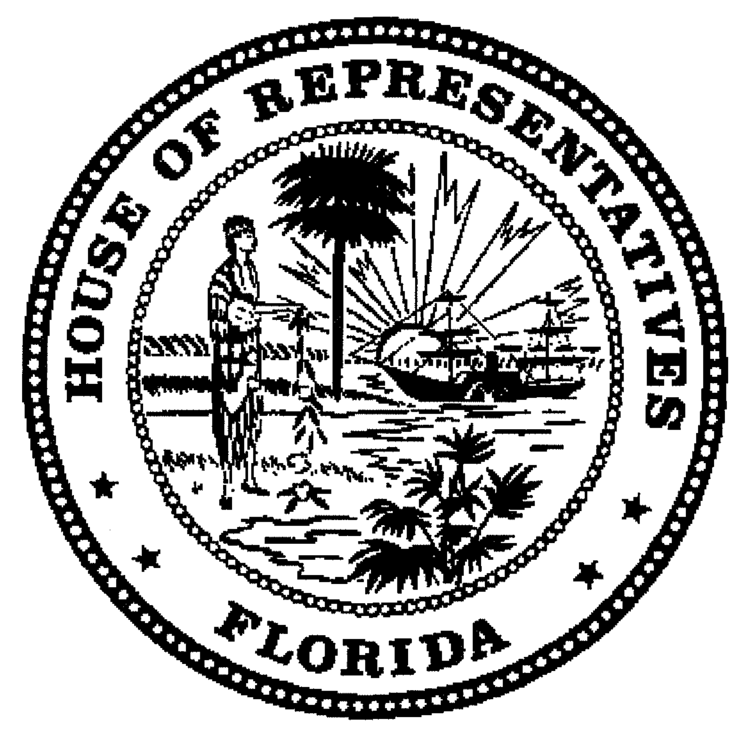


# Civil Justice Subcommittee

## Tuesday, March 29, 2011
## 12:00 PM
## 404 HOB

**Dean Cannon**
**Speaker**

**Eric Eisnaugle**
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Civil Justice Subcommittee

**Start Date and Time:** Tuesday, March 29, 2011 12:00 pm

**End Date and Time:** Tuesday, March 29, 2011 03:00 pm

**Location:** 404 HOB
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 291 Residential Tenancies by Artiles
CS/HB 599 Uniform Prudent Management of Institutional Funds by Insurance & Banking Subcommittee, Passidomo
CS/HB 907 Transfer of Tax Liability by Finance & Tax Committee, Wood
HJR 1471 Religious Freedom by Plakon

**Consideration of the following bill(s) with proposed committee substitute(s):**

PCS for HB 1195 -- Community Associations

**NOTICE FINALIZED on 03/25/2011 16:21 by Jones.Missy**

HB 291

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 291 Residential Tenancies
**SPONSOR(S):** Artiles and others
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 426

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Billmeier LMB | Bond NB |
| 2) Judiciary Committee | | | |

## SUMMARY ANALYSIS


Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Currently, three categories of persons may serve process in Florida: a sheriff, a person appointed by the sheriff in the sheriff's county, or a certified process server appointed by the chief judge of the circuit court. The sheriff may serve all process in Florida legal actions. Special process servers and certified process servers may only serve process as specified by statute.

A writ of possession directs the sheriff to put a person in possession of real property. Under current law, only a sheriff may serve a writ of possession. Certified process servers cannot serve writs of possession. A writ of possession is a two-step process. The writ is served on the resident or on the property and if the premises is not vacated within 24 hours, the sheriff returns to keep the peace while the property owner removes the belongings.

This bill authorizes a person to use a certified process server, rather than the sheriff, to serve the initial writ of possession in an action to recover the premises.

This bill does not appear to have a fiscal impact on state government. The fiscal impact on sheriffs and on private parties is not known.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service of Process

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Statutes governing service of process are strictly construed to insure that persons served receive notice of an action against them and have the opportunity to protect their rights. There are two types of service of process: enforceable and non-enforceable. Enforceable service is a court order which requires the sheriff to take action such as make an arrest or seize property. Non-enforceable service of process is designed to place another party on notice that he or she must take action.

Currently, three categories of persons may serve process in Florida: a sheriff, a person appointed by the sheriff in the sheriff's county ("special process server"), or a certified process server appointed by the chief judge of the circuit court.[1] All process must be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses, which may be served by a special or certified process server.[2]

A certified process server must be appointed by the chief judge of the judicial circuit in which he or she shall be allowed to serve process.[3] A person applying to become a certified process server must:

- Be at least 18 years of age;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation;
- Certify that he or she has no pending criminal case, no record of any felony conviction, nor a record of conviction of a misdemeanor involving moral turpitude of dishonesty within the past 5 years;
- If prescribed by the chief judge of the circuit, submit to an examination testing his or her knowledge of the laws and rules regarding the service of process;
- Execute a bond in the amount of $5,000, which shall be renewable annually, for the benefit of any person injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server; and
- Take an oath that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.[4]

Once the process server is certified, he or she may serve initial nonenforceable civil process, criminal witness subpoenas and criminal summonses on a person found within the circuit where the server is certified.[5] A certified process server may charge a fee for his or her services.[6]

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[1] *See* s. 48.021(1), F.S.
[2] *See* s. 48.021(1), F.S.
[3] *See* s. 48.27(1), F.S.
[4] *See* s. 48.29(3), F.S.
[5] *See* s. 48.27(2), F.S.
[6] *See* s. 48.29(8), F.S.

Florida Residential Landlord Tenant Act and Writs of Possession

Part II of ch. 83, F.S., titled the "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement.[7] A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated.[8] Once the court enters a judgment allowing the landlord to take possession of the premises, the clerk of the court must issue a writ of possession to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises.[9] The sheriff serves the writ of possession or posts it on the premises. Twenty four hours later, the sheriff goes to the premises to ensure that the landlord can take possession of the premises. After the 24-hour period elapses from the posting of the writ, the landlord may remove any personal property found on the premises.[10] The landlord may request that the sheriff be present while the landlord changes the locks and removes the personal property from the premises.[11]

Sheriffs must charge fixed, nonrefundable fees for the service of process in civil actions as established by a statutory schedule.[12] Current law provides that the sheriff may charge $90 for service of a writ of possession.[13] The sheriff is authorized to charge a reasonable hourly rate if a person requests that the sheriff stand by as the landlord takes possession of the property and that person is responsible for paying for the sheriff's time.[14]

Under current law, only sheriffs can serve writs of possession. Certified process servers and special process services are not permitted to do so.

Effect of this Bill

This bill amends s. 48.27, F.S., to allow certified process servers to serve writs of possession in actions pursuant to s. 83.62, F.S., of the Florida Residential Landlord Tenant Act. Under this bill, the landlord may choose to have a certified process server serve the writ of possession rather than the sheriff. This bill amends s. 83.62, F.S., to require the clerk of the court to issue the writ of possession or to a certified process server.

This bill does not change the requirement that sheriff ensure that the landlord can take possession of the premises. The certified process server may only complete the first portion of the eviction.

This bill does not affect special process servers. It only allows the sheriff or "any person authorized by s. 48.27, F.S." to serve the writ of possession. Special process servers, created by s. 48.021, F.S., are not affected.

Sheriffs would still be required to serve writs of possession in foreclosure actions pursuant to s.702.10(2)(h), F.S.,[15] and in actions relating to mobile homes.[16]

This bill takes effect July 1, 2011.

B. SECTION DIRECTORY:

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[7] *See* s. 83.41, F.S.
[8] *See* s. 83.59, F.S.
[9] *See* s. 83.62(1), F.S.
[10] *See* s. 83.62(2), F.S.
[11] *See* s. 83.62(2), F.S.
[12] *See* s. 30.231, F.S.
[13] *See* s. 30.231(1)(d), F.S.
[14] *See* s. 83.62(2), F.S.
[15] Section 702.10(2)(h), F.S., provides that the clerk "shall issue to the sheriff" and does not contemplate certified process servers or special process servers.
[16] Section 723.062, F.S. (describing the procedure for a landlord to take possession of a mobile home and providing that the clerk shall issue a writ of possession to the sheriff).

Section 1 amends s. 48.27, F.S., relating to certified process servers.

Section 2 amends s. 83.62, F.S., relating to restoration of possession to landlord.

Section 3 provides that this bill is effective July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The effect on sheriffs is not known. This bill permits persons to use certified process servers instead of the sheriff to serve the writ of possession. To the extent, persons exercise this option, sheriffs will lose revenue and certified process services will gain revenue.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill does not require a certified process server to notify the sheriff that he or she has served the writ of possession. Accordingly, a sheriff may not know that the writ has been issued and may not be available to execute it.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to residential tenancies; amending s.
3 48.27, F.S.; authorizing certified process servers to
4 serve writs of possession in actions for possession of
5 residential property; amending s. 83.62, F.S.; conforming
6 provisions; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (2) of section 48.27, Florida
11 Statutes, is amended to read:
12 48.27 Certified process servers.—
13 (2)(a) The addition of a person's name to the list
14 authorizes him or her to serve initial nonenforceable civil
15 process on a person found within the circuit where the process
16 server is certified when a civil action has been filed against
17 such person in the circuit court or in a county court in the
18 state. Upon filing an action in circuit or county court, a
19 person may select from the list for the circuit where the
20 process is to be served one or more certified process servers to
21 serve initial nonenforceable civil process.
22 (b) The addition of a person's name to the list authorizes
23 him or her to serve criminal witness subpoenas and criminal
24 summonses on a person found within the circuit where the process
25 server is certified. The state in any proceeding or
26 investigation by a grand jury or any party in a criminal action,
27 prosecution, or proceeding may select from the list for the
28 circuit where the process is to be served one or more certified

29 process servers to serve the subpoena or summons.
30 (c) The addition of a person's name to the list also
31 authorizes him or her to serve writs of possession in actions
32 for possession of real property pursuant to s. 83.62 on a person
33 found within the circuit where the process server is certified.
34 Upon entry of judgment in favor of the landlord and issuance of
35 a writ by the clerk, a person may select from the list for the
36 circuit where the process is to be served one or more certified
37 process servers to serve the writ.
38 Section 2. Section 83.62, Florida Statutes, is amended to
39 read:
40 83.62 Restoration of possession to landlord.—
41 (1) In an action for possession, after entry of judgment
42 in favor of the landlord, the clerk shall issue a writ to the
43 sheriff, or other person authorized by s. 48.27 to serve
44 process, describing the premises and commanding the sheriff to
45 put the landlord in possession after 24 hours' notice
46 conspicuously posted on the premises.
47 (2) At the time the sheriff executes the writ of
48 possession or at any time thereafter, the landlord or the
49 landlord's agent may remove any personal property found on the
50 premises to or near the property line. Subsequent to executing
51 the writ of possession, the landlord may request the sheriff to
52 stand by to keep the peace while the landlord changes the locks
53 and removes the personal property from the premises. When such a
54 request is made, the sheriff may charge a reasonable hourly
55 rate, and the person requesting the sheriff to stand by to keep
56 the peace shall be responsible for paying the reasonable hourly

57 rate set by the sheriff. Neither the sheriff nor the landlord or
58 the landlord's agent shall be liable to the tenant or any other
59 party for the loss, destruction, or damage to the property after
60 it has been removed.
61 Section 3. This act shall take effect July 1, 2011.

CS/HB 599

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 599 Uniform Prudent Management of Institutional Funds
**SPONSOR(S):** Insurance & Banking Subcommittee; Passidomo
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 952

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | 14 Y, 0 N, As CS | Barnum | Cooper |
| 2) Civil Justice Subcommittee | | Billmeier LMB | Bond NB |
| 3) Appropriations Committee | | | |
| 4) Economic Affairs Committee | | | |

## SUMMARY ANALYSIS


The Florida Uniform Management of Institutional Funds Act became law in 1990 and was updated in 2003. It is based upon the Uniform Management of Institutional Funds Act promulgated by the National Conference of Commissioners on Uniform State Laws. The Florida Uniform Management of Institutional Funds Act:

- Only applies to an institution organized and operated exclusively for educational purposes, or a governmental entity holding funds exclusively for educational purposes.
- Provides standards of conduct for a governing board.
- Delineates factors a governing board shall consider when expending endowment funds.

This bill creates the Uniform Prudent Management of Institutional Funds Act to replace the Florida Uniform Management of Institutional Funds Act. Among its key provisions, this bill:

- Makes significant enhancements to provisions currently contained in the Florida Uniform Management of Institutional Funds Act.
- Applies to all charitable institutions, not just those associated exclusively with educational purposes.
- Expands the types of assets which can be in a charitable organization's portfolio.
- Allows pooling of institutional funds for purposes of managing and investing.
- Delineates factors to be considered prior to expenditure of funds.
- Provides new procedures for releasing restrictions on small institutional funds.
- Provides for modification of restrictions on the use of endowment funds.

The provisions contained in this bill would apply to a non-educational direct-support organization only if it held a fund exclusively for charitable purposes.

This bill makes Florida's not-for-profit law consistent with national standards for the management of endowment funds which have already been adopted by 47 other states.

The fiscal impact is indeterminate.



**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

**Background**

Prior to 1972, charities generally made investment and spending decisions based upon trust law guidance, which allowed for expenditure of income such as interest and dividends. Most charitable institutions invested endowment funds primarily for current income. They limited spending to a portion of dividends, interest, rents, and royalties earned. Thus, investments were predominantly made in bonds and high-yield stocks, while growth investments were avoided. The focus was on income and not capital gains. Investments were evaluated individually, rather than considering the total performance of the portfolio. At that time, trust law did not allow for delegation of investment authority.

Recognizing that charitable institutions needed guidelines separate from trust law, in 1972, the Uniform Management of Institutional Funds Act (UMIFA) was promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission).[1] The UMIFA allowed for investing in any kind of asset, pooling endowment funds for investment purposes, and delegating investment management to professional advisors. It specified that, when delegating investment management to others, a charity's governing board was required to exercise ordinary business care and prudence. UMIFA codified the first prudent investing rules. The two guiding principles were: (1) assets should be invested prudently in diversified investments that sought growth as well as income; and, (2) appreciation of assets could prudently be spent for the purposes of any endowment fund held by a charitable institution. Use of these guiding principles allowed charitable institutions to focus on the best investment strategy and distribution policy for the overall long and short-term health of the institution.

The Florida Uniform Management of Institutional Funds Act (Act) became law as a result of 1990 legislative action.[2] It was based upon the UMIFA. However, the State's version of UMIFA was only applicable to an institution organized and operated exclusively for educational purposes, or a governmental entity holding funds exclusively for educational purposes. The Act provided definitions and allowed for the expenditure of endowment funds by a governing board. It codified investment authority and the delegation of investment management. Consistent with UMIFA, the Act allowed for expenditure of net appreciation over the "historic dollar value"[3] of the fund.

During the 2002 re-writing of the K-20 Education Code, the Act was omitted in error.[4] When it was restored in law,[5] the Act was updated based upon a revised draft of UMIFA issued by the Uniform Law Commission. This version provided new guidelines in response to the market situation at that time when many gifts designated for endowment had fallen below their historical market value. In that case, once an endowment had dropped below its historic gift value, all spending from the fund was stopped.

The new 2003 language in the Florida Uniform Management of Institutional Funds Act allows public and private institutions to continue to conserve the long term value of endowments while also continuing distributions consistent with the donor's wishes. The law provides guidelines for educational institutions in executing their fiduciary responsibilities by expanding and delineating factors which the governing board should consider when expending endowment funds.[6] These include:

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[1] The organization comprises more than 300 lawyers, judges and law professors, appointed by the states as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands, to draft proposals for uniform and model laws on subjects where uniformity is desirable and practicable.
[2] Section 1, ch. 90-297, L.O.F.
[3] Per statutory definition at that time, "Historic dollar value" means the aggregate fair value in dollars of an endowment fund at the time it became an endowment fund, each subsequent donation to the fund at the time it is made, and each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.
[4] Education K-20 Committee HB 319 w/CS Bill Analysis, page 3, dated April 8, 2003.
[5] Section 13, ch. 2003-399, L.O.F.
[6] Section 1010.10(3), F.S.

- The purpose of the institution.
- The intent of the donors.
- The long and short term needs of the institution.
- The general economic conditions.
- The possible effect of inflation or deflation.

Conserving the purchasing power of the endowment fund continues to be a primary goal.

The law also provides specific standards of conduct for a governing board. In addition, it identifies activities where reasonable care, skill and caution are required when delegating investment management.

The law provides additional details regarding release of restrictions placed on the use of the gift instrument or investment by the donor in the absence of the donor's written consent. The governing board is permitted to release a restriction if consent can not be obtained because of the donor's death, disability, unavailability, or impossibility of identification, if the total value was less than $100,000 and the value was insufficient to justify separate administration. In similar circumstances, but with a value greater than $100,000, the governing board can apply to the circuit court of the county in which the institution was located for release. In doing so, the Attorney General is required to be notified of the application and given an opportunity to be heard. The Act addresses release of restrictions, but makes no provisions for modifying a restriction.

Currently, university direct-support organizations[7] operate in accordance with the Florida Uniform Management of Institutional Funds Act.[8] Community college direct-support organizations are incorporated, organized and operated in a similar manner.[9]

Direct-support organizations are incorporated under the provisions of Chapter 617, F.S., and approved by the Department of State.[10] In addition to university and community college direct-support organizations, the law provides that other entities, including the following, may or shall establish, create, or contract with a direct-support organization:

- Department of Elder Affairs[11]
- Department of Juvenile Justice[12]
- Department of Legal Affairs[13]
- Department of Military Affairs[14]
- Department of Veterans' Affairs[15]
- Division of Blind Services[16]
- Statewide Guardian Ad Litem Office[17]
- Statewide Public Guardianship Office[18]

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[7] A university direct-support organization is a not-for-profit corporation organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida.
[8] State University System of Florida Board of Governors Legislative Bill Analysis dated February 24, 2011, on file with the Insurance & Banking Subcommittee.
[9] Section 1004.70, F.S.
[10] Section 1004.28, F.S.
[11] Section 430.82, F.S.
[12] Section 985.672, F.S
[13] Section 16.616, F.S.
[14] Section 250.115, F.S.
[15] Section 292.055, F.S.
[16] Section 413.0111, F.S.
[17] Section 39.8298, F.S.
[18] Section 744.7082, F.S.

The Florida Uniform Management of Institutional Funds Act is not applicable to any existing direct-support organizations associated with these entities. The Act is only applicable to an institution organized and operated exclusively for educational purposes, or a governmental entity holding funds exclusively for educational purposes.

In July 2006, the Uniform Law Commission adopted the Uniform Prudent Management of Institutional Funds Act (UPMIFA), which replaced the Uniform Management of Institutional Funds Act. UPMIFA emphasizes the portfolio approach to investing trust assets, taking into account the tradeoff between risk and return. It provides guidance and authority to charitable organizations concerning the management and investment of funds held by those organizations. UPMIFA expands the governing board's authority to delegate investment and management decisions, while clearly identifying safeguards to be observed. It applies rules on investment decision making and duties to charities organized as charitable trusts, as nonprofit corporations, or in some other manner. However, it does not apply to trusts managed by fiduciaries who are not themselves charities.

UPMIFA modernizes the rules governing expenditures from endowment funds, both to provide stricter guidelines on spending from endowment funds, and to give institutions the ability to cope more easily with fluctuations in the value of the endowment. The historic-dollar value limitation on spending from an endowment fund is replaced with rules allowing for expenditure of the principal, while requiring the board to be prudent when considering the facts and circumstances surrounding such a decision. It spells out more of the factors a charity should consider in making investment decisions,

UPMIFA updates the provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds. It authorizes a modification that a court determines to be in accordance with the donor's probable intention. If the charity asks for court approval of a modification, the charity must notify the state's chief charitable regulator and the regulator may participate in the proceeding.

Florida is one of only three states which have not enacted UPMIFA in some form.[19, 20]

**Effect of this Bill**

This bill repeals the Florida Uniform Management of Institutional Funds Act from the Educational Codes and creates the Uniform Prudent Management of Institutional Funds Act in Chapter 617, Florida Statutes - Corporations Not for Profit. In so doing, it expands the earlier application to include charitable institutions other than those associated exclusively with educational purposes.[21] This bill applies to any Florida not-for-profit entity meeting the definition of an "institution", which holds "institutional funds", as defined. "Institution" is defined as:

- A person, other than an individual, organized and operated exclusively for charitable purposes.
- A government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose.
- A trust that had both charitable and noncharitable interests after all noncharitable interests have terminated.

This bill defines "charitable purpose", which is not defined in the context of Chapter 617, as "the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose, the achievement of which is beneficial to the community." This bill defines "institution" as:

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[19] Spending and Management of Endowments under UPMIFA, Findings of a 2010 Survey of Colleges, Universities, and Institutionally Related Foundations Conducted by AGB in partnership with Commonfund Institute, available at http://www.agb.org/reports/2010/spending-and-management-endowments-under-upmifa

[20] Lexology - http://www.lexology.com/library/detail.aspx?g=f9da48c5-2fb4-45be-8f1c-4eba1eb08e05 (Last visited on March 7, 2011)

[21] As of March 7, 2011, Department of Juvenile Justice and Department of Veterans' Affairs have reported that they currently have no endowment funds. Department of Elder Affairs has reported that the proposed legislation would have no effect on the agency.

- A person, other than an individual, organized and operated exclusively for charitable purposes;
- A government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose; or
- A trust that had both charitable and noncharitable interests after all noncharitable interests have terminated.

This bill defines "institutional fund" as a fund held by an institution exclusively for charitable purposes. The term does not include:

- Program-related assets;
- A fund held for an institution by a trustee that is not an institution;
- A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund; or
- A fund managed or administered by the State Board of Administration pursuant to its constitutional or statutory authority.

This bill makes significant enhancements to provisions previously contained in the Florida Uniform Management of Institutional Funds Act. Among its key provisions, this bill:

- Expands the types of assets which can be in a charitable organizations portfolio, to include any kind of property or type of investment consistent with the new statutes.
- Specifies that management and investment of institutional funds must accomplished with the care an ordinarily prudent person would exercise.
- Requires an institution to make a reasonable effort to verify relevant facts.
- Allows pooling of institutional funds for purposes of managing and investing.
- Makes reference to an overall investment strategy for the first time.
- Obliges a person with special relevant skills or expertise, to use those skills or that expertise in managing and investing institutional funds.
- Delineates factors to be considered prior to expenditure of funds.

While current law makes no provision for modifying a restriction, and limits a governing board's ability to release restrictions without petitioning the court, this bill provides for more flexibility, while protecting the donor's interest and intent. In addition to seeking release because a restriction is unlawful, impractical, or wasteful, the new procedures allow for modification or release of a restriction because of circumstances not anticipated by the donor. For funds with a value of $100,000 or less, notification of the Attorney General is still required. In those situations where the institutional fund subject to the restriction has a total value of $100,000 to $250,000, and more than 20 years has elapsed since the fund was established, the governing board must provide written notice to the Attorney General prior to modification or release of the restriction.

The rules and guidelines contained in this bill apply to future decisions or actions taken on institutional funds already held and all new funds established after the effective date of this bill. This conforms to national standards.

This bill provides for an exception to the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. § 7001.[22] Per 15 U.S.C. § 7002, in some cases exceptions are permissible if a state has enacted the Uniform Electronic Transactions Act, which Florida did in 2000.[23] The exception does not result in any loss of the consumer protections contained in the ESIGN. This bill's provisions

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[22] This section provides that a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. It also provides consumer protections.

[23] Section 1, ch. 2000-164, L.O.F.

regarding the relation to ESIGN is consistent with the UPMIFA and incorporated in similar laws of other states.

This bill makes Florida's not-for-profit law consistent with national standards for the management of endowment funds already adopted by 47 other states.

This bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1 creates s. 617.2104, F.S., relating to the Uniform Prudent Management of Institutional Funds Act.

Section 2 repeals s. 1010.10, F.S., relating to the Florida Uniform Management of Institutional Funds Act.

Section 3 provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the March 9, 2011, meeting of the Insurance & Banking Subcommittee, four amendments were proposed and adopted.

Amendment 1 provided that funds administered by the State Board of Administration are not subject to the provisions of this bill.

Amendment 2 clarified that the circuit court for the circuit in which an institution is located is the appropriate court to handle requests for changes to restrictions. It removed the requirement that the Attorney General be provided an opportunity to respond to requests for modifications.

Amendment 3 removed the requirement that the Attorney General approve requests to release or modify restrictions for funds with a value of $100,000 to $250,000.

Amendment 4 changed the effective date to July 1, 2012.

The analysis is drafted to the committee substitute.

1 A bill to be entitled
2 An act relating to uniform prudent management of
3 institutional funds; creating s. 617.2104, F.S.; creating
4 a short title; providing definitions; providing
5 requirements for the management of funds held by an
6 institution exclusively for charitable purposes; providing
7 standards of conduct in managing and investing
8 institutional funds; providing requirements for
9 appropriation for expenditure or accumulation of an
10 endowment fund by an institution; authorizing an
11 institution to delegate to an external agent the
12 management and investment of an institutional fund;
13 authorizing the release or modification of a restriction
14 on management, investment, or purpose of an institutional
15 fund; providing for determination of compliance; providing
16 for application to existing or newly established
17 institutional funds; providing relationship to federal
18 law; providing requirements for uniformity of application
19 and construction of the act; repealing s. 1010.10, F.S.,
20 relating to the Florida Uniform Management of
21 Institutional Funds Act; providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Section 617.2104, Florida Statutes, is created
26 to read:
27 617.2104 Uniform Prudent Management of Institutional Funds
28 Act.—

29 (1) SHORT TITLE.—This section may be cited as the "Uniform
30 Prudent Management of Institutional Funds Act."
31 (2) DEFINITIONS.—For purposes of this section:
32 (a) "Charitable purpose" means the relief of poverty, the
33 advancement of education or religion, the promotion of health,
34 the promotion of a governmental purpose, or any other purpose
35 the achievement of which is beneficial to the community.
36 (b) "Endowment fund" means an institutional fund or part
37 thereof that, under the terms of a gift instrument, is not
38 wholly expendable by the institution on a current basis. The
39 term does not include assets that an institution designates as
40 an endowment fund for its own use.
41 (c) "Gift instrument" means a record or records, including
42 an institutional solicitation, under which property is granted
43 to, transferred to, or held by an institution as an
44 institutional fund.
45 (d) "Institution" means:
46 1. A person, other than an individual, organized and
47 operated exclusively for charitable purposes;
48 2. A government or governmental subdivision, agency, or
49 instrumentality to the extent that it holds funds exclusively
50 for a charitable purpose; or
51 3. A trust that had both charitable and noncharitable
52 interests after all noncharitable interests have terminated.
53 (e) "Institutional fund" means a fund held by an
54 institution exclusively for charitable purposes. The term does
55 not include:
56 1. Program-related assets;

57 2. A fund held for an institution by a trustee that is not
58 an institution;
59 3. A fund in which a beneficiary that is not an
60 institution has an interest, other than an interest that could
61 arise upon violation or failure of the purposes of the fund; or
62 4. A fund managed or administered by the State Board of
63 Administration pursuant to its constitutional or statutory
64 authority.
65 (f) "Person" means an individual, corporation, business
66 trust, estate, trust, partnership, limited liability company,
67 association, joint venture, public corporation, government or
68 governmental subdivision, agency, or instrumentality, or any
69 other legal or commercial entity.
70 (g) "Program-related asset" means an asset held by an
71 institution primarily to accomplish a charitable purpose of the
72 institution and not primarily for investment.
73 (h) "Record" means information that is inscribed on a
74 tangible medium or that is stored in an electronic or other
75 medium and is retrievable in perceivable form.
76 (3) STANDARD OF CONDUCT IN MANAGING AND INVESTING
77 INSTITUTIONAL FUND.—
78 (a) Subject to the intent of a donor expressed in a gift
79 instrument, an institution, in managing and investing an
80 institutional fund, shall consider the charitable purposes of
81 the institution and the purposes of the institutional fund.
82 (b) In addition to complying with the duty of loyalty
83 imposed by law other than this section, each person responsible
84 for managing and investing an institutional fund shall manage

85 and invest the fund in good faith and with the care an
86 ordinarily prudent person in a like position would exercise
87 under similar circumstances.
88 (c) In managing and investing an institutional fund, an
89 institution:
90 1. May incur only costs that are appropriate and
91 reasonable in relation to the assets, the purposes of the
92 institution, and the skills available to the institution.
93 2. Shall make a reasonable effort to verify facts relevant
94 to the management and investment of the fund.
95 (d) An institution may pool two or more institutional
96 funds for purposes of management and investment.
97 (e) Except as otherwise provided by a gift instrument, the
98 following rules apply:
99 1. In managing and investing an institutional fund, the
100 following factors, if relevant, must be considered:
101 a. General economic conditions.
102 b. The possible effect of inflation or deflation.
103 c. The expected tax consequences, if any, of investment
104 decisions or strategies.
105 d. The role that each investment or course of action plays
106 within the overall investment portfolio of the fund.
107 e. The expected total return from income and the
108 appreciation of investments.
109 f. Other resources of the institution.
110 g. The needs of the institution and the fund to make
111 distributions and to preserve capital.

