in s. 718.109, unless accomplished in accordance with law. This section is intended to clarify existing law and applies to associations existing on July 1, 2021.

Section 13. Section 718.501, Florida Statutes, is amended to read:

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

(1) The division may enforce and ensure compliance with ~~the provisions of~~ this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate

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complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under ~~pursuant to~~ s. 718.111(12).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and

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location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

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

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

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter.

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If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

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

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach

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thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

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

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates ~~a provision of~~ this chapter, adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of

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the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed \$5,000. ~~By January 1, 1998,~~ The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by

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stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for

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any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least \$500 but no more than \$5,000 for each violation. The court may also award to the prevailing party court costs and reasonable ~~attorney~~ attorney's fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce ~~the provisions of this chapter.~~

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2) (a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include

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web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution ~~arbitration~~ proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected

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parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ~~pursuant to~~ ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under ~~pursuant to~~ this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's

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investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory

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changes. The report shall be submitted by September 30 following the end of the fiscal year.

(2) (a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

Section 14. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office in a ~~Leen County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 15. Subsection (25) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

(25) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as

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1857 specified in the cooperative documents. An interest in a unit is
 1858 an interest in real property.

1859 Section 16. Paragraph (c) of subsection (2) of section
 1860 719.104, Florida Statutes, is amended to read:

1861 719.104 Cooperatives; access to units; records; financial
 1862 reports; assessments; purchase of leases.—

1863 (2) OFFICIAL RECORDS.—

1864 (c)The official records of the association are open to
 1865 inspection by any association member or the authorized
 1866 representative of such member at all reasonable times. The right
 1867 to inspect the records includes the right to make or obtain
 1868 copies, at the reasonable expense, if any, of the association
 1869 member. The association may adopt reasonable rules regarding the
 1870 frequency, time, location, notice, and manner of record
 1871 inspections and copying, but may not require a member to
 1872 demonstrate any purpose or state any reason for the inspection.

1873 The failure of an association to provide the records within 10
 1874 working days after receipt of a written request creates a
 1875 rebuttable presumption that the association willfully failed to
 1876 comply with this paragraph. A member ~~unit-owner~~ who is denied
 1877 access to official records is entitled to the actual damages or
 1878 minimum damages for the association's willful failure to comply.
 1879 The minimum damages are \$50 per calendar day for up to 10 days,
 1880 beginning on the 11th working day after receipt of the written
 1881 request. The failure to permit inspection entitles any person
 1882 prevailing in an enforcement action to recover reasonable
 1883 attorney fees from the person in control of the records who,
 1884 directly or indirectly, knowingly denied access to the records.
 1885 Any person who knowingly or intentionally defaces or destroys

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1886 accounting records that are required by this chapter to be
 1887 maintained during the period for which such records are required
 1888 to be maintained, or who knowingly or intentionally fails to
 1889 create or maintain accounting records that are required to be
 1890 created or maintained, with the intent of causing harm to the
 1891 association or one or more of its members, is personally subject
 1892 to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The
 1893 association shall maintain an adequate number of copies of the
 1894 declaration, articles of incorporation, bylaws, and rules, and
 1895 all amendments to each of the foregoing, as well as the question
 1896 and answer sheet as described in s. 719.504 and year-end
 1897 financial information required by the department, on the
 1898 cooperative property to ensure their availability to members
 1899 ~~unit-owners~~ and prospective purchasers, and may charge its
 1900 actual costs for preparing and furnishing these documents to
 1901 those requesting the same. An association shall allow a member
 1902 or his or her authorized representative to use a portable
 1903 device, including a smartphone, tablet, portable scanner, or any
 1904 other technology capable of scanning or taking photographs, to
 1905 make an electronic copy of the official records in lieu of the
 1906 association providing the member or his or her authorized
 1907 representative with a copy of such records. The association may
 1908 not charge a member or his or her authorized representative for
 1909 the use of a portable device. Notwithstanding this paragraph,
 1910 the following records shall not be accessible to members ~~unit~~
 1911 ~~owners~~:

1912 1. Any record protected by the lawyer-client privilege as
 1913 described in s. 90.502 and any record protected by the work-
 1914 product privilege, including any record prepared by an

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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

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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.

Section 17. Paragraphs (b), (f), and (l) of subsection (1) of section 719.106, Florida Statutes, are amended, and subsection (3) is added to that section, to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

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

1. Unless otherwise provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of voting interests, and decisions shall be made by owners of a majority of the voting

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interests. Unless otherwise provided in this chapter, or in the articles of incorporation, bylaws, or other cooperative documents, and except as provided in subparagraph (d)1., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2., for votes taken to waive the financial reporting requirements of s.

719.104(4)(b), for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned

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meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

5. A board member or committee member participating in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must~~ shall be ~~used~~ utilized so that the conversation of ~~such those board or committee members attending by telephone~~ may be heard by the board or committee members attending in person, as well as by any unit owners present at a meeting.

(f) *Recall of board members.*—Subject to s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the voting interests to recall any member of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a

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meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall shall be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written

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agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration ~~under pursuant to the procedures of~~ s. 719.1255 or file an action with a court of competent jurisdiction. For purposes of this paragraph, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any member of the board, the recall ~~is~~ shall be effective upon the mailing of the final order of arbitration to the association or the final order of the court. If the association fails to comply with the order of the court or the arbitrator, the division may take action ~~under pursuant to~~ s. 719.501. Any member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall ~~is~~ shall be deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition or action, the unit owner representative may file a petition ~~under pursuant to~~ s. 719.1255 or file an action in a court of competent

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jurisdiction challenging the board's failure to act. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition under pursuant to s. 719.1255 or file an action in a court of competent jurisdiction challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the unit owner representative shall be named as the respondents.

8. The division or court may not accept for filing a recall petition or action, whether filed under pursuant to subparagraph 1., subparagraph 2., subparagraph 5., or subparagraph 7. and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board

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member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(1) Alternative dispute resolution ~~Arbitration~~.—There shall be a provision for alternative dispute resolution ~~mandatory nonbinding arbitration~~ of internal disputes arising from the operation of the cooperative in accordance with s. 719.1255.

(3) GENERALLY.—The association may extinguish a discriminatory restriction as provided under s. 712.065.

Section 18. Section 719.128, Florida Statutes, is amended to read:

719.128 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the cooperative, may exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, electronic transmission, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this

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2147 paragraph.

2148 (b) Cancel and reschedule an association meeting.

2149 (c) Designate assistant officers who are not directors. If
 2150 the executive officer is incapacitated or unavailable, the
 2151 assistant officer has the same authority during the state of
 2152 emergency as the executive officer he or she assists.

2153 (d) Relocate the association's principal office or
 2154 designate an alternative principal office.

2155 (e) Enter into agreements with counties and municipalities
 2156 to assist counties and municipalities with debris removal.

2157 (f) Implement a disaster or an emergency plan before,
 2158 during, or ~~immediately~~ following the event for which a state of
 2159 emergency is declared, which may include turning on or shutting
 2160 off elevators; electricity; water, sewer, or security systems;
 2161 or air conditioners for association buildings.

2162 (g) Based upon the advice of emergency management officials
 2163 or public health officials, or upon the advice of licensed
 2164 professionals retained by or otherwise available to the board of
 2165 administration, determine any portion of the cooperative
 2166 property unavailable for entry or occupancy by unit owners or
 2167 their family members, tenants, guests, agents, or invitees to
 2168 protect their health, safety, or welfare.

2169 (h) Based upon the advice of emergency management officials
 2170 or public health officials, or upon the advice of licensed
 2171 professionals retained by or otherwise available to the board of
 2172 administration, determine whether the cooperative property or
 2173 any portion thereof can be safely inhabited or occupied.
 2174 However, such determination is not conclusive as to any
 2175 determination of habitability pursuant to the cooperative

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2176 documents ~~declaration.~~

2177 (i) Require the evacuation of the cooperative property in
 2178 the event of a mandatory evacuation order in the area where the
 2179 cooperative is located or prohibit or restrict access to the
 2180 cooperative property in the event of a public health threat. If
 2181 a unit owner or other occupant of a cooperative fails to
 2182 evacuate the cooperative property for which the board has
 2183 required evacuation, the association is immune from liability
 2184 for injury to persons or property arising from such failure.

2185 (j) Mitigate further damage, injury, or contagion,
 2186 including taking action to contract for the removal of debris
 2187 and to prevent or mitigate the spread of fungus, including mold
 2188 or mildew, by removing and disposing of wet drywall, insulation,
 2189 carpet, cabinetry, or other fixtures on or within the
 2190 cooperative property, regardless of whether the unit owner is
 2191 obligated by the cooperative documents ~~declaration~~ or law to
 2192 insure or replace those fixtures and to remove personal property
 2193 from a unit or to sanitize the cooperative property.

2194 (k) Contract, on behalf of a unit owner, for items or
 2195 services for which the owner is otherwise individually
 2196 responsible, but which are necessary to prevent further injury,
 2197 contagion, or damage to the cooperative property. In such event,
 2198 the unit owner on whose behalf the board has contracted is
 2199 responsible for reimbursing the association for the actual costs
 2200 of the items or services, and the association may use its lien
 2201 authority provided by s. 719.108 to enforce collection of the
 2202 charges. Such items or services may include the drying of the
 2203 unit, the boarding of broken windows or doors, ~~and~~ the
 2204 replacement of a damaged air conditioner or air handler to

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provide climate control in the unit or other portions of the property, and the sanitizing of the cooperative property.

(1) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit;

or

(b) The habitability of the unit or for the health and

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safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

Section 19. Subsection (8) of section 720.301, Florida Statutes, is amended to read:

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

(8) "Governing documents" means:

(a) The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and

(b) The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto; ~~and~~

~~(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.~~

Section 20. Present paragraph (1) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m) and amended, a new paragraph (1) is added to that subsection, and paragraph (c) of subsection (2), paragraph (c) of subsection (5), paragraphs (c) and (d) of subsection (6), and paragraphs (b), (d), (g), (k), and (l) of subsection (10) are amended, to read:

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

(2) BOARD MEETINGS.—

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(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on the association's website or an application that can be downloaded on a mobile device for at least the minimum period

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of time for which a notice of a meeting is also required to be physically posted on the association property. Any rule adopted must, in addition to other matters, include a requirement that the association send an electronic notice to members whose e-mail addresses are included in the association's official records in the same manner as is required for a notice of a meeting of the members. Such notice must include a hyperlink to the website or such mobile application on which the meeting notice is posted. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the

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meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

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

(1) Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.

(m) ~~(1)~~ All other written records of the association not specifically included in this subsection ~~the foregoing~~ which are related to the operation of the association.

(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

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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

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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. Information an association obtains in a gated community in connection with guests' visits to parcel owners or community residents.

4. 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

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company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

~~5.4-~~ Medical records of parcel owners or community residents.

~~6.5-~~ 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.

~~7.6-~~ Any electronic security measure that is used by the association to safeguard data, including passwords.

~~8.7-~~ 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.

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The data is part of the official records of the association.

(6) BUDGETS.—

(c)1. If the budget of the association does not provide for reserve accounts ~~under pursuant to~~ paragraph (d), or the declaration of covenants, articles, or bylaws do not obligate the developer to create reserves, and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided or not fully funded, each financial report for the preceding fiscal year required by subsection (7) must contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR FULLY FUNDED RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS REGARDING THOSE ITEMS. OWNERS MAY ELECT TO PROVIDE FOR FULLY FUNDED RESERVE ACCOUNTS UNDER ~~PURSUANT TO~~ SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

2. If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established ~~under pursuant to~~ paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES

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AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS ~~UNDER PURSUANT TO~~ SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

(d) An association is deemed to have provided for reserve accounts ~~if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves. If reserve accounts are established by the developer, the budget must designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided by the developer, the membership of the association may elect to do so~~ upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).

(10) RECALL OF DIRECTORS.—

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(b)1. Board directors may be recalled by an agreement in writing or by written ballot without a membership meeting. The agreement in writing or the written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.

2. The board shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing or written ballots. At the meeting, the board shall either certify the written ballots or written agreement to recall a director or directors of the board, in which case such director or directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in paragraph (d).

3. When it is determined by the department pursuant to binding arbitration proceedings or the court in an action filed in a court of competent jurisdiction that an initial recall effort was defective, written recall agreements or written ballots used in the first recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than 120 days after it has been signed by the member.

4. Any rescission or revocation of a member's written recall ballot or agreement must be in writing and, in order to be effective, must be delivered to the association before the association is served with the written recall agreements or ballots.

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5. The agreement in writing or ballot shall list at least as many possible replacement directors as there are directors subject to the recall, when at least a majority of the board is sought to be recalled; the person executing the recall instrument may vote for as many replacement candidates as there are directors subject to the recall.

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file an action with a court of competent jurisdiction or file with the department a petition for binding arbitration under ~~pursuant to~~ the applicable procedures in ss. 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any director or directors of the board, the recall will be effective upon the final order of the court or the mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(g) If the board fails to duly notice and hold the required meeting or fails to file the required petition or action, the parcel unit owner representative may file a petition or a court action under ~~pursuant to~~ s. 718.1255 challenging the board's failure to act. The petition or action must be filed within 60

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days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this paragraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

(k) A board member who has been recalled may file an action with a court of competent jurisdiction or a petition under ~~pursuant to~~ ss. 718.112(2)(j) and 718.1255 and the rules adopted challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the parcel ~~unit~~ owner representative shall be named as respondents.

