Civil Justice Subcommittee

Wednesday, December 7, 2011
1:00 PM
404 HOB

Dean Cannon
Speaker

Eric Eisnaugle
Chair

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time:	Wednesday, December 07, 2011 01:00 pm
End Date and Time:	Wednesday, December 07, 2011 03:00 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 319 Residential Properties by Moraitis
HB 385 Sovereign Immunity by Gaetz, Renuart
HB 609 Wage Protection for Employees by Goodson
HB 631 Terms of Courts by Weinstein
HB 4125 Judges by Stargel
HB 4133 District Courts of Appeal by Gaetz

Consideration of the following proposed committee substitute(s):

PCS for HB 549 -- Alimony

NOTICE FINALIZED on 11/30/2011 16:11 by Jones.Missy

HB 319

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 319 Residential Properties
SPONSOR(S): Moraitis, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JMC	Bond TB
2) Business & Consumer Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

This bill amends laws relating to condominiums, cooperatives, and homeowners' associations, to:

- Allow condominium boards to install code-compliant hurricane doors and other types of code-compliant hurricane protection;
- Allow extra time for the completion of planned additional phases to a condominium;
- Provide for the creation of a condominium within a condominium;
- Extend the time period for classification as a bulk assignee or bulk buyer of condominiums from July 1, 2012 to July 1, 2015;
- Allow the condominium ombudsman and his or her staff to engage in other professions as long as it does not create a conflict with his or her work in that office;
- Conform certain provisions to make the laws of condominiums, cooperatives, and homeowners' associations consistent in certain areas;
- Require a condominium board secretary to maintain directors' educational certificates, and imposes the same requirements on cooperative and homeowners' association secretaries;
- Limit challenges to association member election or recall results to within 60 days after the results are released, and limits recalls when that member is schedule to come up for election within 60 days of the desired recall;
- Allow a condominium or homeowners association to collect unpaid late fees, interest, costs, and reasonable attorneys fees when collecting unpaid assessments;
- Modify quorum requirements to account for suspended members;
- Provide that the home address of a licensed Community Association Manager is not published except in response to a specific public records request; and
- Remove the requirement that elevators in multi-family structures be retrofitted to meet certain codes by 2015, without changing requirement to bring an elevator up to current code if the elevator is replaced or substantially modified.

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 - Background

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 of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] The declaration generally provides a method for amendment, but if it does not provide such a method, 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]

Cooperatives - Background

A "cooperative" is a form of ownership of real property created pursuant to ch. 719, F.S., 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.[7]

Like condominiums, cooperatives are created by cooperative documents and include articles of incorporation of the association, bylaws, the ground lease or any other underlying lease, the document evidencing a unit owner's membership or share in the association, and the document recognizing a unit owner's title or right of possession to his or her unit.[8]

Cooperatives are administered in accordance with the bylaws or other cooperative documents.[9] Should the bylaws or other cooperative documents not specify the form of administration, the board of administration is composed of three or five members, depending on the size of the cooperative, including a president, a secretary, and a treasurer.[10] Bylaws or other cooperative documents are required to provide rules relating to administration, quorum, board meetings, shareholder meetings, budget procedures, recall of board members, common expenses, amendment of bylaws, transfer fees, annual budget, and arbitration, though the statutes provide rules if the bylaws or other cooperative documents fail to do so.[11]

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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 719.103(12), F.S.
[8] Section 719.103(13), F.S.
[9] Section 719.106(1), F.S.
[10] Section 719.106(1)(a), F.S.
[11] Section 719.106, F.S.

Homeowners' Associations – Background

Florida law gives statutory recognition to corporations that operate residential communities, 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.[12]

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.[13] Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not-for-profit corporations.[14]

Homeowners' associations are administered by an elected board of directors.[15] 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.[16] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[17]

Effect of the Bill - Condominiums

These provisions of the bill apply only to condominium associations:

Windstorm Protection

Condominium boards are currently required to adopt hurricane shutter specifications in accordance with the applicable building code.[18] They are also allowed to approve the installation of hurricane shutters, impact glass, and code-compliant windows.[19] This bill amends ss. 718.113(5) and 718.115(1), F.S., to allow a condominium to install code-compliant doors and other types of code-compliant hurricane protection.

Phases

Condominiums may be developed in phases if the declaration of condominium provides for the phases and describes the anticipated phases in detail.[20] The phases must be added within seven years or the right to add additional phases expires.[21] This bill amends s. 718.403(1), F.S., to provide that the unit owners may extend the 7-year period to allow for an additional three years from the end of the original 7-year period. The vote to extend must occur within the last 3 years of the original 7-year period.

Condominium Within a Condominium

This bill creates s. 718.406, F.S. to allow the development of a condominium within a condominium parcel. The bill provides for creation of a secondary condominium within one or more condominium units pursuant to a secondary condominium declaration. The secondary condominium is governed by both the primary condominium declaration and the secondary condominium declaration. The primary condominium declaration controls the secondary in the event of a conflict.

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[12] *See* s. 720.302(1), F.S.
[13] Section 720.301(9), F.S.
[14] Section 720.302(5), F.S.
[15] *See* ss. 720.303 and 720.307, F.S.
[16] *See* ss. 720.301 and 720.303, F.S.
[17] Section 720.303(1), F.S.
[18] Section 718.113(5), F.S.
[19] Section 718.113(5)(a), F.S.
[20] Section 718.403(1), F.S.
[21] *Id.*

The secondary condominium association acts on behalf of the unit owners in the primary condominium association and the president of the secondary condominium association or designee casts the vote of the secondary condominium in the primary condominium association. The primary condominium association may provide insurance required by s. 718.111(11), F.S. for common elements and other improvements within the secondary condominium if the primary condominium declaration allows it. Common expenses due the primary condominium association with respect to a subdivided unit are common expense of the secondary condominium association and are collected by the secondary condominium association from its members to be paid to the primary condominium association. Owners or first mortgage holders of a secondary condominium unit may register an interest in the property with the primary condominium association.

Bulk Assignee or Bulk Buyer

In 2010, the Legislature passed the Distressed Condominium Relief Act[22] in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act.[23] Specifically, the Distressed Condominium Relief Act created categories of "bulk buyers" and "bulk assignees."[24] A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents.[25] A bulk buyer is a person who acquires more than seven condominium parcels 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 payment of working capital contributions; and
- Be exempt from rights of first refusal.[26]

In general, a bulk assignee, but not a bulk buyer, assumes all liabilities of the developer. However, a bulk assignee is not liable for:

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee;
- Funding converter reserves for a unit not acquired by the bulk assignee;
- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser;
- Including in the cumulative audit required at turnover an audit of income and expenses during the period prior to assignment;
- Any actions taken by the board prior to the time at which the bulk assignee appoints a majority of the board; or
- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

The Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state"[27] and was not intended to be open-ended, and was therefore enacted for "only a specific and defined period."[28] Currently, the time limitation for classification as a bulk assignee or bulk buyer is until July 1, 2102.[29] This bill amends s. 718.707, F.S., to extend the date to July 1, 2015.

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[22] Chapter 2010-174, L.O.F.
[23] Section 718.702(3), F.S.
[24] Section 718.703(1) & (2), F.S.
[25] Section 718.703(1), F.S.
[26] Section 718.703(2), F.S.
[27] Section 718.102(1), F.S.
[28] Section 718.102(3), F.S.
[29] Section 718.707, F.S.

Ombudsman

In 2004, the Legislature created the Office of the Condominium Ombudsman.[30] The Ombudsman is an attorney appointed by the Governor and is, along with office staff, restricted from certain acts, such as actively engaging in any other business or profession, serving as the representative of any political party, executive committee, or other governing body of a political party, serving as an executive, officer, or employee of a political party, receiving remuneration for activities on behalf of any candidate for public office, or campaigning for a candidate for political office.[31] The Ombudsman's duties include, but are not limited to:

- Preparing and issuing reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division;
- Acting as a liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties;
- Monitoring and reviewing procedures and disputes concerning condominium elections or meetings, including enforcement when the ombudsman believes election misconduct has occurred;
- Making recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers;
- Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with the statutes, division rules, and the condominium documents governing the association;
- Encouraging and facilitating voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy; and
- Assisting with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the division to resolve.[32]

This bill amends s. 718.5011, F.S., to provide that an officer or full-time employee of the ombudsman's office may engage in another business or profession as long as it does not directly or indirectly relate to or conflict with his or her work in the Ombudsman's office.

<u>Conforming Laws related to Condominiums, Cooperatives and Homeowners' Associations</u>

The bill conforms certain aspects of the Condominium Act, the Cooperative Act and the statute governing Homeowners' Associations.

Amending Condominium, Cooperative, and Homeowners' Association Documents

Current law allows condominiums, cooperatives, and homeowners' associations, through the declaration of condominium, cooperative documents, and bylaws, respectively, to establish procedures for amending said documents.[33] However, current law also provides default procedures, should the documents not establish such procedures.[34] The Condominium Act contains a provision with a legislative finding that the procurement of mortgagee consent to amendments that do not affect the rights or interest of mortgagees is an unreasonable and substantial logistical and financial burden o the unit owners and that there is a compelling state interest in enabling the members of a condominium association to approve amendments to the condominium documents though legal means.[35] The Condominium Act renders unenforceable provisions in the declaration, articles of incorporation, or

[30] Chapter 2004-385, L.O.F.
[31] Section 718.5011(2), F.S.
[32] Section 718.5012, F.S.
[33] *See* ss. 718.110, 719.1055, and 720.306, F.S.
[34] *Id.*
[35] Section 718.110(11), F.S.

bylaws that require mortgagee consent in matters that do not affect the rights or interests of the mortgagee. The Act only applies to mortgages entered into after October 1, 2007.[36]

Where consent is required, current law allows a condominium association to:

- Rely upon public records to identify the holders of outstanding mortgages;
- Use the address provided in the original recorded mortgage document unless there is a different address in a recorded assignment or modification of the mortgage;
- Request the name and address of the person to whom mortgage payments are currently being made; and
- Provide notice to each address found using such methods, along with all other available addresses provided to the association, using a method that establishes proof of delivery.[37]

For amendments that require mortgagee consent, consent may be evidenced by properly recorded joinder. For individuals or entities that do not respond to such notice, consent is evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded.[38]

This bill adds subsection (7) to s. 719.1055, F.S. and adds paragraph (d) to s. 720.306(1), F.S. to provide substantially the same procedures for both cooperatives and homeowners' associations.

Board Member Education Requirement

Current law requires newly appointed or elected members of a condominium board of directors to certify in writing within 90 days that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Alternatively, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies, and the board may temporarily fill the vacancy during the suspension. The secretary is required to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. [39] These educational requirements to do apply to cooperative or homeowners associations.

This bill amends ss. 719.106(1)(d)1., F.S., and 720.306(9)(a), F.S., to impose the same education and certification requirements on board members of a cooperative association and a homeowners' association. The bill also amends s. 718.112(2)(d)4.b., F.S. to require the secretary to retain the director's written certification or educational certificate for the duration of the director's uninterrupted tenure, if the director serves longer than 5 years.

Changes to Election and Recall

Current law requires that condominium, cooperative, and homeowners' association board members, directors, and/or elected officers are elected[40] by written ballot or voting machine in the case of condominiums[41] and cooperatives[42], and as provided in accordance with the procedures set forth in the governing documents in the case of homeowners' associations.[43] There is currently no limitations

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[36] *Id.*
[37] *Id.*
[38] Section 718.110(11)(e), F.S.
[39] Section 718.112(2)(d)4.b., F.S.
[40] Under certain circumstances, board members may be appointed rather than elected. *See, e.g.*, ss. 718.112(2)(d)9., 719.106(d)6., and 720.303(10)(e), F.S.
[41] Section 718.112(2)(d)4, F.S.
[42] Section 719.106(1)(d)1, F.S.
[43] Section 720.306(9)(a), F.S.

period to initiate a challenge to the election process. Furthermore, board members may be recalled with or without cause by the vote or agreement in writing by a majority of all the voting interests by vote or petition.[44]

This bill adds s. 718.112(2)(d)4.c., F.S., and amends ss. 719.106(1)(d)1., F.S., and 720.306(9)(a), F.S., to require that all challenges to condominium, cooperative or homeowners' association member elections must be commenced within 60 days after the election results are announced.[45] This bill amends ss. 718.112(2)(j), 719.106(1)(f), and 720.303(10), F.S., to require that challenges to a recall election must be filed within 60 days after the recall is deemed certified and limiting challenges when there are 60 or fewer days until the scheduled election of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled. The bill also gives unit owners the right to challenge the board for failure to act on the recall vote or petition pursuant to s. 718.1255, F.S.,[46] limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

Assessments

Owners of units in condominiums, cooperatives, and homeowners' associations are required to pay periodic assessments to fund the operations of the association.[47] Owners and occupants maintain obligations to the associations.[48] The purchaser of a unit is jointly and severally liable with the previous owner for all assessments that were due at the time of the purchase, regardless of the method of purchase.[49]

This bill amends ss. 718.116(1)(a), and 720.3085(2)(b), F.S. to provide that a purchaser is jointly and severally liable with the previous owner for late fees, interest, costs, and reasonable attorney fees incurred by the association in an attempt to collect, in addition to the unpaid assessments. The bill does not affect cooperatives concerning this issue.