112 h. An asset's special relationship or special value, if
113 any, to the charitable purposes of the institution.
114 2. Management and investment decisions about an individual
115 asset must be made not in isolation but rather in the context of
116 the institutional fund's portfolio of investments as a whole and
117 as a part of an overall investment strategy having risk and
118 return objectives reasonably suited to the fund and to the
119 institution.
120 3. Except as otherwise provided by law other than this
121 section, an institution may invest in any kind of property or
122 type of investment consistent with this section.
123 4. An institution shall diversify the investments of an
124 institutional fund unless the institution reasonably determines
125 that, because of special circumstances, the purposes of the fund
126 are better served without diversification.
127 5. Within a reasonable time after receiving property, an
128 institution shall make and carry out decisions concerning the
129 retention or disposition of the property or to rebalance a
130 portfolio in order to bring the institutional fund into
131 compliance with the purposes, terms, and distribution
132 requirements of the institution as necessary to meet other
133 circumstances of the institution and the requirements of this
134 section.
135 6. A person that has special skills or expertise, or is
136 selected in reliance upon the person's representation that the
137 person has special skills or expertise, has a duty to use those
138 skills or that expertise in managing and investing institutional
139 funds.

140 (4) APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF
141 ENDOWMENT FUND; RULES OF CONSTRUCTION.—
142 (a) Subject to the intent of a donor expressed in the gift
143 instrument, an institution may appropriate for expenditure or
144 accumulate so much of an endowment fund as the institution
145 determines is prudent for the uses, benefits, purposes, and
146 duration for which the endowment fund is established. Unless
147 stated otherwise in the gift instrument, the assets in an
148 endowment fund are donor-restricted assets until appropriated
149 for expenditure by the institution. In making a determination to
150 appropriate or accumulate, the institution shall act in good
151 faith with the care that an ordinarily prudent person in a like
152 position would exercise under similar circumstances and shall
153 consider, if relevant, the following factors:
154 1. The duration and preservation of the endowment fund.
155 2. The purposes of the institution and the endowment fund.
156 3. General economic conditions.
157 4. The possible effect of inflation or deflation.
158 5. The expected total return from income and the
159 appreciation of investments.
160 6. Other resources of the institution.
161 7. The investment policy of the institution.
162 (b) To limit the authority to appropriate for expenditure
163 or accumulate under paragraph (a), a gift instrument must
164 specifically state the limitation.
165 (c) Terms in a gift instrument designating a gift as an
166 endowment, or a direction or authorization in the gift
167 instrument to use only "income," "interest," "dividends," or

168 "rents, issues, or profits," or "to preserve the principal
169 intact," or words of similar import:
170 1. Create an endowment fund of permanent duration unless
171 other language in the gift instrument limits the duration or
172 purpose of the fund.
173 2. Do not otherwise limit the authority to appropriate for
174 expenditure or accumulate under paragraph (a).
175 (5) DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.—
176 (a) Subject to any specific limitation set forth in a gift
177 instrument or in law other than this section, an institution may
178 delegate to an external agent the management and investment of
179 an institutional fund to the extent that an institution could
180 prudently delegate under the circumstances. An institution shall
181 act in good faith, with the care that an ordinarily prudent
182 person in a like position would exercise under similar
183 circumstances, in:
184 1. Selecting an agent.
185 2. Establishing the scope and terms of the delegation,
186 consistent with the purposes of the institution and the
187 institutional fund.
188 3. Periodically reviewing the agent's actions in order to
189 monitor the agent's performance and compliance with the scope
190 and terms of the delegation.
191 (b) In performing a delegated function, an agent owes a
192 duty to the institution to exercise reasonable care to comply
193 with the scope and terms of the delegation.

194 (c) An institution that complies with paragraph (a) is not
195 liable for the decisions or actions of an agent to which the
196 function was delegated.
197 (d) By accepting delegation of a management or investment
198 function from an institution that is subject to the laws of this
199 state, an agent submits to the jurisdiction of the courts of
200 this state in all proceedings arising from or related to the
201 delegation or the performance of the delegated function.
202 (e) An institution may delegate management and investment
203 functions to its committees, officers, or employees as
204 authorized by law other than this section.
205 (6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT,
206 INVESTMENT, OR PURPOSE.—
207 (a) If the donor consents in a record, an institution may
208 release or modify, in whole or in part, a restriction contained
209 in a gift instrument on the management, investment, or purpose
210 of an institutional fund. A release or modification may not
211 allow a fund to be used for a purpose other than a charitable
212 purpose of the institution.
213 (b) The circuit court for the circuit in which an
214 institution is located, upon application of that institution,
215 may modify a restriction contained in a gift instrument
216 regarding the management or investment of an institutional fund
217 if the restriction has become impracticable or wasteful, if it
218 impairs the management or investment of the fund, or if, because
219 of circumstances not anticipated by the donor, a modification of
220 a restriction will further the purposes of the fund. The
221 institution shall notify the Attorney General of the

222 application. To the extent practicable, any modification must be
223 made in accordance with the donor's probable intention.
224 (c) If a particular charitable purpose or a restriction
225 contained in a gift instrument on the use of an institutional
226 fund becomes unlawful, impracticable, impossible to achieve, or
227 wasteful, the circuit court for the circuit in which an
228 institution is located, upon application of that institution,
229 may modify the purpose of the fund or the restriction on the use
230 of the fund in a manner consistent with the charitable purposes
231 expressed in the gift instrument. The institution shall notify
232 the Attorney General of the application.
233 (d) If consent of the donor in a record cannot be obtained
234 by reason of the donor's death, disability, unavailability, or
235 impossibility of identification, a governing board may modify a
236 restriction contained in a gift instrument regarding the
237 management, investment, or use of an institutional fund if the
238 fund has a total value of $100,000 or less and the restriction
239 has become impracticable or wasteful, impairs the management,
240 investment, or use of the fund or if, because of circumstances
241 not anticipated by the donor, a modification of a restriction
242 will further the purposes of the fund.
243 (e) If an institution determines that a restriction
244 contained in a gift instrument on the management, investment, or
245 purpose of an institutional fund is unlawful, impracticable,
246 impossible to achieve, or wasteful, the institution, after
247 providing written notice to the Attorney General, may release or
248 modify the restriction, in whole or part, if:

249 1. The institutional fund subject to the restriction has a
250 total value of at least $100,000 and not more than $250,000;
251 2. More than 20 years have elapsed since the fund was
252 established; and
253 3. The institution uses the property in a manner
254 consistent with the charitable purposes expressed in the gift
255 instrument.
256 (7) REVIEWING COMPLIANCE.—Compliance with this section is
257 determined in light of the facts and circumstances existing at
258 the time a decision is made or action is taken, and not by
259 hindsight.
260 (8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This
261 section applies to institutional funds existing on or
262 established after the effective date of this section. As applied
263 to institutional funds existing on the effective date of this
264 section, this section governs only decisions made or actions
265 taken on or after that date.
266 (9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
267 NATIONAL COMMERCE ACT.—This section modifies, limits, and
268 supersedes the federal Electronic Signatures in Global and
269 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
270 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
271 7001(c), or authorize electronic delivery of any of the notices
272 described in s. 103(b) of that act, 15 U.S.C. s. 7001(b).
273 (10) UNIFORMITY OF APPLICATION AND CONSTRUCTION.—In
274 applying and construing this uniform act, consideration must be
275 given to the need to promote uniformity of the law with respect
276 to its subject matter among states that enact it.

277 Section 2. Section 1010.10, Florida Statutes, is repealed.

278 Section 3. This act shall take effect July 1, 2012.

CS/HB 907

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 907 Transfer of Tax Liability
**SPONSOR(S):** Finance & Tax Committee; Wood
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1384

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Finance & Tax Committee | 23 Y, 0 N, As CS | Flieger | Langston |
| 2) Civil Justice Subcommittee | | Billmeier LMB | Bond NPB |
| 3) Economic Affairs Committee | | | |

## SUMMARY ANALYSIS


In general, a person who buys a business (transferee) assumes the tax liabilities of the seller (transferor), unless an exception applies. Current law provides three different statutes relating to state tax liability related to the transfer of a business to new ownership. One applies to sales tax liability, one to communications services tax, and one to state taxes in general. This bill repeals the two specific statutes (sales and communications) and amends the statute relating to all taxes owed to the state.

This bill revises the requirements for a transferee to take possession of a business without assuming any outstanding tax liabilities of a transferor. Current law provides that if the transferor provides a certificate from the Department of Revenue showing that no taxes are owed and the department conducts an audit finding no liability for taxes, the transferee can take possession without assuming any tax liability. This bill allows the transferee to take the business without assuming the transferor's liabilities under either of the following two circumstances:

- If the there are no insiders in common between the transferor and the transferee, the transferee may obtain a certificate of compliance from the Department of Revenue showing that a transferor has not received notice of audit, has filed all required tax returns, has paid the tax due from those returns; or

- The transferee or transferor may request an audit of the transferor's books and records, to be completed within 90 days by the Department of Revenue, in order to find that a transferee is not liable for any outstanding tax liabilities of the transferor.

If a transferee is found liable for unpaid tax of the transferor, this bill requires that the transferee has 60 days after receiving written notice of the unpaid tax to pay the tax. After 60 days, the transferee may not engage in any business activity in the state until the tax liability is paid.

The repealed specific statutes regarding transfer of tax liability contain misdemeanor penalties related to violations of the law on transfer of tax liability. This bill repeals the criminal penalties.

The 2011 Revenue Estimating Conference estimates that the bill has a negative, indeterminate impact on state and local government revenues.

It is possible that this bill may implicate the constitutional limit on bills creating a local government mandate.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

When a person buys a business, the buyer, or transferee, is liable for unpaid business taxes, such as sales taxes, that the seller, or transferor, owes.[1] The Legislature passed the first statute related to this subject in 1949.[2] In 2000, the Legislature passed s. 202.31, F.S., governing tax liability related to communications services companies.[3] In 2010, the Legislature adopted s. 213.758, F.S., governing the transfer of tax liability in other situations. This bill resolves any conflict between the three statutes.

The transfer of tax liability for every tax administered by the Department of Revenue[4] ("the department"), excluding the corporate income tax, is governed by ss. 202.31, 212.10, and 213.758, F.S. Section 213.758(2), F.S., provides that a taxpayer who is liable for any tax, interest, penalty, surcharge, or fee[5] who quits a business without the benefit of a purchaser, successor, or assignee, or without transferring the business or stock of goods to a transferee must make a final return and pay the amount due within 15 days.

The transferee of more than 50% of a business is liable for any tax owed by the transferor unless the transferor provides the transferee a receipt or certificate from the department showing that the transferor is not liable for taxes and the department conducts an audit and finds that the transferor is not liable for taxes. The department may charge a fee to perform these audits.[6] The maximum liability for a transferee is the greater of the fair market value of the business or the purchase price paid.[7]

Transferees or taxpayers who quit a business without paying all taxes due are prohibited from engaging in any business until the tax liability is paid.[8] The department may request the Department of Legal Affairs (DLA) to seek an injunction to prevent further business activity until all taxes due have been paid and the injunction may be granted without notice.[9]

Sections 202.31 and 212.10, F.S., govern the transfer of tax liability for communications and services tax and sales and use tax, respectively. The procedures pursuant to those statutes are substantially similar to those in s. 213.758, F.S. Sections 202.31 and s. 212.10, F.S., provide for misdemeanor criminal penalties for violations of the tax transfer provisions contained in those statutes.

Section 213.758, F.S., does not impose liability on those transferees who take possession due to an involuntary transfer.[10]

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[1] *See* s. 212.10, F.S.
[2] *See* s. 10, ch. 26319, 1949.
[3] *See* ss. 23,58, ch. 2000-260, L.O.F.
[4] As listed in s. 213.05, F.S.
[5] The statute refers to taxes, interest, penalties, surcharges, or fees pursuant to ch. 443, F.S., or described in s. 72.011(1), F.S., excluding the corporate income tax.
[6] Section 213.758(4), F.S.
[7] Section 213.758(6), F.S.
[8] Sections 213.758(2), (4)(c), F.S.
[9] Sections 213.758(2), (4), F.S.
[10] Section 213.758(1)(a) defines an involuntary transfer as a transfer due to the foreclosure by a non-insider, from eminent domain or condemnation actions, those involved in a bankruptcy proceeding, or to a financial institution to satisfy a debt.

### Effect of Proposed Changes

#### Tax Liability

This bill allows a transferee to avoid liability for the unpaid tax of the transferor if the transferee receives a "certificate of compliance" from the department showing that the transferor has not received a notice of audit and that the transferor has filed all required tax returns, and has paid all tax arising from those returns. The transferor and transferee also must not have any insiders in common. Alternatively, a transferee may be exempt from liability if the department finds that the transferor is not liable for any taxes after an audit. Either the transferee or transferor may request that the department conduct an audit, and if requested, the department must complete the audit within 90 days.

This bill amend s. 213.758(4), F.S, to require 60 days notice by the department to a noncompliant transferee of the transferee's failure to pay taxes before the transferee is prohibited from engaging in business in the state.

This bill requires 20 days written notice to a person before the Department of Legal Affairs may seek an injunction enjoining further business activity by the transferee or taxpayer on the grounds of failure to pay state taxes.

This bill amends section 213.758(6), F.S., to provide that the maximum tax liability of the transferee is the fair market value or purchase price paid for the business, whichever is greater, net of any liens or liability to non-insiders.

#### Definitions

This bill defines the term "business" to require that a discrete division of a larger business be aggregated with all other divisions that are not separate legal entities. The definition of "financial institution" includes any person who controls, is controlled by, or is under common control with a financial institution.[11] The term "insider" encompasses a member, manager, or managing member of a limited liability company. The bill defines "stock of goods" as an inventory of a business held for sale to customers in the ordinary course of business. This bill defines "transfer" to include that a business is transferred when there is a transfer of more than 50 percent of the business, the assets of the business, or the stock of goods of the business.

#### Rulemaking

This bill removes the department's authority to promulgate rules relating to s. 213.758, F.S.

#### Repeal of Statutes

This bill repeals ss. 202.31 and 212.10, F.S. The repeal of these sections eliminates the criminal penalty provisions for violations of these sections.

#### Effective Date

This bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 213.758, F.S., relating to transfer of tax liabilities.

Section 2 repeals s. 202.31, F.S., and s. 212.10, F.S.

Section 3 provides an effective date of July 1, 2011.

[11] The statute currently uses "financial institution" solely as defined by s. 655.005, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimates that the bill has an indeterminate negative fiscal impact on state government revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates that the bill has an indeterminate negative fiscal impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Local governments are given a share of sales tax revenue, and may impose additional sales taxes that are collected by the state on behalf of the local governments. It is possible that this bill may implicate the mandates provision at art. VII, s. 18(b) of the State Constitution, which provides:

   > (b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

   It is possible that this bill may have the effect of reducing the authority of local governments to raise revenues if this bill has the effect of reducing the ability of the state to collect taxes from transferees who have purchased a business in those circumstances where the transferor business owner has illegally misrepresented the taxes owed and then is uncollectible.

   If this bill is found to be a mandate, it is also possible that this bill qualifies for an exception to the mandates provision in that this bill may have an "insignificant fiscal impact." See art. VII, s. 18(d) of

the State Constitution. There is no definition of what constitutes an insignificant fiscal impact. If the bill passes with a 2/3rds vote of the membership of the House of Representatives and the Senate, it will not be subject to a mandates objection.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill removes rule making authority currently found in s. 213.758, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The removal of the department's authority to create rules may not allow for the proper implementation of the certificate of compliance referenced in s. 213.758(4)(a)(1), F.S.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Finance & Tax Committee adopted two amendments:

- The first amendment fixed a typographical error.
- The second removed language which required the department to charge a fee for audits requested by the transferee or transferor.

This analysis reflects the committee substitute.

1 A bill to be entitled
2 An act relating to the transfer of tax liability; amending
3 s. 213.758, F.S.; providing definitions; revising
4 provisions relating to tax liability when a person
5 transfers or quits a business; excluding the corporate
6 income tax from provisions relating to the transfer of tax
7 liabilities when a business is transferred; providing that
8 the transfer of the assets of a business or stock of goods
9 of a business under certain circumstances constitutes a
10 transfer of the business; requiring the Department of
11 Revenue to provide certain notification to a business
12 before a circuit court may enjoin business activity by
13 that business; providing that transferees of the business
14 are liable for certain taxes unless specified conditions
15 are met; requiring the department to conduct certain
16 audits relating to the tax liability of transferors and
17 transferees of a business within a specified time period;
18 limiting a transferee who is liable for unpaid taxes from
19 engaging in business activities under certain
20 circumstances; providing an exception during the pendency
21 of a timely filed appeal; providing for the posting of
22 security during the pendency of an appeal under certain
23 circumstances; requiring certain notification by the
24 Department of Revenue to a transferee before a circuit
25 court may enjoin business activity in an action brought by
26 the Department of Legal Affairs seeking an injunction;
27 specifying a transferor and transferee of the assets of a
28 business are jointly and severally liable for certain tax

29 payments up to a specified maximum amount; specifying the
30 maximum liability of a transferee; providing methods for
31 calculating the fair market value or total purchase price
32 of specified business transfers to determine maximum tax
33 liability of transferees; repealing s. 202.31, F.S.,
34 relating to the tax liability and criminal liability of
35 dealers of communications services who make certain
36 transfers related to a communications services business;
37 repealing s. 212.10, F.S., relating to a dealer's tax
38 liability and criminal liability for sales tax when
39 certain transfers of a business occur; providing an
40 effective date.
41
42 Be It Enacted by the Legislature of the State of Florida:
43
44 Section 1. Section 213.758, Florida Statutes, is amended
45 to read:
46 213.758 Transfer of tax liabilities.—
47 (1) As used in this section, the term:
48 (a) "Business" means any activity regularly engaged in by
49 any person, or caused to be engaged in by any person, for the
50 purpose of direct or indirect, private or public gain, benefit,
51 or advantage. The term does not include occasional or isolated
52 sales or transactions involving property or services by a person
53 who does not hold himself or herself out as engaged in business.
54 A discrete division or portion of a business is not a separate
55 business and must be aggregated with all other divisions or
56 portions that constitute a business if the division or portion

57 is not a separate legal entity.
58 (b) "Financial institution" means a financial institution
59 as defined in s. 655.005 and any person who controls, is
60 controlled by, or is under common control with a financial
61 institution as defined in s. 655.005.
62 (c) "Insider" means a person as defined in s. 726.102(7),
63 and a member, manager, or managing member of a limited liability
64 company.
65 (d)~~(a)~~ "Involuntary transfer" means a transfer of a
66 business or stock of goods made without the consent of the
67 transferor, including, but not limited to, a transfer:
68 1. That occurs due to the foreclosure of a security
69 interest issued to a person who is not an insider ~~as defined in~~
70 ~~s. 726.102~~;
71 2. That results from an eminent domain or condemnation
72 action;
73 3. Pursuant to chapter 61, chapter 702, or the United
74 States Bankruptcy Code;
75 4. To a financial institution~~, as defined in s. 655.005,~~
76 if the transfer is made to satisfy the transferor's debt to the
77 financial institution; or
78 5. To a third party to the extent that the proceeds are
79 used to satisfy the transferor's indebtedness to a financial
80 institution ~~as defined in s. 655.005~~. If the third party
81 receives assets worth more than the indebtedness, the transfer
82 of the excess may not be deemed an involuntary transfer.
83 (e) "Stock of goods" means the inventory of a business
84 held for sale to customers in the ordinary course of business.



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

85 (f) "Tax" means any tax, interest, penalty, surcharge, or
86 fee administered by the department pursuant to chapter 443 or
87 any of the chapters specified in s. 213.05, excluding corporate
88 income tax.
89 (g) ~~(b)~~ "Transfer" means every mode, direct or indirect,
90 with or without consideration, of disposing of or parting with a
91 business, assets of the business, or stock of goods, and
92 includes, but is not limited to, assigning, conveying, demising,
93 gifting, granting, or selling, other than to customers in the
94 ordinary course of business, to a transferee or to a group of
95 transferees who are acting in concert. A business is transferred
96 when there is a transfer of more than 50 percent of:
97 1. The business;
98 2. The assets of the business; or
99 3. The stock of goods of the business.
100 (2) A taxpayer in business who is liable for any tax
101 arising from the operation of that business~~, interest, penalty,~~
102 ~~surcharge, or fee administered by the department pursuant to~~
103 ~~chapter 443 or described in s. 72.011(1), excluding corporate~~
104 ~~income tax,~~ and who quits the ~~a~~ business without the benefit of
105 a purchaser, successor, or assignee, or without transferring the
106 business, assets of the business, or stock of goods to a
107 transferee, must file a final return for the business and make
108 full payment of all taxes arising from the operation of that
109 business within 15 days after quitting the business. A taxpayer
110 who fails to file a final return and make payment may not engage
111 in any business in this state until the final return has been
112 filed and all taxes~~, interest, or penalties~~ due have been paid.

113 The Department of Legal Affairs may seek an injunction at the
114 request of the department to prevent further business activity
115 of a taxpayer who fails to file a final return and make payment
116 of the taxes associated with the operation of the business until
117 such taxes ~~tax, interest, or penalties~~ are paid. A temporary
118 injunction enjoining further business activity may be granted by
119 a circuit court with jurisdiction over the taxpayer if the
120 department has provided at least 20 days' prior written notice
121 to the taxpayer ~~without notice~~. The written notice may be
122 provided to the taxpayer before the filing of the lawsuit
123 seeking the injunction.
124 (3) A taxpayer who is liable for taxes with respect to a
125 business~~, interest, or penalties levied under chapter 443 or any~~
126 ~~of the chapters specified in s. 213.05, excluding corporate~~
127 ~~income tax,~~ who transfers the taxpayer's business, assets of the
128 business, or stock of goods, must file a final return and make
129 full payment within 15 days after the date of transfer.
130 (4)(a) A transferee, or a group of transferees acting in
131 concert, of more than 50 percent of a business, assets of a
132 business, or stock of goods is liable for any unpaid tax~~,~~
133 ~~interest, or penalties~~ owed by the transferor arising from the
134 operation of that business unless:
135 1.a. The transferor provides a receipt or certificate of
136 compliance from the department to the transferee showing that
137 the transferor has not received a notice of audit and the
138 transferor has filed all required tax returns and has paid all
139 tax arising ~~is not liable for taxes, interest, or penalties~~ from
140 the operation of the business identified on the returns filed;

141 and
142 b. There were no insiders in common between the transferor
143 and the transferee at the time of the transfer; or ~~and~~
144 2. The department finds that the transferor is not liable
145 for taxes, interest, or penalties after an audit of the
146 transferor's books and records. The audit may be requested by
147 the transferee or the transferor and, if not done pursuant to
148 the certified audit program under s. 213.285, must be completed
149 by the department within 90 days after the records are made
150 available to the department. The department may charge a fee for
151 the cost of the audit if it has not issued a notice of intent to
152 audit by the time the request for the audit is received.
153 (b) A transferee may withhold a portion of the
154 consideration for a business, assets of the business, or stock
155 of goods to pay the tax ~~taxes, interest, or penalties~~ owed to
156 the state by the transferor taxpayer arising from the operation
157 of the business. The transferee shall pay the withheld
158 consideration to the state within 30 days after the date of the
159 transfer. If the consideration withheld is less than the
160 transferor's liability, the transferor remains liable for the
161 deficiency.
162 (c) A transferee who is liable for unpaid tax of a
163 transferor and who fails to pay the taxes due within 60 days
164 after written notice from the department may not engage in any
165 business in the state until the taxes are paid unless an action
166 is filed pursuant to subsection (7). If an action is timely
167 filed, the transferee may continue to engage in business until a
168 final determination is entered against the transferee, although

169 the court may, during the pendency of the action, require the
170 transferee to post a bond or other security if the department
171 establishes that it is likely to prevail and the collection of
172 the unpaid tax would be jeopardized by delay acquires the
173 business or stock of goods and fails to pay the taxes, interest,
174 or penalties due may not engage in any business in the state
175 until the taxes, interest, or penalties are paid. The Department
176 of Legal Affairs may seek an injunction at the request of the
177 department to prevent further business activity of a transferee
178 who is liable for unpaid tax of a transferor and who fails to
179 pay or cause to be paid the transferee's maximum liability for
180 such tax due until such maximum liability for the tax is,
181 interest, or penalties are paid. A temporary injunction
182 enjoining further business activity may be granted by a circuit
183 court if the department has provided at least 20 days' prior
184 written notice to the taxpayer without notice. The written
185 notice may be provided to the taxpayer before the filing of the
186 lawsuit seeking the injunction.
187 (5) The transferee, or transferees acting in concert, of
188 more than 50 percent of a business, assets of the business, or
189 stock of goods who are liable for any tax pursuant to this
190 section shall be are jointly and severally liable with the
191 transferor for the payment of the tax taxes, interest, or
192 penalties owed to the state from the operation of the business
193 by the transferor up to the transferee's maximum liability for
194 such tax due.
195 (6) The maximum liability of a transferee pursuant to this
196 section is equal to the fair market value of the business,

197 assets of the business, or stock of goods ~~property~~ transferred
198 to the transferee or the total purchase price paid by the
199 transferee for the business, assets of the business, or stock of
200 goods, whichever is greater.
201 (a) The fair market value must be determined net of any
202 liens or liabilities, with the exception of liens or liabilities
203 owed to insiders.
204 (b) The total purchase price must be determined net of
205 liens and liabilities against the assets, with the exception of:
206 1. Liens or liabilities owed to insiders.
207 2. Liens or liabilities assumed by the transferee that are
208 not liens or liabilities owed to insiders.
209 (7) After notice by the department of transferee liability
210 under this section, the transferee has 60 days within which to
211 file an action as provided in chapter 72.
212 (8) This section does not impose liability on a transferee
213 of a business or stock of goods pursuant to an involuntary
214 transfer.
215 ~~(9) The department may adopt rules necessary to administer~~
216 ~~and enforce this section.~~
217 Section 2. Sections 202.31 and 212.10, Florida Statutes,
218 are repealed.
219 Section 3. This act shall take effect July 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | ____ |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Wood offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 213.758, Florida Statutes, is amended
7 to read:
8 213.758 Transfer of tax liabilities.—
9 (1) As used in this section, the term:
10 (a) "Business" means any activity regularly engaged in by
11 any person, or caused to be engaged in by any person, for the
12 purpose of private or public gain, benefit, or advantage. The
13 term does not include occasional or isolated sales or
14 transactions involving property or services by a person who does
15 not hold himself or herself out as engaged in business. A
16 discrete division or portion of a business is not a separate
17 business and must be aggregated with all other divisions or
18 portions that constitute a business if the division or portion
19 is not a separate legal entity.