(l) The division or a court of competent jurisdiction may not accept for filing a recall petition or action, whether filed under ~~pursuant to~~ paragraph (b), paragraph (c), paragraph (g), or paragraph (k) and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

Section 21. Subsection (2) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(2) An ~~The~~ association may levy reasonable fines. A fine may not exceed \$100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided

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in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or

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suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner the date of the committee meeting at which the fine is approved. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant ~~tenant~~, licensee, or invitee of the parcel owner.

Section 22. Paragraph (g) of subsection (1) and paragraph (c) of subsection (9) of section 720.306, Florida Statutes, are amended, and paragraph (h) is added to subsection (1) of that section, to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(g) A notice required under this section must be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association as required under s. 720.303(4) on the property appraiser's website for the county in which the parcel is located, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.

(h)1. Except as provided herein, an amendment to a governing document, rule, or regulation enacted after July 1,

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2021, which prohibits a parcel owner from renting his or her parcel, alters the authorized duration of a rental term, or specifies or limits the number of times that a parcel owner may rent his or her parcel during a specified period, applies only to a parcel owner who consents, individually or through a representative, to the amendment, and to parcel owners who acquire title to a parcel after the effective date of the amendment.

2. Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rental durations that are for terms of less than 6 months and to prohibit a parcel owner from renting his or parcel more than three times in a calendar year. Such amendments apply to all parcel owners.

3. This paragraph does not affect the amendment restrictions for associations of 15 or fewer parcel owners as provided in s. 720.303(1).

4. For purposes of this paragraph, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner. For purposes of this paragraph, the term "affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish the association a document certifying that this

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paragraph applies, as well as providing any organizational documents for the parcel owner and the affiliated entity that support the representations in the certificate, as requested by the association.

(9) ELECTIONS AND BOARD VACANCIES.—

(c) Any election dispute between a member and an association must be submitted to ~~mandatory~~ binding arbitration with the division or filed with a court of competent jurisdiction. Such proceedings that are submitted to binding arbitration with the division must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

Section 23. Subsections (1) and (2) of section 720.307, Florida Statutes, are amended to read:

720.307 Transition of association control in a community.—

With respect to homeowners' associations:

(1) Members other than the developer are entitled to elect at least a majority of the members of the board of directors of

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the homeowners' association when the earlier of the following events occurs:

(a) Three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members other than the developer;

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

(c) Upon the developer abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308 for a period of more than 2 years;

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

(e) Upon the developer losing title to the property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or

(f) Upon a receiver for the developer being appointed by a circuit court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental

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to the association or its members.

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

(2) Members other than the developer are entitled to elect at least one member of the board of directors of the homeowners' association if 50 percent of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to members other than the developer.

Section 24. Subsection (1) of section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department under ~~pursuant to~~ s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct ~~mandatory~~ binding arbitration of election disputes between a member and an association in accordance with ~~pursuant to~~ s. 718.1255 and rules adopted by the division. ~~Neither~~ Election disputes and ~~nor~~ recall disputes are not eligible for presuit mediation; these disputes must ~~shall~~ be

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arbitrated by the department or filed in a court of competent jurisdiction. At the conclusion of an arbitration ~~the~~ proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney ~~attorney's~~ fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

Section 25. Subsection (6) is added to section 720.3075, Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(6) An association may extinguish a discriminatory restriction as provided in s. 712.065.

Section 26. Section 720.316, Florida Statutes, is amended to read:

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with s. 617.0830, the board of directors, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), ~~event~~ for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board meetings, committee meetings, elections,

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2785 or membership meetings, in whole or in part, by telephone, real-
 2786 time videoconferencing, or similar real-time electronic or video
 2787 communication after notice of the meetings and board decisions
 2788 is provided in as practicable a manner as possible, including
 2789 via publication, radio, United States mail, the Internet,
 2790 electronic transmission, public service announcements,
 2791 conspicuous posting on the common area association property, or
 2792 any other means the board deems appropriate under the
 2793 circumstances. Notice of decisions may also be communicated as
 2794 provided in this paragraph.

2795 (b) Cancel and reschedule an association meeting.

2796 (c) Designate assistant officers who are not directors. If
 2797 the executive officer is incapacitated or unavailable, the
 2798 assistant officer has the same authority during the state of
 2799 emergency as the executive officer he or she assists.

2800 (d) Relocate the association's principal office or
 2801 designate an alternative principal office.

2802 (e) Enter into agreements with counties and municipalities
 2803 to assist counties and municipalities with debris removal.

2804 (f) Implement a disaster or an emergency plan before,
 2805 during, or immediately following the event for which a state of
 2806 emergency is declared, which may include, but is not limited to,
 2807 turning on or shutting off elevators; electricity; water, sewer,
 2808 or security systems; or air conditioners for association
 2809 buildings.

2810 (g) Based upon the advice of emergency management officials
 2811 or public health officials, or upon the advice of licensed
 2812 professionals retained by or otherwise available to the board,
 2813 determine any portion of the common areas or facilities

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2814 ~~association property~~ unavailable for entry or occupancy by
 2815 owners or their family members, tenants, guests, agents, or
 2816 invitees to protect their health, safety, or welfare.

2817 (h) Based upon the advice of emergency management officials
 2818 or public health officials or upon the advice of licensed
 2819 professionals retained by or otherwise available to the board,
 2820 determine whether the common areas or facilities association
 2821 ~~property~~ can be safely inhabited, accessed, or occupied.
 2822 However, such determination is not conclusive as to any
 2823 determination of habitability pursuant to the declaration.

2824 (i) Mitigate further damage, injury, or contagion,
 2825 including taking action to contract for the removal of debris
 2826 and to prevent or mitigate the spread of fungus, including mold
 2827 or mildew, by removing and disposing of wet drywall, insulation,
 2828 carpet, cabinetry, or other fixtures on or within the common
 2829 areas or facilities or sanitizing the common areas or facilities
 2830 ~~association property~~.

2831 (j) Notwithstanding a provision to the contrary, and
 2832 regardless of whether such authority does not specifically
 2833 appear in the declaration or other recorded governing documents,
 2834 levy special assessments without a vote of the owners.

2835 (k) Without owners' approval, borrow money and pledge
 2836 association assets as collateral to fund emergency repairs and
 2837 carry out the duties of the association if operating funds are
 2838 insufficient. This paragraph does not limit the general
 2839 authority of the association to borrow money, subject to such
 2840 restrictions contained in the declaration or other recorded
 2841 governing documents.

2842 (2) The authority granted under subsection (1) is limited

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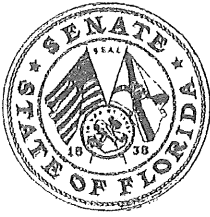
to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit parcel owners, tenants, guests, agents, or invitees of a parcel owner from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a parcel; or

(b) The habitability of the parcel or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the parcel. Any such access is subject to reasonable restrictions adopted by the association.

Section 27. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR DENNIS BAXLEY
12th District

March 17, 2021

The Honorable Chair Kathleen Passidomo
400 Senate Office Building
Tallahassee, Florida 32399

Dear Chair Passidomo,

I would like to request that CS/SB 630 Community Association be heard in the next Rules Committee meeting.

This bill will move Florida's community associations into the 21st century by streamlining community documents, increasing transparency, and keeping costs low on Florida homeowners. CS/SB 630 will also update emergency powers of community association boards during a state health emergency by allowing board members to attend meetings telephonically or by video communication, implement emergency plans, and mitigate contagion spread in common elements of an association.

The bill will also increase transparency by allowing homeowners to inspect documents without having to provide a specific purpose, allowing associations to post documents not only on its website but also on mobile application platforms. It will also reduce costs for Florida homeowners by allowing associations to recoup actual cost related to background in connection with sale, lease or mortgage of a unit preventing these costs being passed onto current unit owners.

Thank you for your favorable consideration.

Onward & Upward,

A handwritten signature in black ink, appearing to read "Dennis K. Baxley".

Senator Dennis K. Baxley
Senate District 12

DKB/dd

REPLY TO:

- ☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- ☐ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

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

630
Bill Number (if applicable)
686078
Amendment Barcode (if applicable)

Topic Community Associations

Name William Sklar

Job Title _____

Address 215 S. Monroe St. Ste 500
Street
Tallahassee FL 32301
City State Zip

Phone 561-843-2909

Email WSKlar@carltonfields.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Homebuilders 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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/31/21

Meeting Date

630

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Marco Paredes

Job Title _____

Address 106 E. College Ave, Ste. 700

Phone 850-354-7608

Street

Tallahassee, FL

32311

City

State

Zip

Email mparedes@stearnsweaver.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing On Top of the World Communities

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

5/31/21

Meeting Date

630

Bill Number (if applicable)

Topic SB 630

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title Lobbyist

Address 110 S Monroe St

Phone 813-205-0654

Street

Tallahassee

City

FL

State

32301

Zip

Email mark@consultanderson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Chief Executive Officers of Management Companies (CEOMC)

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

3/31/2021

Meeting Date

SB 630

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Sean Stafford

Job Title SVP McGuirewoods

Address 115 E Park Ave

Phone 850-727-5000

Street

Tallahassee

City

FL

State

32301

Zip

Email SStafford@mnciv.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associa

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

03/31/2021

Meeting Date

SB 630

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Director of Government Affairs

Address P. O. Box 12129

Phone 850-893-4155

Street

Tallahassee

FL

32317

Email bmurphy@faia.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Insurance Agents

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)

THE FLORIDA SENATE
APPEARANCE RECORD

3/31/21

Meeting Date

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

630

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020

Street

Phone 727.421.6902

St. Petersburg

City

FL

State

33731

Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Associations Institute + FirstService Residential

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/31/21
Meeting Date

630
Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name William Sklar

Job Title _____

Address 215 S. Monroe St. Ste 500
Tallahassee FL 32301
City State Zip

Phone 561-843-2909

Email wsklar@carltonfields.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Homebuilders 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.

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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)

3-31-21

Meeting Date

SB 430

Bill Number (if applicable)

686078

Amendment Barcode (if applicable)

Topic Condominium Reserves

Name KARE HEIBRANK

Job Title _____

Address 215 S. Monroe
Tallahassee FL 32301
City State Zip

Phone 546-7824

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA HOME BUILDERS

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.

This information was not read
into the record by the Chair

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-31-21

Meeting Date

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

SB 630

Bill Number (if applicable)

Topic Condominiums

Amendment Barcode (if applicable)

Name KARI HEBRANK

Job Title _____

Address 215 S. MONROE

Phone 566-7824

TALLAHASSEE FL 32301
City State Zip

Email Khebrank@carlton
files.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA HOME BUILDERS

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.

**This information was not read
into the record by the Chair**

S-001 (10/14/14)

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 Rules

BILL: CS/CS/SB 912

INTRODUCER: Rules Committee; Environment and Natural Resources Committee; and Senator Albritton

SUBJECT: Tolling and Extension of Permits and Other Authorizations During States of Emergency

DATE: April 1, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

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 tolls¹ the period remaining for a party to exercise rights under certain permits and other authorizations. 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 an environmental resource permit issued pursuant to Part IV of ch. 373, F.S.

CS/CS/SB 912 specifies additional permits and authorizations that may be tolled and extended during a state of emergency. These include consumptive use 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.

¹ Toll means “[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.” Black’s Law Dictionary (6th ed. 1990).

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 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.⁴ To facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.⁵ The Governor may delegate this and other emergency powers to executive agencies and local governments.⁶

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."⁷ 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,⁸ and vests authority in the Governor as commander-in-chief of the Florida National Guard and "all other forces available for emergency duty."⁹

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.¹⁰

² Section 252.36(2), F.S.

³ Section 252.36, F.S.; *see also Miami-Dade County v. Miami Gardens Square One, Inc.*, --- So.3d ---, 2020 WL 6472542 (Fla. 3rd DCA Nov. 4, 2020).

⁴ Section 252.36(5), F.S.

⁵ Section 252.36(1)(b), F.S.

⁶ Section 252.35(2)(v), F.S.

⁷ 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."

⁸ Section 252.36(3)(b), F.S.

⁹ Section 252.36(4), F.S.

¹⁰ Section 252.36(2), F.S.

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,¹¹ the period to exercise rights under a permit or other authorization is tolled 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:

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of an environmental resource permit issued by the Department of Environmental Protection (DEP) or a water management district under ch. 373, part IV, F.S.; or
- The buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.¹²

To receive the benefit of 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 permitholder must provide written notice of the intent to exercise the tolling and extension. The written notice must identify the specific permit or authorization qualifying for the extension to the issuing authority. Once the permitholder 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.¹³

The tolling and extension of permits and other authorizations does not apply to the following:

- 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 due to a state of emergency.¹⁴

¹¹ 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).

¹² Section 252.363(1)(a), F.S.

¹³ “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 Op. Att’y Gen. Fla. 12-13* (2012), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDDBEC852579EB00743D48> (last visited Mar. 16, 2021).

¹⁴ Section 252.363(1)(d), F.S.

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 20-52.¹⁵ 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, 2021.¹⁶

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. DEP and the state's five water management districts¹⁷ are provided statutory authority to ensure effective implementation of Florida's water resource laws.¹⁸ 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. DEP and Florida's five water management districts are tasked with various aspects of the consumptive use permit (CUP) system. The water management districts are responsible for issuing CUPs.¹⁹

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 in a manner that does not interfere with other existing legal water uses and protects water resources from harm.²⁰ The water can be used for public supply (drinking water), agricultural and landscape irrigation, golf course irrigation, commercial use, dewatering/mining activities, and power generation. 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.²¹

¹⁵ Executive Order 20-52 (Mar. 9, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited Mar. 16, 2021).

¹⁶ 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. 16, 2021).

¹⁷ 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 Mar. 16, 2021).

¹⁸ Section 373.016, F.S.

¹⁹ See South Florida Water Management District, *Consumptive Water Use Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits> (last visited Mar. 16, 2021).