Common Elements

Condominiums, cooperatives, and homeowners' associations contain and control common elements and facilities. Condominiums, cooperatives, and homeowners' associations are currently allowed to take action against owners and/or residents that do not comply with the provisions of the declaration bylaws, or reasonable rules.[50] Sanctions may include suspending, for a reasonable time, the right of a unit owner or tenant or guest to use the common elements, common facilities, or any other association property.[51]

This bill limits which common elements the association may restrict the unit owner, tenant, or guest from using. Specifically, the bill amends ss. 718.303(3)(a), 719.303(3)(a), and 720.305(2)(a), F.S., to prohibit an association from restricting the use of:

- Limited common elements intended to be used only by that unit;
- Common elements needed to access the unit;
- Utility services provided to the unit;

[44] *See* ss. 718.112(2)(j), 719.106(1)(f), and 720.303(10), F.S.
[45] By contrast, results of state elections must be contested within 10 days after the last board officially certifies the results of the election. *See* s. 102.168(2), F.S.
[46] Section 718.1255, F.S., requires alternative dispute resolution, such as voluntary mediation or mandatory nonbinding arbitration prior to filing suit in trial court.
[47] *See, e.g.*, ss. 718.116, 719.104(5), and 720.308, F.S.
[48] *See, e.g.*, ss. 718.303, 719.303. and 720.305, F.S.
[49] Sections 718.116(1)(a), 719.108(1), and 720.3085(2)(b), F.S.
[50] *See* ss. 718.303(3), 719.303(3), and 720.305(2), F.S.
[51] *See* ss. 718.303(3)(a), 719.303(3)(a), and 720.305(2)(a), F.S.

- Parking spaces; and
- Elevators.[52]

Quorum

Condominiums, cooperatives, and homeowners' associations may suspend voting rights of a unit or member due to nonpayment of any monetary obligation due the association which is more than 90 days delinquent.[53] Suspended voting interests may not be counted towards the total number of voting interests necessary to constitute a quorum.[54]

This bill amends ss. 718.303(5), 719.303(5), and 720.305(4), F.S., to specifically reduce the number of voting interests required to establish a quorum by the number of suspended voting interests, notwithstanding the association's governing documents or bylaws.

Public Records

The Department of Business and Professional Regulation is responsible for certifying applicants to be licensed community association[55] managers.[56] This bill creates s. 468.433(5), F.S., to prohibit the department from publishing a licensee's personal home address unless it is for the purpose of satisfying a public records request.

Elevator Safety

In 2010, the Legislature amended s. 399.02, F.S. to exempt elevators in condominiums, cooperatives and other multi-family residential buildings that were issued certificates of occupancy as of July 1, 2008, from retroactive application of future updates to the Elevator Safety Code (ASME A17.1 and A17.3) until July 1, 2015 or until the elevator is replaced or requires major modification, whichever occurs first.[57]

The bill amends s. 399.02(9), F.S. to eliminate the July 1, 2015 deadline and thereby provide that existing elevators need not comply with current codes until the elevator is replaced or requires major modification.

This bill also contains numerous technical and clarifying changes throughout.

B. SECTION DIRECTORY:

Section 1 amends s. 399.02, F.S., regarding the Elevator Safety Code.

Section 2 amends s. 468.433, F.S., prohibiting the publication of a licensee's home address except to satisfy a public record request.

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

Section 4 amends s. 718.113, F.S., regarding hurricane shutters and protection in condominiums.

Section 5 amends s. 718.115, F.S., regarding common expenses in condominiums.

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[52] The bill does not include the 'elevators' provision in amending s. 720.305(2)(a), F.S., but does include a provision prohibiting the homeowners' association from impairing the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including the right to park.
[53] *See* ss. 718.303(5), 719.303(5), and 720.305(4), F.S.
[54] *Id.*
[55] By definition in s. 468.431(1), F.S., "community association" includes condominiums, cooperatives, and a "residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel."
[56] Section 468.433(1), F.S.
[57] Chapter 2010-176, L.O.F.

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

Section 7 amends s. 718.303, F.S., regarding obligations of condominium owners and occupants.

Section 8 amends s. 718.403, F.S., regarding phase condominiums.

Section 9 creates s. 718.406, F.S., regarding condominiums created within condominium parcels.

Section 10 amends s. 718.5011, F.S., regarding condominium ombudsman.

Section 11 amends s. 718.707, F.S., regarding time limitation for classification as bulk assignee or bulk buyer.

Section 12 amends s. 719.104, F.S., regarding cooperative official records.

Section 13 amends s. 719.1055, F.S., regarding amendment of cooperative documents.

Section 14 amends s. 719.106, F.S., regarding cooperative bylaws.

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

Section 16 amends s. 720.303, F.S., regarding homeowners' association powers and duties.

Section 17 amends s. 720.305, F.S., regarding obligations of members of homeowners' associations.

Section 18 amends s. 720.306, F.S., regarding homeowners' association elections.

Section 19 amends s. 720.3085, F.S., regarding homeowners' association assessments.

Section 20 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of this bill, regarding elevator codes, will have a positive fiscal impact on associations and the owners of multi-family structures, and a corresponding negative fiscal impact on companies that provide such services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

Article I, Section 10 of the Florida provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[58] A statute contravenes the state constitution's prohibition against impairment of contracts when it has the effect of changing the substantive rights of the parties to existing contracts.[59]

Laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens. Florida has a "well-accepted principle . . . that virtually no degree of contract impairment is tolerable in this state." When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy."[60]

This year, the Supreme Court held that a provision in the Condominium Act that retroactively changed the composition of the voting interests in a condominium board was an unconstitutional impairment of the obligation of contracts.[61] This bill amends s. 718.303, F.S., to reduce the number of votes to obtain a quorum in accordance with the number of suspended voting interests or consent rights "notwithstanding an association's declaration, articles of incorporation, or bylaws."

B. RULE-MAKING AUTHORITY:

The 2010 law on elevators required the Department of Business and Professional Regulation to adopt rules to administer the exemption. The department is still in the rulemaking process, which will have to be started again if this bill is passed into law.

Otherwise, the bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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[58] Article 1, Sec. 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . ."
[59] 10A Fla. Jur. s. 411, Constitutional Law.
[60] *Pomponio v. Claridge of Popmano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).
[61] *Cohn v. Grand Condominium Assoc.*, 62 So.3d 1120 (Fla. 2011).

1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 399.02, F.S.; exempting certain elevators from
4 specific code update requirements; amending s.
5 468.433, F.S.; prohibiting the Department of Business
6 and Professional Regulation from publishing a
7 community association manager's personal home address
8 unless it is for the purpose of satisfying a public
9 records request; amending s. 718.112, F.S.; revising
10 condominium unit owner meeting notice requirements;
11 revising recordkeeping requirements of a condominium
12 association board; requiring challenges to an election
13 to commence within a certain time period; providing
14 requirements for challenging the failure of a board to
15 duly notice and hold the required board meeting or to
16 file the required petition for a recall; providing
17 requirements for recalled board members to challenge
18 the recall; providing duties of the division regarding
19 recall petitions; amending s. 718.113, F.S.; providing
20 requirements for a condominium association board
21 relating to the installation of hurricane shutters,
22 impact glass, code-compliant windows or doors, and
23 other types of code-compliant hurricane protection
24 under certain circumstances; amending s. 718.115,
25 F.S.; conforming provisions to changes made by the
26 act; amending s. 718.116, F.S.; revising liability of
27 certain condominium unit owners acquiring title;
28 amending s. 718.303, F.S.; revising provisions

29 relating to imposing remedies against a noncompliant
30 or delinquent condominium unit owner or member;
31 revising voting requirements under certain conditions;
32 amending s. 718.403, F.S.; providing requirements for
33 the completion of phase condominiums; creating s.
34 718.406, F.S.; providing definitions; providing
35 requirements for condominiums created within
36 condominium parcels; providing for the establishment
37 of primary condominium and secondary condominium
38 units; providing requirements for association
39 declarations; authorizing a primary condominium
40 association to provide insurance and adopt hurricane
41 shutter or hurricane protection specifications under
42 certain conditions; providing requirements relating to
43 assessments; providing for resolution of conflicts
44 between primary condominium declarations and secondary
45 condominium declarations; providing requirements
46 relating to common expenses due the primary
47 condominium association; amending s. 718.5011, F.S.;
48 revising the restriction on officers and full-time
49 employees of the ombudsman from engaging in other
50 businesses or professions; amending s. 718.707, F.S.;
51 revising the time limitation for classification as a
52 bulk assignee or bulk buyer; amending s. 719.104,
53 F.S.; specifying additional records that are not
54 accessible to unit owners; amending s. 719.1055, F.S.;
55 revising provisions relating to the amendment of
56 cooperative documents; providing legislative findings

57 and a finding of compelling state interest; providing
58 criteria for consent or joinder to an amendment;
59 requiring notice regarding proposed amendments to
60 mortgagees; providing criteria for notification;
61 providing for voiding certain amendments; amending s.
62 719.106, F.S.; requiring challenges to an election to
63 commence within a certain time period; specifying
64 certification or educational requirements for a newly
65 elected or appointed cooperative board director;
66 providing requirements for challenging the failure of
67 a board to duly notice and hold the required board
68 meeting or to file the required petition for a recall;
69 providing requirements for recalled board members to
70 challenge the recall; providing duties of the division
71 regarding recall petitions; amending s. 719.303, F.S.;
72 revising provisions relating to imposing remedies
73 against a noncompliant or delinquent cooperative unit
74 owner or member; revising voting requirements under
75 certain conditions; amending s. 720.303, F.S.;
76 revising the types of records that are not accessible
77 to homeowners' association members and parcel owners;
78 providing requirements for challenging the failure of
79 a board to duly notice and hold the required board
80 meeting or to file the required petition for a recall;
81 providing requirements for recalled board members to
82 challenge the recall; providing duties of the division
83 regarding recall petitions; amending s. 720.305, F.S.;
84 revising provisions relating to imposing remedies

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85 against a noncompliant or delinquent homeowners'
86 association member and parcel owner; revising voting
87 requirements under certain conditions; amending s.
88 720.306, F.S.; revising provisions relating to the
89 amendment of homeowners' association declarations;
90 providing legislative findings and a finding of
91 compelling state interest; providing criteria for
92 consent or joinder to an amendment; requiring notice
93 to mortgagees regarding proposed amendments; providing
94 criteria for notification; providing for voiding
95 certain amendments; requiring challenges to an
96 election to commence within a certain time period;
97 specifying certification or educational requirements
98 for a newly elected or appointed homeowners'
99 association board director; amending s. 720.3085,
100 F.S.; revising liability of certain parcel owners
101 acquiring title; providing an effective date.
102
103 Be It Enacted by the Legislature of the State of Florida:
104
105 Section 1. Subsection (9) of section 399.02, Florida
106 Statutes, is amended to read:
107 399.02 General requirements.—
108 (9) Updates to the Safety Code for Existing Elevators and
109 Escalators, ASME A17.1 and A17.3, which require Phase II
110 Firefighters' Service on elevators may not be enforced ~~until~~
111 ~~July 1, 2015, or~~ until the elevator is replaced or requires
112 major modification~~, whichever occurs first,~~ on elevators in