20 (b) "Financial institution" means a financial institution
21 as defined in s. 655.005 and any person who controls, is
22 controlled by, or is under common control with a financial
23 institution as defined in s. 655.005.
24 (c) "Insider" means a person as defined in s. 726.102(7),
25 and a manager of, a managing member of, a person who controls a
26 limited liability company or a relative thereof as defined in s.
27 726.102(11).
28 (d) ~~(a)~~ "Involuntary transfer" means a transfer of a
29 business, assets of a business or stock of goods of a business
30 made without the consent of the transferor, including, but not
31 limited to, a transfer:
32 1. That occurs due to the foreclosure of a security
33 interest issued to a person who is not an insider ~~as defined in~~
34 ~~s. 726.102~~;
35 2. That results from an eminent domain or condemnation
36 action;
37 3. Pursuant to chapter 61, chapter 702, or the United
38 States Bankruptcy Code;
39 4. To a financial institution~~, as defined in s. 655.005,~~
40 if the transfer is made to satisfy the transferor's debt to the
41 financial institution; or
42 5. To a third party to the extent that the proceeds are
43 used to satisfy the transferor's indebtedness to a financial
44 institution ~~as defined in s. 655.005~~. If the third party
45 receives assets worth more than the indebtedness, the transfer
46 of the excess may not be deemed an involuntary transfer.

47 (e) "Stock of goods" means the inventory of a business
48 held for sale to customers in the ordinary course of business.
49 (f) "Tax" means any tax, interest, penalty, surcharge, or
50 fee administered by the department pursuant to chapter 443 or
51 any of the chapters specified in s. 213.05, excluding chapter
52 220, the corporate income tax code.
53 (g) ~~(b)~~ "Transfer" means every mode, direct or indirect,
54 with or without consideration, of disposing of or parting with a
55 business, assets of the business, or stock of goods of the
56 business, and includes, but is not limited to, assigning,
57 conveying, demising, gifting, granting, or selling, other than
58 to customers in the ordinary course of business, to a transferee
59 or to a group of transferees who are acting in concert. A
60 business is considered transferred when there is a transfer of
61 more than 50 percent of: ~~.~~
62 1. The business;
63 2. The assets of the business; or
64 3. The stock of goods of the business.
65 (2) A taxpayer engaged in a business who is liable for any
66 tax arising from the operation of that business ~~, interest,~~
67 ~~penalty, surcharge, or fee administered by the department~~
68 ~~pursuant to chapter 443 or described in s. 72.011(1), excluding~~
69 ~~corporate income tax,~~ and who quits the ~~a~~ business without the
70 benefit of a purchaser, successor, or assignee, or without
71 transferring the business, assets of the business, or stock of
72 goods of a business to a transferee, must file a final return
73 for the business and make full payment of all taxes arising from
74 the operation of that business within 15 days after quitting the

75 business. ~~A taxpayer who fails to file a final return and make~~
76 ~~payment may not engage in any business in this state until the~~
77 ~~final return has been filed and all taxes, interest, or~~
78 ~~penalties due have been paid.~~ The Department of Legal Affairs
79 may seek an injunction at the request of the department to
80 prevent further business activity of a taxpayer who fails to
81 file a final return and make payment of the taxes associated
82 with the operation of the business until such taxes ~~tax,~~
83 ~~interest, or penalties~~ are paid. A temporary injunction
84 enjoining further business activity shall ~~may~~ be granted by a
85 circuit court with jurisdiction over the taxpayer if the
86 department has provided at least 20 days prior written notice to
87 the taxpayer ~~without notice~~.
88 (3) A taxpayer who is liable for taxes with respect to a
89 business~~, interest, or penalties levied under chapter 443 or any~~
90 ~~of the chapters specified in s. 213.05, excluding corporate~~
91 ~~income tax,~~ who transfers the taxpayer's business, assets of the
92 business, or stock of goods of the business, must file a final
93 return and make full payment within 15 days after the date of
94 transfer.
95 (4)(a) A transferee, or a group of transferees acting in
96 concert, of more than 50 percent of a business, assets of a
97 business, or stock of goods of a business is liable for any
98 unpaid tax~~, interest, or penalties~~ owed by the transferor
99 arising from the operation of that business unless:
100 1.a. The transferor provides a receipt or certificate of
101 compliance from the department to the transferee showing that
102 the transferor has not received a notice of audit and the

103 transferor has filed all required tax returns and has paid all
104 tax arising ~~is not liable for taxes, interest, or penalties~~ from
105 the operation of the business identified on the returns filed;
106 and
107 b. There were no insiders in common between the transferor
108 and the transferee at the time of the transfer; or
109 2. The department finds that the transferor is not liable
110 for taxes, interest, or penalties after an audit of the
111 transferor's books and records. The audit may be requested by
112 the transferee or the transferor and, if not done pursuant to
113 the certified audit program under s. 213.285, must be completed
114 by the department within 90 days after the records are made
115 available to the department. The department may charge a fee for
116 the cost of the audit if it has not issued a notice of intent to
117 audit by the time the request for the audit is received.
118 (b) A transferee may withhold a portion of the
119 consideration for a business, assets of the business, or stock
120 of goods of the business to pay the tax ~~taxes, interest, or~~
121 ~~penalties~~ owed to the state by the transferor taxpayer arising
122 from the operation of the business. The transferee shall pay the
123 withheld consideration to the state within 30 days after the
124 date of the transfer. If the consideration withheld is less than
125 the transferor's liability, the transferor remains liable for
126 the deficiency.
127 (c) ~~A transferee who acquires the business or stock of~~
128 ~~goods and fails to pay the taxes, interest, or penalties due may~~
129 ~~not engage in any business in the state until the taxes,~~
130 ~~interest, or penalties are paid.~~ The Department of Legal Affairs

131 may seek an injunction at the request of the department to
132 prevent further business activity of a transferee who is liable
133 for unpaid tax of a transferor and who fails to pay or cause to
134 be paid the transferee's maximum liability for such tax due
135 until such maximum liability for the tax is, interest, or
136 penalties are paid. A temporary injunction enjoining further
137 business activity shall may be granted by a circuit court with
138 jurisdiction over the transferee if: without notice.
139 1. The assessment against the transferee is final and
140 either:
141 a. The time for filing a contest under s.72.011 has
142 expired, or
143 b. Any contest filed pursuant to s. 72.011 resulted in a
144 final and non-appealable judgment sustaining any part of the
145 assessment, and
146 2. The department has provided at least 20 days' prior
147 written notice to the transferee of its intention to seek an
148 injunction.
149 (5) The transferee, or transferees acting in concert, of
150 more than 50 percent of a business, assets of the business, or
151 stock of goods of a business who are liable for any tax pursuant
152 to this section shall be are jointly and severally liable with
153 the transferor for the payment of the tax taxes, interest, or
154 penalties owed to the state from the operation of the business
155 by the transferor up to the transferee's or transferees' maximum
156 liability for such tax due.
157 (6) The maximum liability of a transferee pursuant to this
158 section is equal to the fair market value of the business,

159 assets of the business or stock of goods of the business
160 ~~property~~ transferred to the transferee or the total purchase
161 price paid by the transferee for the business, assets of the
162 business, or stock of goods of the business, whichever is
163 greater.
164 (a) The fair market value must be determined net of any
165 liens or liabilities, with the exception of liens or liabilities
166 owed to insiders.
167 (b) The total purchase price must be determined net of
168 liens and liabilities against the assets, with the exception of:
169 1. Liens or liabilities owed to insiders.
170 2. Liens or liabilities assumed by the transferee that are
171 not liens or liabilities owed to insiders.
172 (7) After notice by the department of transferee liability
173 under this section, the transferee has 60 days within which to
174 file an action as provided in chapter 72.
175 (8) This section does not impose liability on a transferee
176 of a business, assets of a business or stock of goods of a
177 business pursuant to an involuntary transfer.
178 (9) The department may adopt rules necessary to administer
179 and enforce this section.
180 Section 2. Subsection (17) of section 213.053, Florida
181 Statutes, is amended to read:
182 213.053 Confidentiality and information sharing.—
183 (17) The department may provide to the person against whom
184 transferee liability is being asserted pursuant to s.213.758 ~~s.~~
185 ~~212.10(1)~~ information relating to the basis of the claim.
186 Section 3. Section 202.31, Florida Statutes, is repealed.

187 Section 4. Section 212.10, Florida Statutes, is repealed.
188 Section 5. This act shall take effect July 1, 2011.
189
190
191 -----------------------------------------------------
192 **T I T L E A M E N D M E N T**
193 Remove the entire title and insert:
194 An act relating to the transfer of tax liability; amending s.
195 213.758, F.S.; amending s. 213.053, F.S.; repealing s. 202.31,
196 F.S., relating to sale of business; liability for tax;
197 procedures; penalty for violations; repealing s. 212.10, F.S.,
198 relating to sale of business; liability for tax, procedure,
199 penalty for violation; providing an effective date.

PCS/HB 1195

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 1195 Community Associations
**SPONSOR(S):** Civil Justice Subcommittee
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 530

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Civil Justice Subcommittee | | Woodburn | Bond |

## SUMMARY ANALYSIS


The term "community association" refers to condominium, homeowners', and cooperative associations. Regarding community associations the bill:

- Provides that a condominium, cooperative, or multifamily residential building that is less than four stories is exempt from installing manual fire alarm system if the building has exterior corridor providing a means of egress;
- Provides for the suspension of use rights and election rights of unit or parcel owners who are more than 90 days delinquent in the payment of a monetary obligation and for failure to comply with the association's governing documents;
- Allows an association to demand payment from a unit or parcel owner's tenant for all unpaid monetary obligations of a unit owner owned to the association; and
- Provides for the suspension of use rights and election rights of unit or parcel owners who are more than 90 days delinquent in the payment of a monetary obligation.

Regarding condominium associations, the bill:

- Allows condominium unit owners to consent to the disclosure of protected information, e.g. name and telephone numbers for a membership directory;
- Allows unit owners access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee;
- Permits condominium associations to hold closed meetings to discuss personnel matters;
- Provides that an association may also include impact glass and other code compliant windows for hurricane protection;
- Requires a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities;
- Provides for termination of a shared condominium and timeshare property where the improvements have been completely destroyed; and
- Provides for the partial termination of a condominium property.

Regarding homeowners' associations the bill:

- Amends the definition of declaration of covenants to include multiple written instruments
- Provides that a person who is 90 days delinquent on financial obligations to the association who has been convicted of a felony is not eligible to run for election to the board;
- Authorizes and provides procedures for homeowners associations to contract for communications, information, or Internet services on a bulk rate basis

The bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Condominiums**

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

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

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.[5] Condominiums are administered by a board of directors referred to as a "board of administration."[6]

**Condominium – Official Records**

The official records of the condominium are governed by s. 718.112, F.S. What constitutes the official records is provided in s. 718.112(12)(a), F.S. The official records of a condominium association must be maintained within the state for at least seven years.[7] The records must be made available to the unit owner within 45 miles of the condominium property or within the county in which the condominium property is located. The records must be made available within five working days after a written request is received by the governing board of the association or its designee. The records may be made available by having a copy of the official records of the association available for inspection or copying on the condominium property or association property. Alternatively, the association may offer the option of making the records of the association 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 must maintain accounting records and separate accounting records for each condominium that the association operates.[8] Section 718.111(12)(c), F.S., provides that all accounting records must be maintained for a period of not less than seven years. It prohibits any person from knowingly or intentionally defacing or destroying accounting records required to be maintained by ch. 718, F.S. It also prohibits a person from knowingly or intentionally defacing or destroying accounting or official records required to be created or maintained for a required period as provided in ch. 718, F.S., or knowingly or intentionally failing to create or maintain accounting records as required with the intent of causing harm to the association or one or more of its members. Persons who violate this provision are subject to a civil penalty as provided in s. 718.501(1)(d)6., F.S. The prohibition s. 718.111(12)(c), F.S., is substantially similar to the prohibition in s. 718.111(12)(a)11., F.S.

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[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So.2d 494, 496-97 (Fla. 4th DCA 2003).
[4] Section 718.104(5), F.S.
[5] Section 718.110(1)(a), F.S.
[6] Section 718.103(4), F.S.
[7] Section 718.111(12)(b), F.S.
[8] Section 718.111(12)(a)11., F.S.

Section 718.111(12)(c), F.S., prohibits unit owner access to certain official records or information in the possession of the association, including:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, including but not limited to disciplinary, health, insurance, and personnel records of the association's employees;
- Social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements, and any person identifying information of a unit owner;
- Electronic security measures used to safeguard data, including passwords; and
- Software and operating systems used by the association to allow manipulation of data.

Section 718.111(12)(c), F.S., allows access to the following personal identifying information of a unit: the person's name, lot or unit designation, mailing address, and property address.

***Effect of the Bill: Condominium- Fire Safety (Section 1)***

The amendment of s. 633.0215, F.S., provided in this bill was signed into law in ch. 2010-174, L.O.F., but a conflicting amendment was enacted in ch. 2010-176, L.O.F., which is what is provided in current law.[9]

The bill amends s. 633.0215, F.S., to include cooperative and multifamily buildings in the exemption from installing manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code. The bill also provides that this amendment is to clarify existing law.

***Effect of the Bill: Condominiums – Official Records (Section 2)***

The bill amends s. 718.111(12)(a)7., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association. The bill provides that the email and facsimile addresses of unit owners may not be accessible to other unit owners if the unit owner has consented to receive notice via electronic transmission in accordance with subparagraph (12)(c)5. of s. 718.111, F.S.

The bill amends s. 718.111(12)(a)11., F.S, to provide that the prohibited defacement or destruction of records relates to the accounting records that are required to be maintained for 7 years. It deletes redundant language relating to the records that are required to be created or maintained by ch. 718, F.S., during the period such records are required to be maintained.

The bill deletes the prohibition in s. 718.111(12)(c), F.S., relating to the defacement or destruction of accounting or official records, including the provision for a civil penalty as provided in s. 718.501(1)(d)6., F.S. The deleted provision is substantially similar to an existing prohibition in s. 718.111(12)(a)11., F.S., which is not deleted by this bill.

The bill amends s. 718.111(12)(c)1., F.S., which relates to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

[9] See note in s. 633.0215(14), F.S. "As enacted by s. 47, ch. 2010-176. For a description of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes, 'Statutory Construction.' Substantially similar material was created as subsection (13) by s. 6, ch. 2010-174, and redesignated as subsection (14) by the editors, and that version reads: (14) A condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system under s. 9.6 of the Life Safety Code adopted in the Florida Fire Prevention Code."

The bill amends s. 718.111(12)(c)3., F.S., which relates to personnel records that are not accessible to unit owners, to include records regarding management company employees. It allows unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 718.111(12)(c)5., F.S., which relates to information about unit owners that is not accessible to other unit owners, to include facsimile numbers in the list of information that is not accessible to unit owners. It also provides that any address, e-mail address, or facsimile number provided to the association to fulfill its notice requirements is not accessible.

Section 718.111(12)(c)5., F.S., is amended to prohibit access to information about unit owners that is provided to fulfill the association's notice requirements, including any address, e-mail address, or facsimile number.

The bill also amends s. 718.111(12)(c)5., F.S., to allow unit owners to consent to the disclosure of protected information. It provides that the association is not liable for the disclosure of protected information if it is included in other official records of the association, is voluntarily provided by an owner, and is not requested by the association.

This provision is consistent with the provision in s. 718.111(12)(a)7., F.S., which provides that the association is not liable for the erroneous disclosure of e-mail addresses and facsimile numbers.

**Post-Election Certification of Condominium Board Members**

The requirements for the association's bylaws are provided in s. 718.112, F.S. Section 718.112(2)(d)3.b., F.S., provides a post-election certification requirement for newly elected board members. Within 90 days of being elected or appointed, a new board member must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider.

A board member is automatically suspended from service on the board if he or she fails to timely file the written certification or educational certificate. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment. The validity of any appropriate action is not affected by the association's failure to have the certification on file.

***<u>Effect of the Bill: Condominiums – Bylaws (Section 3)</u>***

The bill creates s. 718.112(2)(c)3.b., F.S., to allow a condominium association to hold closed meetings to discuss personnel matters.

The bill amends s. 718.112(2)(d)2., F.S., to define the term "candidate" as an eligible person who timely submits the written notice, as described in s. 718.112(2)(d)2., F.S., of his or her intent to become a candidate. It also provides an additional exception to the requirement that that the terms of all board members expire at the annual meeting. The terms of members with staggered terms will not expire at the annual meeting. Regarding members whose terms would otherwise expire at the annual meeting, those terms will not expire if there are no candidates.

The bill also amends s. 718.112(2)(d)2., F.S., to:

- Provide that, if the number of board members whose terms have expired exceeds the number of candidates, the candidates become board members upon the adjournment of the annual meeting;
- Provide that, unless the bylaws provide otherwise, any remaining vacancies are filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director;
- Deletes the current provision that board members whose terms have expired need not stand for reelection and would be eligible for reappointment if the number of board members whose terms have expired exceeds the number of candidates; and
- Requires that candidates comply with the notice of intent to be a candidate requirement in s. 718.112(2)(d)4.a., F.S., be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run, and continuously thereafter.

The bill amends s. 718.112(2)(d)4.b., F.S., to revise the post-election certification requirements for newly elected or appointed board members. The bill provides that the newly elected or appointed board member may, in lieu of the written certification, submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium provider within 1 year before the election or 90 days after the election. It also provides that a certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

In regards to timeshare condominium associations, the bill also amends s. 718.112(2)(d)4.b., F.S., to provide that ch. 718, F.S., 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 the association.

**Condominium - Hurricane Protection**

Section 718.113(5)(a), F.S., provides that the board may install hurricane shelters or hurricane protection that complies with or exceeds the applicable building code. The associate is responsible for the maintenance, repair, and replacement of the hurricane shelters or other hurricane protection if the hurricane protection if so provided in the declaration. Otherwise, the maintenance is the responsibility of the owner.

***<u>Effect of the Bill: Hurricane Protection (Section 4)</u>***

The bill amends s. 718.133, F.S., to provide that impact glass and other code-compliant windows are included in the hurricane protection options of the association.

**Condominium – Assessments and Foreclosures**

Current law defines an "assessment" as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."[10] "Special assessment" is defined to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[11] A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.[12]

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[10] Section 718.103(1), F.S.
[11] Section 718.103(24), F.S.
[12] Section 718.116(1)(a), F.S.

**Condominiums – Payments by Tenants**

Section 718.116(11), F.S., authorizes the association to demand payment of any future monetary obligation from the tenant of a unit owner if the unit owner is delinquent in payment. The association must mail written notice of such action to the unit owner. The tenant is obligated to make such payments. These provisions are comparable to the provisions in ss. 719.108(10) and 720.3085(8), F.S., for tenants in cooperative associations and homeowners' associations, respectively.

The tenant is not required to pay any unpaid past monetary obligations of the unit owner. The tenant is required to pay monetary obligations to the association until the tenant is released by the association or by the terms of the lease, and is liable for increases in the monetary obligations only if given a notice of the increase not less than 10 days before the date the rent is due.

If the tenant has prepaid rent to the unit owner before the receipt of the association's demand for payment, and the tenant provides written evidence of the prepaid rent to the association within 14 days of receipt of the written demand, then the tenant must make all accruing rent payments thereafter to the association. The tenant will receive credit for the prepaid rent for the applicable period, and those payments will be credited against the monetary obligations of the unit owner to the association. A tenant who responds in good faith to a written demand from an association is immune from any claim from the unit owner. It is unclear to what extent "claims" are precluded by the immunity afforded in this provision. For example, if the tenant pays the obligation and subtracts that amount from the rent owed to the unit owner, the unit owner may be precluded from recovering in a "breach of lease" claim.

The landlord and unit owner must provide the tenant a credit against rent payments to the unit owner in the amount of monetary obligations paid to the association. The tenant's liability to the association may not exceed the amount due from the tenant to his or her landlord. If a tenant fails to pay, the association may act as a landlord to evict the tenant under the procedures in ch. 83, F.S. However, the association is not otherwise considered a landlord under ch. 83, F.S., and does not have the duty to maintain the premises as required by s. 83.56, F.S. The tenant's payments do not give the tenant voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 718.116(11), F.S., may be superseded.

Comparable provisions are provided in s. 719.108(10), F.S., relating to tenants in cooperative associations, and s. 720.3085(8), F.S.

***Effect of the Bill: Condominiums – Assessments (Section 6)***

The bill amends s. 718.116(11), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner relate to the rent once the association has demanded payment. The bill requires that the tenant's payment must be applied to the unit owner's oldest delinquent monetary obligation.

Comparable provisions for collecting the unit owner's unpaid monetary obligations from their tenant are provided in the bill for cooperatives in s. 719.108(10), F.S., and for homeowners' associations in s. 720.3085(8), F.S.

**Termination of a Condominium**

Section 718.117, F.S., provides for the termination of a condominium when the continued operation of the condominium would constitute economic waste or would be impossible to operate or reconstruct a condominium. To terminate the condominium, the required vote is the lesser of the lowest percentage

of voting interests needed to amend the declaration or as otherwise provided in the declaration for termination of the condominium.[13] The criteria for economic waste or impossibility are:

- The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or
- It becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.

If 75 percent or more of the condominium units are timeshare units, the condominium may be terminated by a plan of termination that is approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.[14]

Section 718.117(3), F.S., provides an optional termination procedure with a lower vote threshold. Regardless of whether continued operation would constitute economic waste or would be impossible, the condominium may be terminated if approved by at least 80 percent of the total voting interests of the condominium, provided that not more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections thereto.

Section 718.117(4), F.S., provides that a plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.

Section 718.117(9), F.S., provides that the plan for termination must be a written document executed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.[15] In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.[16]

Section 718.117(12), F.S, provides for the distribution of the proceeds of sale. Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee. The value of the common elements is to be paid to the owners according to their proportionate share in the common elements, as in current law.

Section 718.117(14), F.S., provides that the unit owners' rights and title as tenants in common in undivided interests in the condominium property vest in the termination trustee when the plan is recorded on in a later date specified in the plan. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee may contract for the sale of real property, but the contract is not binding on the unit owners until the plan is approved.

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[13] Section 718.117(2)(a), F.S.
[14] Section 718.117(2)(b), F.S.
[15] Section 718.117(11)(a), F.S.
[16] Section 718.117(11)(b), F.S.

Section 718.117(17), F.S., provides that the condominium property, association property, common surplus, and other assets of the association must be held by the termination trustee. The trustee would hold the property as trustee for the unit owner and lienholders in their order or priority.

Section 718.117(19), provides that the trustee is not barred from filing a declaration of condominium, or an amended and restated declaration of condominium, for any portion or the property.

***Effect of the Bill: Condominium - Termination of Condominium (Section 7)***

The bill creates s. 718.117(2)(c), F.S., to provide that a condominium that includes units and timeshare estates where the improvements have been totally destroyed or demolished may be terminated pursuant to a plan of termination proposed by a unit owner upon the filing of a petition in court seeking equitable relief. The bill requires that within ten days after filing the petition the petitioner must record the proposed plan of termination and mail a copy of the plan to:

- Each member of the board of directors and the registered agent of the association;[17]
- The managing entity;[18] as defined in s. 721.05, F.S.;
- Each unit owner and each timeshare estate owner; and
- Each holder of a recorded mortgage lien affecting a unit or timeshare estate.

Any of the above parties may intervene in the proceedings to contest the proposed plan of termination. If no party intervenes within 45 days of the filing of the petition, the petitioner may move the court to enter a final judgment to authorize the plan of termination be implemented. If a party timely intervenes to contest the proposed plan, the plan will not be implemented until a final judgment of the court has been entered finding that the plan is fair and reasonable.

The bill amends s. 718.117(3), F.S., to provide that a condominium may be terminated for all or a portion of the condominium property. Current law does not reference the termination of a portion of the condominium property.

The bill amends s. 718.117(4), F.S., to provide that a plan for partial termination is not an amendment subject to s. 718.110(4), which requires that all unit owners must approve any amendment that changes the configuration or size of any unit in any material fashion, materially alters or modifies the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses. The bill would permit the partial termination of a condominium with a less than unanimous approval of the owners.

The bill also amends s. 718.117(4), F.S., to provide that a partial termination is permissible if the percentage of ownership share in the common elements remains proportional to the percentage of common element ownership before the partial termination.

The bill amends s. 718.117(11), F.S., to provide that the plan for partial termination must:

- Identify the units that survive the partial termination; and
- Provide that the units that survive the termination remain in the condominium form of ownership.

The bill provides that, in a partial termination, title to the surviving units and common elements remain vested in the ownership shown in the public records and do not vest in the termination trustee.

The bill amends s. 718.117(12)(a), F.S., which relates to the allocation of proceeds from the sale of condominium property after a termination, to provide that, in a partial termination, the aggregate values

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[17] If the association has not been dissolved as a matter of law.

[18] As defined in s. 721.05(22), F.S., "Managing entity" means the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S.

of the units and common elements that are being terminated must be separately determined. It also requires that the plan of termination must specify the allocation of the proceeds of sale for the units and common elements.

The bill amends s. 718.117(12)(d), F.S., to provide that liens on terminated units transfer to the sale of the portion being terminated attributable to each unit.

Regarding the association, the bill amends s. 718.117(18), F.S., to provide that the association may continue as the condominium association for the property that remains after the partial termination.

The bill amends s. 718.117(19), F.S., to provide that a partial termination does not bar the termination trustee from filing a declaration of condominium for any portion of the property that it terminated under the plan for partial termination. The termination plan may also provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium for any remaining portion of the condominium property.