²⁰ *Id.*

²¹ Florida Department of Environmental Protection, *2021 Florida Water Plan*, available at <https://fdp.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c> (last visited Mar. 16, 2021).

Section 373.236(1), F.S., provides in part that CUPs "shall be granted for a period of 20 years[.]" However, the precise duration of a CUP largely depends on circumstances and facts related to the specific water resource and water use.²² CUP renewal applications are treated in the same manner as the initial permit application.²³ 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.²⁴

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. DEP and water management districts proscribe rules and regulations related to the management and storage of surface water and administer surface water permitting.²⁵

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.²⁶ 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 DEP and water management districts.²⁷

Permitting thresholds and requirements may vary between water management districts. Water quality and quantity considerations and general environmental concerns are addressed in the permit application process. Permit revocation or modification of a permit may occur if the permit conditions or statutory mandates are not met. Permit duration will vary depending on the project.²⁸

Community Planning and Development

The Community Planning Act²⁹ 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.³⁰ 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.

²² See s. 373.236, F.S.

²³ Section 373.239(3), F.S.

²⁴ Florida Department of Environmental Protection, *2021 Florida Water Plan*, available at <https://fddep.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c> (last visited Mar. 16, 2021).

²⁵ Section 373.4131, F.S.

²⁶ 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 Mar. 16, 2021).

²⁷ *Id.*

²⁸ *Id.* at 6-1.

²⁹ Part II of ch. 163, F.S.

³⁰ Section 163.3167(1)(b), F.S.

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."³¹ 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 permitting the development of land."³² Once a local government has officially granted or denied a development permit, the official action constitutes a development order.³³

The Florida Local Government Development Agreement Act

In furtherance of community planning and development, the Legislature enacted the Florida Local Government Development Agreement Act.³⁴ This Act standardizes the procedures and requirements needed for a local government to enter into a development agreement.³⁵ 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.³⁶ A development agreement's duration may not exceed 30 years unless the local government and property owner/developer mutually consent to extend the agreement.³⁷

III. Effect of Proposed Changes:

Section 1 amends s. 252.363, F.S., to provide for the tolling and extension of certain permits and agreements during a state of emergency. Under the bill, the expiration of consumptive use permits issued by DEP or a water management district under Part II of ch. 373, F.S., may be tolled and extended during a state of emergency, as long as the permit is related to land subject to a development agreement and the permittee and developer are the same or a related entity. Additionally, the bill provides that the expiration of 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 provisions of the bill 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

³¹ Section 163.3164(14), F.S.; *see* s. 380.04(1), F.S.

³² Section 163.3164(16), F.S.

³³ *See* s. 163.3164(15), F.S. "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

³⁴ *See* s. 163.3220, F.S.

³⁵ Section 163.3227, F.S.; *see* ss. 163.3220-163.3243, F.S.

³⁶ *See Preserve Palm Beach Political Action Committee v. Town of Palm Beach*, 50 So.3d 1176 (Fla. 4th DCA 2010).

³⁷ Section 163.3229, F.S.

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.

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

CS/CS by Rules on March 31, 2021:

The committee substitute clarifies that the emergency tolling and extension of a consumptive use permit issued by the DEP or a water management district only applies when land is subject to a development agreement and the permittee and developer are the same or a related entity.

CS by Environment and Natural Resources on March 22, 2021:

Makes a technical change.

- B. **Amendments:**

None.



647342

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2021	.	
	.	
	.	
	.	

The Committee on Rules (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 32 - 36
and insert:
to part IV of chapter 373.

4. Permits issued by the Department of Environmental
Protection or a water management district pursuant to part II of
chapter 373 for land subject to a development agreement under
ss. 163.3220-163.3243 in which the permittee and the developer
are the same or a related entity.

5. The buildout date of a development of regional impact,



647342

including any extension of a buildout date that was previously
granted as specified in s. 380.06(7)(c).

6. The expiration of a development permit or a development

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

And the title is amended as follows:

Delete line 5

and insert:

specified consumptive use permits issued under part II
of ch.

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

592-03176-21

2021912c1

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.

Page 1 of 3

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

592-03176-21

2021912c1

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. The expiration of a development permit or a development agreement 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

Page 2 of 3

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

592-03176-21

2021912c1

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

APPEARANCE RECORD

3/31/21

Meeting Date

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

912

Bill Number (if applicable)

647342

Amendment Barcode (if applicable)

Topic SB 912/Amendment 647342

Name Jeff Woodburn

Job Title

Address 204 South Monroe St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-8900

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/31/21

Meeting Date

912

Bill Number (if applicable)

Topic SB 912

Amendment Barcode (if applicable)

Name Jeff Woodburn

Job Title _____

Address 204 South Monroe St.

Phone 850-222-8900

Street

Tallahassee

FL

32301

City

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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)

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 Rules

BILL: CS/CS/SB 1018

INTRODUCER: Rules Committee; Environment and Natural Resources Committee; Senators Boyd and Perry

SUBJECT: Sale of Aquaculture Products

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	Favorable
2.	Anderson	Rogers	EN	Fav/CS
3.	Becker	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1018 allows for Florida largemouth bass to be sold by an aquaculture producer or a dealer with a nonrecreational license from the Fish and Wildlife Conservation Commission. Florida largemouth bass may be sold without restriction, including for human consumption, so long as the product origin can be identified.

The bill takes effect July 1, 2021.

II. Present Situation:

The Department of Agriculture and Consumer Services (DACS) Division of Aquaculture (division) is Florida's lead aquaculture agency. The division coordinates and assists in the development of aquaculture and regulates aquafarms to protect and conserve Florida's natural resources.¹

DACS issues certificates of registration to aquaculture producers under s. 597.004, F.S.² Certified aquaculture producers and dealers licensed pursuant to part VII of ch. 379, F.S., are

¹ Florida Department of Agriculture and Consumer Services (DACS), *Division of Aquaculture*, <https://www.fdacs.gov/Divisions-Offices/Aquaculture> (last visited Mar. 17, 2021).

² Section 597.004(6), F.S.

permitted to sell aquaculture products³ except those otherwise prohibited by law and those for which the origin of the product is unknown.⁴ Specifically prohibited species include shellfish, snook, and any fish of the genus *Microperterus*, and prohibited and restricted freshwater and marine species identified by the Fish and Wildlife Conservation Commission (FWC).⁵

FWC, by rule, allows persons with a valid aquaculture certificate of registration to culture and sell game fish as food. However, the rule specifically excludes fish of the genus *Microperterus*.⁶

FWC also lists the northern largemouth bass (*Micropterus salmoides salmoides*) as a conditional non-native species and prohibits its possession east and south of the Suwannee River.⁷ In its agency analysis, FWC stated that this rule is a safeguard to conserve the genetic integrity of the Florida largemouth bass (*Micropterus salmoides floridanus*) and ensure that it continues to be protected from hybridization with the northern largemouth bass.⁸

III. Effect of Proposed Changes:

CS/CS/SB 1018 amends s. 597.004, F.S., to remove the species *Micropterus salmoides floridanus* (Florida largemouth bass) from the aquaculture products that are prohibited to be sold by certified aquaculture producers and dealers with a nonrecreational license from the Florida Fish and Wildlife Conservation Commission (FWC).

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.

³ “Aquaculture products” means aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions. Such products do not include organisms harvested from the wild for depuration, wet storage, or relay for purification. Section 597.0015(3).

⁴ Section 597.004(5), F.S.

⁵ *Id.*

⁶ Fla. Admin. Code R. 68A-23.009(2)(c).

⁷ Fla. Admin. Code R. 68-5.004(1)(r).

⁸ Florida Fish and Wildlife Conservation Commission (FWC), *Senate Bill 1018 Agency Bill Analysis* (February 23, 2021)(on file with the Senate Committee on Environment and Natural Resources).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Certified aquaculture producers and dealers with a nonrecreational license from FWC could see a financial benefit from the ability to offer Florida largemouth bass for sale.

C. Government Sector Impact:

FWC and DACS may incur costs related to rulemaking if it is necessary for the agencies to amend their rules based on the provisions in the bill.⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 597.004 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.)

CS/CS by Rules on March 31, 2021:

Requires the Department of Agriculture and Consumer Services to include the following in its rulemaking for aquaculture certificates of registration: A requirement that any facility that cultures *Micropeterus salmoides floridanus* (Florida largemouth bass) maintain stock acquisition documentation or records of genetic testing.

CS by Environment and Natural Resources on March 22, 2021:

Authorizes certified aquaculture producers and licensed dealers to sell Florida largemouth bass, rather than all largemouth bass.

⁹ *Id.*; DACS, *Senate Bill 1018 Agency Bill Analysis* (Feb. 15, 2021)(on file with the Senate Committee on Environment and Natural Resources).

B. Amendments:

None.

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



303308

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2021	.	
	.	
	.	
	.	

The Committee on Rules (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (2) and paragraph
(a) of subsection (5) of section 597.004, Florida Statutes, are
amended to read:

597.004 Aquaculture certificate of registration.—

(2) RULES.—

(a) The department, in consultation with the Department of
Environmental Protection, the water management districts,



303308

environmental groups, and representatives from the affected farming groups, shall adopt rules to:

1. Specify the requirement of best management practices to be implemented by holders of aquaculture certificates of registration.

2. Establish procedures for holders of aquaculture certificates of registration to submit the notice of intent to comply with best management practices.

3. Establish schedules for implementation of best management practices, and of interim measures that can be taken prior to adoption of best management practices. Interim measures may include the continuation of regulatory requirements in effect on June 30, 1998.

4. Establish a system to assure the implementation of best management practices, including recordkeeping requirements.

5. Require any facility that cultures *Micropterus salmoides floridanus* to maintain stock acquisition documentation or records of genetic testing.

(5) SALE OF AQUACULTURE PRODUCTS.—

(a) Aquaculture products, except shellfish, snook, and any fish of the genus *Micropterus*, excluding *Micropterus salmoides floridanus*, and prohibited and restricted freshwater and marine species identified by rules of the Fish and Wildlife Conservation Commission, may be sold by an aquaculture producer certified pursuant to this section or by a dealer licensed pursuant to part VII of chapter 379 without restriction so long as the product origin can be identified.

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



303308

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to largemouth bass; amending s.
597.004, F.S.; requiring the Department of Agriculture
and Consumer Services, in consultation with specified
entities, to adopt a rule requiring certain facilities
to maintain stock acquisition documentation or records
of genetic testing related to Florida largemouth bass;
authorizing the sale of Florida largemouth bass as
food fish under certain circumstances; providing an
effective date.

By the Committee on Environment and Natural Resources; and
Senators Boyd and Perry

592-03180-21

20211018c1

A bill to be entitled

An act relating to the sale of aquaculture products;
amending s. 597.004, F.S.; authorizing certified
aquaculture producers and certain licensed dealers to
sell Florida largemouth bass without restriction under
certain circumstances; making technical changes;
providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) of section
597.004, Florida Statutes, is amended to read:

597.004 Aquaculture certificate of registration.—

(5) SALE OF AQUACULTURE PRODUCTS.—

(a) An aquaculture producer certified pursuant to this
section or a dealer licensed pursuant to part VII of chapter 379
may sell aquaculture products, except shellfish, snook, and
any fish of the genus *Micropterus*, excluding the species
Micropterus salmoides floridanus (Florida largemouth bass); and
prohibited and restricted freshwater and marine species
identified by rules of the Fish and Wildlife Conservation
Commission, ~~may be sold by an aquaculture producer certified~~
~~pursuant to this section or by a dealer licensed pursuant to~~
~~part VII of chapter 379~~ without restriction so long as the
product origin can be identified.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD
21st District

March 24, 2021

Senator Passidomo
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Madam Chair:

I respectfully request that CS/SB 1018: Sale of Aquaculture Products, be scheduled for a hearing in the Committee on Rules at your earliest convenience.

I believe this bill will provide an opportunity for Florida's aquaculture industry to grow with the introduction of a new species for production. We are currently one of 5 states that does not allow Largemouth Bass to be grown as a food fish. I believe the introduction of this fish to Florida's already extensive seafood menu would be a great addition.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

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

Jim Boyd

cc: John Phelps
Cynthia Futch

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/31/21

Meeting Date

1018

Bill Number (if applicable)

Topic LARGE Mouth Bass

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address 1195 Monroe St

Phone 850-228-1296

Street

TALLAHASSEE

City

FL

State

32301

Zip

Email Jim.spratt@flsenate.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Aquaculture 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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/31/21
Meeting Date

SB 1018
Bill Number (if applicable)

Topic Sale of Aquaculture Products

Amendment Barcode (if applicable)

Name Landon Hoffman

Job Title legislative Affairs

Address 2057 W Forest Dr
Street

Phone 850 508 1236

Tallahassee FL 32303
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Farm Bureau

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
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 Rules

BILL: SB 1134

INTRODUCER: Senator Harrell

SUBJECT: Department of Highway Safety and Motor Vehicles

DATE: March 29, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Proctor	Vickers	TR	Favorable
2. Ponder	McVane	GO	Favorable
3. Proctor	Phelps	RC	Favorable

I. Summary:

SB 1134 includes the following provisions:

- Updates the date of adoption of federal regulations and rules for commercial motor vehicles (CMV) to December 31, 2020;
- Revises the length of time within which an officer of the Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to give written notice requiring correction of an unduly hazardous operating condition from 14 days to 15 days;
- Updates statute to reflect the DHSMV is the agency responsible for the safe operations of nonpublic sector buses;
- Provides that current seat belt requirements are applicable when a vehicle is stationary at a traffic signal;
- Exempts from odometer disclosure a vehicle with a model year of 2011 or newer after 20 years;
- Provides that a motor carrier or vehicle owner whose registration has been suspended is required to return the license plate to the DHSMV or surrender it to law enforcement;
- Provides that a person who has been convicted of any felony involving human trafficking under state or federal law involving the use of a CMV may not be licensed as a CMV operator, or hold a CMV license;
- Provides that the expiration date for an original issuance of a commercial driver license is at midnight 8 years after the licensee's last birthday; and
- Incorporates violations for texting or using a handheld phone device while operating a CMV as a serious disqualifying offense, which may result in a person being disqualified from operating a CMV for a specified period of time, to align with federal regulations.