113 condominiums or multifamily residential buildings, including
114 those that are part of a continuing care facility licensed under
115 chapter 651, or similar retirement community with apartments,
116 having a certificate of occupancy by the local building
117 authority that was issued before July 1, 2008. This exception
118 does not prevent an elevator owner from requesting a variance
119 from the applicable codes ~~before or after July 1, 2015~~. This
120 subsection does not prohibit the division from granting
121 variances pursuant to s. 120.542 and subsection (8). The
122 division shall adopt rules to administer this subsection.
123 Section 2. Subsection (5) is added to section 468.433,
124 Florida Statutes, to read:
125 468.433 Licensure by examination.—
126 <u>(5) The department may not publish a licensee's personal</u>
127 <u>home address unless it is for the purpose of satisfying a public</u>
128 <u>records request.</u>
129 Section 3. Paragraphs (d) and (j) of subsection (2) of
130 section 718.112, Florida Statutes, are amended to read:
131 718.112 Bylaws.—
132 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
133 following and, if they do not do so, shall be deemed to include
134 the following:
135 (d) Unit owner meetings.—
136 1. An annual meeting of the unit owners shall be held at
137 the location provided in the association bylaws and, if the
138 bylaws are silent as to the location, the meeting shall be held
139 within 45 miles of the condominium property. However, such
140 distance requirement does not apply to an association governing

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141 a timeshare condominium.
142 2. Unless the bylaws provide otherwise, a vacancy on the
143 board caused by the expiration of a director's term shall be
144 filled by electing a new board member, and the election must be
145 by secret ballot. An election is not required if the number of
146 vacancies equals or exceeds the number of candidates. For
147 purposes of this paragraph, the term "candidate" means an
148 eligible person who has timely submitted the written notice, as
149 described in sub-subparagraph 4.a., of his or her intention to
150 become a candidate. Except in a timeshare condominium, or if the
151 staggered term of a board member does not expire until a later
152 annual meeting, or if all members' terms would otherwise expire
153 but there are no candidates, the terms of all board members
154 expire at the annual meeting, and such members may stand for
155 reelection unless prohibited by the bylaws. If the bylaws permit
156 staggered terms of no more than 2 years and upon approval of a
157 majority of the total voting interests, the association board
158 members may serve 2-year staggered terms. If the number of board
159 members whose terms expire at the annual meeting equals or
160 exceeds the number of candidates, the candidates become members
161 of the board effective upon the adjournment of the annual
162 meeting. Unless the bylaws provide otherwise, any remaining
163 vacancies shall be filled by the affirmative vote of the
164 majority of the directors making up the newly constituted board
165 even if the directors constitute less than a quorum or there is
166 only one director. In a condominium association of more than 10
167 units or in a condominium association that does not include
168 timeshare units or timeshare interests, coowners of a unit may

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169 not serve as members of the board of directors at the same time
170 unless they own more than one unit or unless there are not
171 enough eligible candidates to fill the vacancies on the board at
172 the time of the vacancy. Any unit owner desiring to be a
173 candidate for board membership must comply with sub-subparagraph
174 4.a. and must be eligible to serve on the board of directors at
175 the time of the deadline for submitting a notice of intent to
176 run in order to have his or her name listed as a proper
177 candidate on the ballot or to serve on the board. A person who
178 has been suspended or removed by the division under this
179 chapter, or who is delinquent in the payment of any fee, fine,
180 or special or regular assessment as provided in paragraph (n),
181 is not eligible for board membership. A person who has been
182 convicted of any felony in this state or in a United States
183 District or Territorial Court, or who has been convicted of any
184 offense in another jurisdiction which would be considered a
185 felony if committed in this state, is not eligible for board
186 membership unless such felon's civil rights have been restored
187 for at least 5 years as of the date such person seeks election
188 to the board. The validity of an action by the board is not
189 affected if it is later determined that a board member is
190 ineligible for board membership due to having been convicted of
191 a felony.
192 3. The bylaws must provide the method of calling meetings
193 of unit owners, including annual meetings. Written notice must
194 include an agenda, must be mailed, hand delivered, or
195 electronically transmitted to each unit owner at least 14 days
196 before the annual meeting, and must be posted in a conspicuous

197 place on the condominium property at least 14 continuous days
198 before the annual meeting. Upon notice to the unit owners, the
199 board shall, by duly adopted rule, designate a specific location
200 on the condominium property or association property where all
201 notices of unit owner meetings shall be posted. This requirement
202 does not apply if there is no condominium property or
203 association property for posting notices. In lieu of, or in
204 addition to, the physical posting of meeting notices, the
205 association may, by reasonable rule, adopt a procedure for
206 conspicuously posting and repeatedly broadcasting the notice and
207 the agenda on a closed-circuit cable television system serving
208 the condominium association. However, if broadcast notice is
209 used in lieu of a notice posted physically on the condominium
210 property, the notice and agenda must be broadcast at least four
211 times every broadcast hour of each day that a posted notice is
212 otherwise required under this section. If broadcast notice is
213 provided, the notice and agenda must be broadcast in a manner
214 and for a sufficient continuous length of time so as to allow an
215 average reader to observe the notice and read and comprehend the
216 entire content of the notice and the agenda. Unless a unit owner
217 waives in writing the right to receive notice of the annual
218 meeting, such notice must be hand delivered, mailed, or
219 electronically transmitted to each unit owner. Notice for
220 meetings and notice for all other purposes must be mailed to
221 each unit owner at the address last furnished to the association
222 by the unit owner, or hand delivered to each unit owner.
223 However, if a unit is owned by more than one person, the
224 association must provide notice to the address that the

225 developer identifies for that purpose and thereafter as one or
226 more of the owners of the unit advise the association in
227 writing, or if no address is given or the owners of the unit do
228 not agree, to the address provided on the deed of record. An
229 officer of the association, or the manager or other person
230 providing notice of the association meeting, must provide an
231 affidavit or United States Postal Service certificate of
232 mailing, to be included in the official records of the
233 association affirming that the notice was mailed or hand
234 delivered in accordance with this provision.
235 4. The members of the board shall be elected by written
236 ballot or voting machine. Proxies may not be used in electing
237 the board in general elections or elections to fill vacancies
238 caused by recall, resignation, or otherwise, unless otherwise
239 provided in this chapter.
240 a. At least 60 days before a scheduled election, the
241 association shall mail, deliver, or electronically transmit, by
242 separate association mailing or included in another association
243 mailing, delivery, or transmission, including regularly
244 published newsletters, to each unit owner entitled to a vote, a
245 first notice of the date of the election. Any unit owner or
246 other eligible person desiring to be a candidate for the board
247 must give written notice of his or her intent to be a candidate
248 to the association at least 40 days before a scheduled election.
249 Together with the written notice and agenda as set forth in
250 subparagraph 3., the association shall mail, deliver, or
251 electronically transmit a second notice of the election to all
252 unit owners entitled to vote, together with a ballot that lists

253 all candidates. Upon request of a candidate, an information
254 sheet, no larger than 8 1/2 inches by 11 inches, which must be
255 furnished by the candidate at least 35 days before the election,
256 must be included with the mailing, delivery, or transmission of
257 the ballot, with the costs of mailing, delivery, or electronic
258 transmission and copying to be borne by the association. The
259 association is not liable for the contents of the information
260 sheets prepared by the candidates. In order to reduce costs, the
261 association may print or duplicate the information sheets on
262 both sides of the paper. The division shall by rule establish
263 voting procedures consistent with this sub-subparagraph,
264 including rules establishing procedures for giving notice by
265 electronic transmission and rules providing for the secrecy of
266 ballots. Elections shall be decided by a plurality of ballots
267 cast. There is no quorum requirement; however, at least 20
268 percent of the eligible voters must cast a ballot in order to
269 have a valid election. A unit owner may not permit any other
270 person to vote his or her ballot, and any ballots improperly
271 cast are invalid. A unit owner who violates this provision may
272 be fined by the association in accordance with s. 718.303. A
273 unit owner who needs assistance in casting the ballot for the
274 reasons stated in s. 101.051 may obtain such assistance. The
275 regular election must occur on the date of the annual meeting.
276 Notwithstanding this sub-subparagraph, an election is not
277 required unless more candidates file notices of intent to run or
278 are nominated than board vacancies exist.
279 b. Within 90 days after being elected or appointed to the
280 board, each newly elected or appointed director shall certify in

281 writing to the secretary of the association that he or she has
282 read the association's declaration of condominium, articles of
283 incorporation, bylaws, and current written policies; that he or
284 she will work to uphold such documents and policies to the best
285 of his or her ability; and that he or she will faithfully
286 discharge his or her fiduciary responsibility to the
287 association's members. In lieu of this written certification,
288 within 90 days after being elected or appointed to the board,
289 the newly elected or appointed director may submit a certificate
290 of having satisfactorily completed the educational curriculum
291 administered by a division-approved condominium education
292 provider within 1 year before or 90 days after the date of
293 election or appointment. The written certification or
294 educational certificate is valid and does not have to be
295 resubmitted as long as the director serves on the board without
296 interruption. A director who fails to timely file the written
297 certification or educational certificate is suspended from
298 service on the board until he or she complies with this sub-
299 subparagraph. The board may temporarily fill the vacancy during
300 the period of suspension. The secretary shall cause the
301 association to retain a director's written certification or
302 educational certificate for inspection by the members for 5
303 years after a director's election <u>or the duration of the</u>
304 <u>director's uninterrupted tenure, whichever is longer</u>. Failure to
305 have such written certification or educational certificate on
306 file does not affect the validity of any board action.
307 <u>c. Any challenge to the election process must be commenced</u>
308 <u>within 60 days after the election results are announced.</u>

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309 5. Any approval by unit owners called for by this chapter
310 or the applicable declaration or bylaws, including, but not
311 limited to, the approval requirement in s. 718.111(8), must be
312 made at a duly noticed meeting of unit owners and is subject to
313 all requirements of this chapter or the applicable condominium
314 documents relating to unit owner decisionmaking, except that
315 unit owners may take action by written agreement, without
316 meetings, on matters for which action by written agreement
317 without meetings is expressly allowed by the applicable bylaws
318 or declaration or any law that provides for such action.
319 6. Unit owners may waive notice of specific meetings if
320 allowed by the applicable bylaws or declaration or any law. If
321 authorized by the bylaws, notice of meetings of the board of
322 administration, unit owner meetings, except unit owner meetings
323 called to recall board members under paragraph (j), and
324 committee meetings may be given by electronic transmission to
325 unit owners who consent to receive notice by electronic
326 transmission.
327 7. Unit owners have the right to participate in meetings
328 of unit owners with reference to all designated agenda items.
329 However, the association may adopt reasonable rules governing
330 the frequency, duration, and manner of unit owner participation.
331 8. A unit owner may tape record or videotape a meeting of
332 the unit owners subject to reasonable rules adopted by the
333 division.
334 9. Unless otherwise provided in the bylaws, any vacancy
335 occurring on the board before the expiration of a term may be
336 filled by the affirmative vote of the majority of the remaining

337 directors, even if the remaining directors constitute less than
338 a quorum, or by the sole remaining director. In the alternative,
339 a board may hold an election to fill the vacancy, in which case
340 the election procedures must conform to sub-subparagraph 4.a.
341 unless the association governs 10 units or fewer and has opted
342 out of the statutory election process, in which case the bylaws
343 of the association control. Unless otherwise provided in the
344 bylaws, a board member appointed or elected under this section
345 shall fill the vacancy for the unexpired term of the seat being
346 filled. Filling vacancies created by recall is governed by
347 paragraph (j) and rules adopted by the division.
348 10. This chapter does not limit the use of general or
349 limited proxies, require the use of general or limited proxies,
350 or require the use of a written ballot or voting machine for any
351 agenda item or election at any meeting of a timeshare
352 condominium association.
353
354 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
355 association of 10 or fewer units may, by affirmative vote of a
356 majority of the total voting interests, provide for different
357 voting and election procedures in its bylaws, which may be by a
358 proxy specifically delineating the different voting and election
359 procedures. The different voting and election procedures may
360 provide for elections to be conducted by limited or general
361 proxy.
362 (j) Recall of board members.—Subject to ~~the provisions of~~
363 s. 718.301, any member of the board of administration may be
364 recalled and removed from office with or without cause by the

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365 vote or agreement in writing by a majority of all the voting
366 interests. A special meeting of the unit owners to recall a
367 member or members of the board of administration may be called
368 by 10 percent of the voting interests giving notice of the
369 meeting as required for a meeting of unit owners, and the notice
370 shall state the purpose of the meeting. Electronic transmission
371 may not be used as a method of giving notice of a meeting called
372 in whole or in part for this purpose.