**Condominium – Sanctioning Unit Owners**

Section 718.303(3), F.S., provides for the assessment of fines and provides penalties for failure to pay a monetary obligation to the association.. It authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be, for a reasonable period of time, for the right of a unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The declaration of condominium or the bylaws of the association must authorize the suspension. A fine may not exceed $100 per violation, but may be levied on each day of a violation. A fine does not become a lien on the property. A fine against a unit owner may not in the aggregate exceed $1,000. Before a suspension or fine is imposed, notice and an opportunity for a hearing must be provided.

Suspensions may not be imposed by an association unless it first gives at least 14-days notice and an opportunity for a hearing to the unit owner or occupant, if applicable. Associations may provide in their bylaws or declaration of condominium that a unit owner's voting rights may be suspended due to nonpayment of assessments, fines, or other charges payable to the association which are delinquent in excess of 90 days. The suspension shall end when the payment due or overdue to the association is paid in full.

***Effect of the Bill: Condominiums – Obligations of Owners and Occupants (Section 8)***

The bill amends subsection (3) of s. 718.303, F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill adds the deleted provision from subsection (3) of s. 718.303, F.S., to a new subsection (4).

The bill creates s. 718.303(3)(a), F.S., to authorize associations to suspend, for a reasonable period of time, the use rights of a unit owner, or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

The bill also amends subsections (3) and (4) of s. 718.303, F.S., to provide that a 14-day notice and a hearing are not required when the association suspends use rights when an owner is more than 90 days delinquent in the payment of any monetary obligation. A hearing is still required before a fine may be imposed and a board meeting is required before suspension of use rights.

The bill amends subsection (5) of s. 718.303, F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the suspension of a member's

voting rights may not count for or against a proposed question. It also provides that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.[19]

The bill creates subsection (6) of s. 718.303, F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The bill deletes the notice and hearing provisions in the current subsection (4) of s. 718.303, F.S, which relate to fines and suspension of use rights. The deleted provisions are redundant of the notice and hearing provisions in subsections (3), (4), (5), and (6) of s. 718.303, F.S.

The suspension provisions in s. 718.303, F.S., are substantially similar to the suspension provisions in the bill for cooperatives in s. 719.303, F.S., and for homeowners' associations in s. 720.305, F.S.

**Distressed Condominium Relief Act**

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

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

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

- Conduct sales, leasing, and marketing activities within the condominium;
- Be exempt from making working capital contributions that arise out of or in connection with the bulk buyer's acquisition of a bulk number of units; and
- Be exempt from any rights of first refusal which may be held by the association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to any third-party purchaser concerning one or more units.

Section 718.704, F.S., provides for the assignment and assumption of developer rights. It provides that a bulk assignee assumes all the duties and responsibilities of the developer. The bulk assignee is not liable for:

- The warranties of a developer under s. 718.203(1) or 718.618, F.S.; however, the bulk assignee would assume the warranties for design, construction, development, or repair work performed by or on behalf of the bulk assignee;
- The obligation to fund converter reserves for a unit not acquired by the bulk assignee;
- The obligation to provide converter warranties on any portion of the condominium property except as provided in a contract for sale between the assignee and a new purchaser;
- Providing the condominium association with a cumulative audit of the association's finances from the date of formation, except for the period that the bulk assignee elects a majority of the board; and
- The developer's failure to fund previous assessments or resolve budget deficits, but the bulk assignee must provide an audit for the period in which the assignee elects a majority of the board members, except when the bulk assignee receives the assignment of rights of the developer to guarantee assessment levels and fund budget deficits.

[19] Section 718.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association my levy a fine. The fine cannot be levied if the committee does not agree with the fine.

Section 718.705, F.S., provides for the transfer of control of the condominium board of administration to the unit owners other than the developer, if a bulk owner is entitled to elect a majority of the board members. The condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a buyer, or to be owned by anyone other than the developer, until the parcel is conveyed to a buyer who is not the bulk assignee.

Section 718.706, F.S., provides for the sale or lease of units by a bulk assignee or a bulk buyer. It provides that, prior to the sale or lease of units for a term of more than five years, a bulk assignee or a bulk buyer must file the specified documents with the division and provide the documents to a prospective purchaser or tenant.

Section 718.707, F.S., provides a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2012. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

***Effect of the Bill: Distressed Condominium Relief Act - Definitions (Section 9)***

The bill amends s. 718.703, F.S., to redefine the terms "bulk assignee" and "bulk buyer." The bill further distinguishes the differences between the two classifications.

The bill amends the definition of "bulk assignee" in s. 718.703(1), F.S., to provide that a bulk assignee is one who acquires seven condominium units in a single condominium. Current law does not specify whether the seven condominium units are in a single condominium. It further revises the definition for a bulk buyer to include a final judgment or certificate of title issued at a foreclosure sale within the list of means by which a bulk buyer receives the assignment of any of the developer rights.

The bill also amends s. 718.703, F.S., to clarify the status of a mortgagee or its assignee as a bulk assignee or developer. A mortgagee or its assignee does not become a developer if it acquires condominium units and receives an assignment of some or all of a developer rights. However, the mortgagee or its assignee would be deemed a developer if they exercise any of the developer rights other than those described in subsection (2) of s. 718.703, F.S., bulk buyers.

***Effect of the Bill: Distressed Condominium Relief Act – Developer Rights (Section 10)***

The bill amends s. 718.704, F.S., to revise the provisions relating to the assignment of developer rights by a "bulk assignee" and "bulk buyer." It provides that the bulk assignee assumes the obligations of a developer when it acquires title to the units. This specifies that the assumption of developer obligations is prospective.

The bill amends subsections (1) and (2) of s. 718.704, F.S., to provide that the bulk assignee is liable for the developer's warrantees expressly provided in the prospectus, offering circular, or contract for purchase and sale.

The bill amends s. 718.704(5), F.S., to provide that the assignment of developer rights may be made by a mortgagee or assignee who has acquired title to the units and received an assignment of rights. It also clarifies that the previous bulk assignee may assign developer rights if the developer rights were held by the predecessor in title to the bulk assignee.

The bill also requires that the instrument that assigns the developer the assignment of rights must be recorded in the public records. It further provides that any subsequent purported bulk assignee may still qualify as a bulk buyer.

***Effect of the Bill: Distressed Condominium Relief Act – Transfer of Control (Section 11)***

The bill amends s. 718.705, F.S., to provide that a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

The bill also provides that the bulk assignee is not required to deliver items and documents that he or she does not possess if some of the items were or should have been in existence before the bulk assignee acquired the units.

***Effect of the Bill Distressed Condominium Relief Act – Disclosures (Section 12)***

The bill amends s. 718.706, F.S., to revise the provisions relating to bulk assignee and bulk buyers offering units for sale or lease. The bill amends ss. 718.706(1) and (2), F.S., to provide that the documents must be filed, provided or disclosed before offering more than seven units in a single condominium for sale or lease for a term exceeding five years.

The bill also amends s. 718.706(1), F.S., to revise the required disclosure that bulk assignees and bulk buyers must include in purchase contracts. In current law, the disclosure gives notice that the financial information report required under s. 718.111(13), F.S., is not available. The bill revises the disclosure to provide that it relates to all or a portion of the report. It also revises the disclosure to provide that the financial information report relates to the period before the seller's acquisition of the unit instead of the time period immediately proceeding the fiscal year of the association.

The bill provides that the disclosure requirements in s. 718.706(2), F.S., apply to tenants under a lease for a term exceeding 5 years.

The bill amends s. 718.706(5), F.S., to exempt bulk assignees and bulk buyers from the filing and disclosure requirements in subsections (1) and (2) of s. 718.706, F.S., if all of the units they own are offered and conveyed to a single purchaser in a single sale. The bill deletes the current provisions in this subsection that require the bulk buyer to comply with the requirements in the declaration for the transfer of a unit. It also deletes the provision that the bulk buyer is not entitled to any exemptions afforded a developer or successor developer under ch. 718, F.S., regarding the transfer of a unit.

***Effect of the Bill Distressed Condominium Relief Act – Time Limits for Classification (Section 13)***

The bill amends s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012. This provision appears to create a two-year window for classification as a bulk assignee or bulk buyer.

**Cooperative Associations**

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

> That 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 unit's occupants receive an exclusive right to occupy the unit. 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.[20] In practice, there is little difference between a condominium and a cooperative.

***Effect of the Bill: Cooperatives – Rents and Assessments (Section 14)***

Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill amends s. 719.108(10), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment in order to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner that relate to the rent once the association has demanded payment. The bill requires that the tenant's payment must be applied to the unit owner's oldest delinquent monetary obligation.

Comparable provisions for collecting a unit owner' unpaid monetary obligations from their tenant are provided in the bill for condominium associations in s. 718.116(11), F.S., and for homeowners' association in s. 720.3085(8), F.S.

**Cooperatives - Sanctioning Unit Owners**

Section 719.303(3), F.S., allows cooperative associations to levy reasonable fines against unit owners for failure to comply with the cooperative documents or rules of the association. Fines may not exceed $100 per violation and may not become a lien against the unit. The fine may be levied on the basis of each day of a continuing violation. A fine may not exceed $1,000 in the aggregate.

***Effect of the Bill: Cooperatives – Obligations of Owners (Section 15)***

The bill amends s. 719.303(3), F.S., which sets forth the provisions for fines by cooperative associations, to delete the exemption for unoccupied units.

The bill creates s. 719.303(3)(a), F.S., to authorize an association to suspend, for a reasonable period of time, the use rights of a unit owner, or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

The bill creates s. 719.303(4), F.S., to authorize a cooperative association to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be until the monetary obligation is paid. The suspension may be directed to the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. For the suspension of use rights, the notice and hearing requirements in s. 719.303(3), F.S., do not apply.[21]

The bill creates s. 719.303(5), F.S., to authorize a cooperative association to suspend the voting rights of members who are delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension ends when all due or unpaid monetary obligations are paid. For the suspension of voting rights, the notice and hearing requirements in s. 719.303(3), F.S., also do not apply.

The bill creates s. 719.303(6), F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once

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[20] *See* ss. 719.106(1)(g) and 719.107, F.S.

[21] Section 719.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 719.303, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for homeowners' associations in s. 720.305, F.S.

**Homeowners' Associations – Background**

Florida law provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.[22]

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

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

***Effect of the Bill- Declaration of Covenants (Section 16)***

The bill amends s. 720.301(4), F.S., to modify the definition of declaration of covenants to provide that a declaration of covenants or declaration may be comprised or more than one written instrument.

**Homeowners' Associations – Inspection and Copying of Records**

Section 720.303(5), F.S., provides for the inspection and copying of homeowners' association records. Generally, the official records of the association must be open to the association's membership for inspection and available for photocopying within 10 days of a written request for access. Section 720.303(5)(a), F.S., creates a rebuttable presumption that the association has willfully failed to comply with a member's written request to inspect its records if the association does not provide the member access to the records within ten days of the request. The member's request must be submitted by certified mail, return receipt requested.

Section 720.303(5)(c), F.S., authorizes the association to charge the member for the actual cost of copying records, to provide that the actual cost of copying records includes reasonable costs involving personnel fees and charges at an hourly rate for employee time to cover the administrative costs to the association. The copies may be made by the management company.

Section 720.303(5)(c)1., F.S., lists the official documents of the homeowners' association that are not accessible to members. These include:

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[22] *See* s. 720.302(1), F.S.
[23] Section 720.301(9), F.S.
[24] Section 720.302(5), F.S.
[25] *See* ss. 720.303 and 720.307, F.S.
[26] *See* ss. 720.301 and 720.303, F.S.
[27] Section 720.303(1), F.S.

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a parcel;
- Personnel records, payroll records of the association's employees, but not limited to disciplinary, payroll, health, and insurance records;
- Medical records of parcel owners or community residents;
- Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone 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;
- Any electronic security measure that is used by the association to safeguard data, including passwords; and
- The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Regarding records that are protected by the attorney-client privilege and that were prepared exclusively for civil or criminal litigation, s. 720.303(5)(c)1., F.S., provides that the protection lasts until the conclusion of the litigation or administrative proceedings.

This information is consistent with s. 718.111(12)(c), F.S., which exempts the same information from the open records requirements for condominium associations.

***Effect of the Bill: Homeowners' Associations - Official Records (Section 17)***

The bill revises the provisions related to access to the official records of a homeowners' association. It amends s. 720.303(5)(c)1., F.S., which relates to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 720.303(5)(c)3., F.S., which relates to personnel records that are not accessible to unit owners, to allow unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 720.303(5)(c)5., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association.

The bill also amends s. 720.303(5)(c)5., F.S., to allow unit owners to consent to the disclosure of protected information. It provides that the association is not liable for the disclosure of protected information if it is included in other official records of the association, is voluntarily provided by an owner, and is not requested by the association.

**Homeowners' Associations – Sanctioning Parcel Owners**

Section 720.305(2), F.S., authorizes a homeowners' association to suspend a unit owner's use rights until the unit owner's monetary obligation to the association is paid if the unit owner is delinquent for more than 90 days. The suspension of the parcel owner's right to use association property does not apply to common areas that provide access or utility services to the parcel. Any fine or suspension must be imposed at a properly noticed board meeting. The owner, and, if applicable, the owner's occupant, licensee, or invitee must be notified of the fine or suspension by mail or hand delivery.

An association may levy a fine of up to $100 per violation. The fine may be levied for each day of the violation and may not exceed $1,000 in the aggregate. A fine of less than $1,000 may not become a lien against a parcel. If the association imposes a fine or suspension, the association must provide written notice by mail or hand delivery to the parcel owner or, in some instances, any tenant, licensee, or invitee of the parcel owner.

***Effect of the Bill: Homeowners' Associations – Obligations of Members (Section 18)***

The bill revises the suspension or use and voting rights provisions in s. 720.305, F.S.

The bill creates s. 720.305(2), F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill moves the deleted provision to s. 718.305(3), F.S. Regarding the suspension of use rights when a member is more than 90 days delinquent in the payment of a monetary obligation, the s. 720.305(3), F.S., provides that the notice and hearing requirements of subsection (2) of s. 720.305, F.S., do not apply.[28]

The bill creates s. 720.305(2)(a), F.S., to authorize a homeowners' association to suspend, for a reasonable period of time, the rights 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.

The bill amends s. 720.305(2)(a), F.S., to delete the provision that the suspension of use rights do not apply to the portion of the common areas that must be used to access the parcel or its utility service. The bill moves this provision to the new subsection (3) of s. 720.305, F.S.

The bill amends s. 718.305(4), F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.

The bill creates s. 718.303(5), F.S., to provide that all suspensions of use rights under subsection (3) and voting rights under subsection (4) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 720.305, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for cooperative associations in s. 719.303, F.S.

***Effect of the Bill: Homeowners' Associations – Elections and Board Vacancies (Section 19)***

The bill amends s. 720.306(9), F.S., to provide that a person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association is not eligible for board membership. The bill also provides that a person who has been convicted of a felony is not eligible for board membership unless that person's civil rights have been restored for a least five years as of the date on which the person seeks election to the board. The bill provides that the validity of any action by the board is not affected if it is later determined that a member of the board is ineligible for board membership.

***Effect of the Bill: Homeowners' Associations – Assessments and Liens (Section 20)***

Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill amends s. 720.3085(8), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner relate to the rent once the association has demanded payment. The bill requires that the tenant's payment must be applied to the unit owner's oldest delinquent monetary obligation.

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[28] Section 719.303(2), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association my levy a fine. The fine cannot be levied if the committee does not agree with the fine.

The bill amends s. 720.3085(8)(b), F.S., to provide that the liability of the tenant may not exceed the amount due from the tenant's landlord. An identical provision is included under current law in s. 718.116(11)(b), F.S., relating to condominium associations, and in s. 719.108.(10)(b), F.S., relating to cooperative associations.

Comparable provisions for the collecting a homeowner's unpaid monetary obligations from their tenant are provided in the bill for condominium associations in s. 718.116(11), F.S., and for cooperatives in s. 719.108(10), F.S.

***Effect of the Bill: Homeowners' Associations – Bulk Service Contracts (Section 21)***

The bill amends s. 720.309, F.S. to authorize homeowners associations to contract for communications services, as defined in s. 202.11, F.S., information services, or Internet services on a bulk rate basis. The association's governing documents must authorize such contracts before the authority can be exercised. However, if the governing documents do not authorize such contract, the board may enter into the contract, and the cost of the service will be an operating expense to be allocated on a per-unit basis rather than a percentage basis. The costs will be assessed on a per-unit basis even if the covenants provide for other than an equal sharing of operating expenses.

The bill also provides that any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all homeowners, may be changed to allocate the cost equally among all parcels. The vote to change the allocation must be by the vote of a majority of the voting interests present at a regular or special meeting of the association.

The bill creates s. 720.309(2)(a), F.S., to allow the homeowners to terminate a bulk rate contract entered into by the board of directors. The vote to terminate the contract must be by the majority of the voting interests present at the next regular or special meeting of the association, whichever occurs first. The contract would be deemed ratified if not terminated at that meeting.

The bill creates s. 720.309(2)(b), F.S., to allow the following specified homeowners to elect not to receive bulk services, or be required to pay for the costs allocated to their property:

- A hearing-impaired or legally blind parcel owner who does not occupy the parcel with a non-hearing-impaired or sighted person; or
- Any parcel owner receiving Social Security supplemental income.

The expense of the contract must be shared among all the participating parcel owners, and the payment of the expense may be enforced using the provision in s. 720.3085, F.S., which relates to the enforcement of assessment payments.

The cost will be allocated to the homeowner whether or not the homeowner buys the contracted communication service or has contracted with another communication service provider. Payments can be enforced by the association by securing a lien on the property under s. 720.3085, F.S. The homeowner's property may be foreclosed upon by the association for nonpayment of the assessment for the communication service. Communication services under s. 202.11(2), F.S., include:

> The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

It does not include, among other items, Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

The bill creates s. 720.309(2)(c), F.S., to provide that any parcel owner or tenant must be afforded access to any available franchised or licensed cable television service paid directly to the service provider by the resident. The resident or the cable or video service provider cannot be required to pay anything of value in order to obtain or provide such service, except those charges normally paid for like services by other residents of single-family homes not located in the community but which are within the same franchised or licensed area, and except for installation charges. Such charges may be agreed to between the resident and the provider.

B. SECTION DIRECTORY:

Section 1 amends s. 633.0215, F.S., regarding Florida Fire Prevention Code.

Section 2 amends s. 718.111, F.S., regarding association official records.

Section 3 amends s. 718.112, F.S., regarding association bylaws.

Section 4 amends s. 718.113, F.S., regarding maintenance.

Section 5 amends s. 718.114, F.S, regarding association powers.

Section 6 amends s. 718.116, F.S., regarding assessments.

Section 7 amends s. 718.117, F.S., regarding termination of condominium.

Section 8 amends s. 718.303, F.S., regarding obligations of owners and occupants.

Section 9 amends s. 718.703, F.S., regarding definition of bulk assignee.

Section 10 amends s. 718.704, F.S., regarding bulk assignee and bulk buyer.

Section 11 amends s. 718.705, F.S., regarding board of administration.

Section 12 amends s. 718.706, F.S., regarding bulk assignee or bulk buyer.

Section 13 amends s. 718.707, F.S., regarding bulk assignee or bulk buyer.

Section 14 amends s. 719.108, F.S., regarding rents and assessments.

Section 15 amends s. 719.303, F.S., regarding obligations of owners.

Section 16 amends s. 720.301, F.S., regarding definition of declaration of covenant.

Section 17 amends s. 720.303, F.S., regarding association powers and duties.

Section 18 amends s. 720.305, F.S., regarding obligations of members.

Section 19 amends s. 720.306, F.S., regarding meeting of members.

Section 20 amends s. 720.3085, F.S., regarding payments for assessments.

Section 21 amends s. 720.309, F.S., regarding agreements entered into by association.

Section 22 provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to condominium, cooperative, and
3 homeowners' associations; amending s. 633.0215, F.S.;
4 exempting certain residential buildings from a requirement
5 to install a manual fire alarm system; amending s.
6 718.111, F.S.; revising provisions relating to the
7 official records of condominium associations; providing
8 for disclosure of employment agreements or compensation
9 paid to association employees; amending s. 718.112, F.S.;
10 revising provisions relating to bylaws; providing that
11 board of administration meetings discussing personnel
12 matters are not open to unit members; revising
13 requirements for electing the board of directors;
14 providing for continued office and for filling vacancies
15 under certain circumstances; specifying unit owner
16 eligibility for board membership; requiring that certain
17 educational curriculum be completed within a specified
18 time before the election or appointment of a board
19 director; amending s. 718.113, F.S.; authorizing the board
20 of a condominium association to install impact glass or
21 other code-compliant windows under certain circumstances;
22 amending s. 718.114, F.S.; requiring the vote or written
23 consent of a majority of the voting interests before a
24 condominium association may enter into certain agreements
25 to acquire leaseholds, memberships, or other possessory or
26 use interests; amending s. 718.116, F.S.; revising
27 provisions relating to condominium assessments; requiring
28 any rent payments received by an association from a tenant

29 to be applied to the oldest delinquent monetary obligation
30 of a unit owner; amending s. 718.117, F.S.; providing for
31 procedures and requirements for termination of a
32 condominium property that has been totally destroyed or
33 demolished; providing procedures and requirements for
34 partial termination of a condominium property; requiring
35 that a lien against a condominium unit being terminated be
36 transferred to the proceeds of sale for that property;
37 amending s. 718.303, F.S.; revising provisions relating to
38 imposing remedies against a delinquent unit owner or
39 occupant; providing for the suspension of certain rights
40 of use or voting rights; requiring that the suspension of
41 certain rights of use or voting rights be approved at a
42 noticed board meeting; amending s. 718.703. F.S.;
43 redefining the term "bulk assignee" for purposes of the
44 Distressed Condominium Relief Act; amending s. 718.704,
45 F.S.; revising provisions relating to the assignment of
46 developer rights by a bulk assignee; amending s. 718.705,
47 F.S.; revising provisions relating to the transfer of
48 control of a condominium board of administration to unit
49 owners; amending s. 718.706, F.S.; revising provisions
50 relating to the offering of units by a bulk assignee or
51 bulk buyer; amending s. 718.707, F.S.; revising the time
52 limitation for classification as a bulk assignee or bulk
53 buyer; amending s. 719.108, F.S.; requiring any rent
54 payments received by a cooperative association from a
55 tenant to be applied to the oldest delinquent monetary
56 obligation of a unit owner; amending s. 719.303, F.S.;

57 revising provisions relating to imposing remedies against
58 a delinquent unit owner or occupant; providing for the
59 suspension of certain rights of use or voting rights;
60 requiring that the suspension of certain rights of use or
61 voting rights be approved at a noticed board meeting;
62 amending s. 720.310, F.S.; revising the definition of the
63 term "declaration of covenants"; amending s. 720.303,
64 F.S.; revising provisions relating to records that are not
65 accessible to members of a homeowners' association;
66 providing for disclosure of employment agreements and
67 compensation paid to association employees; amending s.
68 720.305, F.S.; revising provisions relating to imposing
69 remedies against a delinquent member of a homeowners'
70 association; requiring that the suspension of certain
71 rights of use or voting rights be approved at a noticed
72 board meeting; amending s. 720.306, F.S.; specifying
73 additional requirements for candidates to be a member of
74 the board of a homeowners' association; amending s.
75 720.3085, F.S.; requiring any rent payments received by an
76 association from a tenant to be applied to the oldest
77 delinquent monetary obligation of a parcel owner; amending
78 s. 720.309, F.S.; providing for the allocation of
79 communication services by a homeowners' association;
80 providing for the cancellation of communication contracts;
81 providing that hearing-impaired or legally blind owners
82 and owners receiving certain supplemental security income
83 or food stamps may discontinue the service without
84 incurring costs; providing that residents may not be

85 denied access to available franchised, licensed, or
86 certificated cable or video service providers; providing
87 an effective date.
88
89 Be It Enacted by the Legislature of the State of Florida:
90 Section 1. Subsection (14) of section 633.0215, Florida
91 Statutes, is amended to read:
92 633.0215 Florida Fire Prevention Code.—
93 (14) A condominium, cooperative, or multifamily
94 residential building that is less than four ~~one or two~~ stories
95 in height and has an exterior corridor providing a means of
96 egress is exempt from installing a manual fire alarm system as
97 required in s. 9.6 of the most recent edition of the Life Safety
98 Code adopted in the Florida Fire Prevention Code. This is
99 intended to clarify existing law.
100 Section 2. Paragraphs (a) and (c) of subsection (12) of
101 section 718.111, Florida Statutes, are amended to read:
102 718.111 The association.—
103 (12) OFFICIAL RECORDS.—
104 (a) From the inception of the association, the association
105 shall maintain each of the following items, if applicable, which
106 constitute ~~shall constitute~~ the official records of the
107 association:
108 1. A copy of the plans, permits, warranties, and other
109 items provided by the developer pursuant to s. 718.301(4).
110 2. A photocopy of the recorded declaration of condominium
111 of each condominium operated by the association and ~~of~~ each
112 amendment to each declaration.

113 3. A photocopy of the recorded bylaws of the association
114 and ~~of~~ each amendment to the bylaws.
115 4. A certified copy of the articles of incorporation of
116 the association, or other documents creating the association,
117 and ~~of~~ each amendment thereto.
118 5. A copy of the current rules of the association.
119 6. A book or books that ~~which~~ contain the minutes of all
120 meetings of the association, ~~of~~ the board of administration, and
121 the ~~of~~ unit owners, which minutes must be retained for at least
122 7 years.
123 7. A current roster of all unit owners and their mailing
124 addresses, unit identifications, voting certifications, and, if
125 known, telephone numbers. The association shall also maintain
126 the electronic mailing addresses and facsimile ~~the~~ numbers
127 ~~designated by unit owners for receiving notice sent by~~
128 ~~electronic transmission~~ of ~~those~~ unit owners consenting to
129 receive notice by electronic transmission. The electronic
130 mailing addresses and facsimile ~~telephone~~ numbers may not be
131 accessible to unit owners ~~must be removed from association~~
132 ~~records~~ if consent to receive notice by electronic transmission
133 is not provided in accordance with subparagraph (c)5 ~~revoked~~.
134 However, the association is not liable for an erroneous
135 disclosure of the electronic mail address or facsimile ~~the~~
136 number for receiving electronic transmission of notices.
137 8. All current insurance policies of the association and
138 condominiums operated by the association.
139 9. A current copy of any management agreement, lease, or
140 other contract to which the association is a party or under

141 which the association or the unit owners have an obligation or
142 responsibility.
143 10. Bills of sale or transfer for all property owned by
144 the association.
145 11. Accounting records for the association and separate
146 accounting records for each condominium that ~~which~~ the
147 association operates. All accounting records must ~~shall~~ be
148 maintained for at least 7 years. Any person who knowingly or
149 intentionally defaces or destroys such ~~accounting~~ records
150 ~~required to be created and maintained by this chapter during the~~
151 ~~period for which such records are required to be maintained~~, or
152 who knowingly or intentionally fails to create or maintain such
153 records, with the intent of causing harm to the association or
154 one or more of its members, is personally subject to a civil
155 penalty pursuant to s. 718.501(1)(d). The accounting records
156 must include, but are not limited to:
157 a. Accurate, itemized, and detailed records of all
158 receipts and expenditures.
159 b. A current account and a monthly, bimonthly, or
160 quarterly statement of the account for each unit designating the
161 name of the unit owner, the due date and amount of each
162 assessment, the amount paid on ~~upon~~ the account, and the balance
163 due.
164 c. All audits, reviews, accounting statements, and
165 financial reports of the association or condominium.
166 d. All contracts for work to be performed. Bids for work
167 to be performed are also considered official records and must be
168 maintained by the association.