The bill may have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2021.

II. Present Situation:

Federal Regulations

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA), an agency within the U.S. Department of Transportation (USDOT), is to prevent CMV-related fatalities and injuries.¹

Florida law defines “commercial motor vehicle” as any self-propelled or towed vehicle used on public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act,² as amended.³

Section 316.302(1)(a), F.S., provides that all owners and drivers of a CMV operating on the state’s public highways while engaged in *interstate* commerce are subject to federal regulations.

Section 316.302(1)(b), F.S., provides that, with certain exceptions, all owners or drivers of CMVs engaged in *intrastate* commerce are subject to federal regulations, as they existed on December 31, 2018.

Federal regulations provide that, with some exceptions, CMV drivers must be at least 21 years of age.⁴ Federal regulations also provide maximum drive time requirements for property carrying vehicles.⁵ Section 316.302(2)(a), F.S., provides that a person operating a CMV solely in intrastate commerce and not transporting any hazardous material in amounts that require placarding⁶ are not required to comply with the above-referenced federal regulations and are not required to comply with 49 C.F.R. 395.3, documenting the maximum driving time for operators of property carrying vehicles. These drivers continue to be subject to the maximum driving times required by state law.

Florida law also provides that, except as provided in federal regulations, a person operating a CMV solely in intrastate commerce and not transporting any hazardous material may not drive:

- More than 12 hours following 10 consecutive hours off duty; or

¹ Federal Motor Carrier Safety Administration, available at <https://www.fmcsa.dot.gov/mission/about-us> (last visited February 10, 2021).

² 49 U.S.C. ss. 1801 et seq.

³ Section 316.003(13), F.S.

⁴ 49 C.F.R. s. 391.11(b)(1).

⁵ 49 C.F.R. s. 395.3(a) and (b).

⁶ Placarding is required pursuant to 49 C.F.R. part 172. In this analysis, everywhere there is a discussion regarding the transportation of hazardous materials, it is assumed to be in amounts that require placarding.

- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.⁷

These provisions do not apply to drivers of utility service vehicles.⁸

Section 316.302(2)(c), F.S., provides that, except as provided in the federal hours of service (HOS) rules,⁹ a person operating a CMV solely in intrastate commerce, not transporting any hazardous material, may not drive after having been on duty more than 70 hours in any period of seven consecutive days or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week. Upon request of the DHSMV, motor carriers must furnish time records or other written verification so that the DHSMV can determine compliance with the HOS requirements. Falsification of time records is subject to a civil penalty not to exceed \$100.

Section 316.302(2)(d), F.S., provides that a person operating a CMV solely in intrastate commerce not transporting any hazardous material within a 150 air-mile radius is not required to comply with federal provisions regarding a driver's record of duty status¹⁰ if the requirements of certain federal rules regarding short-haul operations¹¹ are met. If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.

Section 316.302(9) F.S., requires carriers to provide written notification of the repair of a documented defect to the DHSMV within 14 days. This is inconsistent with federal requirements requiring carriers to provide written notification within 15 days.

Seat Belt Usage

It is unlawful for any person to operate a motor vehicle¹² in Florida unless all drivers, all front seat passengers and all passengers under the age of 18 are restrained by a safety belt or by a child restraint device.¹³

⁷ Section 316.302(2)(b), F.S.

⁸ 49 C.F.R. s. 395.2, defines "utility service vehicle" as any commercial motor vehicle:

(1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

⁹ 49 C.F.R. s. 395.1.

¹⁰ 49 C.F.R. s. 395.8.

¹¹ 49 C.F.R. s. 395.1(e)(1)(iii) and (v) are various rules relating to short-haul operations.

¹² Section 316.003(44), F.S., defines "motor vehicle" as a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.

¹³ Section 316.614, F.S.

Drivers and passengers 18 or older can be cited if they, or any passenger under the age of 18, are not properly strapped in. Drivers will be charged with a seat belt violation if any passenger under the age of 18 is not restrained with a seat belt or child restraint device.

Florida law requires the use of safety belts for all drivers and passengers in all motorized vehicles, except:

- A person certified with a physician as having a medical condition that causes seat belt use to be inappropriate or dangerous. (Keep a copy of certification while driving/being driven);
- Employee of a newspaper home delivery service while delivering newspapers;
- An employee of a solid waste or recyclable collection service is not required to be restrained by a safety belt while in the course of employment collecting solid waste or recyclables on designated routes;
- The living quarters of a recreational vehicle or a space within a truck body primarily intended for merchandise or property;
- School buses purchased new prior to December 31, 2000;
- Buses used for transportation of persons for compensation;
- Farm equipment;
- Trucks of a net weight of more than 26,000 pounds; and
- A rural letter carrier of the United States Postal Service while performing duties in the course of his or her employment on a designated postal route.¹⁴

A seat belt (without a booster seat) may only be used for children 4-5 years of age when the driver is not a member of the child's immediate family and the child is being transported as a favor or in an emergency.¹⁵

Wearing a seat belt reduces the risk of being injured or killed in a crash by almost 50 percent.¹⁶

Nonpublic Sector Buses

Chapter 2011-69, Laws of Florida, moved motor carrier compliance (to include nonpublic sector buses) from the Florida Department of Transportation (FDOT) to the DHSMV.¹⁷ However, some statutes were not amended to reflect the corresponding changes. The FDOT no longer revises standards for the safe operation of nonpublic sector buses since those functions have been moved to the DHSMV.

Odometer Exemption

The federal odometer law, 49 U.S.C. Chapter 327 (Public Law 103-272), prohibits the disconnection, resetting, or alteration of a motor vehicle's odometer with intent to change the number of miles indicated. The law requires that a written disclosure of the mileage registered on an odometer be provided by the seller to the purchaser on the title to the vehicle when the ownership of a vehicle is transferred. If the odometer mileage is incorrect, the law requires a

¹⁴ Section 316.614(6), F.S.

¹⁵ Section 316.613(1)(a)2., F.S.

¹⁶ *Id.*

¹⁷ Ch. 2011-69, Laws of Fla.

statement to that effect to be furnished on the title to the buyer. However, vehicles ten years old and older are exempt from the written disclosure requirements.¹⁸

Violations of any of the above requirements may subject the violator to civil liability if it is determined that their actions were intended to defraud the purchaser. The law makes available to the buyer a remedy in the amount of \$1,500 or treble damages, whichever is greater, together with attorney's fees. To obtain this remedy, 49 U.S. Code Section 32710 of federal law permits the buyer to bring a private civil action in State or Federal court.¹⁹

Beginning January 1, 2021, the USDOT National Highway Traffic Safety Administration began enforcing a new rule for odometer disclosures for every transfer of ownership for the first 20 years, beginning with model year 2011 vehicles.²⁰ Model year 2010 and older vehicles will continue to be subject to the previous 10-year disclosure requirements and thus are exempt from extended Federal odometer disclosure requirements.²¹

Current state law only provides for odometer exemptions for vehicles manufactured with a 2010 model year or older remain exempt under the 10-year exemption.²² Any person who fails to complete or acknowledge an odometer disclosure statement as required by law is guilty of a misdemeanor of the second degree.²³

Performance and Registration Information Systems Management

The Performance Information Systems Management (PRISM) program is a cooperative federal-state safety program developed to reduce commercial vehicle accidents. PRISM utilizes the commercial vehicle registration process of the states to improve motor carrier safety in two ways:

- By determining the safety fitness of the motor carrier prior to issuing license plates; and,
- By motivating the carrier to improve its safety performance either through an improvement process or the application of registration sanctions.

The PRISM program encompasses two major processes registration and enforcement, which are integrated to identify motor carriers and hold them responsible for the safety of their operations. The performance of unsafe carriers is improved through a comprehensive system of identifications, education, data gathering, safety monitoring, and treatment.²⁴

The PRISM program is a key component to FMCSA efforts to reduce the number of CMV crashes, injuries and fatalities in a rapidly expanding interstate motor carrier population. Currently, the DHSMV does not have the authority to deny vehicle registration to a commercial

¹⁸ National Highway Traffic Safety Administration, Odometer Fraud, <https://one.nhtsa.gov/Vehicle-Safety/Odometer-Fraud/Odometer-Information-Overview-for-Consumers> (last visited February 12, 2021).

¹⁹ *Id.*

²⁰ National Highway Traffic Safety Administration, Press Releases, <https://www.nhtsa.gov/press-releases/odometer-disclosure-requirements-change> (last visited February 12, 2021).

²¹ 49 C.F.R. part 580.

²² Section 319.225(4), F.S.

²³ *Id.*

²⁴ Federal Motor Carrier Safety Administration, PRISM Management Grant, <https://www.fmcsa.dot.gov/grants/prism-management-grant/performance-and-registration-information-systems-management-prism> (last visited February 12, 2021).

motor carrier who has received an out of service order by FMCSA but attempts to circumvent the order by obtaining a new USDOT number and company name. These carriers are commonly referred to as “reincarnated” or “chameleon” carriers because they often operate the same vehicles under a different USDOT number and name but maintain the same officers and directors, business address, telephone number, and email of the out of service carrier.

Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with the FMCSA, have a USDOT number, and comply with federal safety regulations in order to have their vehicles registered under the International Registration Plan. When a company fails to meet FMCSA safety requirements, it may be placed out of service. However, an out of service order does not automatically impact a vehicle’s registration.

In 2019, over 5,000 motor carriers with serious safety deficiencies were issued a federal out-of-service order that required registration sanctions. PRISM state registration agencies suspended 27,905 vehicle registrations of these motor carriers.²⁵

An effectiveness evaluation report released in February 2016 by the FMCSA determined that between 2008 and 2013 states that fully participate in PRISM when compared to non-fully participating states experience a:

- 20.4 percent observable reduction in all CMV crashes;
- 9.8 percent observable reduction in fatalities involving all CMV crashes; and
- 6.9 percent reduction in state registered CMVs being placed out of service roadside for operating while under a federal order.²⁶

In addition, vehicles registered in states that fully participate in PRISM compared to non-fully participating states experienced the equivalent of 777 lives saved between 2008 and 2013. These results equate to 130 lives saved each year.²⁷

Human Trafficking

The federal Victims of Trafficking and Violence Protection Act of 2000²⁸ defines “sex trafficking” as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial act. “Severe forms of trafficking in persons” includes:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.²⁹

²⁵ Federal Motor Carrier Safety Administration, PRISM, <https://www.fmcsa.dot.gov/PRISM> (last visited February 12, 2021).

²⁶ Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 1134*, (February 9, 2021), p. 4 (on file with the Senate Committee on Transportation).

²⁷ *Id.*

²⁸ Public Law 106-386, s. 103, 22 U.S.C. s. 7102.

²⁹ *Id.*

There are approximately 2.5 million victims of human trafficking in the United States. Many victims are lured with false promises of financial or emotional security; instead they are forced or coerced into commercial sex, domestic servitude, or other types of forced labor. Any minor under the age of 18 who is induced to perform a commercial sex act is a victim of human trafficking, regardless of whether there is forced fraud or coercion. Increasingly, criminal organizations such as gangs, are luring children from local schools into commercial sexual exploitation or trafficking. According to the U.S. Department of Justice, every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.³⁰

On January 8, 2019, the “No Human Trafficking on Our Roads Act” was signed into law.³¹ Subsequently, the FMCSA issued a new rule to prohibit an individual from operating a CMV for life if that individual uses a CMV in committing a felony involving human trafficking. The new rule revises the list of offenses permanently disqualifying individuals from operating a CMV for which a commercial driver’s license or a commercial learner’s permit is required.³² On July 23, 2019, the FMCSA announced the final rule, which went into effect on September 23, 2019, that permanently bans drivers convicted of human trafficking from operating a CMV for which a commercial driver’s license or a commercial learner’s permit is required.

The State of Florida does not have specific authority to take action against a commercial driver license when an individual has committed a felony involving human trafficking.

Human Trafficking in Florida

Florida ranks third in the nation for reported cases of human trafficking.³³ In 2019, the National Human Trafficking Hotline had 896 human trafficking cases reported in Florida.³⁴ Children are often those targeted in trafficking operations, with 12-14 being the average age that a trafficked victim is first used for commercial sex.³⁵

In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking commits the crime of human trafficking.³⁶ Such an offense is punishable as a first degree

³⁰ Florida Department of Education, *Healthy Schools – Human Trafficking*, available at: <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited February 12, 2021).

³¹ Section 1532 - 115th Congress (2017-2018).

³² Federal Motor Carrier Safety Administration, Press Release, <https://www.fmcsa.dot.gov/newsroom/us-department-transportation-permanently-bans-commercial-drivers-convicted-human> (last visited February 12, 2021).

³³ National Human Trafficking Hotline, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited February 12, 2021).

³⁴ National Human Trafficking Hotline, *Florida: Statistics*, available at <https://humantraffickinghotline.org/state/florida> (last visited February 12, 2021).

³⁵ Statewide Council on Human Trafficking, *Statewide Council on Human Trafficking Annual Reports*, available at <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last visited February 12, 2021).