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

384 2. If the proposed recall is by an agreement in writing by
385 a majority of all voting interests, the agreement in writing or
386 a copy thereof shall be served on the association by certified
387 mail or by personal service in the manner authorized by chapter
388 48 and the Florida Rules of Civil Procedure. The board of
389 administration shall duly notice and hold a meeting of the board
390 within 5 full business days after receipt of the agreement in
391 writing. At the meeting, the board shall either certify the
392 written agreement to recall a member or members of the board, in

393 which case such member or members shall be recalled effective
394 immediately and shall turn over to the board within 5 full
395 business days any and all records and property of the
396 association in their possession, or proceed as described in
397 subparagraph 3.
398 3. If the board determines not to certify the written
399 agreement to recall a member or members of the board, or does
400 not certify the recall by a vote at a meeting, the board shall,
401 within 5 full business days after the meeting, file with the
402 division a petition for arbitration pursuant to the procedures
403 in s. 718.1255. For the purposes of this section, the unit
404 owners who voted at the meeting or who executed the agreement in
405 writing shall constitute one party under the petition for
406 arbitration. If the arbitrator certifies the recall as to any
407 member or members of the board, the recall will be effective
408 upon mailing of the final order of arbitration to the
409 association. If the association fails to comply with the order
410 of the arbitrator, the division may take action pursuant to s.
411 718.501. Any member or members so recalled shall deliver to the
412 board any and all records of the association in their possession
413 within 5 full business days after ~~of~~ the effective date of the
414 recall.
415 4. If the board fails to duly notice and hold a board
416 meeting within 5 full business days after ~~of~~ service of an
417 agreement in writing or within 5 full business days after ~~of~~ the
418 adjournment of the unit owner recall meeting, the recall shall
419 be deemed effective and the board members so recalled shall
420 immediately turn over to the board any and all records and

421 property of the association.
422 5. If the board fails to duly notice and hold the required
423 meeting or fails to file the required petition, the unit owner
424 representative may file a petition pursuant to s. 718.1255
425 challenging the board's failure to act. The petition must be
426 filed within 60 days after the expiration of the applicable 5-
427 full-business-day period. The review of a petition under this
428 subparagraph is limited to the sufficiency of service on the
429 board and the facial validity of the written agreement or
430 ballots filed.
431 6.~~5.~~ If a vacancy occurs on the board as a result of a
432 recall or removal and less than a majority of the board members
433 are removed, the vacancy may be filled by the affirmative vote
434 of a majority of the remaining directors, notwithstanding any
435 provision to the contrary contained in this subsection. If
436 vacancies occur on the board as a result of a recall and a
437 majority or more of the board members are removed, the vacancies
438 shall be filled in accordance with procedural rules to be
439 adopted by the division, which rules need not be consistent with
440 this subsection. The rules must provide procedures governing the
441 conduct of the recall election as well as the operation of the
442 association during the period after a recall but prior to the
443 recall election.
444 7. A board member who has been recalled may file a
445 petition pursuant to s. 718.1255 challenging the validity of a
446 recall. The petition must be filed within 60 days after the
447 recall is deemed certified. The association and the unit owner
448 representative shall be named as the respondents.

449 8. The division may not accept for filing a recall
450 petition, whether filed pursuant to subparagraph 1.,
451 subparagraph 2., subparagraph 5., or subparagraph 7. and
452 regardless of whether the recall was certified, when there are
453 60 or fewer days until the scheduled reelection of the board
454 member sought to be recalled or when 60 or fewer days have
455 elapsed since the election of the board member sought to be
456 recalled.
457 Section 4. Subsection (5) of section 718.113, Florida
458 Statutes, is amended to read:
459 718.113 Maintenance; limitation upon improvement; display
460 of flag; hurricane shutters and protection; display of religious
461 decorations.—
462 (5) Each board of administration shall adopt hurricane
463 shutter specifications for each building within each condominium
464 operated by the association which shall include color, style,
465 and other factors deemed relevant by the board. All
466 specifications adopted by the board must comply with the
467 applicable building code.
468 (a) The board may, subject to ~~the provisions of~~ s.
469 718.3026~~,~~ and the approval of a majority of voting interests of
470 the condominium, install hurricane shutters, impact glass, ~~or~~
471 ~~other~~ code-compliant windows or doors, or other types of code-
472 compliant hurricane protection that comply ~~complies~~ with or
473 exceed ~~exceeds~~ the applicable building code. However, a vote of
474 the owners is not required if the maintenance, repair, and
475 replacement of hurricane shutters, impact glass, ~~or other~~ code-
476 compliant windows or doors, or other types of code-compliant

477 hurricane protection are the responsibility of the association
478 pursuant to the declaration of condominium. If hurricane
479 protection or laminated glass or window film architecturally
480 designed to function as hurricane protection that ~~which~~ complies
481 with or exceeds the current applicable building code has been
482 previously installed, the board may not install hurricane
483 shutters, ~~hurricane protection, or~~ impact glass, ~~or other~~ code-
484 compliant windows or doors, or other types of code-compliant
485 hurricane protection except upon approval by a majority vote of
486 the voting interests.
487 (b) The association is responsible for the maintenance,
488 repair, and replacement of the hurricane shutters, impact glass,
489 code-compliant windows or doors, or other types of code-
490 compliant hurricane protection authorized by this subsection if
491 such property ~~hurricane shutters or other hurricane protection~~
492 is the responsibility of the association pursuant to the
493 declaration of condominium. If the hurricane shutters, impact
494 glass, code-compliant windows or doors, or other types of code-
495 compliant hurricane protection ~~authorized by this subsection~~ are
496 the responsibility of the unit owners pursuant to the
497 declaration of condominium, the maintenance, repair, and
498 replacement of such items are the responsibility of the unit
499 owner.
500 (c) The board may operate shutters, impact glass, code-
501 compliant windows or doors, or other types of code-compliant
502 hurricane protection installed pursuant to this subsection
503 without permission of the unit owners only if such operation is
504 necessary to preserve and protect the condominium property and

505 association property. The installation, replacement, operation,
506 repair, and maintenance of such shutters, impact glass, code-
507 compliant windows or doors, or other types of code-compliant
508 hurricane protection in accordance with the procedures set forth
509 in this paragraph are not a material alteration to the common
510 elements or association property within the meaning of this
511 section.
512 (d) Notwithstanding any other provision in the condominium
513 documents, if approval is required by the documents, a board may
514 not refuse to approve the installation or replacement of
515 hurricane shutters, impact glass, code-compliant windows or
516 doors, or other types of code-compliant hurricane protection by
517 a unit owner conforming to the specifications adopted by the
518 board.
519 Section 5. Paragraph (e) of subsection (1) of section
520 718.115, Florida Statutes, is amended to read:
521 718.115 Common expenses and common surplus.—
522 (1)
523 (e) The expense of installation, replacement, operation,
524 repair, and maintenance of hurricane shutters, impact glass,
525 code-compliant windows or doors, or other types of code-
526 compliant hurricane protection by the board pursuant to s.
527 718.113(5) constitutes ~~shall constitute~~ a common expense ~~as~~
528 ~~defined herein~~ and shall be collected as provided in this
529 section if the association is responsible for the maintenance,
530 repair, and replacement of the hurricane shutters, impact glass,
531 code-compliant windows or doors, or other types of code-
532 compliant hurricane protection pursuant to the declaration of

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533 condominium. However, if the maintenance, repair, and
534 replacement of the hurricane shutters, impact glass, code-
535 compliant windows or doors, or other types of code-compliant
536 hurricane protection are ~~is~~ the responsibility of the unit
537 owners pursuant to the declaration of condominium, the cost of
538 the installation of the hurricane shutters, impact glass, code-
539 compliant windows or doors, or other types of code-compliant
540 hurricane protection is ~~shall~~ not ~~be~~ a common expense and~~, but~~
541 shall be charged individually to the unit owners based on the
542 cost of installation of the hurricane shutters, impact glass,
543 code-compliant windows or doors, or other types of code-
544 compliant hurricane protection appurtenant to the unit.
545 Notwithstanding ~~the provisions of~~ s. 718.116(9), and regardless
546 of whether or not the declaration requires the association or
547 unit owners to maintain, repair, or replace hurricane shutters,
548 impact glass, code-compliant windows or doors, or other types of
549 code-compliant hurricane protection, a unit owner who has
550 previously installed hurricane shutters in accordance with s.
551 718.113(5) that comply with the current applicable building code
552 shall receive a credit when the shutters are installed; a unit
553 owner who has previously installed impact glass or code-
554 compliant windows or doors that comply with the current
555 applicable building code shall receive a credit when the impact
556 glass or code-compliant windows or doors are installed; and a
557 unit owner who has installed~~,~~ other types of code-compliant
558 hurricane protection that comply with the current applicable
559 building code shall receive a credit when the same type of other
560 code-compliant hurricane protection is installed, and the ~~or~~

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561 ~~laminated glass architecturally designed to function as~~
562 ~~hurricane protection, which hurricane shutters or other~~
563 ~~hurricane protection or laminated glass comply with the current~~
564 ~~applicable building code, shall receive a~~ credit <u>shall be</u> equal
565 to the pro rata portion of the assessed installation cost
566 assigned to each unit. However, such unit owner <u>remains</u> ~~shall~~
567 ~~remain~~ responsible for the pro rata share of expenses for
568 hurricane shutters<u>, impact glass, code-compliant windows or</u>
569 <u>doors,</u> or other <u>types of code-compliant</u> hurricane protection
570 installed on common elements and association property by the
571 board pursuant to s. 718.113(5)~~,~~ and <u>remains</u> ~~shall remain~~
572 responsible for a pro rata share of the expense of the
573 replacement, operation, repair, and maintenance of such
574 shutters<u>, impact glass, code-compliant windows or doors,</u> or
575 other <u>types of code-compliant</u> hurricane protection.
576 Section 6. Paragraphs (a) and (b) of subsection (1) of
577 section 718.116, Florida Statutes, are amended to read:
578 718.116 Assessments; liability; lien and priority;
579 interest; collection.—
580 (1)(a) A unit owner, regardless of how <u>the unit owner has</u>
581 <u>acquired</u> ~~his or her~~ title ~~has been acquired~~, including<u>, but not</u>
582 <u>limited to,</u> by purchase at a foreclosure sale ~~or by deed in lieu~~
583 ~~of foreclosure~~, is liable for all assessments <u>that</u> ~~which~~ come
584 due while he or she is the unit owner. Additionally, a unit
585 owner <u>is jointly and severally liable with the previous owner</u>
586 <u>for all unpaid assessments, late fees, interest, costs, and</u>
587 <u>reasonable attorney fees incurred by the association in an</u>
588 <u>attempt to collect all such amounts</u> ~~is jointly and severally~~

589 ~~liable with the previous owner for all unpaid assessments~~ that
590 came due up to the time of transfer of title. This liability is
591 without prejudice to any right the owner may have to recover
592 from the previous owner the amounts paid by the owner.
593 (b)1. The liability of a first mortgagee or its successor
594 or assignees who acquire title to a unit by foreclosure or by
595 deed in lieu of foreclosure for the unpaid assessments that
596 became due before the mortgagee's acquisition of title is
597 limited to the lesser of:
598 a. The unit's unpaid common expenses and regular periodic
599 assessments which accrued or came due during the 12 months
600 immediately preceding the acquisition of title and for which
601 payment in full has not been received by the association; or
602 b. One percent of the original mortgage debt.
603
604 The limitations on first mortgagee liability provided by
605 ~~provisions of~~ this subparagraph ~~paragraph~~ apply only if the
606 first mortgagee joined the association as a defendant in the
607 foreclosure action. Joinder of the association is not required
608 if, on the date the complaint is filed, the association was
609 dissolved or did not maintain an office or agent for service of
610 process at a location that ~~which~~ was known to or reasonably
611 discoverable by the mortgagee.
612 2. An association, or its successor or assignee, that
613 acquires title to a unit through the foreclosure of its lien for
614 assessments is not liable for any unpaid assessments, late fees,
615 interest, or reasonable attorney ~~attorney's~~ fees and costs that
616 came due before the association's acquisition of title in favor