169 12. Ballots, sign-in sheets, voting proxies, and all other
170 papers relating to voting by unit owners, which must be
171 maintained for 1 year from the date of the election, vote, or
172 meeting to which the document relates, notwithstanding paragraph
173 (b).
174 13. All rental records if the association is acting as
175 agent for the rental of condominium units.
176 14. A copy of the current question and answer sheet as
177 described in s. 718.504.
178 15. All other records of the association not specifically
179 included in the foregoing which are related to the operation of
180 the association.
181 16. A copy of the inspection report as described ~~provided~~
182 in s. 718.301(4)(p).
183 (c) The official records of the association are open to
184 inspection by any association member or the authorized
185 representative of such member at all reasonable times. The right
186 to inspect the records includes the right to make or obtain
187 copies, at the reasonable expense, if any, of the member. The
188 association may adopt reasonable rules regarding the frequency,
189 time, location, notice, and manner of record inspections and
190 copying. The failure of an association to provide the records
191 within 10 working days after receipt of a written request
192 creates a rebuttable presumption that the association willfully
193 failed to comply with this paragraph. A unit owner who is denied
194 access to official records is entitled to the actual damages or
195 minimum damages for the association's willful failure to comply.
196 Minimum damages are ~~shall be~~ $50 per calendar day for up to 10

197 days, beginning ~~the calculation to begin~~ on the 11th working day
198 after receipt of the written request. The failure to permit
199 inspection ~~of the association records as provided herein~~
200 entitles any person prevailing in an enforcement action to
201 recover reasonable attorney's fees from the person in control of
202 the records who, directly or indirectly, knowingly denied access
203 to the records. ~~Any person who knowingly or intentionally~~
204 ~~defaces or destroys accounting records that are required by this~~
205 ~~chapter to be maintained during the period for which such~~
206 ~~records are required to be maintained, or who knowingly or~~
207 ~~intentionally fails to create or maintain accounting records~~
208 ~~that are required to be created or maintained, with the intent~~
209 ~~of causing harm to the association or one or more of its~~
210 ~~members, is personally subject to a civil penalty pursuant to s.~~
211 ~~718.501(1)(d).~~ The association shall maintain an adequate number
212 of copies of the declaration, articles of incorporation, bylaws,
213 and rules, and all amendments to each of the foregoing, as well
214 as the question and answer sheet as described ~~provided for~~ in s.
215 718.504 and year-end financial information required under ~~in~~
216 this section, on the condominium property to ensure their
217 availability to unit owners and prospective purchasers, and may
218 charge its actual costs for preparing and furnishing these
219 documents to those requesting the documents. Notwithstanding ~~the~~
220 ~~provisions of~~ this paragraph, the following records are not
221 accessible to unit owners:
222 1. Any record protected by the lawyer-client privilege as
223 described in s. 90.502; and any record protected by the work-
224 product privilege, including a ~~any~~ record prepared by an

225 association attorney or prepared at the attorney's express
226 direction, ~~;~~ which reflects a mental impression, conclusion,
227 litigation strategy, or legal theory of the attorney or the
228 association, and which was prepared exclusively for civil or
229 criminal litigation or for adversarial administrative
230 proceedings, or which was prepared in anticipation of such
231 ~~imminent civil or criminal~~ litigation or ~~imminent adversarial~~
232 ~~administrative~~ proceedings until the conclusion of the
233 litigation or ~~adversarial administrative~~ proceedings.
234 2. Information obtained by an association in connection
235 with the approval of the lease, sale, or other transfer of a
236 unit.
237 3. Personnel records of association or management company
238 employees, including, but not limited to, disciplinary, payroll,
239 health, and insurance records. For purposes of this
240 subparagraph, the term "personnel records" does not include
241 written employment agreements with an association employee or
242 budgetary or financial records that indicate the compensation
243 paid to an association employee.
244 4. Medical records of unit owners.
245 5. Social security numbers, driver's license numbers,
246 credit card numbers, e-mail addresses, telephone numbers,
247 facsimile numbers, emergency contact information, ~~any~~ addresses
248 of a unit owner ~~other than as provided to fulfill the~~
249 ~~association's notice requirements~~, and other personal
250 identifying information of any person, excluding the person's
251 name, unit designation, mailing address, ~~and~~ property address,
252 and any address, e-mail address, or facsimile number provided to



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

253 the association to fulfill the association's notice
254 requirements. However, an owner may consent in writing to the
255 disclosure of protected information described in this
256 subparagraph. The association is not liable for the disclosure
257 of information that is protected under this subparagraph if the
258 information is included in an official record of the association
259 and is voluntarily provided by an owner and not requested by the
260 association.
261 6. ~~Any~~ Electronic security measures ~~measure~~ that are ~~is~~
262 used by the association to safeguard data, including passwords.
263 7. The software and operating system used by the
264 association which allow the ~~allows~~ manipulation of data, even if
265 the owner owns a copy of the same software used by the
266 association. The data is part of the official records of the
267 association.
268 Section 3. Paragraphs (b), (c), and (d) of subsection (2)
269 of section 718.112, Florida Statutes, are amended to read:
270 718.112 Bylaws.—
271 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
272 following and, if they do not do so, shall be deemed to include
273 the following:
274 (b) *Quorum; voting requirements; proxies.*—
275 1. Unless a lower number is provided in the bylaws, the
276 percentage of voting interests required to constitute a quorum
277 at a meeting of the members is ~~shall be~~ a majority of the voting
278 interests. Unless otherwise provided in this chapter or in the
279 declaration, articles of incorporation, or bylaws, and except as
280 provided in subparagraph (d)4. ~~(d)3.~~, decisions shall be made by

281 ~~owners of~~ a majority of the voting interests represented at a
282 meeting at which a quorum is present.
283 2. Except as specifically otherwise provided herein, ~~after~~
284 ~~January 1, 1992,~~ unit owners may not vote by general proxy, but
285 may vote by limited proxies substantially conforming to a
286 limited proxy form adopted by the division. A ~~No~~ voting interest
287 or consent right allocated to a unit owned by the association
288 may not ~~shall~~ be exercised or considered for any purpose,
289 whether for a quorum, an election, or otherwise. Limited proxies
290 and general proxies may be used to establish a quorum. Limited
291 proxies shall be used for votes taken to waive or reduce
292 reserves in accordance with subparagraph (f)2.; for votes taken
293 to waive the financial reporting requirements of s. 718.111(13);
294 for votes taken to amend the declaration pursuant to s. 718.110;
295 for votes taken to amend the articles of incorporation or bylaws
296 pursuant to this section; and for any other matter for which
297 this chapter requires or permits a vote of the unit owners.
298 Except as provided in paragraph (d), a ~~after January 1, 1992, no~~
299 proxy, limited or general, may not ~~shall~~ be used in the election
300 of board members. General proxies may be used for other matters
301 for which limited proxies are not required, and may ~~also~~ be used
302 in voting for nonsubstantive changes to items for which a
303 limited proxy is required and given. Notwithstanding ~~the~~
304 ~~provisions of~~ this subparagraph, unit owners may vote in person
305 at unit owner meetings. This subparagraph does not ~~Nothing~~
306 ~~contained herein shall~~ limit the use of general proxies or
307 require the use of limited proxies for any agenda item or
308 election at any meeting of a timeshare condominium association.

309 3. Any proxy given is ~~shall be~~ effective only for the
310 specific meeting for which originally given and any lawfully
311 adjourned meetings thereof. A ~~In no event shall any~~ proxy is not
312 ~~be~~ valid ~~for a period~~ longer than 90 days after the date of the
313 first meeting for which it was given. Every proxy is revocable
314 at any time at the pleasure of the unit owner executing it.
315 4. A member of the board of administration or a committee
316 may submit in writing his or her agreement or disagreement with
317 any action taken at a meeting that the member did not attend.
318 This agreement or disagreement may not be used as a vote for or
319 against the action taken or to create ~~and may not be used for~~
320 ~~the purposes of creating~~ a quorum.
321 5. If ~~When~~ any of the board or committee members meet by
322 telephone conference, those board or committee members ~~attending~~
323 ~~by telephone conference~~ may be counted toward obtaining a quorum
324 and may vote by telephone. A telephone speaker must be used so
325 that the conversation of those ~~board or committee~~ members
326 ~~attending by telephone~~ may be heard by the board or committee
327 members attending in person as well as by any unit owners
328 present at a meeting.
329 (c) *Board of administration meetings.*—Meetings of the
330 board of administration at which a quorum of the members is
331 present are ~~shall be~~ open to all unit owners. A ~~Any~~ unit owner
332 may tape record or videotape the meetings ~~of the board of~~
333 ~~administration~~. The right to attend such meetings includes the
334 right to speak at such meetings with reference to all designated
335 agenda items. The division shall adopt reasonable rules
336 governing the tape recording and videotaping of the meeting. The

337 association may adopt written reasonable rules governing the
338 frequency, duration, and manner of unit owner statements.
339 1. Adequate notice of all board meetings, which must
340 ~~notice shall~~ specifically identify all ~~incorporate an~~
341 ~~identification of~~ agenda items, must ~~shall~~ be posted
342 conspicuously on the condominium property at least 48 continuous
343 hours before ~~preceding~~ the meeting except in an emergency. If 20
344 percent of the voting interests petition the board to address an
345 item of business, the board ~~shall~~ at its next regular board
346 meeting or at a special meeting of the board, but not later than
347 60 days after the receipt of the petition, shall place the item
348 on the agenda. Any item not included on the notice may be taken
349 up on an emergency basis by at least a majority plus one of the
350 board members ~~of the board~~. Such emergency action must ~~shall~~ be
351 noticed and ratified at the next regular board meeting ~~of the~~
352 ~~board~~. However, written notice of any meeting at which
353 nonemergency special assessments, or at which amendment to rules
354 regarding unit use, will be considered must ~~shall~~ be mailed,
355 delivered, or electronically transmitted to the unit owners and
356 posted conspicuously on the condominium property at least ~~not~~
357 ~~less than~~ 14 days before ~~prior to~~ the meeting. Evidence of
358 compliance with this 14-day notice requirement must ~~shall~~ be
359 made by an affidavit executed by the person providing the notice
360 and filed with ~~among~~ the official records of the association.
361 Upon notice to the unit owners, the board shall, by duly adopted
362 rule, designate a specific location on the condominium ~~property~~
363 or association property where ~~upon which~~ all notices of board
364 meetings are to ~~shall~~ be posted. If there is no condominium

365 property or association property where ~~upon which~~ notices can be
366 posted, notices ~~of board meetings~~ shall be mailed, delivered, or
367 electronically transmitted at least 14 days before the meeting
368 to the owner of each unit. In lieu of or in addition to the
369 physical posting of the notice ~~of any meeting of the board of~~
370 ~~administration~~ on the condominium property, the association may,
371 by reasonable rule, adopt a procedure for conspicuously posting
372 and repeatedly broadcasting the notice and the agenda on a
373 closed-circuit cable television system serving the condominium
374 association. However, if broadcast notice is used in lieu of a
375 notice ~~posted~~ physically posted on ~~the~~ condominium property, the
376 notice and agenda must be broadcast at least four times every
377 broadcast hour of each day that a posted notice is otherwise
378 required under this section. If ~~When~~ broadcast notice is
379 provided, the notice and agenda must be broadcast in a manner
380 and for a sufficient continuous length of time so as to allow an
381 average reader to observe the notice and read and comprehend the
382 entire content of the notice and the agenda. Notice of any
383 meeting in which regular or special assessments against unit
384 owners are to be considered for any reason must ~~shall~~
385 specifically state that assessments will be considered and
386 provide the nature, estimated cost, and description of the
387 purposes for such assessments.
388 2. Meetings of a committee to take final action on behalf
389 of the board or make recommendations to the board regarding the
390 association budget are subject to ~~the provisions of~~ this
391 paragraph. Meetings of a committee that does not take final
392 action on behalf of the board or make recommendations to the

393 board regarding the association budget are subject to ~~the~~
394 ~~provisions of~~ this section, unless those meetings are exempted
395 from this section by the bylaws of the association.
396 3. Notwithstanding any other law, the requirement that
397 board meetings and committee meetings be open to the unit owners
398 does not apply ~~is inapplicable~~ to:
399 a. Meetings between the board or a committee and the
400 association's attorney, with respect to proposed or pending
401 litigation, if ~~when~~ the meeting is held for the purpose of
402 seeking or rendering legal advice; or
403 b. Board meetings held for the purpose of discussing
404 personnel matters.
405 (d) *Unit owner meetings.*—
406 1. An annual meeting of the unit owners shall be held at
407 the location provided in the association bylaws and, if the
408 bylaws are silent as to the location, the meeting shall be held
409 within 45 miles of the condominium property. However, such
410 distance requirement does not apply to an association governing
411 a timeshare condominium.
412 2. Unless the bylaws provide otherwise, a vacancy on the
413 board caused by the expiration of a director's term shall be
414 filled by electing a new board member, and the election must be
415 by secret ballot. An election is not required ~~However,~~ if the
416 number of vacancies equals or exceeds the number of candidates~~,~~
417 ~~an election is not required~~. For purposes of this paragraph, the
418 term "candidate" means an eligible person who has timely
419 submitted the written notice, as described in sub-subparagraph
420 4.a., of his or her intention to become a candidate. Except in a

421 timeshare condominium, or if the staggered term of a board
422 member does not expire until a later annual meeting, or if all
423 members terms would otherwise expire but there are no
424 candidates, the terms of all board members ~~of the board~~ expire
425 at the annual meeting, and such ~~board~~ members may stand for
426 reelection unless prohibited ~~otherwise permitted~~ by the bylaws.
427 If the bylaws permit staggered terms of no more than 2 years and
428 upon approval of a majority of the total voting interests, the
429 association board members may serve 2-year staggered terms. If
430 the number of board members whose terms expire at the annual
431 meeting equals or ~~have expired~~ exceeds the number of candidates,
432 the candidates become members of the board effective upon the
433 adjournment of the annual meeting. Unless the bylaws provide
434 otherwise, any remaining vacancies shall be filled by the
435 affirmative vote of the majority of the directors making up the
436 newly constituted board even if the directors constitute less
437 than a quorum or there is only one director ~~eligible members~~
438 ~~showing interest in or demonstrating an intention to run for the~~
439 ~~vacant positions, each board member whose term has expired is~~
440 ~~eligible for reappointment to the board of administration and~~
441 ~~need not stand for reelection~~. In a condominium association of
442 more than 10 units or in a condominium association that does not
443 include timeshare units or timeshare interests, coowners of a
444 unit may not serve as members of the board of directors at the
445 same time unless they own more than one unit or unless there are
446 not enough eligible candidates to fill the vacancies on the
447 board at the time of the vacancy. Any unit owner desiring to be
448 a candidate for board membership must comply with sub-

449 subparagraph 4.a. and must be eligible to serve on the board of
450 directors at the time of the deadline for submitting a notice of
451 intent to run, and continuously thereafter, in order to have his
452 or her name listed as a proper candidate on the ballot or to
453 serve on the board ~~3.a~~. A person who has been suspended or
454 removed by the division under this chapter, or who is delinquent
455 in the payment of any fee, fine, or special or regular
456 assessment as provided in paragraph (n), is not eligible for
457 board membership. A person who has been convicted of any felony
458 in this state or in a United States District or Territorial
459 Court, or who has been convicted of any offense in another
460 jurisdiction which ~~that~~ would be considered a felony if
461 committed in this state, is not eligible for board membership
462 unless such felon's civil rights have been restored for at least
463 5 years as of the date ~~on which~~ such person seeks election to
464 the board. The validity of an action by the board is not
465 affected if it is later determined that a board member ~~of the~~
466 ~~board~~ is ineligible for board membership due to having been
467 convicted of a felony.

468 3.~~2.~~ The bylaws must provide the method of calling
469 meetings of unit owners, including annual meetings. Written
470 notice~~, which~~ must include an agenda, must ~~shall~~ be mailed, hand
471 delivered, or electronically transmitted to each unit owner at
472 least 14 days before the annual meeting, and must be posted in a
473 conspicuous place on the condominium property at least 14
474 continuous days before ~~preceding~~ the annual meeting. Upon notice
475 to the unit owners, the board shall, by duly adopted rule,
476 designate a specific location on the condominium property or

477 association property <u>where</u> ~~upon which~~ all notices of unit owner
478 meetings shall be posted. <u>This requirement does not apply</u>
479 ~~However,~~ if there is no condominium property or association
480 property <u>for posting</u> ~~upon which~~ notices ~~can be posted, this~~
481 ~~requirement does not apply~~. In lieu of<u>,</u> or in addition to<u>,</u> the
482 physical posting of meeting notices, the association may, by
483 reasonable rule, adopt a procedure for conspicuously posting and
484 repeatedly broadcasting the notice and the agenda on a closed-
485 circuit cable television system serving the condominium
486 association. However, if broadcast notice is used ~~in lieu of a~~
487 ~~notice posted physically on the condominium property~~, the notice
488 and agenda must be broadcast at least four times every broadcast
489 hour of each day that a posted notice is otherwise required
490 under this section. If broadcast notice is provided, the notice
491 and agenda must be broadcast in a manner and for a sufficient
492 continuous length of time so as to allow an average reader to
493 observe the notice and read and comprehend the entire content of
494 the notice and the agenda. Unless a unit owner waives in writing
495 the right to receive notice of the annual meeting, such notice
496 must be hand delivered, mailed, or electronically transmitted to
497 each unit owner. Notice for meetings and notice for all other
498 purposes must be mailed to each unit owner at the address last
499 furnished to the association by the unit owner, or hand
500 delivered to each unit owner. However, if a unit is owned by
501 more than one person, the association <u>must</u> ~~shall~~ provide notice~~,~~
502 ~~for meetings and all other purposes,~~ to <u>the</u> ~~that one~~ address
503 <u>that</u> ~~which~~ the developer ~~initially~~ identifies for that purpose
504 and thereafter as one or more of the owners of the unit ~~shall~~


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505 advise the association in writing, or if no address is given or
506 the owners of the unit do not agree, to the address provided on
507 the deed of record. An officer of the association, or the
508 manager or other person providing notice of the association
509 meeting, must ~~shall~~ provide an affidavit or United States Postal
510 Service certificate of mailing, to be included in the official
511 records of the association affirming that the notice was mailed
512 or hand delivered~~,~~ in accordance with this provision.
513 4.~~3.~~ The members of the board shall be elected by written
514 ballot or voting machine. Proxies may not be used in electing
515 the board in general elections or elections to fill vacancies
516 caused by recall, resignation, or otherwise, unless otherwise
517 provided in this chapter.
518 a. At least 60 days before a scheduled election, the
519 association shall mail, deliver, or electronically transmit,
520 ~~whether~~ by separate association mailing or included in another
521 association mailing, delivery, or transmission, including
522 regularly published newsletters, to each unit owner entitled to
523 a vote, a first notice of the date of the election. Any unit
524 owner or other eligible person desiring to be a candidate for
525 the board must give written notice of his or her intent to be a
526 candidate to the association at least 40 days before a scheduled
527 election. Together with the written notice and agenda as set
528 forth in subparagraph 3. ~~2.~~, the association shall mail,
529 deliver, or electronically transmit a second notice of the
530 election to all unit owners entitled to vote, together with a
531 ballot that lists all candidates. Upon request of a candidate,
532 an information sheet, no larger than 8 1/2 inches by 11 inches,

533 which must be furnished by the candidate at least 35 days before
534 the election, must be included with the mailing, delivery, or
535 transmission of the ballot, with the costs of mailing, delivery,
536 or electronic transmission and copying to be borne by the
537 association. The association is not liable for the contents of
538 the information sheets prepared by the candidates. In order to
539 reduce costs, the association may print or duplicate the
540 information sheets on both sides of the paper. The division
541 shall by rule establish voting procedures consistent with this
542 sub-subparagraph, including rules establishing procedures for
543 giving notice by electronic transmission and rules providing for
544 the secrecy of ballots. Elections shall be decided by a
545 plurality of ~~those~~ ballots cast. There is no quorum requirement;
546 however, at least 20 percent of the eligible voters must cast a
547 ballot in order to have a valid election ~~of members of the~~
548 ~~board~~. A unit owner may not permit any other person to vote his
549 or her ballot, and any ballots improperly cast are invalid. A~~,~~
550 ~~provided any~~ unit owner who violates this provision may be fined
551 by the association in accordance with s. 718.303. A unit owner
552 who needs assistance in casting the ballot for the reasons
553 stated in s. 101.051 may obtain such assistance. The regular
554 election must occur on the date of the annual meeting. ~~This sub-~~
555 ~~subparagraph does not apply to timeshare condominium~~
556 ~~associations.~~ Notwithstanding this sub-subparagraph, an election
557 is not required unless more candidates file notices of intent to
558 run or are nominated than board vacancies exist.
559 b. Within 90 days after being elected or appointed to the
560 board, each newly elected or appointed director shall certify in

561 writing to the secretary of the association that he or she has
562 read the association's declaration of condominium, articles of
563 incorporation, bylaws, and current written policies; that he or
564 she will work to uphold such documents and policies to the best
565 of his or her ability; and that he or she will faithfully
566 discharge his or her fiduciary responsibility to the
567 association's members. In lieu of this written certification,
568 within 90 days after being elected or appointed to the board,
569 the newly elected or appointed director may submit a certificate
570 of having satisfactorily completed ~~satisfactory completion of~~
571 the educational curriculum administered by a division-approved
572 condominium education provider within 1 year before or 90 days
573 after the date of election or appointment. The written
574 certification or educational certificate is valid and does not
575 have to be resubmitted as long as the director serves on the
576 board without interruption. A director who fails to timely file
577 the written certification or educational certificate is
578 suspended from service on the board until he or she complies
579 with this sub-subparagraph. The board may temporarily fill the
580 vacancy during the period of suspension. The secretary shall
581 cause the association to retain a director's written
582 certification or educational certificate for inspection by the
583 members for 5 years after a director's election. Failure to have
584 such written certification or educational certificate on file
585 does not affect the validity of any board action. This chapter
586 does not limit the use of general or limited proxies, require
587 the use of general or limited proxies, or require the use of a
588 written ballot or voting machine for any agenda item or election

589 at any meeting of a timeshare condominium association.
590 5.~~4.~~ Any approval by unit owners called for by this
591 chapter or the applicable declaration or bylaws, including, but
592 not limited to, the approval requirement in s. 718.111(8), must
593 ~~shall~~ be made at a duly noticed meeting of unit owners and is
594 subject to all requirements of this chapter or the applicable
595 condominium documents relating to unit owner decisionmaking,
596 except that unit owners may take action by written agreement,
597 without meetings, on matters for which action by written
598 agreement without meetings is expressly allowed by the
599 applicable bylaws or declaration or any law ~~statute~~ that
600 provides for such action.
601 6.~~5.~~ Unit owners may waive notice of specific meetings if
602 allowed by the applicable bylaws or declaration or any law
603 ~~statute~~. If authorized by the bylaws, notice of meetings of the
604 board of administration, unit owner meetings, except unit owner
605 meetings called to recall board members under paragraph (j), and
606 committee meetings may be given by electronic transmission to
607 unit owners who consent to receive notice by electronic
608 transmission.
609 7.~~6.~~ Unit owners ~~shall~~ have the right to participate in
610 meetings of unit owners with reference to all designated agenda
611 items. However, the association may adopt reasonable rules
612 governing the frequency, duration, and manner of unit owner
613 participation.
614 8.~~7.~~ A ~~Any~~ unit owner may tape record or videotape a
615 meeting of the unit owners subject to reasonable rules adopted
616 by the division.