³⁶ Section 787.06(3), F.S.

felony,³⁷ unless the person being sex trafficked is a child under the age of 18, mentally defective, or mentally incapacitated, then such an offense is punishable as a life felony.³⁸

Human trafficking cases are often hidden operations that require law enforcement agencies to engage in intricate investigations. In November 2018, an investigation in Polk County lead to the arrest of 103 people for charges including prostitution and human trafficking.³⁹ Similarly, in January 2019, a two month-long investigation lead to the arrest of a 36-year-old male in Tallahassee on prostitution and sex trafficking charges involving a 14-year old girl. At the time of his arrest, the male was already facing charges for sex trafficking a child in 2014.⁴⁰

Commercial Driver License

Federal law 49 CFR 383.73(b)(9) requires that a commercial driver license (initial) cannot be valid for more than 8-years from the date of issuance. Currently, the DHSMV issues an original commercial driver license that expires 8-years from the commercial drivers next birthday.⁴¹ This situation allows holders to have a license that is valid for more than 8-years from the issue date that is reflected on both the commercial driver license and driver record. This has been addressed as a deficiency in a recent FMCSA compliance audit.⁴²

Florida law requires every applicant for an original driver license to pass an examination. However, the DHSMV may waive the knowledge, endorsement, and skills tests requirements for an applicant who is otherwise qualified and who surrenders a valid driver license issued by another state, a Canadian province, or the United States Armed Forces, if the driver applies for a Florida license of an equal or lesser classification.⁴³

Under Florida law, the examination for a commercial driver license must include various tests including an actual demonstration of the applicant's ability to operate a motor vehicle or combination of vehicles of the type covered by the license classification the applicant is seeking, including his or her ability to perform a vehicle inspection.⁴⁴

Under FMCSA rules, states may waive knowledge and skill test requirements for commercial driver licenses for current and former military service members who have experience driving a CMV in the military for an equivalent state license. The application must be made within one year of discharge of military service and certain conditions must be met.⁴⁵

³⁷ A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

³⁸ Section 787.06(3)(a)-(g), F.S. A life felony is punishable by a state prison term for life, by a term of imprisonment not exceeding 40 years, a fine not exceeding \$15,000, or both. Sections 775.082 and 775.083, F.S.

³⁹ Daniel Dahm and Brianna Volz, *Orlando-area doctor among 103 arrested in Polk County sex sting, sheriff says*, ClickOrlando.com, (December 3, 2018) available at <https://www.clickorlando.com/news/103-arrested-in-polk-county-sex-sting> (last visited February 12, 2021).

⁴⁰ WTXL, *Human trafficking suspect accused of sex-trafficking child in Tallahassee*, (January 26, 2019) available at http://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article_9748879c-21a4-11e9-b768-5bb68f906ecc.html (last visited February 12, 2021).

⁴¹ Section 322.18(2)(a), F.S.

⁴² *Supra* FN 27.

⁴³ Section 322.12(1), F.S.

⁴⁴ Section 322.12(4), F.S.

⁴⁵ 49 C.F.R. 383.77

Under the DHSMV's rules, applicants seeking a waiver of commercial driver's license skill testing due to military experience must pass all written knowledge exams for the appropriate license class and any applicable endorsements, and apply for a waiver while on active duty or within 90 days of separation from military service. Additionally, he or she must certify that he or she for at least two years immediately preceding the application operated a motor vehicle in the appropriate class, and present a Certificate for Waiver of Skill Test for Military Personnel form signed by their commanding officer.⁴⁶

Serious Disqualifying Offense for a CMV Driver

Section 316.3025, F.S., codifies a federal prohibition on CMV drivers using handheld devices while operating a CMV.⁴⁷ However, s. 322.61, F.S., relating to offenses disqualifying someone from driving a CMV was not amended to list using a handheld device while operating a CMV as a serious disqualifying offense regarding a commercial driver's license. Current law provides penalties associated with texting and using a handheld mobile telephone while driving a CMV. A driver violating the federal prohibitions against texting⁴⁸ or using a handheld mobile telephone⁴⁹ while operating a CMV, may be assessed a civil penalty and commercial driver's license disqualification as follows:

- First violation: \$500;
- Second violation: \$1,000 and a 60-day disqualification;⁵⁰
- Third and subsequent violations: \$2,750 and a 120-day disqualification.

If while operating a CMV, a person is convicted of two or more of the following offenses within a three-year period, that person is disqualified from operating a CMV for a period of 60 days for:

- A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a crash resulting in death;
- Reckless driving;⁵¹
- Unlawful speed of 15 miles per hour or more above the posted speed limit;
- Improper lane change;⁵²
- Following too closely;⁵³
- Driving a commercial vehicle without obtaining a commercial driver's license;
- Driving a commercial vehicle without the proper class of commercial driver's license or commercial learner's permit or without the proper endorsement; or
- Driving a commercial vehicle without a commercial driver's license or commercial learner's permit in possession.⁵⁴

⁴⁶ Rule 15A-7.018, F.A.C.

⁴⁷ Chapter 2013-160, L.O.F.

⁴⁸ 49 C.F.R. 329.80.

⁴⁹ 49 C.F.R. 392.82.

⁵⁰ Commercial driver license disqualification is pursuant to 49 C.F.R. part 383.

⁵¹ Reckless driving is defined in s. 316.192, F.S.

⁵² Improper lane change is defined in s. 316.085, F.S.

⁵³ Following too closely is defined in s. 316.0895, F.S.

⁵⁴ A license or learner permit is required to drive a commercial motor vehicle pursuant to s. 322.03, F.S.

III. Effect of Proposed Changes:

Federal Regulations (Section 1)

Section 1 amends s. 316.302, F.S. to update federal regulations from 2018 to 2020. The change makes all owners and drivers of commercial motor vehicles engaged in interstate commerce subject to the most recent federal regulations and rules. This update continues to prevent CMV operators from driving for more than 8 consecutive hours without at least a 30-minute change in duty status, and provides the following changes:

- Increases the minimum annual percentage rate for random controlled substances testing, for owners and drivers of CMV's engaged in intrastate commerce requiring a commercial driver's license, from 25 percent to 50 percent;
- Extends the maximum duty period allowed under the short-haul exception from 12 to 14 hours and extending the distance limit within which the driver may operate from 100 to 150 air miles;
- Allows a driver to extend the maximum "driving window" by up to 2 hours during adverse driving conditions;
- Requires a 30-minute break after 8 hours of driving time (instead of on duty time) and allows on duty/not driving periods to qualify as breaks; and
- Modifies the sleeper berth exception to allow drivers to split their required 10 hours off duty into two periods: an 8/2 split, and a 7/3 split - with neither period counting against the driver's 14-hour driving window.

This section also increases the time a CMV carrier has to provide written notification of the repair of a documented defect to the DHSMV from 14 to 15 days.

Seat Belt Usage (Section 2)

Section 2 amends s. 316.614, F.S., to expand the definition of motor vehicle to include when the vehicle is stationary at a traffic control device. This is intended to ensure that current seat belt requirements are applicable when the vehicle is stationary at a traffic control device.

Nonpublic Sector Buses (Section 3)

Section 3 amends s. 316.70, F.S., to update the statute to reflect that the DHSMV, not the FDOT, has statutory authority to adopt rules for the safe operations of CMVs and conduct compliance reviews for the safe operations of nonpublic sector buses.

Odometer Exemption (Section 4)

Section 4 amends s. 319.225, F.S., to provide an exemption from odometer disclosure for a vehicle with a model year of 2011 or newer after 20 years.

Performance and Registration Information Systems Management (Section 5)

Section 5 amends s. 320.0715, F.S., to provide that a motor carrier or vehicle owner whose registration has been suspended will be required to return the license plate to the DHSMV or surrender it to law enforcement.

In addition, the DHSMV must deny registration if:

- The applicant fails to disclose material information required on the application;
- The applicant has applied in an attempt to hide the disclosure of the real party in interest who has been issued a federal out-of-service order; or
- The applicant's business is operated, managed, or otherwise controlled by or affiliated with a person who is ineligible for registration, including the applicant entity, a relative, a family member, a corporate officer, or a shareholder.

Human Trafficking (Sections 6, 7, 9-11)

Sections 6, 7, 9, 10, and 11 amend ss. 322.01, 322.05, 322.25, 322.28, and 322.61, F.S., respectively, to provide that:

- The definition for "human trafficking" has the same meaning as provided in s. 787.06(2)(d), F.S.;⁵⁵
- The DHSMV may not license any person, as a CMV operator, who has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, any felony involving human trafficking under state or federal law involving the use of a CMV;
- Each clerk of court must promptly report to the DHSMV each conviction, regardless of whether adjudication was withheld, for human trafficking which involves the use of a CMV;
- The court must permanently revoke the commercial driver's license of a person who is convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication is withheld, any felony involving human trafficking under state or federal law which involves the use of a CMV. If the court has not permanently revoked the driver license or driving privilege within 30 days after imposing a sentence, the DHSMV must permanently revoke the driver license or driving privilege; and
- Any person who uses a CMV in the commission of any felony involving human trafficking under state or federal law shall, upon conviction of, or plea of guilty or nolo contendere to, regardless of whether adjudication is withheld, such felony, be permanently disqualified from operating a CMV.

Commercial Driver License Expiration (Section 8)

Section 8 amends s. 322.18, F.S., to provide that the expiration date for an original issuance of a commercial driver license is at midnight 8 years after the licensee's last birthday.

⁵⁵ Section 787.06(2)(d), F.S., provides "human trafficking" to mean transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

Serious Disqualifying Offense for a CMV Driver (Section 11)

Section 11 amends s. 322.61, F.S., to incorporate violations for texting or using a handheld phone device while operating a CMV as a serious disqualifying offense, which may cause a person to be disqualified from operating a CMV, to align with federal regulations.

Section 12 amends s. 322.34(2), F.S., to update a cross reference.

Section 13 provides the bill takes effect on July 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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:

Clarifying that current seat belt requirements are applicable when a vehicle is stationary at a traffic signal may result in an increase in the number of seat belt violations issued to drivers. However, the impact is indeterminate at this time.

There is a potential impact to the CMV industry associated with changes to the CMV regulations contained in the bill. However, the impact is indeterminate at this time.

C. Government Sector Impact:

Making current seat belt requirements applicable when a vehicle is stationary at a traffic control device may result in an increase in the number of seat belt violations issued to drivers. This may result in an indeterminate, positive fiscal impact to local governments.

Programming will be required in the driver license components of the Online Registration Identity Operating Network (ORION) and the Driver and Vehicle Information Database. A new disposition code must be added, and programming will be required within the citation processing and disqualification processes to create the lifetime disqualification for the disposition of an individual who has had their commercial drive license permanently revoked due to a human trafficking conviction, or plea of guilty or nolo contendere to, any felony involving human trafficking involving the use of a commercial vehicle.⁵⁶ This may result in an insignificant workload impact that can be absorbed within existing DHSMV resources.

Programming will be required in the driver license components of the ORION to limit the lifecycle of a commercial driver license to 8 years.⁵⁷ This may result in an insignificant workload impact that can be absorbed within existing DHSMV resources.

Multiple components of the bill will require the DHSMV procedures to be modified, the DHSMV's website to be updated, and communications and outreach to be developed and disseminated, which may result in an insignificant workload impact that can be absorbed within existing DHSMV resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.302, 316.614, 316.70, 319.225, 320.0715, 322.01, 322.05, 322.18, 322.25, 322.28, 322.61, and 322.34.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

⁵⁶ *Supra* FN 27, p.9.

⁵⁷ *Id.*

B. Amendments:

None.

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

By Senator Harrell

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1 A bill to be entitled
 2 An act relating to the Department of Highway Safety
 3 and Motor Vehicles; amending s. 316.302, F.S.;
 4 revising regulations applicable to owners and drivers
 5 of commercial motor vehicles; revising the length of
 6 time within which an officer is authorized to give
 7 written notice requiring correction of an unduly
 8 hazardous operating condition; amending s. 316.614,
 9 F.S.; revising the definition of the term "motor
 10 vehicle"; amending s. 316.70, F.S.; requiring the
 11 Department of Highway Safety and Motor Vehicles,
 12 rather than the Department of Transportation, to
 13 establish and revise standards to ensure the safe
 14 operation of nonpublic sector buses; conforming
 15 provisions to changes made by the act; amending s.
 16 319.225, F.S.; revising applicability; providing that
 17 vehicles that meet certain conditions are exempt from
 18 odometer disclosure after specified periods of time;
 19 amending s. 320.0715, F.S.; requiring motor carriers
 20 and vehicle owners whose registrations have been
 21 suspended to return their license plates to the
 22 Department of Highway Safety and Motor Vehicles or
 23 surrender their license plates to law enforcement;
 24 requiring the department to deny registration of a
 25 motor vehicle trip permit under certain conditions;
 26 amending s. 322.01, F.S.; defining the term "human
 27 trafficking"; amending s. 322.05, F.S.; prohibiting
 28 the department from issuing a license to any person as
 29 a commercial motor vehicle operator under specified

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30 conditions; amending s. 322.18, F.S.; providing that
 31 commercial driver licenses expire at midnight 8 years
 32 after the licensee's birthday; amending s. 322.25,
 33 F.S.; requiring clerks of court to promptly report to
 34 the department each conviction for human trafficking,
 35 regardless of whether adjudication is withheld;
 36 amending s. 322.28, F.S.; requiring the court to
 37 permanently revoke the commercial driver license of a
 38 person under specified conditions; requiring the
 39 department to permanently revoke the driver license or
 40 driving privilege of the person if the court has not
 41 revoked such driver license or driving privilege
 42 within a specified timeframe; amending s. 322.61,
 43 F.S.; revising provisions for disqualification from
 44 operating a commercial motor vehicle; providing a
 45 penalty for any person who uses a commercial motor
 46 vehicle in the commission of a felony involving human
 47 trafficking; amending s. 322.34, F.S.; conforming a
 48 cross-reference; providing an effective date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Paragraph (b) of subsection (1) and subsection
 53 (9) of section 316.302, Florida Statutes, are amended to read:
 54 316.302 Commercial motor vehicles; safety regulations;
 55 transporters and shippers of hazardous materials; enforcement.—
 56 (1)
 57 (b) Except as otherwise provided in this section, all
 58 owners and ~~or~~ drivers of commercial motor vehicles that are

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engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, 386, and 390-397, as such rules and regulations existed on December 31, 2020 ~~2018~~.