617 of any other association, as defined in s. 718.103(2) or s.
618 720.301(9), which holds a ~~superior~~ lien interest on the unit.
619 This subparagraph is intended to clarify existing law.
620 Section 7. Paragraph (a) of subsection (3) and subsection
621 (5) of section 718.303, Florida Statutes, are amended to read:
622 718.303 Obligations of owners and occupants; remedies.—
623 (3) The association may levy reasonable fines for the
624 failure of the owner of the unit or its occupant, licensee, or
625 invitee to comply with any provision of the declaration, the
626 association bylaws, or reasonable rules of the association. A
627 fine may not become a lien against a unit. A fine may be levied
628 on the basis of each day of a continuing violation, with a
629 single notice and opportunity for hearing. However, the fine may
630 not exceed $100 per violation, or $1,000 in the aggregate.
631 (a) An association may suspend, for a reasonable period of
632 time, the right of a unit owner, or a unit owner's tenant,
633 guest, or invitee, to use the common elements, common
634 facilities, or any other association property for failure to
635 comply with any provision of the declaration, the association
636 bylaws, or reasonable rules of the association. <u>This paragraph</u>
637 <u>does not apply to limited common elements intended to be used</u>
638 <u>only by that unit, common elements needed to access the unit,</u>
639 <u>utility services provided to the unit, parking spaces, or</u>
640 <u>elevators.</u>
641 (5) An association may suspend the voting rights of a unit
642 or member due to nonpayment of any monetary obligation due ~~to~~
643 the association which is more than 90 days delinquent.
644 <u>Notwithstanding an association's declaration, articles of</u>

645 <u>incorporation, or bylaws, the requirements to establish a</u>
646 <u>quorum, conduct an election, or obtain membership approval on</u>
647 <u>actions under this chapter or pursuant to the declaration,</u>
648 <u>articles of incorporation, or bylaws shall be reduced by the</u>
649 <u>number of suspended voting interests or consent rights.</u> ~~A voting~~
650 ~~interest or consent right allocated to a unit or member which~~
651 ~~has been suspended by the association may not be counted towards~~
652 ~~the total number of voting interests necessary to constitute a~~
653 ~~quorum, the number of voting interests required to conduct an~~
654 ~~election, or the number of voting interests required to approve~~
655 ~~an action under this chapter or pursuant to the declaration,~~
656 ~~articles of incorporation, or bylaws.~~ The suspension ends upon
657 full payment of all obligations currently due or overdue the
658 association. The notice and hearing requirements under
659 subsection (3) do not apply to a suspension imposed under this
660 subsection.
661 Section 8. Subsection (1) of section 718.403, Florida
662 Statutes, is amended to read:
663 718.403 Phase condominiums.—
664 (1) Notwithstanding ~~the provisions of~~ s. 718.110, a
665 developer may develop a condominium in phases, if the original
666 declaration of condominium submitting the initial phase to
667 condominium ownership or an amendment to the declaration which
668 has been approved by all of the unit owners and unit mortgagees
669 provides for and describes in detail all anticipated phases; the
670 impact, if any, which the completion of subsequent phases would
671 have upon the initial phase; and the time period (which may not
672 exceed 7 years from the date of recording the declaration of

673 condominium, unless extended as provided in this subsection)
674 within which all phases must be added to the condominium and
675 comply with the requirements of this section and at the end of
676 which the right to add additional phases expires.
677 (a) All phases must be added to the condominium within 7
678 years after the date of recording the original declaration of
679 condominium submitting the initial phase to condominium
680 ownership unless an amendment extending the 7-year period is
681 approved by the unit owners.
682 (b) An amendment to extend the 7-year period requires the
683 approval of the owners necessary to amend the declaration of
684 condominium consistent with s. 718.110(1)(a). An extension of
685 the 7-year period may be submitted for approval only during the
686 last 3 years of the 7-year period.
687 (c) An amendment must describe the time period within
688 which all phases must be added to the condominium and such time
689 period may not exceed 10 years after the date of recording the
690 original declaration of condominium submitting the initial phase
691 to condominium ownership.
692 (d) Notwithstanding s. 718.110, an amendment extending the
693 7-year period is not an amendment subject to s. 718.110(4).
694 Section 9. Section 718.406, Florida Statutes, is created
695 to read:
696 718.406 Condominiums created within condominium parcels.—
697 (1) Unless otherwise expressed in the declaration of
698 condominium, if a condominium is created within a condominium
699 parcel, the term:

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700 (a) "Primary condominium" means any condominium that is
701 not a secondary condominium and contains one or more subdivided
702 units.
703 (b) "Primary condominium association" means any entity
704 that operates a primary condominium.
705 (c) "Primary condominium declaration" means the instrument
706 or instruments by which a primary condominium is created, as
707 they are from time to time amended.
708 (d) "Secondary condominium" means one or more condominium
709 parcels that have been submitted to condominium ownership
710 pursuant to a secondary condominium declaration.
711 (e) "Secondary condominium association" means any entity
712 responsible for the operation of a secondary condominium.
713 (f) "Secondary condominium declaration" means the
714 instrument or instruments by which a secondary condominium is
715 created, as they are from time to time amended.
716 (g) "Subdivided unit" means a condominium parcel in a
717 primary condominium that has been submitted to condominium
718 ownership pursuant to a secondary condominium declaration.
719 (2) Unless otherwise provided in the primary condominium
720 declaration, if a condominium parcel is a subdivided unit, the
721 secondary condominium association governing the secondary
722 condominium containing the subdivided unit shall act on behalf
723 of the unit owners of units in the subdivided unit and shall
724 exercise all rights of the unit owners of units in the
725 subdivided unit in the primary condominium association other
726 than the right of possession of such unit. The designated
727 representative of the secondary condominium association shall

728 cast the vote of the subdivided unit in the primary condominium
729 association and, if no person is designated by the secondary
730 condominium association to cast such vote, the vote shall be
731 cast by the president of the secondary condominium association
732 or the designee of the president.
733 (3) Unless otherwise provided in the primary condominium
734 declaration, if a condominium parcel in the primary condominium
735 is being submitted for condominium ownership, then the consent
736 of the primary condominium association responsible for the
737 operation of the condominium containing such condominium parcel
738 is not required to create the secondary condominium on such
739 condominium parcel.
740 (4) If the primary condominium declaration requires the
741 consent of the primary condominium association to create a
742 secondary condominium in a condominium parcel within the primary
743 condominium, then, unless otherwise provided in the primary
744 condominium declaration, only the approval of a majority of the
745 board of administration of the primary condominium association
746 is required for such consent. Unless otherwise provided in the
747 primary condominium declaration, neither consent of the unit
748 owners of, nor the lienholders on, any condominium parcels in
749 the primary condominium that are not subdivided units are
750 required to approve the secondary condominium declaration.
751 Approval is required for the execution of a secondary
752 condominium declaration by the owner of the subdivided unit and
753 any lienholder on the subdivided unit.

754 (5) An owner of a condominium parcel in a subdivided unit
755 is subject to both the primary condominium declaration and the
756 secondary condominium declaration.
757 (6) The primary condominium association may provide
758 insurance required by s. 718.111(11) for common elements and
759 other improvements within the secondary condominium if the
760 primary condominium declaration permits the primary condominium
761 association to provide such insurance for the benefit of the
762 condominium property included in the subdivided unit, in lieu of
763 such insurance being provided by the secondary condominium
764 association.
765 (7) Unless otherwise provided in the primary condominium
766 declaration, the board of administration of the primary
767 condominium association may adopt hurricane shutter or hurricane
768 protection specifications for each building within which
769 subdivided units are located and govern any subdivided units in
770 the primary condominium.
771 (8) Any unit owner of, or holder of a first mortgage on, a
772 unit in a secondary condominium may register such unit owner's
773 or mortgagee's interest in the secondary condominium with the
774 primary condominium association by written notice to the primary
775 condominium association. Once registered, the primary
776 condominium association must provide written notice to such unit
777 owner and his or her mortgagee at least 30 days before
778 instituting any foreclosure action against the subdivided unit
779 in which the unit owner or his and her mortgagee holds an
780 interest for failure to pay any assessments or other amounts due
781 the primary condominium association. A foreclosure action

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782 against a subdivided unit is not effective without an affidavit
783 indicating that written notice of the foreclosure was timely
784 sent to the names and addresses of unit owners and first
785 mortgagees registered with the primary condominium association
786 pursuant to this subsection. The registered unit owner or
787 mortgagee has a right to pay the proportionate amount of the
788 delinquent assessment attributable to the unit in which the
789 registered unit owner or mortgagee holds an interest. Upon such
790 payment, the primary condominium association shall release the
791 lien of the primary condominium association of record against
792 such unit. Alternatively, such registered unit owner or
793 mortgagee may pay the amount of all delinquent assessments
794 attributed to the subdivided unit and seek reimbursement for all
795 such amounts paid and all costs incurred from the secondary
796 condominium association, including, without limitation, the
797 costs of collection other than the share allocable to the unit
798 on behalf of which such payment was made.
799 (9) In the event of a conflict between the primary
800 condominium declaration and the secondary condominium
801 declaration, the primary condominium declaration controls.
802 (10) All common expenses due the primary condominium
803 association with respect to a subdivided unit are a common
804 expense of the secondary condominium association and shall be
805 collected by the secondary condominium association from its
806 members and paid to the primary condominium association.
807 Section 10. Subsection (2) of section 718.5011, Florida
808 Statutes, is amended to read:
809 718.5011 Ombudsman; appointment; administration.—

810 (2) The Governor shall appoint the ombudsman. The
811 ombudsman must be an attorney admitted to practice before the
812 Florida Supreme Court and shall serve at the pleasure of the
813 Governor. A vacancy in the office shall be filled in the same
814 manner as the original appointment. An officer or full-time
815 employee of the ombudsman's office may not actively engage in
816 any other business or profession that directly or indirectly
817 relates to or conflicts with his or her work in the ombudsman's
818 office; serve as the representative of any political party,
819 executive committee, or other governing body of a political
820 party; serve as an executive, officer, or employee of a
821 political party; receive remuneration for activities on behalf
822 of any candidate for public office; or engage in soliciting
823 votes or other activities on behalf of a candidate for public
824 office. The ombudsman or any employee of his or her office may
825 not become a candidate for election to public office unless he
826 or she first resigns from his or her office or employment.
827 Section 11. Section 718.707, Florida Statutes, is amended
828 to read:
829 718.707 Time limitation for classification as bulk
830 assignee or bulk buyer.—A person acquiring condominium parcels
831 may not be classified as a bulk assignee or bulk buyer unless
832 the condominium parcels were acquired on or after July 1, 2010,
833 but before July 1, 2015 ~~2012~~. The date of such acquisition shall
834 be determined by the date of recording a deed or other
835 instrument of conveyance for such parcels in the public records
836 of the county in which the condominium is located, or by the

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837 date of issuing a certificate of title in a foreclosure
838 proceeding with respect to such condominium parcels.
839 Section 12. Paragraph (c) of subsection (2) of section
840 719.104, Florida Statutes, is amended to read:
841 719.104 Cooperatives; access to units; records; financial
842 reports; assessments; purchase of leases.—
843 (2) OFFICIAL RECORDS.—
844 (c) The official records of the association shall be open
845 to inspection by any association member or the authorized
846 representative of such member at all reasonable times. Failure
847 to permit inspection of the association records as provided in
848 this subsection ~~herein~~ entitles any person prevailing in an
849 enforcement action to recover reasonable attorney ~~attorney's~~
850 fees from the person in control of the records who, directly or
851 indirectly, knowingly denies access to the records for
852 inspection. The right to inspect the records includes the right
853 to make or obtain copies, at the reasonable expense, if any, of
854 the association member. The association may adopt reasonable
855 rules regarding the frequency, time, location, notice, and
856 manner of record inspections and copying. The failure of an
857 association to provide the records within 10 working days after
858 receipt of a written request creates a rebuttable presumption
859 that the association willfully failed to comply with this
860 paragraph. A unit owner who is denied access to official records
861 is entitled to the actual damages or minimum damages for the
862 association's willful failure to comply with this paragraph. The
863 minimum damages shall be $50 per calendar day up to 10 days, the
864 calculation to begin on the 11th day after receipt of the