617 9.~~8.~~ Unless otherwise provided in the bylaws, any vacancy
618 occurring on the board before the expiration of a term may be
619 filled by the affirmative vote of the majority of the remaining
620 directors, even if the remaining directors constitute less than
621 a quorum, or by the sole remaining director. In the alternative,
622 a board may hold an election to fill the vacancy, in which case
623 the election procedures must conform to ~~the requirements of~~ sub-
624 subparagraph 4.a. ~~3.a.~~ unless the association governs 10 units
625 or fewer and has opted out of the statutory election process, in
626 which case the bylaws of the association control. Unless
627 otherwise provided in the bylaws, a board member appointed or
628 elected under this section shall fill the vacancy for the
629 unexpired term of the seat being filled. Filling vacancies
630 created by recall is governed by paragraph (j) and rules adopted
631 by the division.
632
633 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a.
634 ~~(d)3.a.~~, an association of 10 or fewer units may, by affirmative
635 vote of a majority of the total voting interests, provide for
636 different voting and election procedures in its bylaws, which
637 ~~vote~~ may be by a proxy specifically delineating the different
638 voting and election procedures. The different voting and
639 election procedures may provide for elections to be conducted by
640 limited or general proxy.
641 Section 4. Subsection (5) of section 718.113, Florida
642 Statutes, is amended to read:
643 718.113 Maintenance; limitation upon improvement; display
644 of flag; hurricane shutters; display of religious decorations.—


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645 (5) Each board of administration shall adopt hurricane
646 shutter specifications for each building within each condominium
647 operated by the association which shall include color, style,
648 and other factors deemed relevant by the board. All
649 specifications adopted by the board must ~~shall~~ comply with the
650 applicable building code.
651 (a) The board may, subject to the provisions of s.
652 718.3026, and the approval of a majority of voting interests of
653 the condominium, install hurricane shutters, impact glass or
654 other code-compliant windows, or hurricane protection that
655 complies with or exceeds the applicable building code. However~~,~~
656 ~~or both~~, ~~except that~~ a vote of the owners is not required if the
657 maintenance, repair, and replacement of hurricane shutters,
658 impact glass, or other code-compliant windows ~~or other forms of~~
659 ~~hurricane protection~~ are the responsibility of the association
660 pursuant to the declaration of condominium. If ~~However, where~~
661 hurricane protection or laminated glass or window film
662 architecturally designed to function as hurricane protection
663 which complies with or exceeds the current applicable building
664 code has been previously installed, the board may not install
665 hurricane shutters, ~~or other~~ hurricane protection, or impact
666 glass or other code-compliant windows except upon approval by a
667 majority vote of the voting interests.
668 (b) The association is ~~shall be~~ responsible for the
669 maintenance, repair, and replacement of the hurricane shutters
670 or other hurricane protection authorized by this subsection if
671 such hurricane shutters or other hurricane protection is the
672 responsibility of the association pursuant to the declaration of

673 condominium. If the hurricane shutters or other hurricane
674 protection authorized by this subsection are the responsibility
675 of the unit owners pursuant to the declaration of condominium,
676 the responsibility for the maintenance, repair, and replacement
677 of such items are ~~shall be~~ the responsibility of the unit owner.
678 (c) The board may operate shutters installed pursuant to
679 this subsection without permission of the unit owners only if
680 ~~where~~ such operation is necessary to preserve and protect the
681 condominium property and association property. The installation,
682 replacement, operation, repair, and maintenance of such shutters
683 in accordance with the procedures set forth in this paragraph
684 are ~~herein shall~~ not ~~be deemed~~ a material alteration to the
685 common elements or association property within the meaning of
686 this section.
687 (d) Notwithstanding any provision to the contrary in the
688 condominium documents, if approval is required by the documents,
689 a board may ~~shall~~ not refuse to approve the installation or
690 replacement of hurricane shutters by a unit owner conforming to
691 the specifications adopted by the board.
692 Section 5. Section 718.114, Florida Statutes, is amended
693 to read:
694 718.114 Association powers.—An association may ~~has the~~
695 ~~power to~~ enter into agreements~~,~~ to acquire leaseholds,
696 memberships, and other possessory or use interests in lands or
697 facilities such as country clubs, golf courses, marinas, and
698 other recreational facilities, ~~. It has this power~~ whether or not
699 the lands or facilities are contiguous to the lands of the
700 condominium, if such lands and facilities ~~they~~ are intended to

701 provide enjoyment, recreation, or other use or benefit to the
702 unit owners. All of these leaseholds, memberships, and other
703 possessory or use interests existing or created at the time of
704 recording the declaration must be stated and fully described in
705 the declaration. Subsequent to the recording of the declaration,
706 agreements acquiring these leaseholds, memberships, or other
707 possessory or use interests which are not entered into within 12
708 months following the recording of the declaration are shall be
709 considered a material alteration or substantial addition to the
710 real property that is association property, and the association
711 may not acquire or enter into such agreements acquiring these
712 leaseholds, memberships, or other possessory or use interests
713 except upon a vote of, or written consent by, a majority of the
714 total voting interests or as authorized by the declaration as
715 provided in s. 718.113. The declaration may provide that the
716 rental, membership fees, operations, replacements, and other
717 expenses are common expenses and may impose covenants and
718 restrictions concerning their use and may contain other
719 provisions not inconsistent with this chapter. A condominium
720 association may conduct bingo games as provided in s. 849.0931.
721 Section 6. Subsection (3), paragraph (b) of subsection
722 (5), and subsection (11) of section 718.116, Florida Statutes,
723 are amended to read:
724 718.116 Assessments; liability; lien and priority;
725 interest; collection.—
726 (3) Assessments and installments on assessments which are
727 not paid when due bear interest at the rate provided in the
728 declaration, from the due date until paid. The This rate may not

729 exceed the rate allowed by law, and, if no rate is provided in
730 the declaration, interest accrues at the rate of 18 percent per
731 year. ~~Also,~~ If provided by the declaration or bylaws, the
732 association may, in addition to such interest, charge an
733 administrative late fee of up to the greater of $25 or 5 percent
734 of ~~each installment of the assessment for~~ each delinquent
735 installment for which the payment is late. Any payment received
736 by an association must be applied first to any interest accrued
737 by the association, then to any administrative late fee, then to
738 any costs and reasonable attorney's fees incurred in collection,
739 and then to the delinquent assessment. The foregoing is
740 applicable notwithstanding any restrictive endorsement,
741 designation, or instruction placed on or accompanying a payment.
742 A late fee is not subject to chapter 687 or s. 718.303(4)
743 ~~718.303(3)~~.
744 (5)
745 (b) To be valid, a claim of lien must state the
746 description of the condominium parcel, the name of the record
747 owner, the name and address of the association, the amount due,
748 and the due dates. It must be executed and acknowledged by an
749 officer or authorized agent of the association. The lien is not
750 effective ~~longer than~~ 1 year after the claim of lien was
751 recorded unless, within that time, an action to enforce the lien
752 is commenced. The 1-year period is automatically extended for
753 any length of time during which the association is prevented
754 from filing a foreclosure action by an automatic stay resulting
755 from a bankruptcy petition filed by the parcel owner or any
756 other person claiming an interest in the parcel. The claim of


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757 lien secures all unpaid assessments that are due and that may
758 accrue after the claim of lien is recorded and through the entry
759 of a final judgment, as well as interest and all reasonable
760 costs and attorney's fees incurred by the association incident
761 to the collection process. Upon payment in full, the person
762 making the payment is entitled to a satisfaction of the lien.
763
764 After notice of contest of lien has been recorded, the clerk of
765 the circuit court shall mail a copy of the recorded notice to
766 the association by certified mail, return receipt requested, at
767 the address shown in the claim of lien or most recent amendment
768 to it and shall certify to the service on the face of the
769 notice. Service is complete upon mailing. After service, the
770 association has 90 days in which to file an action to enforce
771 the lien; and, if the action is not filed within the 90-day
772 period, the lien is void. However, the 90-day period shall be
773 extended for any length of time during which ~~that~~ the
774 association is prevented from filing its action because of an
775 automatic stay resulting from the filing of a bankruptcy
776 petition by the unit owner or by any other person claiming an
777 interest in the parcel.
778 (11) If the unit is occupied by a tenant and the unit
779 owner is delinquent in paying any monetary obligation due to the
780 association, the association may make a written demand that the
781 tenant pay rent to the association ~~the future monetary~~
782 ~~obligations related to the condominium unit to the association~~,
783 and continue to ~~the tenant must~~ make such payments until all
784 monetary obligations of the unit owner related to the unit have

785 been paid in full to the association ~~payment~~. ~~The demand is~~
786 ~~continuing in nature and, upon demand,~~ The tenant must pay the
787 monetary obligations to the association until the association
788 releases the tenant or the tenant discontinues tenancy in the
789 unit. The association must mail written notice to the unit owner
790 of the association's demand that the tenant make payments to the
791 association. The association shall, upon request, provide the
792 tenant with written receipts for payments made. A tenant ~~who~~
793 ~~acts in good faith in response to a written demand from an~~
794 ~~association~~ is immune from any claim by ~~from~~ the unit owner
795 related to the rent once the association has made written
796 demand. Any payment received from a tenant must be applied to
797 the unit owner's oldest delinquent monetary obligation.
798 (a) If the tenant paid ~~prepaid~~ rent to the unit owner for
799 a given rental period before receiving the demand from the
800 association and provides written evidence of prepaying ~~paying~~
801 the rent to the association within 14 days after receiving the
802 demand, the tenant shall receive credit for the prepaid rent for
803 the applicable period but ~~and~~ must make any subsequent rental
804 payments to the association to be credited against the monetary
805 obligations of the unit owner ~~to the association~~.
806 (b) The tenant is not liable for increases in the amount
807 of the monetary obligations due unless the tenant was notified
808 in writing of the increase at least 10 days before the date the
809 rent is due. The liability of the tenant may not exceed the
810 amount due from the tenant to the tenant's landlord. The
811 tenant's landlord shall provide the tenant a credit against
812 rents due to the unit owner in the amount of moneys paid to the

813 association ~~under this section~~.
814 (c) The association may issue notices under s. 83.56 and
815 ~~may~~ sue for eviction under ss. 83.59-83.625 as if the
816 association were a landlord under part II of chapter 83 if the
817 tenant fails to pay a required payment to the association.
818 However, the association is not otherwise considered a landlord
819 under chapter 83 and specifically has no <u>obligations</u> ~~duties~~
820 under s. 83.51.
821 (d) The tenant does not, by virtue of payment of <u>rent</u>
822 ~~monetary obligations~~ to the association, have any of the rights
823 of a unit owner to vote in any election or to examine the books
824 and records of the association.
825 (e) A court may supersede the effect of this subsection by
826 appointing a receiver.
827 Section 7. Subsections (2), (3), (4), and (11), paragraphs
828 (a) and (d) of subsection (12), subsection (14), paragraph (a)
829 of subsection (17), and subsections (18) and (19) of section
830 718.117, Florida Statutes, are amended to read:
831 718.117 Termination of condominium.—
832 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
833 IMPOSSIBILITY.—
834 (a) Notwithstanding any provision in the declaration, the
835 condominium form of ownership of a property may be terminated by
836 a plan of termination approved by the lesser of the lowest
837 percentage of voting interests necessary to amend the
838 declaration or as otherwise provided in the declaration for
839 approval of termination if:
840 1. The total estimated cost of construction or repairs

841 necessary to construct the intended improvements or restore the
842 improvements to their former condition or bring them into
843 compliance with applicable laws or regulations exceeds the
844 combined fair market value of the units in the condominium after
845 completion of the construction or repairs; or
846 2. It becomes impossible to operate or reconstruct a
847 condominium to its prior physical configuration because of land
848 use laws or regulations.
849 (b) Notwithstanding paragraph (a), a condominium in which
850 75 percent or more of the units are timeshare units may be
851 terminated only pursuant to a plan of termination approved by 80
852 percent of the total voting interests of the association and the
853 holders of 80 percent of the original principal amount of
854 outstanding recorded mortgage liens of timeshare estates in the
855 condominium, unless the declaration provides for a lower voting
856 percentage.
857 (c) Notwithstanding paragraph (a), a condominium that
858 includes units and timeshare estates where the improvements have
859 been totally destroyed or demolished may be terminated pursuant
860 to a plan of termination proposed by a unit owner upon the
861 filing of a petition in court seeking equitable relief. Within
862 10 days after the filing of a petition as provided in this
863 paragraph and in lieu of the requirements of paragraph (15)(a),
864 the petitioner shall record the proposed plan of termination and
865 mail a copy of the proposed plan and a copy of the petition to:
866 1. If the association has not been dissolved as a matter of
867 law, each member of the board of directors of the association
868 identified in the most recent annual report filed with the

869 Department of State and the registered agent of the association;
870 2. The managing entity as defined in s. 721.05 (22);
871 3. Each unit owner and each timeshare estate owner at the
872 address reflected in the official records of the association, or
873 if the association records cannot be obtained by the petitioner,
874 then to each unit owner and each timeshare estate owner at the
875 address listed in the office of the tax collector for tax
876 notices; and
877 4. Each holder of a recorded mortgage lien affecting a unit
878 or timeshare estate at the address appearing on the recorded
879 mortgage or any recorded assignment thereof.
880
881 The association if it has not been dissolved as a matter of law,
882 as class representative, or the managing entity as defined in s.
883 721.05(22), any unit owner, timeshare estate owner, or holder of
884 a recorded mortgage lien affecting a unit or timeshare estate
885 may intervene in the proceedings to contest the proposed plan of
886 termination brought pursuant to this paragraph. The provisions
887 of subsection (9), to the extent inconsistent with this
888 paragraph, and subsection (16) shall not be applicable to a
889 party contesting a plan of termination under this paragraph. If
890 no party intervenes to contest the proposed plan within 45 days
891 of the filing of the petition, the petitioner may move the court
892 to enter a final judgment to authorize the plan of termination
893 to be implemented. If a party timely intervenes to contest the
894 proposed plan, the plan shall not be implemented until a final
895 judgment has been entered by the court finding that the proposed
896 plan of termination is fair and reasonable and authorizing

897 implementation of the plan.
898 (3) OPTIONAL TERMINATION.—Except as provided in subsection
899 (2) or unless the declaration provides for a lower percentage,
900 the condominium form of ownership ~~of the property~~ may be
901 terminated for all or a portion of the condominium property
902 pursuant to a plan of termination approved by at least 80
903 percent of the total voting interests of the condominium if no
904 ~~not~~ more than 10 percent of the total voting interests of the
905 condominium have rejected the plan of termination by negative
906 vote or by providing written objections ~~thereto~~. This subsection
907 does not apply to condominiums in which 75 percent or more of
908 the units are timeshare units.
909 (4) EXEMPTION.—A plan of termination is not an amendment
910 subject to s. 718.110(4). In a partial termination, a plan of
911 termination is not an amendment subject to s. 718.110(4) if the
912 ownership share of the common elements of a surviving unit in
913 the condominium remains in the same proportion to the surviving
914 units as it was before the partial termination.
915 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
916 TERMINATION.—
917 (a) The plan of termination may provide that each unit
918 owner retains the exclusive right of possession to the portion
919 of the real estate which ~~that~~ formerly constituted the unit if~~,~~
920 ~~in which case~~ the plan specifies ~~must specify~~ the conditions of
921 possession. In a partial termination, the plan of termination as
922 specified in subsection (10) must also identify the units that
923 survive the partial termination and provide that such units
924 remain in the condominium form of ownership pursuant to an

925 amendment to the declaration of condominium or an amended and
926 restated declaration. In a partial termination, title to the
927 surviving units and common elements that remain part of the
928 condominium property specified in the plan of termination remain
929 vested in the ownership shown in the public records and do not
930 vest in the termination trustee.
931 (b) In a conditional termination, the plan must specify
932 the conditions for termination. A conditional plan does not vest
933 title in the termination trustee until the plan and a
934 certificate executed by the association with the formalities of
935 a deed, confirming that the conditions in the conditional plan
936 have been satisfied or waived by the requisite percentage of the
937 voting interests, have been recorded. In a partial termination,
938 the plan does not vest title to the surviving units or common
939 elements that remain part of the condominium property in the
940 termination trustee.
941 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
942 PROPERTY.—
943 (a) Unless the declaration expressly provides for the
944 allocation of the proceeds of sale of condominium property, the
945 plan of termination must first apportion the proceeds between
946 the aggregate value of all units and the value of the common
947 elements, based on their respective fair market values
948 immediately before the termination, as determined by one or more
949 independent appraisers selected by the association or
950 termination trustee. In a partial termination, the aggregate
951 values of the units and common elements that are being
952 terminated must be separately determined, and the plan of

953 termination must specify the allocation of the proceeds of sale
954 for the units and common elements.
955 (d) Liens that encumber a unit shall be transferred to the
956 proceeds of sale of the condominium property and the proceeds of
957 sale or other distribution of association property, common
958 surplus, or other association assets attributable to such unit
959 in their same priority. In a partial termination, liens that
960 encumber a unit being terminated must be transferred to the
961 proceeds of sale of that portion of the condominium property
962 being terminated which are attributable to such unit. The
963 proceeds of any sale of condominium property pursuant to a plan
964 of termination may not be deemed to be common surplus or
965 association property.
966 (14) TITLE VESTED IN TERMINATION TRUSTEE.—If termination
967 is pursuant to a plan of termination under subsection (2) or
968 subsection (3), ~~the unit owners' rights and~~ title to ~~as tenants~~
969 ~~in common in undivided interests in~~ the condominium property
970 being terminated vests ~~vest~~ in the termination trustee when the
971 plan is recorded or at a later date specified in the plan. The
972 unit owners thereafter become the beneficiaries of the proceeds
973 realized from the plan of termination as set forth in the plan.
974 The termination trustee may deal with the condominium property
975 being terminated or any interest therein if the plan confers on
976 the trustee the authority to protect, conserve, manage, sell, or
977 dispose of the condominium property. The trustee, on behalf of
978 the unit owners, may contract for the sale of real property
979 being terminated, but the contract is not binding on the unit
980 owners until the plan is approved pursuant to subsection (2) or


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981 subsection (3).
982 (17) DISTRIBUTION.—
983 (a) Following termination of the condominium, the
984 condominium property, association property, common surplus, and
985 other assets of the association shall be held by the termination
986 trustee pursuant to the plan of termination, as trustee for unit
987 owners and holders of liens on the units, in their order of
988 priority unless otherwise set forth in the plan of termination.
989 (18) ASSOCIATION STATUS.—The termination of a condominium
990 does not change the corporate status of the association that
991 operated the condominium property. The association continues to
992 exist to conclude its affairs, prosecute and defend actions by
993 or against it, collect and discharge obligations, dispose of and
994 convey its property, and collect and divide its assets, but not
995 to act except as necessary to conclude its affairs. In a partial
996 termination, the association may continue as the condominium
997 association for the property that remains subject to the
998 declaration of condominium.
999 (19) CREATION OF ANOTHER CONDOMINIUM.—The termination or
1000 partial termination of a condominium does not bar the filing of
1001 a new declaration of condominium ~~or an amended and restated~~
1002 ~~declaration of condominium~~ by the termination trustee, or the
1003 trustee's successor in interest, for the terminated property or
1004 ~~affecting~~ any portion thereof ~~of the same property~~. The partial
1005 termination of a condominium may provide for the simultaneous
1006 filing of an amendment to the declaration of condominium or an
1007 amended and restated declaration of condominium by the
1008 condominium association for any portion of the property not


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1009 terminated from the condominium form of ownership.
1010 Section 8. Subsections (3), (4), and (5) of section
1011 718.303, Florida Statutes, are amended, and subsection (6) is
1012 added to that section, to read:
1013 718.303 Obligations of owners and occupants; remedies.—
1014 (3) If a unit owner is delinquent for more than 90 days in
1015 paying a monetary obligation due to the association, the
1016 association may suspend the right of a unit owner or a unit's
1017 occupant, licensee, or invitee to use common elements, common
1018 facilities, or any other association property until the monetary
1019 obligation is paid. This subsection does not apply to limited
1020 common elements intended to be used only by that unit, common
1021 elements that must be used to access the unit, utility services
1022 provided to the unit, parking spaces, or elevators. The
1023 association may also levy reasonable fines for the failure of
1024 the owner of the unit, or its occupant, licensee, or invitee, to
1025 comply with any provision of the declaration, the association
1026 bylaws, or reasonable rules of the association. A fine may does
1027 not become a lien against a unit. A fine may not exceed $100 per
1028 violation. However, A fine may be levied on the basis of each
1029 day of a continuing violation, with a single notice and
1030 opportunity for hearing. However, the fine may not exceed $100
1031 per violation, or $1,000 in the aggregate exceed $1,000.
1032 (a) An association may suspend, for a reasonable period of
1033 time, the right of a unit owner, or a unit owner's tenant,
1034 guest, or invitee, to use the common elements, common
1035 facilities, or any other association property for failure to
1036 comply with any provision of the declaration, the association

1037 bylaws, or reasonable rules of the association.
1038 (b) A fine or suspension may not be imposed levied and a
1039 suspension may not be imposed unless the association first
1040 provides at least 14 days' written notice and an opportunity for
1041 a hearing to the unit owner and, if applicable, its occupant,
1042 licensee, or invitee. The hearing must be held before a
1043 committee of other unit owners who are neither board members nor
1044 persons residing in a board member's household. If the committee
1045 does not agree with the fine or suspension, the fine or
1046 suspension may not be levied or imposed.
1047 (4) If a unit owner is more than 90 days delinquent in
1048 paying a monetary obligation due to the association, the
1049 association may suspend the right of the unit owner or the
1050 unit's occupant, licensee, or invitee to use common elements,
1051 common facilities, or any other association property until the
1052 monetary obligation is paid in full. This subsection does not
1053 apply to limited common elements intended to be used only by
1054 that unit, common elements needed to access the unit, utility
1055 services provided to the unit, parking spaces, or elevators. The
1056 notice and hearing requirements under subsection (3) do not
1057 apply to suspensions imposed under this subsection.
1058 (4) The notice and hearing requirements of subsection (3)
1059 do not apply to the imposition of suspensions or fines against a
1060 unit owner or a unit's occupant, licensee, or invitee because of
1061 failing to pay any amounts due the association. If such a fine
1062 or suspension is imposed, the association must levy the fine or
1063 impose a reasonable suspension at a properly noticed board
1064 meeting, and after the imposition of such fine or suspension,

1065 ~~the association must notify the unit owner and, if applicable,~~
1066 ~~the unit's occupant, licensee, or invitee by mail or hand~~
1067 ~~delivery.~~
1068 (5) An association may ~~also~~ suspend the voting rights of a
1069 member due to nonpayment of any monetary obligation due to the
1070 association which is more than 90 days delinquent. If a member's
1071 voting rights are suspended, that member's suspension may not
1072 count for or against a proposed question. The suspension ends
1073 upon full payment of all obligations currently due or overdue
1074 the association. The notice and hearing requirements under
1075 subsection (3) do not apply to a suspension imposed under this
1076 subsection.
1077 (6) All suspensions imposed pursuant to subsection (4) or
1078 subsection (5) must be approved at a properly noticed board
1079 meeting. Upon approval, the association must notify the unit
1080 owner and, if applicable, the unit's occupant, licensee, or
1081 invitee by mail or hand delivery.
1082 Section 9. Section 718.703, Florida Statutes, is amended
1083 to read:
1084 718.703 Definitions.—As used in this part, the term:
1085 (1) "Bulk assignee" means a person who is not a bulk buyer
1086 and who:
1087 (a) Acquires more than seven condominium parcels in a
1088 single condominium as set forth in s. 718.707; and
1089 (b) Receives an assignment of any of the developer rights,
1090 other than or in addition to those rights described in
1091 subsection (2), ~~some or all of the rights of the developer~~ as
1092 set forth in the declaration of condominium or this chapter: ~~by~~

1093 1. By a written instrument recorded as part of or as an
1094 exhibit to the deed; ~~or as~~
1095 2. By a separate instrument recorded in the public records
1096 of the county in which the condominium is located; or
1097 3. Pursuant to a final judgment or certificate of title
1098 issued in favor of a purchaser at a foreclosure sale.
1099
1100 A mortgagee or its assignee may not be deemed a bulk assignee or
1101 a developer by reason of the acquisition of condominium units
1102 and receipt of an assignment of some or all of a developer
1103 rights unless the mortgagee or its assignee exercises any of the
1104 developer rights other than those described in subsection (2).
1105 (2) "Bulk buyer" means a person who acquires more than
1106 seven condominium parcels in a single condominium as set forth
1107 in s. 718.707, but who does not receive an assignment of any
1108 developer rights, or receives only some or all of the following
1109 rights: ~~other than~~
1110 (a) The right to conduct sales, leasing, and marketing
1111 activities within the condominium;
1112 (b) The right to be exempt from the payment of working
1113 capital contributions to the condominium association arising out
1114 of, or in connection with, the bulk buyer's acquisition of the ~~a~~
1115 ~~bulk number of~~ units; and
1116 (c) The right to be exempt from any rights of first
1117 refusal which may be held by the condominium association and
1118 would otherwise be applicable to subsequent transfers of title
1119 from the bulk buyer to a third party purchaser concerning one or
1120 more units.

1121 Section 10. Section 718.704, Florida Statutes, is amended
1122 to read:
1123 718.704 Assignment and assumption of developer rights by
1124 bulk assignee; bulk buyer.—
1125 (1) A bulk assignee is deemed to have assumed ~~assumes~~ and
1126 is liable for all duties and responsibilities of the developer
1127 under the declaration and this chapter upon its acquisition of
1128 title to units and continuously thereafter, except that it is
1129 not liable for:
1130 (a) Warranties of the developer under s. 718.203(1) or s.
1131 718.618, except as expressly provided by the bulk assignee in a
1132 prospectus or offering circular, or the contract for purchase
1133 and sale executed with a purchaser, or for design, construction,
1134 development, or repair work performed by or on behalf of the
1135 ~~such~~ bulk assignee.~~;~~
1136 (b) The obligation to:
1137 1. Fund converter reserves under s. 718.618 for a unit
1138 that was not acquired by the bulk assignee; or
1139 2. Provide implied ~~converter~~ warranties on any portion of
1140 the condominium property except as expressly provided by the
1141 bulk assignee in a prospectus or offering circular, or the
1142 contract for purchase and sale executed with a purchaser, or for
1143 ~~and pertaining to any~~ design, construction, development, or
1144 repair work performed by or on behalf of the bulk assignee.~~;~~
1145 (c) The requirement to provide the association with a
1146 cumulative audit of the association's finances from the date of
1147 formation of the condominium association as required by s.
1148 718.301(4)(c). However, the bulk assignee must provide an audit


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1149 for the period during which the bulk assignee elects or appoints
1150 a majority of the members of the board of administration.~~;~~
1151 (d) Any liability arising out of or in connection with
1152 actions taken by the board of administration or the developer-
1153 appointed directors before the bulk assignee elects or appoints
1154 a majority of the members of the board of administration.~~; and~~
1155 (e) Any liability for or arising out of the developer's
1156 failure to fund previous assessments or to resolve budgetary
1157 deficits in relation to a developer's right to guarantee
1158 assessments, except as otherwise provided in subsection (2).
1159
1160 The bulk assignee is ~~also~~ responsible only for delivering
1161 documents and materials in accordance with s. 718.705(3). A bulk
1162 assignee may expressly assume some or all of the developer
1163 obligations ~~of the developer~~ described in paragraphs (a)-(e).
1164 (2) A bulk assignee assigned the developer right ~~receiving~~
1165 ~~the assignment of the rights of the developer~~ to guarantee the
1166 level of assessments and fund budgetary deficits pursuant to s.
1167 718.116 assumes and is liable for all obligations of the
1168 developer with respect to such guarantee upon its acquisition of
1169 title to the units and continuously thereafter, including any
1170 applicable funding of reserves to the extent required by law,
1171 for as long as the guarantee remains in effect. A bulk assignee
1172 not receiving such assignment, or a bulk buyer, does not assume
1173 and is not liable for the obligations of the developer with
1174 respect to such guarantee, but is responsible for payment of
1175 assessments due on or after acquisition of the units in the same
1176 manner as all other owners of condominium parcels or as

1177 otherwise provided in s. 718.116.
1178 (3) A bulk buyer is liable for the duties and
1179 responsibilities of a ~~the~~ developer under the declaration and
1180 this chapter only to the extent that such ~~provided in this part,~~
1181 ~~together with any other~~ duties or responsibilities are ~~of the~~
1182 ~~developer~~ expressly assumed in writing by the bulk buyer.
1183 (4) An acquirer of condominium parcels is not a bulk
1184 assignee or a bulk buyer if the transfer to such acquirer was
1185 made:
1186 (a) Before the effective date of this part;
1187 (b) With the intent to hinder, delay, or defraud any
1188 purchaser, unit owner, or the association;~~,~~ or ~~if the acquirer~~
1189 ~~is~~
1190 (c) By a person who would be considered an insider under
1191 s. 726.102(7).
1192 (5) An assignment of developer rights to a bulk assignee
1193 may be made by a ~~the~~ developer, a previous bulk assignee, a
1194 mortgagee or assignee who has acquired title to the units and
1195 received an assignment of rights, or a court acting on behalf of
1196 the developer or the previous bulk assignee if such developer
1197 rights are held by the predecessor in title to the bulk
1198 assignee. At any particular time, there may not be ~~no~~ more than
1199 one bulk assignee within a condominium; however, ~~but~~ there may
1200 be more than one bulk buyer. If more than one acquirer of
1201 condominium parcels in the same condominium receives an
1202 assignment of developer rights in addition to those rights
1203 described in s. 718.703(2) ~~from the same person~~, the bulk
1204 assignee is the acquirer whose instrument of assignment is

1205 recorded first in the public records of the county in which the
1206 condominium is located, and any subsequent purported bulk
1207 assignee may still qualify as a bulk buyer.
1208 Section 11. Subsections (1) and (3) of section 718.705,
1209 Florida Statutes, are amended to read:
1210 718.705 Board of administration; transfer of control.—
1211 (1) If at the time the bulk assignee acquires title to the
1212 units and receives an assignment of developer rights, the
1213 developer has not relinquished control of the board of
1214 administration, for purposes of determining the timing for
1215 transfer of control of the board of administration of the
1216 association ~~to unit owners other than the developer under s.~~
1217 ~~718.301(1)(a) and (b), if a bulk assignee is entitled to elect a~~
1218 ~~majority of the members of the board~~, a condominium parcel
1219 acquired by the bulk assignee is not deemed to be conveyed to a
1220 purchaser, or owned by an owner other than the developer, until
1221 the condominium parcel is conveyed to an owner who is not a bulk
1222 assignee.
1223 (3) If a bulk assignee relinquishes control of the board
1224 of administration as set forth in s. 718.301, the bulk assignee
1225 must deliver all of those items required by s. 718.301(4).
1226 However, the bulk assignee is not required to deliver items and
1227 documents not in the possession of the bulk assignee if some
1228 items were or should have been in existence before the bulk
1229 assignee's acquisition of the units ~~during the period during~~
1230 ~~which the bulk assignee was entitled to elect at least a~~
1231 ~~majority of the members of the board of administration~~. In
1232 conjunction with the acquisition of units ~~condominium parcels~~, a

1233 bulk assignee shall undertake a good faith effort to obtain the
1234 documents and materials that must be provided to the association
1235 pursuant to s. 718.301(4). If the bulk assignee is not able to
1236 obtain ~~all of~~ such documents and materials, the bulk assignee
1237 must certify in writing to the association the names or
1238 descriptions of the documents and materials that were not
1239 obtainable by the bulk assignee. Delivery of the certificate
1240 relieves the bulk assignee of responsibility for delivering the
1241 documents and materials referenced in the certificate as
1242 otherwise required under ss. 718.112 and 718.301 and this part.
1243 The responsibility of the bulk assignee for the audit required
1244 by s. 718.301(4) commences as of the date on which the bulk
1245 assignee elected <u>or appointed</u> a majority of the members of the
1246 board of administration.