(9) For the purpose of enforcing this section, any law enforcement officer of the Department of Highway Safety and Motor Vehicles or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance may require the driver of any commercial vehicle operated on the highways of this state to stop and submit to an inspection of the vehicle or the driver's records. If the vehicle or driver is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer may require the vehicle or the driver to be removed from service pursuant to the North American Standard Out-of-Service Criteria, until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer may give written notice requiring correction of the condition within 15 ~~14~~ days.

(a) Any member of the Florida Highway Patrol or any law enforcement officer employed by a sheriff's office or municipal police department authorized to enforce the traffic laws of this state pursuant to s. 316.640 who has reason to believe that a vehicle or driver is operating in an unsafe condition may, as provided in subsection (11), enforce the provisions of this section.

(b) Any person who fails to comply with an officer's

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request to submit to an inspection under this subsection commits a violation of s. 843.02 if the person resists the officer without violence or a violation of s. 843.01 if the person resists the officer with violence.

Section 2. Paragraph (a) of subsection (3) of section 316.614, Florida Statutes, is amended to read:

316.614 Safety belt usage.—

(3) As used in this section:

(a) "Motor vehicle" means a motor vehicle as defined in s. 316.003 which is operated on the roadways, streets, and highways of this state or when stationary at a traffic control device. The term does not include:

1. A school bus.

2. A bus used for the transportation of persons for compensation.

3. A farm tractor or implement of husbandry.

4. A truck having a gross vehicle weight rating of more than 26,000 pounds.

5. A motorcycle, a moped, a bicycle, or an electric bicycle.

Section 3. Section 316.70, Florida Statutes, is amended to read:

316.70 Nonpublic sector buses; safety rules.—

(1) The Department of Highway Safety and Motor Vehicles ~~Transportation~~ shall establish and revise standards to ensure the safe operation of nonpublic sector buses, which standards shall be those contained in 49 C.F.R. parts 382, 385, and 390-397 and which shall be directed toward ensuring that:

(a) Nonpublic sector buses are safely maintained, equipped,

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and operated.

(b) Nonpublic sector buses are carrying the insurance required by law and carrying liability insurance on the checked baggage of passengers not to exceed the standard adopted by the United States Department of Transportation.

(c) Florida license tags are purchased for nonpublic sector buses pursuant to s. 320.38.

(d) The driving records of drivers of nonpublic sector buses are checked by their employers at least once each year to ascertain whether the driver has a suspended or revoked driver license.

(2) Department of Highway Safety and Motor Vehicles ~~Transportation~~ personnel may conduct compliance reviews for the purpose of determining compliance with this section. A civil penalty not to exceed \$5,000 in the aggregate may be assessed against any person who violates any provision of this section or who violates any rule or order of the Department of Highway Safety and Motor Vehicles ~~Transportation~~. A civil penalty not to exceed \$25,000 in the aggregate may be assessed for violations found in a followup compliance review conducted within a 24-month period. A civil penalty not to exceed \$25,000 in the aggregate may be assessed and the motor carrier may be enjoined pursuant to s. 316.3026 if violations are found after a second followup compliance review within 12 months after the first followup compliance review. Motor carriers found to be operating without insurance coverage required by s. 627.742 or 49 C.F.R. part 387 may be enjoined as provided in s. 316.3026.

(3) School buses subject to the provisions of chapter 1006 or s. 316.615 are exempt from the provisions of this section.

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Section 4. Subsection (4) of section 319.225, Florida Statutes, is amended to read:

319.225 Transfer and reassignment forms; odometer disclosure statements.—

(4) Upon transfer or reassignment of a certificate of title to a used motor vehicle, the transferor shall complete the odometer disclosure statement provided for by this section and the transferee shall acknowledge the disclosure by signing and printing his or her name in the spaces provided. This subsection does not apply to a vehicle that has a gross vehicle rating of more than 16,000 pounds, a vehicle that is not self-propelled, or a vehicle that is exempt from odometer disclosure. A vehicle with a model year of 2011 or newer is exempt from odometer disclosure after 20 years, and a vehicle with a model year of 2010 or older is exempt from odometer disclosure after 10 years ~~old or older~~. A lessor who transfers title to his or her vehicle without obtaining possession of the vehicle shall make odometer disclosure as provided by 49 C.F.R. s. 580.7. Any person who fails to complete or acknowledge a disclosure statement as required by this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The department may not issue a certificate of title unless this subsection has been complied with.

Section 5. Subsections (6) and (7) are added to section 320.0715, Florida Statutes, to read:

320.0715 International Registration Plan; motor carrier services; permits; retention of records.—

(6) A motor carrier or vehicle owner whose registration has been suspended shall return his or her license plate to the

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175 department or surrender his or her license plates to law
176 enforcement.

177 (7) The department shall deny registration if:

178 (a) The applicant fails to disclose material information
179 required on the application;

180 (b) The applicant has applied in an attempt to hide the
181 disclosure of the real party in interest who has been issued a
182 federal out-of-service order; or

183 (c) The applicant's business is operated, managed, or
184 otherwise controlled by or affiliated with a person who is
185 ineligible for registration, including the applicant entity, a
186 relative, a family member, a corporate officer, or a
187 shareholder.

188 Section 6. Present subsections (25) through (47) of section
189 322.01, Florida Statutes, are redesignated as subsections (26)
190 through (48), respectively, and a new subsection (25) is added
191 to that section, to read:

192 322.01 Definitions.—As used in this chapter:

193 (25) "Human trafficking" has the same meaning as provided
194 in s. 787.06(2) (d).

195 Section 7. Subsection (12) is added to section 322.05,
196 Florida Statutes, to read:

197 322.05 Persons not to be licensed.—The department may not
198 issue a license:

199 (12) To any person, as a commercial motor vehicle operator,
200 who has been convicted of, or has entered a plea of guilty or
201 nolo contendere to, regardless of whether adjudication was
202 withheld, any felony involving human trafficking under state or
203 federal law involving the use of a commercial motor vehicle.

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204 Section 8. Paragraph (f) is added to subsection (2) of
205 section 322.18, Florida Statutes, to read:

206 322.18 Original applications, licenses, and renewals;
207 expiration of licenses; delinquent licenses.—

208 (2) Each applicant who is entitled to the issuance of a
209 driver license, as provided in this section, shall be issued a
210 driver license, as follows:

211 (f) Notwithstanding any other provision of this chapter, an
212 applicant applying for an original issuance of a commercial
213 driver license as defined in s. 322.01(7) shall be issued a
214 driver license that expires at midnight 8 years after the
215 licensee's last birthday.

216 Section 9. Subsection (7) is added to section 322.25,
217 Florida Statutes, to read:

218 322.25 When court to forward license to department and
219 report convictions.—

220 (7) Each clerk of court shall promptly report to the
221 department each conviction, regardless of whether adjudication
222 was withheld, for human trafficking which involves the use of a
223 commercial motor vehicle.

224 Section 10. Subsection (8) is added to section 322.28,
225 Florida Statutes, to read:

226 322.28 Period of suspension or revocation.—

227 (8) The court shall permanently revoke the commercial
228 driver license of a person who is convicted of, or has entered a
229 plea of guilty or nolo contendere to, regardless of whether
230 adjudication is withheld, any felony involving human trafficking
231 under state or federal law which involves the use of a
232 commercial motor vehicle. If the court has not permanently

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233 revoked such driver license or driving privilege within 30 days
 234 after imposing a sentence, the department must permanently
 235 revoke the driver license or driving privilege pursuant to this
 236 section.

237 Section 11. Section 322.61, Florida Statutes, is amended to
 238 read:

239 322.61 Disqualification from operating a commercial motor
 240 vehicle.—

241 (1) A person who, for offenses occurring within a 3-year
 242 period, is convicted of two of the following serious traffic
 243 violations or any combination thereof, arising in separate
 244 incidents committed in a commercial motor vehicle shall, in
 245 addition to any other applicable penalties, be disqualified from
 246 operating a commercial motor vehicle for a period of 60 days. A
 247 holder of a commercial driver license or commercial learner's
 248 permit who, for offenses occurring within a 3-year period, is
 249 convicted of two of the following serious traffic violations, or
 250 any combination thereof, arising in separate incidents committed
 251 in a noncommercial motor vehicle shall, in addition to any other
 252 applicable penalties, be disqualified from operating a
 253 commercial motor vehicle for a period of 60 days if such
 254 convictions result in the suspension, revocation, or
 255 cancellation of the licenseholder's driving privilege:

256 (a) A violation of any state or local law relating to motor
 257 vehicle traffic control, other than a parking violation, arising
 258 in connection with a crash resulting in death;

259 (b) Reckless driving, as defined in s. 316.192;

260 (c) Unlawful speed of 15 miles per hour or more above the
 261 posted speed limit;

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262 (d) Improper lane change, as defined in s. 316.085;

263 (e) Following too closely, as defined in s. 316.0895;

264 (f) Driving a commercial vehicle without obtaining a
 265 commercial driver license;

266 (g) Driving a commercial vehicle without the proper class
 267 of commercial driver license or commercial learner's permit or
 268 without the proper endorsement; ~~or~~

269 (h) Driving a commercial vehicle without a commercial
 270 driver license or commercial learner's permit in possession, as
 271 required by s. 322.03;—

272 (i) Texting while driving; or

273 (j) Using a handheld mobile telephone while driving.

274 (2) (a) Any person who, for offenses occurring within a 3-
 275 year period, is convicted of three serious traffic violations
 276 specified in subsection (1) or any combination thereof, arising
 277 in separate incidents committed in a commercial motor vehicle
 278 shall, in addition to any other applicable penalties, including
 279 but not limited to the penalty provided in subsection (1), be
 280 disqualified from operating a commercial motor vehicle for a
 281 period of 120 days.

282 (b) A holder of a commercial driver license or commercial
 283 learner's permit who, for offenses occurring within a 3-year
 284 period, is convicted of three serious traffic violations
 285 specified in subsection (1) or any combination thereof arising
 286 in separate incidents committed in a noncommercial motor vehicle
 287 shall, in addition to any other applicable penalties, including,
 288 but not limited to, the penalty provided in subsection (1), be
 289 disqualified from operating a commercial motor vehicle for a
 290 period of 120 days if such convictions result in the suspension,

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291 revocation, or cancellation of the licenseholder's driving
292 privilege.

293 (3) (a) Except as provided in subsection (4), any person who
294 is convicted of one of the offenses listed in paragraph (b)
295 while operating a commercial motor vehicle shall, in addition to
296 any other applicable penalties, be disqualified from operating a
297 commercial motor vehicle for a period of 1 year.

298 (b) Except as provided in subsection (4), any holder of a
299 commercial driver license or commercial learner's permit who is
300 convicted of one of the offenses listed in this paragraph while
301 operating a noncommercial motor vehicle shall, in addition to
302 any other applicable penalties, be disqualified from operating a
303 commercial motor vehicle for a period of 1 year:

304 1. Driving a motor vehicle while he or she is under the
305 influence of alcohol or a controlled substance;

306 2. Driving a commercial motor vehicle while the alcohol
307 concentration of his or her blood, breath, or urine is .04
308 percent or higher;

309 3. Leaving the scene of a crash involving a motor vehicle
310 driven by such person;

311 4. Using a motor vehicle in the commission of a felony;

312 5. Refusing to submit to a test to determine his or her
313 alcohol concentration while driving a motor vehicle;

314 6. Driving a commercial motor vehicle when, as a result of
315 prior violations committed operating a commercial motor vehicle,
316 his or her commercial driver license or commercial learner's
317 permit is revoked, suspended, or canceled, or he or she is
318 disqualified from operating a commercial motor vehicle; or

319 7. Causing a fatality through the negligent operation of a

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320 commercial motor vehicle.

321 (4) Any person who is transporting hazardous materials as
322 defined in s. 322.01(24) shall, upon conviction of an offense
323 specified in subsection (3), be disqualified from operating a
324 commercial motor vehicle for a period of 3 years. The penalty
325 provided in this subsection shall be in addition to any other
326 applicable penalty.

327 (5) A person who is convicted of two violations specified
328 in subsection (3) which were committed while operating a
329 commercial motor vehicle, or any combination thereof, arising in
330 separate incidents shall be permanently disqualified from
331 operating a commercial motor vehicle. A holder of a commercial
332 driver license or commercial learner's permit who is convicted
333 of two violations specified in subsection (3) which were
334 committed while operating any motor vehicle arising in separate
335 incidents shall be permanently disqualified from operating a
336 commercial motor vehicle. The penalty provided in this
337 subsection is in addition to any other applicable penalty.

338 (6) Notwithstanding subsections (3), (4), and (5), any
339 person who uses a commercial motor vehicle in the commission of
340 any felony involving the manufacture, distribution, or
341 dispensing of a controlled substance, including possession with
342 intent to manufacture, distribute, or dispense a controlled
343 substance, shall, upon conviction of such felony, be permanently
344 disqualified from operating a commercial motor vehicle.
345 Notwithstanding subsections (3), (4), and (5), any holder of a
346 commercial driver license or commercial learner's permit who
347 uses a noncommercial motor vehicle in the commission of any
348 felony involving the manufacture, distribution, or dispensing of

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a controlled substance, including possession with intent to manufacture, distribute, or dispense a controlled substance, shall, upon conviction of such felony, be permanently disqualified from operating a commercial motor vehicle. The penalty provided in this subsection is in addition to any other applicable penalty.