865 written request. The association shall maintain an adequate
866 number of copies of the declaration, articles of incorporation,
867 bylaws, and rules, and all amendments to each of the foregoing,
868 as well as the question and answer sheet provided for in s.
869 719.504, on the cooperative property to ensure their
870 availability to unit owners and prospective purchasers, and may
871 charge its actual costs for preparing and furnishing these
872 documents to those requesting the same. Notwithstanding ~~the~~
873 ~~provisions of~~ this paragraph, the following records shall not be
874 accessible to unit owners:
875 1. Any record protected by the lawyer-client privilege as
876 provided in s. 90.502; protected by the work-product privilege,
877 including any record ~~A record that was~~ prepared by an
878 association attorney or prepared at the attorney's express
879 direction; reflecting ~~that reflects~~ a mental impression,
880 conclusion, litigation strategy, or legal theory of the attorney
881 or the association; or ~~that was~~ prepared exclusively for civil
882 or criminal litigation or for adversarial administrative
883 proceedings or in anticipation of imminent civil or criminal
884 litigation or imminent adversarial administrative proceedings,
885 until the conclusion of the litigation or adversarial
886 administrative proceedings.
887 2. Information obtained by an association in connection
888 with the approval of the lease, sale, or other transfer of a
889 unit.
890 3. Medical records of unit owners.
891 4. Personnel records of association employees, including,
892 but not limited to, disciplinary, payroll, health, and insurance

893 records. For purposes of this subparagraph, the term "personnel
894 records" does not include written employment agreements with an
895 association employee or budgetary or financial records that
896 indicate the compensation paid to an association employee.
897 5. Social security numbers, driver license numbers, credit
898 card numbers, e-mail addresses, telephone numbers, emergency
899 contact information, any addresses of a unit owner other than
900 addresses provided to fulfill the association's notice
901 requirements, and other personal identifying information of any
902 person, excluding the person's name, unit designation, mailing
903 address, and property address.
904 6. Any electronic security measures that are used by the
905 association to safeguard data, including passwords.
906 7. The software and operating system used by the
907 association which allows manipulation of data, even if the owner
908 owns a copy of the same software used by the association. The
909 data is part of the official records of the association.
910 Section 13. Subsection (7) is added to section 719.1055,
911 Florida Statutes, to read:
912 719.1055 Amendment of cooperative documents; alteration
913 and acquisition of property.—
914 (7) The Legislature finds that the procurement of
915 mortgagee consent to amendments that do not affect the rights or
916 interests of mortgagees is an unreasonable and substantial
917 logistical and financial burden on the unit owners and that
918 there is a compelling state interest in enabling the members of
919 an association to approve amendments to the association's
920 cooperative documents through legal means. Accordingly, and

921 notwithstanding any provision to the contrary contained in this
922 subsection:
923 (a) As to any mortgage recorded on or after July 1, 2012,
924 any provision in the association's cooperative documents that
925 requires the consent or joinder of some or all mortgagees of
926 units or any other portion of the association's common areas to
927 amend the association's cooperative documents or for any other
928 matter is enforceable only as to amendments to the association's
929 cooperative documents that adversely affect the priority of the
930 mortgagee's lien or the mortgagee's rights to foreclose its lien
931 or that otherwise materially affect the rights and interests of
932 the mortgagees.
933 (b) As to mortgages recorded before July 1, 2012, any
934 existing provisions in the association's cooperative documents
935 requiring mortgagee consent are enforceable.
936 (c) In securing consent or joinder, the association is
937 entitled to rely upon the public records to identify the holders
938 of outstanding mortgages. The association may use the address
939 provided in the original recorded mortgage document, unless
940 there is a different address for the holder of the mortgage in a
941 recorded assignment or modification of the mortgage, which
942 recorded assignment or modification must reference the official
943 records book and page on which the original mortgage was
944 recorded. Once the association has identified the recorded
945 mortgages of record, the association shall, in writing, request
946 of each unit owner whose unit is encumbered by a mortgage of
947 record any information the owner has in his or her possession
948 regarding the name and address of the person to whom mortgage

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949 payments are currently being made. Notice shall be sent to such
950 person if the address provided in the original recorded mortgage
951 document is different from the name and address of the mortgagee
952 or assignee of the mortgage as shown by the public record. The
953 association is deemed to have complied with this requirement by
954 making the written request of the unit owners required under
955 this paragraph. Any notices required to be sent to the
956 mortgagees under this paragraph shall be sent to all available
957 addresses provided to the association.
958 (d) Any notice to the mortgagees required under paragraph
959 (c) may be sent by a method that establishes proof of delivery,
960 and any mortgagee who fails to respond within 60 days after the
961 date of mailing is deemed to have consented to the amendment.
962 (e) For those amendments requiring mortgagee consent on or
963 after July 1, 2012, in the event mortgagee consent is provided
964 other than by properly recorded joinder, such consent shall be
965 evidenced by affidavit of the association recorded in the public
966 records of the county in which the declaration is recorded.
967 (f) Any amendment adopted without the required consent of
968 a mortgagee is voidable only by a mortgagee who was entitled to
969 notice and an opportunity to consent. An action to void an
970 amendment is subject to the statute of limitations beginning 5
971 years after the date of discovery as to the amendments described
972 in paragraph (a) and 5 years after the date of recordation of
973 the certificate of amendment for all other amendments. This
974 paragraph applies to all mortgages, regardless of the date of
975 recordation of the mortgage.

976 Section 14. Paragraphs (d) and (f) of subsection (1) of
977 section 719.106, Florida Statutes, are amended to read:
978 719.106 Bylaws; cooperative ownership.—
979 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
980 documents shall provide for the following, and if they do not,
981 they shall be deemed to include the following:
982 (d) Shareholder meetings.—There shall be an annual meeting
983 of the shareholders. All members of the board of administration
984 shall be elected at the annual meeting unless the bylaws provide
985 for staggered election terms or for their election at another
986 meeting. Any unit owner desiring to be a candidate for board
987 membership must comply with subparagraph 1. The bylaws must
988 provide the method for calling meetings, including annual
989 meetings. Written notice, which must incorporate an
990 identification of agenda items, shall be given to each unit
991 owner at least 14 days before the annual meeting and posted in a
992 conspicuous place on the cooperative property at least 14
993 continuous days preceding the annual meeting. Upon notice to the
994 unit owners, the board must by duly adopted rule designate a
995 specific location on the cooperative property upon which all
996 notice of unit owner meetings are posted. In lieu of or in
997 addition to the physical posting of the meeting notice, the
998 association may, by reasonable rule, adopt a procedure for
999 conspicuously posting and repeatedly broadcasting the notice and
1000 the agenda on a closed-circuit cable television system serving
1001 the cooperative association. However, if broadcast notice is
1002 used in lieu of a posted notice, the notice and agenda must be
1003 broadcast at least four times every broadcast hour of each day

1004 that a posted notice is otherwise required under this section.
1005 If broadcast notice is provided, the notice and agenda must be
1006 broadcast in a manner and for a sufficient continuous length of
1007 time to allow an average reader to observe the notice and read
1008 and comprehend the entire content of the notice and the agenda.
1009 Unless a unit owner waives in writing the right to receive
1010 notice of the annual meeting, the notice of the annual meeting
1011 must be sent by mail, hand delivered, or electronically
1012 transmitted to each unit owner. An officer of the association
1013 must provide an affidavit or United States Postal Service
1014 certificate of mailing, to be included in the official records
1015 of the association, affirming that notices of the association
1016 meeting were mailed, hand delivered, or electronically
1017 transmitted, in accordance with this provision, to each unit
1018 owner at the address last furnished to the association.
1019 1. The board of administration shall be elected by written
1020 ballot or voting machine. A proxy may not be used in electing
1021 the board of administration in general elections or elections to
1022 fill vacancies caused by recall, resignation, or otherwise
1023 unless otherwise provided in this chapter.
1024 a. At least 60 days before a scheduled election, the
1025 association shall mail, deliver, or transmit, whether by
1026 separate association mailing, delivery, or electronic
1027 transmission or included in another association mailing,
1028 delivery, or electronic transmission, including regularly
1029 published newsletters, to each unit owner entitled to vote, a
1030 first notice of the date of the election. Any unit owner or
1031 other eligible person desiring to be a candidate for the board

1032 of administration must give written notice to the association at
1033 least 40 days before a scheduled election. Together with the
1034 written notice and agenda as set forth in this section, the
1035 association shall mail, deliver, or electronically transmit a
1036 second notice of election to all unit owners entitled to vote,
1037 together with a ballot that ~~which~~ lists all candidates. Upon
1038 request of a candidate, the association shall include an
1039 information sheet, no larger than 8 1/2 inches by 11 inches,
1040 which must be furnished by the candidate at least 35 days before
1041 the election, to be included with the mailing, delivery, or
1042 electronic transmission of the ballot, with the costs of
1043 mailing, delivery, or transmission and copying to be borne by
1044 the association. The association is not liable for the contents
1045 of the information sheets provided by the candidates. In order
1046 to reduce costs, the association may print or duplicate the
1047 information sheets on both sides of the paper. The division
1048 shall by rule establish voting procedures consistent with this
1049 subparagraph, including rules establishing procedures for giving
1050 notice by electronic transmission and rules providing for the
1051 secrecy of ballots. Elections shall be decided by a plurality of
1052 those ballots cast. There is no quorum requirement. However, at
1053 least 20 percent of the eligible voters must cast a ballot in
1054 order to have a valid election. A unit owner may not permit any
1055 other person to vote his or her ballot, and any such ballots
1056 improperly cast are invalid. A unit owner who needs assistance
1057 in casting the ballot for the reasons stated in s. 101.051 may
1058 obtain assistance in casting the ballot. Any unit owner
1059 violating this provision may be fined by the association in

1060 accordance with s. 719.303. The regular election must occur on
1061 the date of the annual meeting. This subparagraph does not apply
1062 to timeshare cooperatives. Notwithstanding this subparagraph, an
1063 election and balloting are not required unless more candidates
1064 file a notice of intent to run or are nominated than vacancies
1065 exist on the board. Any challenge to the election process must
1066 be commenced within 60 days after the election results are
1067 announced.
1068 b. Within 90 days after being elected or appointed to the
1069 board, each new director shall certify in writing to the
1070 secretary of the association that he or she has read the
1071 association's bylaws, articles of incorporation, proprietary
1072 lease, and current written policies; that he or she will work to
1073 uphold such documents and policies to the best of his or her
1074 ability; and that he or she will faithfully discharge his or her
1075 fiduciary responsibility to the association's members. Within 90
1076 days after being elected or appointed to the board, in lieu of
1077 this written certification, the newly elected or appointed
1078 director may submit a certificate of having satisfactorily
1079 completed the educational curriculum administered by an
1080 education provider as approved by the division pursuant to the
1081 requirements established in chapter 718 within 1 year before or
1082 90 days after the date of election or appointment. The
1083 educational certificate is valid and does not have to be
1084 resubmitted as long as the director serves on the board without
1085 interruption. A director who fails to timely file the written
1086 certification or educational certificate is suspended from
1087 service on the board until he or she complies with this sub-

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1088 subparagraph. The board may temporarily fill the vacancy during
1089 the period of suspension. The secretary shall cause the
1090 association to retain a director's written certification or
1091 educational certificate for inspection by the members for 5
1092 years after a director's election or the duration of the
1093 director's uninterrupted tenure, whichever is longer. Failure to
1094 have such written certification or educational certificate on
1095 file does not affect the validity of any board action.
1096 2. Any approval by unit owners called for by this chapter,
1097 or the applicable cooperative documents, must be made at a duly
1098 noticed meeting of unit owners and is subject to this chapter or
1099 the applicable cooperative documents relating to unit owner
1100 decisionmaking, except that unit owners may take action by
1101 written agreement, without meetings, on matters for which action
1102 by written agreement without meetings is expressly allowed by
1103 the applicable cooperative documents or law which provides for
1104 the unit owner action.
1105 3. Unit owners may waive notice of specific meetings if
1106 allowed by the applicable cooperative documents or law. If
1107 authorized by the bylaws, notice of meetings of the board of
1108 administration, shareholder meetings, except shareholder
1109 meetings called to recall board members under paragraph (f), and
1110 committee meetings may be given by electronic transmission to
1111 unit owners who consent to receive notice by electronic
1112 transmission.
1113 4. Unit owners have the right to participate in meetings
1114 of unit owners with reference to all designated agenda items.
1115 However, the association may adopt reasonable rules governing