1247 Section 12. Section 718.706, Florida Statutes, is amended
1248 to read:

1249 718.706 Specific provisions pertaining to offering of
1250 units by a bulk assignee or bulk buyer.—

1251 (1) Before offering <u>more than seven</u> ~~any~~ units <u>in a single</u>
1252 <u>condominium</u> for sale or for lease for a term exceeding 5 years,
1253 a bulk assignee or a bulk buyer must file the following
1254 documents with the division and provide such documents to a
1255 prospective purchaser or tenant:

1256 (a) An updated prospectus or offering circular, or a
1257 supplement to the prospectus or offering circular, filed by the
1258 original developer prepared in accordance with s. 718.504, which
1259 must include the form of contract for sale and for lease in
1260 compliance with s. 718.503(2);

1261 (b) An updated Frequently Asked Questions and Answers
1262 sheet;
1263 (c) The executed escrow agreement if required under s.
1264 718.202; and
1265 (d) The financial information required by s. 718.111(13).
1266 However, if a financial information report did ~~does~~ not exist
1267 ~~for the fiscal year~~ before the acquisition of title by the bulk
1268 assignee or bulk buyer, and if ~~or~~ accounting records that ~~cannot~~
1269 ~~be obtained in good faith by the bulk assignee or the bulk buyer~~
1270 ~~which would~~ permit preparation of the required financial
1271 information report for that period cannot be obtained despite
1272 good faith efforts by the bulk assignee or the bulk buyer, the
1273 bulk assignee or bulk buyer is excused from the requirement of
1274 this paragraph. However, the bulk assignee or bulk buyer must
1275 include in the purchase contract the following statement in
1276 conspicuous type:
1277
1278 ALL OR A PORTION OF THE FINANCIAL INFORMATION REPORT
1279 REQUIRED UNDER S. 718.111(13) FOR THE TIME PERIOD
1280 BEFORE THE SELLER'S ACQUISITION OF THE UNIT
1281 ~~IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION~~
1282 IS NOT AVAILABLE OR CANNOT BE OBTAINED DESPITE THE
1283 GOOD FAITH EFFORTS OF ~~CREATED BY~~ THE SELLER ~~DUE TO THE~~
1284 ~~INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION~~.
1285
1286 (2) Before offering more than seven ~~any~~ units in a single
1287 condominium for sale or for lease for a term exceeding 5 years,
1288 a bulk assignee or a bulk buyer must file with the division and

1289 provide to a prospective purchaser or tenant under a lease for a
1290 term exceeding 5 years a disclosure statement that includes, but
1291 is not limited to:
1292 (a) A description of any ~~rights~~ of the developer rights
1293 that ~~developer which~~ have been assigned to the bulk assignee or
1294 bulk buyer;
1295 (b) The following statement in conspicuous type:
1296
1297 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE
1298 DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS
1299 APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION,
1300 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF
1301 OF THE SELLER; and
1302
1303 (c) If the condominium is a conversion subject to part VI,
1304 the following statement in conspicuous type:
1305
1306 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER
1307 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S.
1308 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY
1309 EXCEPT AS ~~MAY BE~~ EXPRESSLY REQUIRED OF THE SELLER IN
1310 THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
1311 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO
1312 ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK
1313 PERFORMED BY OR ON BEHALF OF THE SELLER.
1314
1315 (3) A bulk assignee, while ~~it is~~ in control of the board
1316 of administration of the association, may not authorize, on



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

1317 behalf of the association:
1318 (a) The waiver of reserves or the reduction of funding of
1319 the reserves pursuant to s. 718.112(2)(f)2., unless approved by
1320 a majority of the voting interests not controlled by the
1321 developer, bulk assignee, and bulk buyer; or
1322 (b) The use of reserve expenditures for other purposes
1323 pursuant to s. 718.112(2)(f)3., unless approved by a majority of
1324 the voting interests not controlled by the developer, bulk
1325 assignee, and bulk buyer.
1326 (4) A bulk assignee or a bulk buyer must comply with ~~all~~
1327 ~~the requirements of~~ s. 718.302 regarding any contracts entered
1328 into by the association during the period the bulk assignee or
1329 bulk buyer maintains control of the board of administration.
1330 Unit owners shall be provided ~~afforded~~ all of the rights and ~~the~~
1331 protections contained in s. 718.302 regarding agreements entered
1332 into by the association which are under the control of ~~before~~
1333 ~~unit owners other than~~ the developer, bulk assignee, or bulk
1334 buyer ~~elected a majority of the board of administration~~.
1335 (5) Notwithstanding any other provision of this part, a
1336 bulk assignee or a bulk buyer is not required to comply with the
1337 filing or disclosure requirements of subsections (1) and (2) if
1338 all of the units owned by the bulk assignee or bulk buyer are
1339 offered and conveyed to a single purchaser in a single
1340 transaction. ~~A bulk buyer must comply with the requirements~~
1341 ~~contained in the declaration regarding any transfer of a unit,~~
1342 ~~including sales, leases, and subleases. A bulk buyer is not~~
1343 ~~entitled to any exemptions afforded a developer or successor~~
1344 ~~developer under this chapter regarding the transfer of a unit,~~

1345 ~~including sales, leases, or subleases.~~
1346 Section 13. Section 718.707, Florida Statutes, is amended
1347 to read:
1348 718.707 Time limitation for classification as bulk
1349 assignee or bulk buyer.—A person acquiring condominium parcels
1350 may not be classified as a bulk assignee or bulk buyer unless
1351 the condominium parcels were acquired <u>on or after July 1, 2010,</u>
1352 <u>but</u> before July 1, 2012. The date of such acquisition shall be
1353 determined by the date of recording ~~of~~ a deed or other
1354 instrument of conveyance for such parcels in the public records
1355 of the county in which the condominium is located, or by the
1356 date of <u>issuing</u> ~~issuance of~~ a certificate of title in a
1357 foreclosure proceeding with respect to such condominium parcels.
1358 Section 14. Subsections (3), (4), and (10) of section
1359 719.108, Florida Statutes, is amended to read:
1360 719.108 Rents and assessments; liability; lien and
1361 priority; interest; collection; cooperative ownership.—
1362 (3) Rents and assessments, and installments on them, not
1363 paid when due bear interest at the rate provided in the
1364 cooperative documents from the date due until paid. This rate
1365 may not exceed the rate allowed by law~~,~~ and, if a rate is not
1366 provided in the cooperative documents, ~~interest~~ accrues at 18
1367 percent per annum. If the cooperative documents or bylaws so
1368 provide, the association may charge an administrative late fee
1369 in addition to such interest, ~~in an amount~~ not to exceed the
1370 greater of $25 or 5 percent of each installment of the
1371 assessment for each delinquent installment that the payment is
1372 late. Any payment received by an association must be applied

1373 first to any interest accrued by the association, then to any
1374 administrative late fee, then to any costs and reasonable
1375 attorney's fees incurred in collection, and then to the
1376 delinquent assessment. The foregoing applies notwithstanding any
1377 restrictive endorsement, designation, or instruction placed on
1378 or accompanying a payment. A late fee is not subject to chapter
1379 687 or s. 719.303(3).
1380 (4) The association has a lien on each cooperative parcel
1381 for any unpaid rents and assessments, plus interest, <u>and</u> any
1382 authorized administrative late fees~~, and any reasonable costs~~
1383 ~~for collection services for which the association has contracted~~
1384 ~~against the unit owner of the cooperative parcel~~. If authorized
1385 by the cooperative documents, the lien also secures reasonable
1386 attorney's fees incurred by the association incident to the
1387 collection of the rents and assessments or enforcement of such
1388 lien. The lien is effective from and after recording a claim of
1389 lien in the public records in the county in which the
1390 cooperative parcel is located which states the description of
1391 the cooperative parcel, the name of the unit owner, the amount
1392 due, and the due dates. The lien expires if a claim of lien is
1393 not filed within 1 year after the date the assessment was due,
1394 and the lien does not continue for longer than 1 year after the
1395 claim of lien has been recorded unless, within that time, an
1396 action to enforce the lien is commenced. Except as otherwise
1397 provided in this chapter, a lien may not be filed by the
1398 association against a cooperative parcel until 30 days after the
1399 date on which a notice of intent to file a lien has been
1400 delivered to the owner.

1401 (a) The notice must be sent to the unit owner at the
1402 address of the unit by first-class United States mail and:
1403 1. If the most recent address of the unit owner on the
1404 records of the association is the address of the unit, the
1405 notice must be sent by registered or certified mail, return
1406 receipt requested, to the unit owner at the address of the unit.
1407 2. If the most recent address of the unit owner on the
1408 records of the association is in the United States, but is not
1409 the address of the unit, the notice must be sent by registered
1410 or certified mail, return receipt requested, to the unit owner
1411 at his or her most recent address.
1412 3. If the most recent address of the unit owner on the
1413 records of the association is not in the United States, the
1414 notice must be sent by first-class United States mail to the
1415 unit owner at his or her most recent address.
1416 (b) A notice that is sent pursuant to this subsection is
1417 deemed delivered upon mailing.
1418 (10) If the unit is occupied by a tenant and the unit
1419 owner is delinquent in paying any monetary obligation due to the
1420 association, the association may make a written demand that the
1421 tenant pay <u>rent to the association</u> ~~the future monetary~~
1422 ~~obligations related to the cooperative share to the association~~
1423 and <u>continue to</u> ~~the tenant must~~ make such <u>payments until all</u>
1424 <u>monetary obligations of the unit owner related to the unit have</u>
1425 <u>been paid in full to the association</u> ~~payment~~. ~~The demand is~~
1426 ~~continuing in nature, and upon demand,~~ The tenant must pay the
1427 monetary obligations to the association until the association
1428 releases the tenant or the tenant discontinues tenancy in the

1429 unit. The association must mail written notice to the unit owner
1430 of the association's demand that the tenant make payments to the
1431 association. The association shall, upon request, provide the
1432 tenant with written receipts for payments made. A tenant ~~who~~
1433 ~~acts in good faith in response to a written demand from an~~
1434 ~~association~~ is immune from any claim by ~~from~~ the unit owner
1435 related to the rent once the association has made written
1436 demand. Any payment received from a tenant by the association
1437 must be applied to the unit owner's oldest delinquent monetary
1438 obligation.
1439 (a) If the tenant paid ~~prepaid~~ rent to the unit owner for
1440 a given rental period before receiving the demand from the
1441 association and provides written evidence of prepaying ~~paying~~
1442 the rent to the association within 14 days after receiving the
1443 demand, the tenant shall receive credit for the prepaid rent for
1444 the applicable period but ~~and~~ must make any subsequent rental
1445 payments to the association to be credited against the monetary
1446 obligations of the unit owner ~~to the association~~.
1447 (b) The tenant is not liable for increases in the amount
1448 of the regular monetary obligations due unless the tenant was
1449 notified in writing of the increase at least 10 days before the
1450 date on which the rent is due. The liability of the tenant may
1451 not exceed the amount due from the tenant to the tenant's
1452 landlord. The tenant's landlord shall provide the tenant a
1453 credit against rents due to the unit owner in the amount of
1454 moneys paid to the association ~~under this section~~.
1455 (c) The association may issue notices under s. 83.56 and
1456 may sue for eviction under ss. 83.59-83.625 as if the

1457 association were a landlord under part II of chapter 83 if the
1458 tenant fails to pay a required payment. However, the association
1459 is not otherwise considered a landlord under chapter 83 and
1460 specifically has no obligations ~~duties~~ under s. 83.51.
1461 (d) The tenant does not, by virtue of payment of monetary
1462 obligations, have any of the rights of a unit owner to vote in
1463 any election or to examine the books and records of the
1464 association.
1465 (e) A court may supersede the effect of this subsection by
1466 appointing a receiver.
1467 Section 15. Subsection (3) of section 719.303, Florida
1468 Statutes, is amended, and subsections (4), (5), and (6) are
1469 added to that section, to read:
1470 719.303 Obligations of owners.—
1471 (3) ~~If the cooperative documents so provide,~~ The
1472 association may levy reasonable fines ~~against a unit owner~~ for
1473 failure of the unit owner or the unit's occupant, ~~his or her~~
1474 licensee, or invitee ~~or the unit's occupant~~ to comply with any
1475 provision of the cooperative documents or reasonable rules of
1476 the association. A fine may not ~~No fine shall~~ become a lien
1477 against a unit. ~~No fine shall exceed $100 per violation.~~
1478 ~~However,~~ A fine may be levied on the basis of each day of a
1479 continuing violation, with a single notice and opportunity for
1480 hearing. However, the fine may not exceed $100 per violation, or
1481 $1,000 ~~provided that no such fine shall~~ in the aggregate ~~exceed~~
1482 ~~$1,000~~.
1483 (a) An association may suspend, for a reasonable period of
1484 time, the right of a unit owner, or a unit owner's tenant,

1485 guest, or invitee, to use the common elements, common
1486 facilities, or any other association property for failure to
1487 comply with any provision of the cooperative documents or
1488 reasonable rules of the association.
1489 (b) A ~~No~~ fine or suspension may not be imposed ~~levied~~
1490 except after giving reasonable notice and opportunity for a
1491 hearing to the unit owner and, if applicable, the unit's ~~his or~~
1492 ~~her~~ licensee or invitee. The hearing must ~~shall~~ be held before a
1493 committee of other unit owners. If the committee does not agree
1494 with the fine or suspension, it may ~~shall~~ not be imposed ~~levied~~.
1495 ~~This subsection does not apply to unoccupied units.~~
1496 (4) If a unit owner is more than 90 days delinquent in
1497 paying a monetary obligation due to the association, the
1498 association may suspend the right of the unit owner or the
1499 unit's occupant, licensee, or invitee to use common elements,
1500 common facilities, or any other association property until the
1501 monetary obligation is paid in full. This subsection does not
1502 apply to limited common elements intended to be used only by
1503 that unit, common elements needed to access the unit, utility
1504 services provided to the unit, parking spaces, or elevators. The
1505 notice and hearing requirements under subsection (3) do not
1506 apply to suspensions imposed under this subsection.
1507 (5) An association may suspend the voting rights of a
1508 member due to nonpayment of any monetary obligation due to the
1509 association which is more than 90 days delinquent. The
1510 suspension ends upon full payment of all obligations currently
1511 due or overdue the association. The notice and hearing
1512 requirements under subsection (3) do not apply to a suspension

1513 imposed under this subsection.
1514 (6) All suspensions imposed pursuant to subsection (4) or
1515 subsection (5) must be approved at a properly noticed board
1516 meeting. Upon approval, the association must notify the unit
1517 owner and, if applicable, the unit's occupant, licensee, or
1518 invitee by mail or hand delivery.
1519 Section 16. Subsection (4) of section 720.301, Florida
1520 Statutes, is amended to read:
1521 720.301 Definitions.—As used in this chapter, the term:
1522 (4) "Declaration of covenants," or "declaration," means a
1523 recorded written instrument or instruments in the nature of
1524 covenants running with the land which subject ~~subjects~~ the land
1525 comprising the community to the jurisdiction and control of an
1526 association or associations in which the owners of the parcels,
1527 or their association representatives, must be members.
1528 Section 17. Paragraph (c) of subsection (5) of section
1529 720.303, Florida Statutes, is amended to read:
1530 720.303 Association powers and duties; meetings of board;
1531 official records; budgets; financial reporting; association
1532 funds; recalls.—
1533 (5) INSPECTION AND COPYING OF RECORDS.—The official
1534 records shall be maintained within the state and must be open to
1535 inspection and available for photocopying by members or their
1536 authorized agents at reasonable times and places within 10
1537 business days after receipt of a written request for access.
1538 This subsection may be complied with by having a copy of the
1539 official records available for inspection or copying in the
1540 community. If the association has a photocopy machine available

1541 where the records are maintained, it must provide parcel owners
1542 with copies on request during the inspection if the entire
1543 request is limited to no more than 25 pages.
1544 (c) The association may adopt reasonable written rules
1545 governing the frequency, time, location, notice, records to be
1546 inspected, and manner of inspections, but may not require a
1547 parcel owner to demonstrate any proper purpose for the
1548 inspection, state any reason for the inspection, or limit a
1549 parcel owner's right to inspect records to less than one 8-hour
1550 business day per month. The association may impose fees to cover
1551 the costs of providing copies of the official records,
1552 including, without limitation, the costs of copying. The
1553 association may charge up to 50 cents per page for copies made
1554 on the association's photocopier. If the association does not
1555 have a photocopy machine available where the records are kept,
1556 or if the records requested to be copied exceed 25 pages in
1557 length, the association may have copies made by an outside
1558 vendor or association management company personnel and may
1559 charge the actual cost of copying, including any reasonable
1560 costs involving personnel fees and charges at an hourly rate for
1561 vendor or employee time to cover administrative costs to the
1562 vendor or association. The association shall maintain an
1563 adequate number of copies of the recorded governing documents,
1564 to ensure their availability to members and prospective members.
1565 Notwithstanding this paragraph, the following records are not
1566 accessible to members or parcel owners:
1567 1. Any record protected by the lawyer-client privilege as
1568 described in s. 90.502 and any record protected by the work-

1569 product privilege, including, but not limited to, a ~~any~~ record
1570 prepared by an association attorney or prepared at the
1571 attorney's express direction which reflects a mental impression,
1572 conclusion, litigation strategy, or legal theory of the attorney
1573 or the association and which was prepared exclusively for civil
1574 or criminal litigation or for adversarial administrative
1575 proceedings or which was prepared in anticipation of such
1576 ~~imminent civil or criminal~~ litigation or ~~imminent adversarial~~
1577 ~~administrative~~ proceedings until the conclusion of the
1578 litigation or ~~administrative~~ proceedings.
1579 2. Information obtained by an association in connection
1580 with the approval of the lease, sale, or other transfer of a
1581 parcel.
1582 3. Personnel records of the association's employees,
1583 including, but not limited to, disciplinary, payroll, health,
1584 and insurance records. For purposes of this paragraph, the term
1585 "personnel records" does not include written employment
1586 agreements with an association employee or budgetary or
1587 financial records that indicate the compensation paid to an
1588 association employee.
1589 4. Medical records of parcel owners or community
1590 residents.
1591 5. Social security numbers, driver's license numbers,
1592 credit card numbers, electronic mailing addresses, telephone
1593 numbers, facsimile numbers, emergency contact information, any
1594 addresses for a parcel owner other than as provided for
1595 association notice requirements, and other personal identifying
1596 information of any person, excluding the person's name, parcel

1597 designation, mailing address, and property address. However, an
1598 owner may consent in writing to the disclosure of protected
1599 information described in this subparagraph. The association is
1600 not liable for the disclosure of information that is protected
1601 under this subparagraph if the information is included in an
1602 official record of the association and is voluntarily provided
1603 by an owner and not requested by the association.
1604 6. Any electronic security measure that is used by the
1605 association to safeguard data, including passwords.
1606 7. The software and operating system used by the
1607 association which allows the manipulation of data, even if the
1608 owner owns a copy of the same software used by the association.
1609 The data is part of the official records of the association.
1610 Section 18. Subsections (2) and (3) of section 720.305,
1611 Florida Statutes, are amended and renumbered as subsections (3)
1612 and (4), respectively, and subsection (5) is added to that
1613 section, to read:
1614 720.305 Obligations of members; remedies at law or in
1615 equity; levy of fines and suspension of use rights.—
1616 (2) The association If a member is delinquent for more
1617 than 90 days in paying a monetary obligation due the
1618 association, an association may suspend, until such monetary
1619 obligation is paid, the rights of a member or a member's
1620 tenants, guests, or invitees, or both, to use common areas and
1621 facilities and may levy reasonable fines of up to $100 per
1622 violation, against any member or any member's tenant, guest, or
1623 invitee for the failure of the owner of the parcel, or its
1624 occupant, licensee, or invitee, to comply with any provision of


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1625 the declaration, the association bylaws, or reasonable rules of
1626 the association. A fine may be levied for each day of a
1627 continuing violation, with a single notice and opportunity for
1628 hearing, except that the ~~a~~ fine may not exceed $1,000 in the
1629 aggregate unless otherwise provided in the governing documents.
1630 A fine of less than $1,000 may not become a lien against a
1631 parcel. In any action to recover a fine, the prevailing party is
1632 entitled to ~~collect its~~ reasonable attorney's fees and costs
1633 from the nonprevailing party as determined by the court.
1634 (a) An association may suspend, for a reasonable period of
1635 time, the right of a member, or a member's tenant, guest, or
1636 invitee, to use common areas and facilities for the failure of
1637 the owner of the parcel, or its occupant, licensee, or invitee,
1638 to comply with any provision of the declaration, the association
1639 bylaws, or reasonable rules of the association. ~~The provisions~~
1640 ~~regarding the suspension-of-use rights do not apply to the~~
1641 ~~portion of common areas that must be used to provide access to~~
1642 ~~the parcel or utility services provided to the parcel.~~
1643 (b)~~(a)~~ A fine or suspension may not be imposed without at
1644 least 14 days' notice to the person sought to be fined or
1645 suspended and an opportunity for a hearing before a committee of
1646 at least three members appointed by the board who are not
1647 officers, directors, or employees of the association, or the
1648 spouse, parent, child, brother, or sister of an officer,
1649 director, or employee. If the committee, by majority vote, does
1650 not approve a proposed fine or suspension, it may not be
1651 imposed. If the association imposes a fine or suspension, the
1652 association must provide written notice of such fine or

1653 suspension by mail or hand delivery to the parcel owner and, if
1654 applicable, to any tenant, licensee, or invitee of the parcel
1655 owner.
1656 (3) If a member is more than 90 days delinquent in paying
1657 a monetary obligation due to the association, the association
1658 may suspend the right of the member, or the member's tenant,
1659 guest, or invitee, to use common areas and facilities until the
1660 monetary obligation is paid in full. The subsection does not
1661 apply to that portion of common areas used to provide access to
1662 the parcel or to provide utility services provided to the
1663 parcel.
1664 ~~(b)~~ Suspension does ~~of common-area-use rights do~~ not
1665 impair the right of an owner or tenant of a parcel to have
1666 vehicular and pedestrian ingress to and egress from the parcel,
1667 including, but not limited to, the right to park. The notice and
1668 hearing requirements under subsection (2) do not apply to a
1669 suspension imposed under this subsection.
1670 (4)~~(3)~~ ~~If the governing documents so provide,~~ An
1671 association may suspend the voting rights of a member for the
1672 nonpayment of any monetary obligation that is more than ~~regular~~
1673 ~~annual assessments that are delinquent in excess of~~ 90 days
1674 delinquent. The notice and hearing requirements under subsection
1675 (2) do not apply to a suspension imposed under this subsection.
1676 The suspension ends upon full payment of all obligations
1677 currently due or overdue to the association.
1678 (5) All suspensions imposed pursuant to subsection (3) or
1679 subsection (4) must be approved at a properly noticed board
1680 meeting. Upon approval, the association must notify the parcel

1681 owner and, if applicable, the parcel's occupant, licensee, or
1682 invitee by mail or hand delivery.
1683 Section 19. Subsection (9) of section 720.306, Florida
1684 Statutes, is amended to read:
1685 720.306 Meetings of members; voting and election
1686 procedures; amendments.—
1687 (9)(a) ELECTIONS AND BOARD VACANCIES.— Elections of
1688 directors must be conducted in accordance with the procedures
1689 set forth in the governing documents of the association. All
1690 members of the association are eligible to serve on the board of
1691 directors, and a member may nominate himself or herself as a
1692 candidate for the board at a meeting where the election is to be
1693 held or, if the election process allows voting by absentee
1694 ballot, in advance of the balloting. Except as otherwise
1695 provided in the governing documents, boards of directors must be
1696 elected by a plurality of the votes cast by eligible voters.
1697 (b) A person who is delinquent in the payment of any fee,
1698 fine, or other monetary obligation to the association for more
1699 than 90 days is not eligible for board membership. A person who
1700 has been convicted of any felony in this state or in a United
1701 States District or Terrritorial Court, or has been convicted of
1702 any offense in another jurisdiction which would be considered a
1703 felony if committed in this state, is not eligible for board
1704 membership unless such felon's civil rights have been restored
1705 for at least 5 years as of the date on which such person seeks
1706 election to the board. The validity of any action by the board
1707 is not affected if it is later determined that a member of the
1708 board is ineligible for board membership.