(7) Any person who uses a commercial motor vehicle in the commission of any felony involving human trafficking under state or federal law shall, upon conviction of, or plea of guilty or nolo contendere to, regardless of whether adjudication is withheld, such felony, be permanently disqualified from operating a commercial motor vehicle. The penalty provided in this subsection is in addition to any other applicable penalty.

(8)~~(7)~~ A person whose privilege to operate a commercial motor vehicle is disqualified under this section may, if otherwise qualified, be issued a Class E driver license, pursuant to s. 322.251.

(9)~~(8)~~ A driver who is convicted of or otherwise found to have committed a violation of an out-of-service order while driving a commercial motor vehicle is disqualified as follows:

(a) At least 180 days but not more than 1 year if the driver is convicted of or otherwise found to have committed a first violation of an out-of-service order.

(b) At least 2 years but not more than 5 years if, for offenses occurring during any 10-year period, the driver is convicted of or otherwise found to have committed two violations of out-of-service orders in separate incidents.

(c) At least 3 years but not more than 5 years if, for offenses occurring during any 10-year period, the driver is

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convicted of or otherwise found to have committed three or more violations of out-of-service orders in separate incidents.

(d) At least 180 days but not more than 2 years if the driver is convicted of or otherwise found to have committed a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 U.S.C. ss. 5101 et seq., or while operating motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of at least 3 years but not more than 5 years if, for offenses occurring during any 10-year period, the driver is convicted of or otherwise found to have committed any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 U.S.C. ss. 5101 et seq., or while operating motor vehicles designed to transport more than 15 passengers, including the driver.

(10)~~(9)~~ A driver who is convicted of or otherwise found to have committed an offense of operating a commercial motor vehicle in violation of federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing must be disqualified for the period of time specified in subsection (11) ~~(10)~~:

(a) For drivers who are not always required to stop, failing to slow down and check that the tracks are clear of approaching trains.

(b) For drivers who are not always required to stop, failing to stop before reaching the crossing if the tracks are not clear.

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407 (c) For drivers who are always required to stop, failing to
408 stop before driving onto the crossing.

409 (d) For all drivers, failing to have sufficient space to
410 drive completely through the crossing without stopping.

411 (e) For all drivers, failing to obey a traffic control
412 device or all directions of an enforcement official at the
413 crossing.

414 (f) For all drivers, failing to negotiate a crossing
415 because of insufficient undercarriage clearance.

416 (11) (a) ~~(10) (a)~~ A driver must be disqualified for at least
417 60 days if the driver is convicted of or otherwise found to have
418 committed a first violation of a railroad-highway grade crossing
419 violation.

420 (b) A driver must be disqualified for at least 120 days if,
421 for offenses occurring during any 3-year period, the driver is
422 convicted of or otherwise found to have committed a second
423 railroad-highway grade crossing violation in separate incidents.

424 (c) A driver must be disqualified for at least 1 year if,
425 for offenses occurring during any 3-year period, the driver is
426 convicted of or otherwise found to have committed a third or
427 subsequent railroad-highway grade crossing violation in separate
428 incidents.

429 Section 12. Subsection (2) of section 322.34, Florida
430 Statutes, is amended to read:

431 322.34 Driving while license suspended, revoked, canceled,
432 or disqualified.—

433 (2) Any person whose driver license or driving privilege
434 has been canceled, suspended, or revoked as provided by law, or
435 who does not have a driver license or driving privilege but is

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436 under suspension or revocation equivalent status as defined in
437 s. 322.01(42) ~~s. 322.01(41)~~, except persons defined in s.
438 322.264, who, knowing of such cancellation, suspension,
439 revocation, or suspension or revocation equivalent status,
440 drives any motor vehicle upon the highways of this state while
441 such license or privilege is canceled, suspended, or revoked, or
442 while under suspension or revocation equivalent status, commits:

443 (a) A misdemeanor of the second degree, punishable as
444 provided in s. 775.082 or s. 775.083.

445 (b)1. A misdemeanor of the first degree, punishable as
446 provided in s. 775.082 or s. 775.083, upon a second or
447 subsequent conviction, except as provided in paragraph (c).

448 2. A person convicted of a third or subsequent conviction,
449 except as provided in paragraph (c), must serve a minimum of 10
450 days in jail.

451 (c) A felony of the third degree, punishable as provided in
452 s. 775.082, s. 775.083, or s. 775.084, upon a third or
453 subsequent conviction if the current violation of this section
454 or the most recent prior violation of the section is related to
455 driving while license canceled, suspended, revoked, or
456 suspension or revocation equivalent status resulting from a
457 violation of:

458 1. Driving under the influence;

459 2. Refusal to submit to a urine, breath-alcohol, or blood
460 alcohol test;

461 3. A traffic offense causing death or serious bodily
462 injury; or

463 4. Fleeing or eluding.

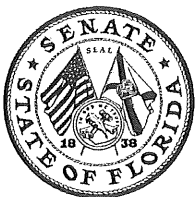
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465 The element of knowledge is satisfied if the person has been
466 previously cited as provided in subsection (1); or the person
467 admits to knowledge of the cancellation, suspension, or
468 revocation, or suspension or revocation equivalent status; or
469 the person received notice as provided in subsection (4). There
470 shall be a rebuttable presumption that the knowledge requirement
471 is satisfied if a judgment or order as provided in subsection
472 (4) appears in the department's records for any case except for
473 one involving a suspension by the department for failure to pay
474 a traffic fine or for a financial responsibility violation.

475 Section 13. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Chair*
Military and Veterans Affairs, Space,
and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 18, 2021

Chair Kathleen Passidomo, Rules Committee
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Passidomo,

I respectfully request that **SB 1134 – Department of Highway Safety & Motor Vehicles** be placed on the next available Committee Agenda for Rules. SB 1134 passed Government Oversight and Accountability unanimously.

Regarding the need for SB 1134 – Department of Highway Safety & Motor Vehicles:
This is the Agency Package and there are several items about to expire and need to be extended:

- Updates the date of adoption of federal regulations and rules for commercial motor vehicles from December 31, 2018, to December 31, 2020;
- Updates statute to reflect the DHSMV is the agency responsible for the safe operations of nonpublic sector buses;
- Clarifies that a seat belt must be worn when a vehicle is stationary at a traffic control device;
- Exempts a vehicle with a model year of 2011 or newer after 20 years, from odometer disclosure to conform to federal law;
- Revises the expiration date for an original issuance of a commercial driver license to be at midnight 8 years after the licensee's last birthday; and

Should you have any further questions or concerns, please feel free to contact my office. Thank you in advance for your consideration of this request.

Respectfully,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

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 Rules

BILL: SB 1850

INTRODUCER: Senator Perry

SUBJECT: Electronic Threats

DATE: March 29, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2. <u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1850 amends s. 836.10, F.S., to prohibit a person from sending, posting, transmitting, or procuring the sending, posting, or transmission of a writing or other record, including an electronic record, in any manner in which it may be viewed by another person, when in such writing or record the person makes a threat to:

- Kill or to do bodily harm to another person; or
- Conduct a mass shooting or an act of terrorism.

This bill removes the requirement in current law that a threat posted online be specifically sent to and received by the person who is the subject of the threat.

The bill defines the previously undefined term of “electronic record” as any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call.

The bill does not alter the current penalty for a violation of s. 836.10, F.S., which is a second degree felony, punishable by up to 15 years imprisonment and a \$10,000 fine.

The bill has a positive indeterminate prison bed impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

II. Present Situation:

A threat is a statement by which the speaker means to communicate an expression of intent to commit an act of unlawful violence to a particular individual or group of individuals.¹ “True threats” to inflict bodily injury or death are not speech protected under the First Amendment of the U.S. Constitution.² To rise to the level of a “true threat,” the person making the threat must intentionally or knowingly communicate the threat and the subject of the threat must have a reasonable fear that the person making the threat intends to carry out the threat.³

Section 836.10, F.S., prohibits the written communication of certain threats. It is a second degree felony⁴ for a person to make a written threat to a specific person or when a person makes a threat, in writing, to conduct a mass shooting or an act of terrorism. Specifically, a person violates s. 836.10, F.S., when he or she:

- Writes or composes and also sends, or procures the sending of, any letter, inscribed communication, or electronic communication, signed or anonymous, to any person which contains a threat to kill or to do bodily injury to the person to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent;⁵ or
- Makes, posts, or transmits a threat in a writing or other record, including an electronic record, to conduct a mass shooting or an act of terrorism, in any manner that would allow another person to view the threat.

Florida courts have reviewed s. 836.10, F.S., and found the current form of the statute not to be unconstitutional.⁶

Florida law has evolved over time. In 2010, the Legislature criminalized threats made over “electronic communication,” however, the provision of the statute requiring a threat be sent directly to the person who is the subject of the threat, or to a person whose family member is the subject of the threat remained unchanged.⁷

A 2016 case determined that a child’s public posting on Twitter that he was going to “shoot up” his school was not sent *directly* to a *specific person*, therefore the child’s conduct did not violate

¹ *Virginia v. Black*, 538 U.S. 343, 359-60 (2003).

² *Saidi v. State*, 845 So. 2d 1022, 1026 (Fla. 5th DCA 2003) citing *United States v. Hutson*, 843 F.2d 1232 (9th Cir. 1988).

³ *Smith v. State*, 532 So.2d 50 (Fla. 2d DCA 1988); *See also Puy v. State*, 294 So.3d 930 (Fla. 4th DCA 2020), holding that the issue of whether a message sent by a former high school student to his friends via Snapchat, which contained a photograph of himself with the caption “On my way! School shooter,” could cause alarm in a reasonable person, such that the message constituted a threat, was a question for the jury to decide.

⁴ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁵ The act of “sending” a threat has been described as a two-part action. The action must be both “depositing” the communication for “delivery” and the “receipt” of the communication *by the person being threatened*. *State v. Wise*, 664 So.2d 1028 (Fla. 2d DCA 1995); *O’Leary v. State*, 109 So.3d 874 (Fla. 1st DCA 2013).

⁶ *Saidi v. State*, 845 So.2d 1022 (Fla. 5th DCA 2003); *See also Smith v. State*, 532 So.2d 50 (Fla.2d DCA 1988).

⁷ Chapter 2010-51, L.O.F.

s. 836.10, F.S.⁸ The court noted that many threats made on social media fall outside the narrow scope of the law, which requires the communication to be sent directly to a specific person.⁹

After the *J.A.W.* opinion, the Legislature again amended s. 836.10, F.S., to include the making, posting, or transmitting of a threat in a writing or other record, including an electronic record, to conduct a *mass shooting or an act of terrorism*, in any manner that would allow another person to view the threat, the second way a person may violate the statute.¹⁰

Although the 2018 amendment to s. 836.10, F.S., captured circumstances involving a threat made to a group of people and eliminated the requirement that a threat be communicated directly to a specific person, the requirement that a threat made to an individual be sent directly to the subject of the threat or to a person whose family member was the subject of the threat remains in current law.¹¹

III. Effect of Proposed Changes:

The bill amends s. 836.10, F.S., to prohibit a person from sending, posting, transmitting, or procuring the sending, posting, or transmission of a writing or other record, including an electronic record, in any manner in which it may be viewed by another person, when in such writing or record the person makes a threat to:

- Kill or to do bodily harm to another person; or
- Conduct a mass shooting or an act of terrorism.

The bill criminalizes publicly posting a threat online, even if it is not specifically sent to or received by the person who is the subject of the threat.¹²

The bill defines the previously undefined term of “electronic record” as any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call.

The bill retains the current second degree felony penalty for a violation of s. 836.10, F.S.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

⁸ *J.A.W. v. State*, 210 So.3d 142 (Fla. 2d DCA 2016).

⁹ *Id.*

¹⁰ Chapter 2018-3, s. 17, L.O.F.

¹¹ Section 836.10(1), F.S.

¹² Criminal prosecution of threats is limited by case law to those threats that are intentionally or knowingly made, and that are sufficient to cause alarm in a reasonable person.

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:

The Criminal Justice Impact Conference considered the bill on March 8, 2021, and determined that the bill will result in a positive indeterminate (i.e. an unquantifiable increase) prison bed impact on the Department of Corrections.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 836.10, and 921.0022.

¹³ Economic and Demographic Research, Criminal Justice Impact Conference, March 8, 2021, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last visited March 11, 2021).

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.

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

By Senator Perry

8-01486B-21

20211850__

A bill to be entitled

An act relating to electronic threats; amending s. 836.10, F.S.; defining the term "electronic record"; prohibiting a person from sending, posting, or transmitting, or from procuring the sending, posting, or transmission of a written or electronic record when in such record the person makes a threat to kill or to do bodily harm to another person or to conduct a mass shooting or an act of terrorism; providing criminal penalties; amending s. 921.0022, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (1) and (2) of section 836.10, Florida Statutes, are redesignated as subsections (2) and (3), respectively, a new subsection (1) is added to that section, and present subsection (1) is amended, to read:

836.10 Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism; punishment; exemption from liability.—

(1) As used in this section, the term "electronic record" means any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call.

(2)(1) It is unlawful for any person to send, post, or transmit, or procure the sending, posting, or transmission of,

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~~who writes or composes and also sends or procures the sending of any letter, inscribed communication, or electronic communication, whether such letter or communication be signed or anonymous, to any person, containing a threat to kill or to do bodily injury to the person to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent, or any person who makes, posts, or transmits a threat in a writing or other record, including an electronic record, to conduct a mass shooting or an act of terrorism, in any manner in which it may be viewed by that would allow another person to view the threat, when in such writing or record the person makes a threat to:~~

(a) Kill or to do bodily harm to another person; or

(b) Conduct a mass shooting or an act of terrorism.