1116 the frequency, duration, and manner of unit owner participation.
1117 5. Any unit owner may tape record or videotape meetings of
1118 the unit owners subject to reasonable rules adopted by the
1119 division.
1120 6. Unless otherwise provided in the bylaws, a vacancy
1121 occurring on the board before the expiration of a term may be
1122 filled by the affirmative vote of the majority of the remaining
1123 directors, even if the remaining directors constitute less than
1124 a quorum, or by the sole remaining director. In the alternative,
1125 a board may hold an election to fill the vacancy, in which case
1126 the election procedures must conform to the requirements of
1127 subparagraph 1. unless the association has opted out of the
1128 statutory election process, in which case the bylaws of the
1129 association control. Unless otherwise provided in the bylaws, a
1130 board member appointed or elected under this subparagraph shall
1131 fill the vacancy for the unexpired term of the seat being
1132 filled. Filling vacancies created by recall is governed by
1133 paragraph (f) and rules adopted by the division.
1134
1135 Notwithstanding subparagraphs (b)2. and (d)1., an association
1136 may, by the affirmative vote of a majority of the total voting
1137 interests, provide for a different voting and election procedure
1138 in its bylaws, which vote may be by a proxy specifically
1139 delineating the different voting and election procedures. The
1140 different voting and election procedures may provide for
1141 elections to be conducted by limited or general proxy.
1142 (f) Recall of board members.—Subject to ~~the provisions of~~
1143 s. 719.301, any member of the board of administration may be

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1144 recalled and removed from office with or without cause by the
1145 vote or agreement in writing by a majority of all the voting
1146 interests. A special meeting of the voting interests to recall
1147 any member of the board of administration may be called by 10
1148 percent of the unit owners giving notice of the meeting as
1149 required for a meeting of unit owners, and the notice shall
1150 state the purpose of the meeting. Electronic transmission may
1151 not be used as a method of giving notice of a meeting called in
1152 whole or in part for this purpose.
1153 1. If the recall is approved by a majority of all voting
1154 interests by a vote at a meeting, the recall shall be effective
1155 as provided in this paragraph ~~herein~~. The board shall duly
1156 notice and hold a board meeting within 5 full business days
1157 after ~~of~~ the adjournment of the unit owner meeting to recall one
1158 or more board members. At the meeting, the board shall either
1159 certify the recall, in which case such member or members shall
1160 be recalled effective immediately and shall turn over to the
1161 board within 5 full business days any and all records and
1162 property of the association in their possession, or shall
1163 proceed as set forth in subparagraph 3.
1164 2. If the proposed recall is by an agreement in writing by
1165 a majority of all voting interests, the agreement in writing or
1166 a copy thereof shall be served on the association by certified
1167 mail or by personal service in the manner authorized by chapter
1168 48 and the Florida Rules of Civil Procedure. The board of
1169 administration shall duly notice and hold a meeting of the board
1170 within 5 full business days after receipt of the agreement in
1171 writing. At the meeting, the board shall either certify the

1172 written agreement to recall members of the board, in which case
1173 such members shall be recalled effective immediately and shall
1174 turn over to the board, within 5 full business days, any and all
1175 records and property of the association in their possession, or
1176 proceed as described in subparagraph 3.
1177 3. If the board determines not to certify the written
1178 agreement to recall members of the board, or does not certify
1179 the recall by a vote at a meeting, the board shall, within 5
1180 full business days after the board meeting, file with the
1181 division a petition for binding arbitration pursuant to the
1182 procedures of s. 719.1255. For purposes of this paragraph, the
1183 unit owners who voted at the meeting or who executed the
1184 agreement in writing shall constitute one party under the
1185 petition for arbitration. If the arbitrator certifies the recall
1186 as to any member of the board, the recall shall be effective
1187 upon mailing of the final order of arbitration to the
1188 association. If the association fails to comply with the order
1189 of the arbitrator, the division may take action pursuant to s.
1190 719.501. Any member so recalled shall deliver to the board any
1191 and all records and property of the association in the member's
1192 possession within 5 full business days after ~~of~~ the effective
1193 date of the recall.
1194 4. If the board fails to duly notice and hold a board
1195 meeting within 5 full business days after ~~of~~ service of an
1196 agreement in writing or within 5 full business days after ~~of~~ the
1197 adjournment of the unit owner recall meeting, the recall shall
1198 be deemed effective and the board members so recalled shall
1199 immediately turn over to the board any and all records and

1200 property of the association.
1201 5. If the board fails to duly notice and hold the required
1202 meeting or fails to file the required petition, the unit owner
1203 representative may file a petition pursuant to s. 719.1255
1204 challenging the board's failure to act. The petition must be
1205 filed within 60 days after the expiration of the applicable 5-
1206 full-business-day period. The review of a petition under this
1207 subparagraph is limited to the sufficiency of service on the
1208 board and the facial validity of the written agreement or
1209 ballots filed.
1210 6.~~5.~~ If a vacancy occurs on the board as a result of a
1211 recall and less than a majority of the board members are
1212 removed, the vacancy may be filled by the affirmative vote of a
1213 majority of the remaining directors, notwithstanding any
1214 provision to the contrary contained in this chapter. If
1215 vacancies occur on the board as a result of a recall and a
1216 majority or more of the board members are removed, the vacancies
1217 shall be filled in accordance with procedural rules to be
1218 adopted by the division, which rules need not be consistent with
1219 this chapter. The rules must provide procedures governing the
1220 conduct of the recall election as well as the operation of the
1221 association during the period after a recall but prior to the
1222 recall election.
1223 7. A board member who has been recalled may file a
1224 petition pursuant to s. 719.1255 challenging the validity of a
1225 recall. The petition must be filed within 60 days after the
1226 recall is deemed certified. The association and the unit owner
1227 representative shall be named as the respondents.

1228 8. The division may not accept for filing a recall
1229 petition, whether filed pursuant to subparagraph 1.,
1230 subparagraph 2., subparagraph 5., or subparagraph 7. and
1231 regardless of whether the recall was certified, when there are
1232 60 or fewer days until the scheduled reelection of the board
1233 member sought to be recalled or when 60 or fewer days have not
1234 elapsed since the election of the board member sought to be
1235 recalled.
1236 Section 15. Paragraph (a) of subsection (3) and subsection
1237 (5) of section 719.303, Florida Statutes, are amended to read:
1238 719.303 Obligations of owners.—
1239 (3) The association may levy reasonable fines for failure
1240 of the unit owner or the unit's occupant, licensee, or invitee
1241 to comply with any provision of the cooperative documents or
1242 reasonable rules of the association. A fine may not become a
1243 lien against a unit. A fine may be levied on the basis of each
1244 day of a continuing violation, with a single notice and
1245 opportunity for hearing. However, the fine may not exceed $100
1246 per violation, or $1,000 in the aggregate.
1247 (a) An association may suspend, for a reasonable period of
1248 time, the right of a unit owner, or a unit owner's tenant,
1249 guest, or invitee, to use the common elements, common
1250 facilities, or any other association property for failure to
1251 comply with any provision of the cooperative documents or
1252 reasonable rules of the association. This paragraph does not
1253 apply to limited common elements intended to be used only by
1254 that unit, common elements needed to access the unit, utility
1255 services provided to the unit, parking spaces, or elevators.

1256 (5) An association may suspend the voting rights of a unit
1257 or member due to nonpayment of any monetary obligation due ~~to~~
1258 the association which is more than 90 days delinquent.
1259 Notwithstanding an association's cooperative documents, the
1260 requirements to establish a quorum, conduct an election, or
1261 obtain membership approval on actions under this chapter or
1262 pursuant to the association's cooperative documents shall be
1263 reduced by the number of suspended voting interests or consent
1264 rights. ~~A voting interest or consent right allocated to a unit~~
1265 ~~or member which has been suspended by the association may not be~~
1266 ~~counted towards the total number of voting interests for any~~
1267 ~~purpose, including, but not limited to, the number of voting~~
1268 ~~interests necessary to constitute a quorum, the number of voting~~
1269 ~~interests required to conduct an election, or the number of~~
1270 ~~voting interests required to approve an action under this~~
1271 ~~chapter or pursuant to the cooperative documents, articles of~~
1272 ~~incorporation, or bylaws.~~ The suspension ends upon full payment
1273 of all obligations currently due or overdue the association. The
1274 notice and hearing requirements under subsection (3) do not
1275 apply to a suspension imposed under this subsection.
1276 Section 16. Paragraph (c) of subsection (5) and subsection
1277 (10) of section 720.303, Florida Statutes, are amended to read:
1278 720.303 Association powers and duties; meetings of board;
1279 official records; budgets; financial reporting; association
1280 funds; recalls.—
1281 (5) INSPECTION AND COPYING OF RECORDS.—The official
1282 records shall be maintained within the state and must be open to
1283 inspection and available for photocopying by members or their

1284 authorized agents at reasonable times and places within 10
1285 business days after receipt of a written request for access.
1286 This subsection may be complied with by having a copy of the
1287 official records available for inspection or copying in the
1288 community. If the association has a photocopy machine available
1289 where the records are maintained, it must provide parcel owners
1290 with copies on request during the inspection if the entire
1291 request is limited to no more than 25 pages.
1292 (c) The association may adopt reasonable written rules
1293 governing the frequency, time, location, notice, records to be
1294 inspected, and manner of inspections, but may not require a
1295 parcel owner to demonstrate any proper purpose for the
1296 inspection, state any reason for the inspection, or limit a
1297 parcel owner's right to inspect records to less than one 8-hour
1298 business day per month. The association may impose fees to cover
1299 the costs of providing copies of the official records,
1300 including, without limitation, the costs of copying. The
1301 association may charge up to 50 cents per page for copies made
1302 on the association's photocopier. If the association does not
1303 have a photocopy machine available where the records are kept,
1304 or if the records requested to be copied exceed 25 pages in
1305 length, the association may have copies made by an outside
1306 vendor or association management company personnel and may
1307 charge the actual cost of copying, including any reasonable
1308 costs involving personnel fees and charges at an hourly rate for
1309 vendor or employee time to cover administrative costs to the
1310 vendor or association. The association shall maintain an
1311 adequate number of copies of the recorded governing documents,

1312 to ensure their availability to members and prospective members.
1313 Notwithstanding this paragraph, the following records are not
1314 accessible to members or parcel owners:
1315 1. Any record protected by the lawyer-client privilege as
1316 described in s. 90.502 and any record protected by the work-
1317 product privilege, including, but not limited to, a record
1318 prepared by an association attorney or prepared at the
1319 attorney's express direction which reflects a mental impression,
1320 conclusion, litigation strategy, or legal theory of the attorney
1321 or the association and which was prepared exclusively for civil
1322 or criminal litigation or for adversarial administrative
1323 proceedings or which was prepared in anticipation of such
1324 litigation or proceedings until the conclusion of the litigation
1325 or proceedings.
1326 2. Information obtained by an association in connection
1327 with the approval of the lease, sale, or other transfer of a
1328 parcel.
1329 3. Personnel records of association or management company
1330 ~~the association's~~ employees, including, but not limited to,
1331 disciplinary, payroll, health, and insurance records. For
1332 purposes of this subparagraph, the term "personnel records" does
1333 not include written employment agreements with an association or
1334 management company employee or budgetary or financial records
1335 that indicate the compensation paid to an association or
1336 management company employee.
1337 4. Medical records of parcel owners or community
1338 residents.
1339 5. Social security numbers, driver ~~driver's~~ license

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1340 numbers, credit card numbers, electronic mailing addresses,
1341 telephone numbers, facsimile numbers, emergency contact
1342 information, any addresses for a parcel owner other than as
1343 provided for association notice requirements, and other personal
1344 identifying information of any person, excluding the person's
1345 name, parcel designation, mailing address, and property address.
1346 However, an owner may consent in writing to the disclosure of
1347 protected information described in this subparagraph. The
1348 association is not liable for the disclosure of information that
1349 is protected under this subparagraph if the information is
1350 included in an official record of the association and is
1351 voluntarily provided by an owner and not requested by the
1352 association.
1353 6. Any electronic security measure that is used by the
1354 association to safeguard data, including passwords.
1355 7. The software and operating system used by the
1356 association which allows the manipulation of data, even if the
1357 owner owns a copy of the same software used by the association.
1358 The data is part of the official records of the association.
1359 (10) RECALL OF DIRECTORS.—
1360 (a)1. Regardless of any provision to the contrary
1361 contained in the governing documents, subject to the provisions
1362 of s. 720.307 regarding transition of association control, any
1363 member of the board of directors may be recalled and removed
1364 from office with or without cause by a majority of the total
1365 voting interests.
1366 2. When the governing documents, including the
1367 declaration, articles of incorporation, or bylaws, provide that

