A bill to be entitled
An act relating to the Condominium Fraud Investigation
Pilot Program; creating s. 16.81, F.S.; creating the
Condominium Fraud Investigation Pilot Program within
the Department of Legal Affairs in the Office of the
Attorney General; providing a purpose for the program;
authorizing the department to contract with a private
entity to achieve the purpose of the program;
requiring the department to hire specified personnel;
authorizing a person to submit a complaint to the
Office of the Condominium Ombudsman; requiring the
ombudsman to review complaints and take specified
actions; providing powers of and requirements for the
department relating to the pilot program; requiring
that the pilot program be funded from the Division of
Florida Condominiums, Timeshares, and Mobile Homes
Trust Fund; providing for future repeal of the program
unless reviewed and saved from repeal by the
Legislature; amending s. 718.501, F.S.; requiring the
Division of Florida Condominiums, Timeshares, and
Mobile Homes to forward complaints received alleging
fraud or corruption to the office; amending s.
718.5012, F.S.; revising the powers of the ombudsman;
providing an effective date.

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

Section 1. Section 16.81, Florida Statutes, is created to
read:
16.81 The Condominium Fraud Investigation Pilot Program.—

(1) The Condominium Fraud Investigation Pilot Program is created within the Department of Legal Affairs in the Office of the Attorney General. The purpose of the program is to investigate condominium-related fraud and corruption in Broward, Miami-Dade, and Monroe Counties. The department may contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud to achieve the purpose of the program. The department shall hire five law enforcement officers certified under chapter 943 to carry out the purpose of the program. If the department does not contract with a private entity, the department must hire three financial investigators, five investigators with previous law enforcement experience, and three clerical employees to staff the program.

(2) A person may submit a complaint to the Office of the Condominium Ombudsman. The ombudsman shall review all complaints submitted to the office and determine which complaints to forward to the department for additional analysis and investigation under the program. If a complaint submitted to the office does not contain allegations of fraud or corruption, the ombudsman must forward the complaint to the Division of Florida Condominiums, Timeshares, and Mobile Homes.

(3) The department has the power to subpoena, audit, and investigate for the purposes of the program. The department may administer oaths, subpoena witnesses, and compel the production of books, papers, or other records relevant to investigations it conducts. If, after reviewing a complaint under the program, the department finds sufficient evidence for criminal prosecution,
it must refer the case to the appropriate state attorney for prosecution.

(4) The program must be funded annually from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund with funds specifically appropriated in the General Appropriations Act.

(5) This section is repealed October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (1) of 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 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 complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under s. 718.111(12). If the division receives a complaint alleging fraud or corruption, the division must forward the complaint to the Office of the Condominium
(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 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.

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 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 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 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 this chapter, an 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 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. 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 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 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 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
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
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 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 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 ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

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

Section 3. Subsections (11), (12), and (13) are added to
section 718.5012, Florida Statutes, to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(11) To void an election if the ombudsman determines that a violation of this chapter has occurred relating to a condominium association election.

(12) To petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or unit owners.

(13) To subpoena, audit, and investigate for the purposes of the Condominium Fraud Investigation Pilot Program under s. 16.81.

Section 4. This act shall take effect October 1, 2022.