A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida	Felony	Description
Statute	Degree	

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57

316.027(2)(b) 2nd Leaving the scene of a crash
involving serious bodily
injury.

58

316.193(2)(b) 3rd Felony DUI, 4th or subsequent
conviction.

59

400.9935(4)(c) 2nd Operating a clinic, or offering
services requiring licensure,
without a license.

60

499.0051(2) 2nd Knowing forgery of transaction
history, transaction
information, or transaction
statement.

61

499.0051(3) 2nd Knowing purchase or receipt of
prescription drug from
unauthorized person.

62

499.0051(4) 2nd Knowing sale or transfer of
prescription drug to
unauthorized person.

63

775.0875(1) 3rd Taking firearm from law
enforcement officer.

64

784.021(1)(a) 3rd Aggravated assault; deadly

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

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65

weapon without intent to kill.

784.021(1)(b)

3rd

Aggravated assault; intent to
commit felony.

66

784.041

3rd

Felony battery; domestic
battery by strangulation.

67

784.048(3)

3rd

Aggravated stalking; credible
threat.

68

784.048(5)

3rd

Aggravated stalking of person
under 16.

69

784.07(2)(c)

2nd

Aggravated assault on law
enforcement officer.

70

784.074(1)(b)

2nd

Aggravated assault on sexually
violent predators facility
staff.

71

784.08(2)(b)

2nd

Aggravated assault on a person
65 years of age or older.

72

784.081(2)

2nd

Aggravated assault on specified
official or employee.

73

784.082(2)

2nd

Aggravated assault by detained
person on visitor or other

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 detainee.
 74 784.083 (2) 2nd Aggravated assault on code
 inspector.
 75 787.02 (2) 3rd False imprisonment; restraining
 with purpose other than those
 in s. 787.01.
 76 790.115 (2) (d) 2nd Discharging firearm or weapon
 on school property.
 77 790.161 (2) 2nd Make, possess, or throw
 destructive device with intent
 to do bodily harm or damage
 property.
 78 790.164 (1) 2nd False report concerning bomb,
 explosive, weapon of mass
 destruction, act of arson or
 violence to state property, or
 use of firearms in violent
 manner.
 79 790.19 2nd Shooting or throwing deadly
 missiles into dwellings,
 vessels, or vehicles.
 80 794.011 (8) (a) 3rd Solicitation of minor to

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 participate in sexual activity
 by custodial adult.
 81 794.05 (1) 2nd Unlawful sexual activity with
 specified minor.
 82 800.04 (5) (d) 3rd Lewd or lascivious molestation;
 victim 12 years of age or older
 but less than 16 years of age;
 offender less than 18 years.
 83 800.04 (6) (b) 2nd Lewd or lascivious conduct;
 offender 18 years of age or
 older.
 84 806.031 (2) 2nd Arson resulting in great bodily
 harm to firefighter or any
 other person.
 85 810.02 (3) (c) 2nd Burglary of occupied structure;
 unarmed; no assault or battery.
 86 810.145 (8) (b) 2nd Video voyeurism; certain minor
 victims; 2nd or subsequent
 offense.
 87 812.014 (2) (b) 1. 2nd Property stolen \$20,000 or
 more, but less than \$100,000,
 grand theft in 2nd degree.

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88

812.014 (6) 2nd Theft; property stolen \$3,000 or more; coordination of others.

89

812.015 (9) (a) 2nd Retail theft; property stolen \$750 or more; second or subsequent conviction.

90

812.015 (9) (b) 2nd Retail theft; aggregated property stolen within 30 days is \$3,000 or more; coordination of others.

91

812.13 (2) (c) 2nd Robbery, no firearm or other weapon (strong-arm robbery).

92

817.4821 (5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

93

817.505 (4) (b) 2nd Patient brokering; 10 or more patients.

94

825.102 (1) 3rd Abuse of an elderly person or disabled adult.

95

825.102 (3) (c) 3rd Neglect of an elderly person or disabled adult.

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96

825.1025 (3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

97

825.103 (3) (c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

98

827.03 (2) (c) 3rd Abuse of a child.

99

827.03 (2) (d) 3rd Neglect of a child.

100

827.071 (2) & (3) 2nd Use or induce a child in a sexual performance, or promote or direct such performance.

101

836.05 2nd Threats; extortion.

102

836.10 2nd Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.

103

843.12 3rd Aids or assists person to escape.

104

847.011 3rd Distributing, offering to distribute, or possessing with

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 intent to distribute obscene
 materials depicting minors.

105 847.012 3rd Knowingly using a minor in the
 production of materials harmful
 to minors.

106 847.0135(2) 3rd Facilitates sexual conduct of
 or with a minor or the visual
 depiction of such conduct.

107 914.23 2nd Retaliation against a witness,
 victim, or informant, with
 bodily injury.

108 944.35(3)(a)2. 3rd Committing malicious battery
 upon or inflicting cruel or
 inhuman treatment on an inmate
 or offender on community
 supervision, resulting in great
 bodily harm.

109 944.40 2nd Escapes.

110 944.46 3rd Harboring, concealing, aiding
 escaped prisoners.

111 944.47(1)(a)5. 2nd Introduction of contraband
 (firearm, weapon, or explosive)

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 into correctional facility.

112 951.22(1)(i) 3rd Firearm or weapon introduced
 into county detention facility.

113

114 Section 3. This act shall take effect October 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill #1850**, relating to Electronic Threats, be placed on the:

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

Statement of Intent:

The current statute language has not caught up to technology as it applies to threats against another on social media or other electronic ways.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written over a horizontal line.

Senator Keith Perry
Florida Senate, District 8

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 31, 2021

Meeting Date

1850

Bill Number (if applicable)

Topic Electronic Threats

Amendment Barcode (if applicable)

Name Jennifer Cook Pritt

Job Title Deputy Executive Director

Address PO Box 14038

Phone 850-219-3631

Street

Tallahassee

FL

32317

Email jpritt@fpca.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police 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)

CourtSmart Tag Report

Room: KB 412
Caption: Senate Rules Committee

Case No.: -
Judge:

Type:

Started: 3/31/2021 11:02:43 AM

Ends: 3/31/2021 11:49:49 AM

Length: 00:47:07

11:02:42 AM Meeting called to order
11:02:46 AM Roll call: quorum is present
11:03:18 AM Chair Passidomo instructs the public on appearing from the Civic Center
11:03:49 AM Rules Chair urging Senators against submitting delete-all amendments unless absolutely necessary
11:04:30 AM SB 1134 Department of Highway Safety and Motor Vehicles by Senator Harrell
11:05:07 AM Senator Harrell explains the bill
11:05:12 AM No questions
11:05:19 AM No public appearances
11:05:23 AM Senator Brandes with a question
11:05:47 AM Senator Harrell responds
11:06:03 AM Senator Brandes with a follow-up
11:06:18 AM Senator Harrell responds
11:06:24 AM Senator Harrell waives close
11:06:28 AM Roll call: SB 1134 is reported favorably
11:07:06 AM SB 1850 Electronic Threats by Senator Perry
11:07:10 AM Senator Perry explains the bill
11:07:46 AM Questions:
11:07:49 AM Senator Thurston asks if there were any discussions regarding changes to bill since the bill last heard
11:08:15 AM Senator Perry responds
11:08:25 AM Senator Thurston with follow-up question
11:08:43 AM Senator Perry responds
11:09:04 AM Senator Thurston has question regarding social media
11:09:25 AM Senator Perry responds
11:09:52 AM Senator Thurston refers to things put on social media
11:10:28 AM Senator Perry responds
11:11:06 AM Senator Thurston continues in questions regarding communications on the internet
11:11:53 AM Senator Perry responds
11:12:18 AM Senator Thurston comments further
11:12:30 AM Senator Perry elaborates on electronic threats
11:12:52 AM Senator Thurston comments
11:13:25 AM Senator Stargel with a question to clarify types of threats
11:13:59 AM Senator Perry responds
11:14:01 AM Public appearance:
11:14:03 AM Jennifer Cook Pritt, The Florida Police Chief's Association, waives in support
11:14:26 AM In debate:
11:14:31 AM Senator Thurston in debate
11:16:18 AM Senator Brandes in debate
11:18:01 AM Senator Gibson requests definition of "bodily harm" in sponsor's bill closing
11:18:50 AM Senator Perry closes on this bill
11:19:50 AM Roll call: SB 1850 is found favorably
11:20:31 AM SB 252 Child Care Facilities by Senator Stewart
11:20:40 AM Senator Stewart explains the bill
11:21:23 AM No questions
11:21:33 AM Public appearance:
11:21:38 AM Dannie McMillon, Florida PTA, waives in support
11:21:52 AM Andrew S Kalel, Office of Criminal Conflict and Civil Regional Counsel, 5th region, waives in support
11:21:59 AM No debate
11:22:11 AM Senator Stewart waives close
11:22:20 AM Roll call: SB 252 is reported favorably
11:22:56 AM CS/SB 1018 Sale of Aquaculture Products by Senator Boyd
11:23:02 AM Senator Boyd explains the bill
11:23:55 AM Amendment 303308 by Senator Boyd is taken up

11:24:04 AM Senator Boyd explains the amendment
11:24:15 AM No questions
11:24:26 AM No public appearance
11:24:32 AM None on the amendment
11:24:34 AM No debate
11:24:41 AM Senator Boyd waives close on amendment
11:24:48 AM Amendment 303308 is adopted
11:24:51 AM Back on the bill as amended
11:24:56 AM No questions
11:25:03 AM Public appearance:
11:25:07 AM Jim Spratt, Florida Aquaculture Association, waives in support
11:25:09 AM Landon Hoffman, Florida Farm Bureau, waives in support
11:25:32 AM Senator Boyd closes on bill
11:25:43 AM Roll call: CS/CS/SB 1018 is reported favorably
11:26:23 AM SB 346 Florida Real Estate Appraisal Board by Senator Rodriguez
11:26:56 AM Senator Garcia explains the bill
11:27:04 AM No questions
11:27:06 AM Andy Gonzalez, Florida Realtors, waives in support
11:27:12 AM No debate
11:27:21 AM Senator Garcia waives close
11:27:28 AM Roll call: SB 346 is reported favorably
11:28:01 AM SB 534 Insurance Representative Examination Requirements by Senator Gibson
11:28:16 AM Senator Gibson explains the bill
11:28:34 AM No questions
11:28:58 AM No public appearance
11:29:06 AM No debate
11:29:08 AM Senator Gibson closes
11:29:20 AM Roll Call: SB 534 is reported favorably
11:29:52 AM CS/SB 630 Community Associations by Senator Baxley
11:30:04 AM Senator Baxley explains the bill
11:30:35 AM Amendment barcode# 686078 by Senator Hutson
11:31:32 AM Senator Hutson explains the amendment
11:32:25 AM No questions
11:32:36 AM Public appearance:
11:32:39 AM William Sklar, Florida Homebuilders Association, waives in support
11:33:03 AM No debate
11:33:09 AM Senator Baxley comments on amendment
11:33:12 AM Senator Hutson waives close on amendment
11:33:17 AM Amendment 686078 is adopted
11:33:24 AM Back on the bill as amended
11:33:35 AM Questions
11:33:37 AM Senator Farmer in questions
11:34:16 AM Senator Baxley refers question to Senator Hutson who responds
11:35:24 AM Senator Farmer with follow up question
11:35:39 AM Senator Hutson responds regarding bid process
11:36:32 AM Senator Farmer follows up
11:37:29 AM Senator Hutson responds on effects on natural gas vehicles
11:38:16 AM Senator Farmer follows up
11:38:35 AM Senator Hutson answers
11:38:58 AM Public appearances
11:39:07 AM Marco Paredes, On Top of the World Communities, waives in support
11:39:19 AM Mark Anderson, Chief Executive Affairs of Management Companies (CECMC), waives in support
11:39:22 AM Sean Stafford, Associa, waives in support
11:39:30 AM B.G. Murphy, Florida Association of Insurance Agents, waives in support
11:39:33 AM Travis Moore, Community Associations Institute & First Service Residential, waives in support
11:39:40 AM William Sklar, Florida Homebuilders Association, waives in support
11:39:49 AM Debate
11:40:10 AM Senator Farmer in debate
11:41:50 AM Senator Brandes in debate
11:41:51 AM Senator Baxley closes on the bill
11:43:31 AM Roll Call
11:44:25 AM CS/SB 630 is reported favorably

11:45:28 AM CS/SB 912 Tolling and Extension of Permits and Other Authorizations During States of Emergency by Senator Albritton

11:45:45 AM Senator Albritton explains the bill

11:46:15 AM Amendment 647342 by Senator Albritton

11:46:40 AM No questions

11:47:00 AM Public appearance: Jeff Woodburn, Associated Industries of Florida, waives in support

11:47:16 AM No debate

11:47:18 AM Senator Albritton waives close

11:47:20 AM Amendment 647342 is adopted

11:47:28 AM Back on the bill as amended

11:47:34 AM No questions

11:47:39 AM Public appearance: Jeff Woodburn, Associated Industries of Florida, waives in support

11:47:46 AM No debate

11:47:59 AM Senator Albritton waives close

11:48:02 AM Roll call: CS/CS/SB 912 is reported favorably

11:48:35 AM Senator Gruters wishes to be recorded voting in the affirmative for Tab 1 (252), Tab 6 (1018), Tab 7 (1134) and Tab 8 (1850)

11:48:56 AM No objections, show it adopted

11:49:04 AM No other business before the committee.

11:49:12 AM Chair Passidomo makes comment about next week's meeting

11:49:19 AM Senator Farmer moves we adjourn. Without objection, meeting is adjourned.