1709 (c) Any election dispute between a member and an
1710 association must be submitted to mandatory binding arbitration
1711 with the division. Such proceedings must be conducted in the
1712 manner provided by s. 718.1255 and the procedural rules adopted
1713 by the division. Unless otherwise provided in the bylaws, any
1714 vacancy occurring on the board before the expiration of a term
1715 may be filled by an affirmative vote of the majority of the
1716 remaining directors, even if the remaining directors constitute
1717 less than a quorum, or by the sole remaining director. In the
1718 alternative, a board may hold an election to fill the vacancy,
1719 in which case the election procedures must conform to the
1720 requirements of the governing documents. Unless otherwise
1721 provided in the bylaws, a board member appointed or elected
1722 under this section is appointed for the unexpired term of the
1723 seat being filled. Filling vacancies created by recall is
1724 governed by s. 720.303(10) and rules adopted by the division.
1725 Section 20. Paragraph (a) of subsection (1) and
1726 subsections (3) and (8) of section 720.3085, Florida Statutes,
1727 are amended to read:
1728 720.3085 Payment for assessments; lien claims.—
1729 (1) When authorized by the governing documents, the
1730 association has a lien on each parcel to secure the payment of
1731 assessments and other amounts provided for by this section.
1732 Except as otherwise set forth in this section, the lien is
1733 effective from and shall relate back to the date on which the
1734 original declaration of the community was recorded. However, as
1735 to first mortgages of record, the lien is effective from and
1736 after recording of a claim of lien in the public records of the

1737 county in which the parcel is located. This subsection does not
1738 bestow upon any lien, mortgage, or certified judgment of record
1739 on July 1, 2008, including the lien for unpaid assessments
1740 created in this section, a priority that, by law, the lien,
1741 mortgage, or judgment did not have before July 1, 2008.
1742 (a) To be valid, a claim of lien must state the
1743 description of the parcel, the name of the record owner, the
1744 name and address of the association, the assessment amount due,
1745 and the due date. The claim of lien <u>secures</u> ~~shall secure~~ all
1746 unpaid assessments that are due and that may accrue subsequent
1747 to the recording of the claim of lien and before entry of a
1748 certificate of title, as well as interest, late charges, and
1749 reasonable costs and attorney's fees incurred by the association
1750 incident to the collection process. The person making ~~the~~
1751 payment is entitled to a satisfaction of the lien upon payment
1752 in full.
1753 (3) Assessments and installments on assessments that are
1754 not paid when due bear interest from the due date until paid at
1755 the rate provided in the declaration of covenants or the bylaws
1756 of the association, which rate may not exceed the rate allowed
1757 by law. If no rate is provided in the declaration or bylaws,
1758 interest accrues at the rate of 18 percent per year.
1759 (a) If the declaration or bylaws so provide, the
1760 association may also charge an administrative late fee ~~in an~~
1761 ~~amount~~ not to exceed the greater of $25 or 5 percent of the
1762 amount of each installment that is paid past the due date.
1763 (b) Any payment received by an association and accepted
1764 shall be applied first to any interest accrued, then to any


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1765 administrative late fee, then to any costs and reasonable
1766 attorney's fees incurred in collection, and then to the
1767 delinquent assessment. This paragraph applies notwithstanding
1768 any restrictive endorsement, designation, or instruction placed
1769 on or accompanying a payment. A late fee is not subject to the
1770 provisions of chapter 687 and is not a fine.
1771 (8) If the parcel is occupied by a tenant and the parcel
1772 owner is delinquent in paying any monetary obligation due to the
1773 association, the association may demand that the tenant pay rent
1774 to the association and continue to make such payments until all
1775 the monetary obligations of the parcel owner related to the
1776 parcel have been paid in full and ~~the future monetary~~
1777 ~~obligations related to the parcel. The demand is continuing in~~
1778 ~~nature, and upon demand, the tenant must continue to pay the~~
1779 ~~monetary obligations until~~ the association releases the tenant
1780 or until the tenant discontinues tenancy in the parcel. A tenant
1781 ~~who acts in good faith in response to a written demand from an~~
1782 ~~association~~ is immune from any claim by ~~from~~ the parcel owner
1783 related to the rent once the association has made written
1784 demand. Any payment received from a tenant by the association
1785 must be applied to the parcel owner's oldest delinquent monetary
1786 obligation.
1787 (a) If the tenant paid ~~prepaid~~ rent to the parcel owner
1788 for a given rental period before receiving the demand from the
1789 association and provides written evidence of prepaying ~~paying~~
1790 the rent to the association within 14 days after receiving the
1791 demand, the tenant shall receive credit for the prepaid rent for
1792 the applicable period but ~~and~~ must make any subsequent rental

1793 payments to the association to be credited against the monetary
1794 obligations of the parcel owner to the association. The
1795 association shall, upon request, provide the tenant with written
1796 receipts for payments made. The association shall mail written
1797 notice to the parcel owner of the association's demand that the
1798 tenant pay monetary obligations to the association.
1799 (b) The tenant is not liable for increases in the amount
1800 of the monetary obligations due unless the tenant was notified
1801 in writing of the increase at least 10 days before the date on
1802 which the rent is due. The liability of the tenant may not
1803 exceed the amount due from the tenant to the tenant's landlord.
1804 The tenant shall be given a credit against rents due to the
1805 parcel owner in the amount of assessments paid to the
1806 association.
1807 (c) The association may issue notices under s. 83.56 and
1808 may sue for eviction under ss. 83.59-83.625 as if the
1809 association were a landlord under part II of chapter 83 if the
1810 tenant fails to pay a monetary obligation. However, the
1811 association is not otherwise considered a landlord under chapter
1812 83 and specifically has no obligations ~~duties~~ under s. 83.51.
1813 (d) The tenant does not, by virtue of payment of monetary
1814 obligations, have any of the rights of a parcel owner to vote in
1815 any election or to examine the books and records of the
1816 association.
1817 (e) A court may supersede the effect of this subsection by
1818 appointing a receiver.
1819 Section 21. Section 720.309, Florida Statutes, is amended
1820 to read:

1821 720.309 Agreements entered into by the association.—
1822 (1) Any grant or reservation made by any document, and any
1823 contract that has ~~with~~ a term greater than ~~in excess of~~ 10
1824 years, that is made by an association before control of the
1825 association is turned over to the members other than the
1826 developer, and that provides ~~which provide~~ for the operation,
1827 maintenance, or management of the association or common areas,
1828 must be fair and reasonable.
1829 (2) If the governing documents provide for the cost of
1830 communication services as defined in s. 202.11, information
1831 services or Internet services obtained pursuant to a bulk
1832 contract shall be deemed an operating expense of the
1833 association. If the governing documents do not provide for such
1834 services, the board may contract for the services, and the cost
1835 shall be deemed an operating expense of the association but must
1836 be allocated on a per-parcel basis rather than a percentage
1837 basis, notwithstanding that the governing documents provide for
1838 other than an equal sharing of operating expenses. Any contract
1839 entered into before July 1, 2011, in which the cost of the
1840 service is not equally divided among all parcel owners may be
1841 changed by a majority of the voting interests present at a
1842 regular or special meeting of the association in order to
1843 allocate the cost equally among all parcels.
1844 (a) Any contract entered into may be canceled by a
1845 majority of the voting interests present at the next regular or
1846 special meeting of the association, whichever occurs first. Any
1847 member may make a motion to cancel such contract, but if no
1848 motion is made or if such motion fails to obtain the required

1849 vote, the contract shall be deemed ratified for the term
1850 expressed therein.
1851 (b) Any contract entered into must provide, and shall be
1852 deemed to provide if not expressly set forth therein, that a
1853 hearing-impaired or legally blind parcel owner who does not
1854 occupy the parcel along with a nonhearing-impaired or sighted
1855 person, or a parcel owner who receives supplemental security
1856 income under Title XVI of the Social Security Act or food stamps
1857 as administered by the Department of Children and Family
1858 Services pursuant to s. 414.31, may discontinue the service
1859 without incurring disconnect fees, penalties, or subsequent
1860 service charges, and may not be required to pay any operating
1861 expenses charge related to such service for those parcels. If
1862 fewer than all parcel owners share the expenses of the
1863 communication services, information services, or Internet
1864 services, the expense must be shared by all participating parcel
1865 owners. The association may use the provisions of s. 720.3085 to
1866 enforce payment by the parcel owners receiving such services.
1867 (c) A resident of any parcel, whether a tenant or parcel
1868 owner, may not be denied access to available franchised,
1869 licensed, or certificated cable or video service providers if
1870 the resident pays the provider directly for services. A resident
1871 or a cable or video service provider may not be required to pay
1872 anything of value in order to obtain or provide such service
1873 except for the charges normally paid for like services by
1874 residents of single-family homes located outside the community
1875 but within the same franchised, licensed, or certificated area,
1876 and except for installation charges agreed to between the

1877 resident and the service provider.

1878 Section 22. This act shall take effect July 1, 2011.

HJR 1471

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 1471 Religious Freedom
**SPONSOR(S):** Plakon and others
**TIED BILLS:** None **IDEN./SIM. BILLS:** SJR 1218

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Thomas | Bond |
| 2) Judiciary Committee | | | |

### SUMMARY ANALYSIS


The Joint Resolution amends the Florida Constitution relating to religious freedom. The resolution:

- Repeals a limit on the power of the state and its subdivisions to spend funds "directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."
- Provides that an individual or entity may not be discriminated against or barred from receiving public funding on the basis of religious identity or belief.

The joint resolution must be adopted by a three-fifths vote of the membership of each house of the Legislature. If approved by the Legislature, the proposed amendment would be placed on the ballot at the November 6, 2012, general election. Sixty percent voter approval is required for adoption. If adopted by the voters, the amendment will take effect on January 4, 2013.

This bill requires an estimated nonrecurring expenditure for publication in FY 2012-2013 of $29,400.78 payable from the General Revenue Fund. The bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

The U.S. Constitution and the Florida Constitution both contain an Establishment Clause and a Free Exercise Clause. The Establishment Clauses are based on the clause including the words "establishment of religion." The Free Exercise Clauses are based on the clause including the words "free exercise."

The First Amendment to the U.S. Constitution states:

> Congress shall make no law respecting an **establishment of religion**, or prohibiting the **free exercise thereof**; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances (emphasis added).

Similarly, Article I, Section 3 of the Florida Constitution states:

> There shall be no law respecting the **establishment of religion** or prohibiting or penalizing the **free exercise thereof**. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. **No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution** (emphasis added).

Blaine Amendments

The last sentence of Article I, Section 3 of the Florida Constitution is known as the "Blaine Amendment" or "no-aid" provision.[1] The U.S. Constitution **does not** contain a similar provision. "Blaine Amendments" are provisions adopted in the latter part of the nineteenth century as part of many state constitutions in an attempt to restrict the use of state funds at "sectarian" schools. Florida's "Blaine Amendment" imposes "further restrictions on the state's involvement with religious institutions than the Establishment Clause" of the Florida or U.S. Constitutions.[2] Florida's Blaine Amendment reads:

> No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.[3]

In 1875, President Ulysses S. Grant, in his State of the Union Address, called for an amendment to the U.S. Constitution to mandate free public schools and prohibit the use of public money for sectarian schools. President Grant laid out his agenda for "good common school education." He attacked government support for "sectarian schools" run by religious organizations, and called for the defense of public education "unmixed with sectarian, pagan or atheistical dogmas." President Grant declared that "Church and State" should be "forever separate." Religion, he said, should be left to families, churches, and private schools devoid of public funds.[4]

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[1] *Bush v. Holmes*, 886 So.2d 340, 344, 348-349 (Fla. 1st DCA 2004).
[2] *Holmes*, at 344.
[3] Article I, s. 3, FLA. CONST.
[4] Deforrest, Mark Edward. "*An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns*," Harvard Journal of Law and Public Policy, Vol. 26, 2003.

After President Grant's speech, Congressman James G. Blaine proposed the President's suggested amendment to the U.S. Constitution. In 1875, the proposed amendment passed by a vote of 180 to 7 in the House of Representatives, but failed by four votes to achieve the necessary two-thirds vote in the U.S. Senate. The proposed text of Blaine's amendment was:

> No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefore, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects and denominations.[5]

While the amendment failed at the federal level, in the following years a majority of states adopted amendments similar to that of Blaine's and such amendments became known as "Blaine Amendments."[6] During this time period, there was a large increase in Catholic immigration to the United States. Catholic families resisted sending their children to public schools where the Protestant bible was read and Protestant prayers were used. This led many Catholic organizations to organize their own school systems, and created concern among Protestants that the government would begin funding Catholic schools. Some commentators believe the "Blaine Amendments" were a reaction to this fear.[7] Today, 37 states have provisions placing some form of restriction on government aid to "sectarian" schools that goes beyond any limits in the U.S. Constitution.[8]

Florida adopted its "Blaine Amendment" in 1885, later than most other states.[9] It was readopted in the 1968 rewrite of the Florida Constitution as part of Article I, Section 3. It has been reported that:

> As elsewhere in the United States, the history of Florida's Blaine Amendment is irrevocably linked to the progress of the common school movement and immigration, urbanization, and industrialization. The common school movement, in Florida and elsewhere, taught a "common religion" that was essentially Protestant in character, requiring until the 1960s, daily reading from the King James Bible, prayer, and other Protestant religious observances in the public schools.[10]

**Florida Court Cases**

Bush v. Homes

Taxpayers challenged the constitutionality of a school voucher program entitled the Opportunity Scholarship Program (OSP). The trial court found the OSP in violation of the free public school system provision in Article IX, Section 1 of the Florida Constitution, relying on the principle of "expressio unius est exclusio alterius"[11] in finding that the expression in the Florida Constitution of a public school system prohibits the Legislature from funding private schools.[12] On appeal, the First District Court of

[5] *Id.*
[6] *The Blaine Game: Controversy Over the Blaine Amendments and Public Funding of Religion.* Pew Forum on Religious and Public Life. July 24, 2008. Available at: http://pewforum.org/Church-State-Law/The-Blaine-Game-Controversy-Over-the-Blaine-Amendments-and-Public-Funding-of-Religion.aspx (last visited March 25, 2011).
[7] *Id.*
[8] The Becket Fund for Religious Liberty, What are Blaine Amendments? http://www.blaineamendments.org/Intro/whatis.html (last visited March 25, 2011).
[9] *Holmes* at 351-352.
[10] Adams, Nathan. *Pedigree of an Unusual Blaine Amendment: Article I, Section 3 Interpreted and Implemented in Florida Education.* 30 Nova L. Rev. 1, Fall 2005.
[11] "A canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative." BLACK'S LAW DICTIONARY (9th edition 2009).
[12] *Bush v. Holmes*, 767 So.2d 668, 672 (Fla. 1st DCA 2000).

Appeal reversed and remanded, holding that the OSP was not unconstitutional on its face under this provision.[13]

On remand, the circuit court found the OSP unconstitutional again, this time based on the State Constitution's "no-aid" provision ("Blaine Amendment") in Article I, Section 3. On appeal, a divided 3-judge panel of the First District Court of Appeal affirmed the trial court's order.[14] The First District subsequently withdrew the panel opinion and issued an en banc decision in which a majority of the First District again affirmed the trial court's order.[15] The Court found that the "no-aid" provision involves three elements:

> (1) the prohibited state action must involve the use of state tax revenues;
> (2) the prohibited use of state revenues is broadly defined, in that state revenues cannot be used "directly or indirectly in aid of" the prohibited beneficiaries; and
> (3) the prohibited beneficiaries of the use of state revenues are "any church, sect or religious denomination" or "any sectarian institution."[16]

In interpreting the "no-aid" provision, the Court commented that:

> [W]e cannot read the entirety of article I, section 3 of the Florida Constitution to be substantively synonymous with the federal Establishment Clause... For a court to interpret the no-aid provision of article I, section 3 as imposing no further restrictions on the state's involvement with religious institutions than the Establishment Clause, it would have to ignore both the clear meaning and intent of the text and the unambiguous history of the no-aid provision... Finally, based upon the recent United States Supreme Court decision in *Locke v. Davey*, 540 U.S. 712 (2004), we hold that the no-aid provision does not violate the Free Exercise clause of the United States Constitution.[17]

On appeal of the First District's 2004 opinion interpreting the "no-aid" provision, the Supreme Court struck the OSP on other grounds.[18] The Court found "it unnecessary to address whether the OSP is a violation of the "no aid" provision in article I, section 3 of the Constitution, as held by the First District."[19]

Council for Secular Humanism, Inc. v. McNeil, Florida 1st DCA 2010

The Council for Secular Humanism (CSH) brought suit against the Department of Corrections (DOC) challenging the use of state funds to support the faith-based substance abuse transitional housing programs of Prisoners of Christ, Inc. (Prisoners) and Lamb of God Ministries, Inc. (Lamb of God). The Council for Secular Humanism (CSH) alleged that payments to these organizations by DOC constituted payments to sectarian institutions contrary to the "no-aid" provision in Article I, Section 3 of the Florida Constitution. The trial court found in favor of DOC.[20]

On appeal, the First District Court of Appeal found:

> As this court explained in *Holmes*, Article I, section 3 of the Florida Constitution is not "substantively synonymous with the federal Establishment Clause." While the first

[13] *Id.*
[14] *Bush v. Holmes*, 29 Fla. L. Weekly D1877 (Fla. 1st DCA Aug.16, 2004).
[15] *Bush v. Holmes*, 886 So.2d 340 (Fla. 1st DCA 2004).
[16] *Id.* at 352.
[17] *Id.* at 344.
[18] *Bush v. Holmes*, 919 So.2d 392, 399 (Fla. 2006). The Florida Supreme Court agreed with the original trial court's opinion that the OSP was in violation of the free public school system provision in Article IX, Section 1 of the Florida Constitution, thus overturning the First District's opinion to the contrary.
[19] *Id.* at 398.
[20] *Council for Secular Humanism, Inc. v. McNeil*, 44 So.3d 112 (Fla.1st DCA 2010).

sentence of Article I, section 3 is consistent with the federal Establishment Clause by "generally prohibiting laws respecting the establishment of religion," the no-aid provision of Article I, section 3 **imposes "further restrictions on the state's involvement with religious institutions than [imposed by] the Establishment Clause.**" Specifically, the state may not use tax revenues to "directly or **indirectly**" aid "any church, sect, or religious denomination or any sectarian institution." As we noted in *Holmes*, the United States Supreme Court has recognized that state constitutional provisions such as Florida's no-aid provision are "far stricter" than the Establishment Clause and "draw [ ] a more stringent line than that drawn by the United States Constitution." [Citations omitted; emphasis added].[21]

Because the Court recognized that their decision was one of first impression in which the Florida no-aid provision was applied outside the school context and was important to how the state could contract for social services, it certified the question to the Florida Supreme Court as one of great public importance under rule 9.330, Florida Rules of Appellate Procedure.[22] The certified question was:

> WHETHER THE NO-AID PROVISION IN ARTICLE I, SECTION 3 OF THE FLORIDA CONSTITUTION PROHIBITS THE STATE FROM CONTRACTING FOR THE PROVISION OF NECESSARY SOCIAL SERVICES BY RELIGIOUS OR SECTARIAN ENTITIES?[23]

The Supreme Court did not accept the certified question,[24] so the case was remanded to the trial court for a hearing on whether Prisoners and Lamb of God are sectarian institutions and a determination if the DOC contracts are in violation of Article I, Section 3 of the Florida Constitution. The remanded case is on the circuit court's docket as of March 25, 2011.

**Effect of Proposed Changes**

The bill repeals a limit on the power of the state to spend funds directly or indirectly in aid of sectarian institutions. Specifically, the measure repeals the "Blaine Amendment" or "no-aid" provision of Article I, Section 3 of the Florida Constitution.

The bill replaces the "Blaine Amendment" with the following statement:

> No individual or entity may be discriminated against or barred from receiving funding on the basis of religious identity or belief.

The bill includes numerous "whereas clauses" that provide statements regarding the importance of religious freedoms, tolerance, and diversity; the history of the Blaine Amendment; the legal history of Blaine Amendment challenges; the abundance and role of private religious affiliated hospitals, schools, adoption agencies, and other benevolent institutions; and discussion regarding the Establishment Clause.

The joint resolution is silent regarding an effective date for the constitutional amendment. Therefore, in accordance with section 5, Article XI, of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate, which is January 8, 2013.

B. SECTION DIRECTORY:

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[21] *Id.* at 119.
[22] *Id.* at 121.
[23] *Id.* at 121.
[24] *McNeil v. Council for Secular Humanism, Inc.*, 41 So.3d 215 (Fla. 2010).

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The joint resolution does not appear to have a fiscal impact on state revenues.

2. Expenditures:

   The State Constitution requires the proposed amendment to be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.[25] The Department of State executes the publication of the Joint Resolution if placed on the ballot. The Florida Department of State estimates that required publication of a proposed constitutional amendment costs $106.14 per word. At approximately 277 words, the amendment would require an estimated expenditure of $29,400.78. These funds must be spent regardless of whether the amendment passes, and would be payable in FY 2012-2013 from the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The joint resolution does not appear to have a fiscal impact on local revenues.

2. Expenditures:

   The joint resolution does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   Private religious institutions could benefit from receiving public funds.

D. FISCAL COMMENTS:

   The cost to publish the amendment is estimated at $29,400.78.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   Article XI, Section 1 of the State Constitution provides for proposed changes to the Constitution by the Legislature:

   > SECTION 1: **Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

[25] Article XI, s. 5(d), FLA. CONST.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records.[26] The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.[27] Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.[28]

Article XI, Section 5(e) of the State Constitution requires 60 percent voter approval for a proposed constitutional amendment to pass.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

[26] Article XI, s. 5(a), FLA. CONST.
[27] Article XI, s. 5(d), FLA. CONST.
[28] Article XI, s. 5(a), FLA. CONST.

1 House Joint Resolution
2 A joint resolution proposing an amendment to Section 3 of
3 Article I of the State Constitution to eradicate remnants
4 of anti-religious bigotry from the State Constitution and
5 to end exclusionary funding practices that discriminate on
6 the basis of religious belief or identity.
7
8 WHEREAS, Floridians highly value tolerance and liberty in
9 all forms, and
10 WHEREAS, Floridians strongly support the right of each
11 person to practice religion according to the dictates of his or
12 her own conscience, and
13 WHEREAS, Florida is a religiously diverse state with over a
14 quarter of its population identifying as Roman Catholic and with
15 the largest Jewish population in the Southern United States, and
16 WHEREAS, the public policy of the State of Florida is to
17 support the protection and advancement of religious liberty, and
18 WHEREAS, Florida's Blaine Amendment language, the last
19 sentence of Article I, Section 3, of the current State
20 Constitution, was originally adopted in 1885 following a failed
21 attempt to adopt similar language in the United States
22 Constitution, and
23 WHEREAS, Florida's Blaine Amendment language was borne in
24 an atmosphere of, and exists as a result of, anti-Catholic
25 bigotry and animus, and
26 WHEREAS, the genesis of Florida's Blaine Amendment language
27 reflects an attempt to stifle and disrupt the constitutional

28 rights and development of the emerging Catholic minority
29 community in America, and
30 WHEREAS, the Constitutional Convention that adopted the
31 Constitution of 1885 created a more religiously and racially
32 discriminatory document than its predecessor, with the first
33 inclusion of the Blaine Amendment language alongside the racist
34 separate-but-equal doctrine, and
35 WHEREAS, the racist separate-but-equal doctrine has been
36 duly abolished and all vestiges thereof rightfully removed from
37 the State Constitution, and the people of Florida should now be
38 given the opportunity to remove the discriminatory Blaine
39 Amendment language, a lasting stain upon the state's history
40 that stands in opposition to the people's will and counter to
41 our time-honored traditions of religious liberty and freedom,
42 and
43 WHEREAS, religiously affiliated hospitals, schools,
44 adoption agencies, and other benevolent institutions have been
45 of longstanding service to the people of Florida and have
46 provided numerous services to those in need, and
47 WHEREAS, until 2004, no Florida court had ever applied the
48 State Constitution in a reported case in a manner more
49 restrictive of the use of state funds than have federal courts
50 applying the Establishment Clause of the First Amendment to the
51 United States Constitution, and
52 WHEREAS, Florida's Blaine Amendment is currently being
53 enforced against religious groups and organizations of all
54 denominations, stifling their development and inhibiting the
55 free exercise of religious liberty, and

56 WHEREAS, courts have prohibited religiously affiliated
57 schools from participating in state-funded education programs
58 and religious organizations from participating in state-funded
59 services to incarcerated persons, and
60 WHEREAS, such application of the Blaine Amendment language
61 jeopardizes the participation of religiously affiliated
62 hospitals and other benevolent institutions in Medicaid and
63 other public programs, and
64 WHEREAS, those institutionalized in hospitals and prisons
65 are among those most in need of spiritual nurture and
66 encouragement as well as being often dependent on state-
67 subsidized human services, and
68 WHEREAS, the enforcement of the Blaine Amendment language,
69 barring religious organizations access to state funding and
70 state-funded business on an equal basis with nonreligious
71 organizations, violates the founding principles of the United
72 States and this state as contained in the Declaration of
73 Independence and the Preamble to the State Constitution, and
74 WHEREAS, the Establishment Clause of the First Amendment to
75 the United States Constitution does not require any such
76 absolute restrictions on the use of public funds, and
77 WHEREAS, the Establishment Clause permits the use of public
78 funds in religious hospitals, schools, and other benevolent
79 institutions, and
80 WHEREAS, the Establishment Clause and the religion clauses
81 of the State Constitution, other than the Blaine Amendment, are
82 intended to protect the religious liberties and sentiments of
83 Floridians without inhibiting the free exercise of religion, and

84 WHEREAS, their religious convictions motivate some
85 Floridians to establish religiously affiliated schools,
86 hospitals, adoption agencies, and other benevolent institutions
87 that provide valuable services to society and to receive or
88 utilize such valuable services from these benevolent providers,
89 which could be subsidized by the state through public programs,
90 and
91 WHEREAS, it is not necessary to prohibit all economic
92 relations with religious organizations and providers in order to
93 prevent an establishment of religion that would infringe on the
94 religious liberties of Floridians, and
95 WHEREAS, in 2000, a plurality of the United States Supreme
96 Court acknowledged that this "doctrine, born of bigotry, should
97 be buried now," and
98 WHEREAS, it is necessary to amend the State Constitution to
99 correct the aforementioned disconnect between the true
100 sentiments and principles of Floridians and the discriminatory
101 origins, intentions, and present application of the Blaine
102 Amendment, in furtherance of a deeply rooted commitment to
103 freedom and liberty, where rights and restrictions ought to be
104 based on the merits of one's words and actions rather than on
105 religious affiliation or identity, NOW, THEREFORE,
106
107 Be It Resolved by the Legislature of the State of Florida:
108
109 That the following amendment to Section 3 of Article I of
110 the State Constitution is agreed to and shall be submitted to
111 the electors of this state for approval or rejection at the next

112 general election or at an earlier special election specifically
113 authorized by law for that purpose:
114 ARTICLE I
115 DECLARATION OF RIGHTS
116 SECTION 3. Religious freedom.—There shall be no law
117 respecting the establishment of religion or prohibiting or
118 penalizing the free exercise thereof. Religious freedom shall
119 not justify practices inconsistent with public morals, peace, or
120 safety. No individual or entity may be discriminated against or
121 barred from receiving funding on the basis of religious identity
122 or belief. ~~No revenue of the state or any political subdivision~~
123 ~~or agency thereof shall ever be taken from the public treasury~~
124 ~~directly or indirectly in aid of any church, sect, or religious~~
125 ~~denomination or in aid of any sectarian institution.~~
126 BE IT FURTHER RESOLVED that the following statement be
127 placed on the ballot:
128 CONSTITUTIONAL AMENDMENT
129 ARTICLE I, SECTION 3
130 RELIGIOUS FREEDOM.—Proposing an amendment to the State
131 Constitution to provide that no individual or entity may be
132 discriminated against or barred from receiving funding on the
133 basis of religious identity or belief and to delete the
134 prohibition against using revenues from the public treasury
135 directly or indirectly in aid of any church, sect, or religious
136 denomination or in aid of any sectarian institution.