1368 only a specific class of members is entitled to elect a board
1369 director or directors, only that class of members may vote to
1370 recall those board directors so elected.
1371 (b)1. Board directors may be recalled by an agreement in
1372 writing or by written ballot without a membership meeting. The
1373 agreement in writing or the written ballots, or a copy thereof,
1374 shall be served on the association by certified mail or by
1375 personal service in the manner authorized by chapter 48 and the
1376 Florida Rules of Civil Procedure.
1377 2. The board shall duly notice and hold a meeting of the
1378 board within 5 full business days after receipt of the agreement
1379 in writing or written ballots. At the meeting, the board shall
1380 either certify the written ballots or written agreement to
1381 recall a director or directors of the board, in which case such
1382 director or directors shall be recalled effective immediately
1383 and shall turn over to the board within 5 full business days any
1384 and all records and property of the association in their
1385 possession, or proceed as described in paragraph (d).
1386 3. When it is determined by the department pursuant to
1387 binding arbitration proceedings that an initial recall effort
1388 was defective, written recall agreements or written ballots used
1389 in the first recall effort and not found to be defective may be
1390 reused in one subsequent recall effort. However, in no event is
1391 a written agreement or written ballot valid for more than 120
1392 days after it has been signed by the member.
1393 4. Any rescission or revocation of a member's written
1394 recall ballot or agreement must be in writing and, in order to
1395 be effective, must be delivered to the association before the

1396 association is served with the written recall agreements or
1397 ballots.
1398 5. The agreement in writing or ballot shall list at least
1399 as many possible replacement directors as there are directors
1400 subject to the recall, when at least a majority of the board is
1401 sought to be recalled; the person executing the recall
1402 instrument may vote for as many replacement candidates as there
1403 are directors subject to the recall.
1404 (c)1. If the declaration, articles of incorporation, or
1405 bylaws specifically provide, the members may also recall and
1406 remove a board director or directors by a vote taken at a
1407 meeting. If so provided in the governing documents, a special
1408 meeting of the members to recall a director or directors of the
1409 board of administration may be called by 10 percent of the
1410 voting interests giving notice of the meeting as required for a
1411 meeting of members, and the notice shall state the purpose of
1412 the meeting. Electronic transmission may not be used as a method
1413 of giving notice of a meeting called in whole or in part for
1414 this purpose.
1415 2. The board shall duly notice and hold a board meeting
1416 within 5 full business days after the adjournment of the member
1417 meeting to recall one or more directors. At the meeting, the
1418 board shall certify the recall, in which case such member or
1419 members shall be recalled effective immediately and shall turn
1420 over to the board within 5 full business days any and all
1421 records and property of the association in their possession, or
1422 shall proceed as set forth in subparagraph (d).
1423 (d) If the board determines not to certify the written

1424 agreement or written ballots to recall a director or directors
1425 of the board or does not certify the recall by a vote at a
1426 meeting, the board shall, within 5 full business days after the
1427 meeting, file with the department a petition for binding
1428 arbitration pursuant to the applicable procedures in ss.
1429 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For
1430 the purposes of this section, the members who voted at the
1431 meeting or who executed the agreement in writing shall
1432 constitute one party under the petition for arbitration. If the
1433 arbitrator certifies the recall as to any director or directors
1434 of the board, the recall will be effective upon mailing of the
1435 final order of arbitration to the association. The director or
1436 directors so recalled shall deliver to the board any and all
1437 records of the association in their possession within 5 full
1438 business days after the effective date of the recall.
1439 (e) If a vacancy occurs on the board as a result of a
1440 recall and less than a majority of the board directors are
1441 removed, the vacancy may be filled by the affirmative vote of a
1442 majority of the remaining directors, notwithstanding any
1443 provision to the contrary contained in this subsection or in the
1444 association documents. If vacancies occur on the board as a
1445 result of a recall and a majority or more of the board directors
1446 are removed, the vacancies shall be filled by members voting in
1447 favor of the recall; if removal is at a meeting, any vacancies
1448 shall be filled by the members at the meeting. If the recall
1449 occurred by agreement in writing or by written ballot, members
1450 may vote for replacement directors in the same instrument in
1451 accordance with procedural rules adopted by the division, which

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1452 rules need not be consistent with this subsection.
1453 (f) If the board fails to duly notice and hold a board
1454 meeting within 5 full business days after service of an
1455 agreement in writing or within 5 full business days after the
1456 adjournment of the member recall meeting, the recall shall be
1457 deemed effective and the board directors so recalled shall
1458 immediately turn over to the board all records and property of
1459 the association.
1460 (g) If the board fails to duly notice and hold the
1461 required meeting or fails to file the required petition, the
1462 unit owner representative may file a petition pursuant to s.
1463 718.1255 challenging the board's failure to act. The petition
1464 must be filed within 60 days after the expiration of the
1465 applicable 5-full-business-day period. The review of a petition
1466 under this paragraph is limited to the sufficiency of service on
1467 the board and the facial validity of the written agreement or
1468 ballots filed.
1469 (h) ~~(g)~~ If a director who is removed fails to relinquish
1470 his or her office or turn over records as required under this
1471 section, the circuit court in the county where the association
1472 maintains its principal office may, upon the petition of the
1473 association, summarily order the director to relinquish his or
1474 her office and turn over all association records upon
1475 application of the association.
1476 (i) ~~(h)~~ The minutes of the board meeting at which the board
1477 decides whether to certify the recall are an official
1478 association record. The minutes must record the date and time of
1479 the meeting, the decision of the board, and the vote count taken

1480 on each board member subject to the recall. In addition, when
1481 the board decides not to certify the recall, as to each vote
1482 rejected, the minutes must identify the parcel number and the
1483 specific reason for each such rejection.
1484 (j) ~~(i)~~ When the recall of more than one board director is
1485 sought, the written agreement, ballot, or vote at a meeting
1486 shall provide for a separate vote for each board director sought
1487 to be recalled.
1488 (k) A board member who has been recalled may file a
1489 petition pursuant to ss. 718.112(2)(j) and 718.1255 and the
1490 rules adopted challenging the validity of the recall. The
1491 petition must be filed within 60 days after the recall is deemed
1492 certified. The association and the unit owner representative
1493 shall be named as respondents.
1494 (l) The division may not accept for filing a recall
1495 petition, whether filed pursuant to paragraph (b), paragraph
1496 (c), paragraph (g), or paragraph (k) and regardless of whether
1497 the recall was certified, when there are 60 or fewer days until
1498 the scheduled reelection of the board member sought to be
1499 recalled or when 60 or fewer days have not elapsed since the
1500 election of the board member sought to be recalled.
1501 Section 17. Subsections (2) and (4) of section 720.305,
1502 Florida Statutes, are amended to read:
1503 720.305 Obligations of members; remedies at law or in
1504 equity; levy of fines and suspension of use rights.—
1505 (2) The association may levy reasonable fines of up to
1506 $100 per violation against any member or any member's tenant,
1507 guest, or invitee for the failure of the owner of the parcel or

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1508 its occupant, licensee, or invitee to comply with any provision
1509 of the declaration, the association bylaws, or reasonable rules
1510 of the association. A fine may be levied for each day of a
1511 continuing violation, with a single notice and opportunity for
1512 hearing, except that the fine may not exceed $1,000 in the
1513 aggregate unless otherwise provided in the governing documents.
1514 A fine of less than $1,000 may not become a lien against a
1515 parcel. In any action to recover a fine, the prevailing party is
1516 entitled to reasonable attorney ~~attorney's~~ fees and costs from
1517 the nonprevailing party as determined by the court.

1518 (a) An association may suspend, for a reasonable period of
1519 time, the right of a member, or a member's tenant, guest, or
1520 invitee, to use common areas and facilities for the failure of
1521 the owner of the parcel or its occupant, licensee, or invitee to
1522 comply with any provision of the declaration, the association
1523 bylaws, or reasonable rules of the association. This paragraph
1524 does not apply to that portion of common areas used to provide
1525 access or utility services to the parcel. A suspension may not
1526 impair the right of an owner or tenant of a parcel to have
1527 vehicular and pedestrian ingress to and egress from the parcel,
1528 including, but not limited to, the right to park.

1529 (b) A fine or suspension may not be imposed without at
1530 least 14 days' notice to the person sought to be fined or
1531 suspended and an opportunity for a hearing before a committee of
1532 at least three members appointed by the board who are not
1533 officers, directors, or employees of the association, or the
1534 spouse, parent, child, brother, or sister of an officer,
1535 director, or employee. If the committee, by majority vote, does

1536 not approve a proposed fine or suspension, it may not be
1537 imposed. If the association imposes a fine or suspension, the
1538 association must provide written notice of such fine or
1539 suspension by mail or hand delivery to the parcel owner and, if
1540 applicable, to any tenant, licensee, or invitee of the parcel
1541 owner.
1542 (4) An association may suspend the voting rights of a
1543 parcel or member for the nonpayment of any monetary obligation
1544 due ~~to~~ the association that is more than 90 days delinquent.
1545 Notwithstanding an association's governing documents, the
1546 requirements to establish a quorum, conduct an election, or
1547 obtain membership approval on actions under this chapter or
1548 pursuant to the association's governing documents shall be
1549 reduced by the number of suspended voting interests or consent
1550 rights. ~~A voting interest or consent right allocated to a parcel~~
1551 ~~or member which has been suspended by the association may not be~~
1552 ~~counted towards the total number of voting interests for any~~
1553 ~~purpose, including, but not limited to, the number of voting~~
1554 ~~interests necessary to constitute a quorum, the number of voting~~
1555 ~~interests required to conduct an election, or the number of~~
1556 ~~voting interests required to approve an action under this~~
1557 ~~chapter or pursuant to the governing documents.~~ The notice and
1558 hearing requirements under subsection (2) do not apply to a
1559 suspension imposed under this subsection. The suspension ends
1560 upon full payment of all obligations currently due or overdue to
1561 the association.

1562 Section 18. Paragraph (d) is added to subsection (1) of
1563 section 720.306, Florida Statutes, and subsection (9) of that
1564 section is amended, to read:
1565 720.306 Meetings of members; voting and election
1566 procedures; amendments.—
1567 (1) QUORUM; AMENDMENTS.—
1568 (d) The Legislature finds that the procurement of
1569 mortgagee consent to amendments that do not affect the rights or
1570 interests of mortgagees is an unreasonable and substantial
1571 logistical and financial burden on the parcel owners and that
1572 there is a compelling state interest in enabling the members of
1573 an association to approve amendments to the association's
1574 governing documents through legal means. Accordingly, and
1575 notwithstanding any provision to the contrary contained in this
1576 paragraph:
1577 1. As to any mortgage recorded on or after July 1, 2012,
1578 any provision in the association's governing documents that
1579 requires the consent or joinder of some or all mortgagees of
1580 parcels or any other portion of the association's common areas
1581 to amend the association's governing documents or for any other
1582 matter is enforceable only as to amendments to the association's
1583 governing documents that adversely affect the priority of the
1584 mortgagee's lien or the mortgagee's rights to foreclose its lien
1585 or that otherwise materially affect the rights and interests of
1586 the mortgagees.
1587 2. As to mortgages recorded before July 1, 2012, any
1588 existing provisions in the association's governing documents
1589 requiring mortgagee consent are enforceable.

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1590 3. In securing consent or joinder, the association is
1591 entitled to rely upon the public records to identify the holders
1592 of outstanding mortgages. The association may use the address
1593 provided in the original recorded mortgage document, unless
1594 there is a different address for the holder of the mortgage in a
1595 recorded assignment or modification of the mortgage, which
1596 recorded assignment or modification must reference the official
1597 records book and page on which the original mortgage was
1598 recorded. Once the association has identified the recorded
1599 mortgages of record, the association shall, in writing, request
1600 of each parcel owner whose parcel is encumbered by a mortgage of
1601 record any information the owner has in his or her possession
1602 regarding the name and address of the person to whom mortgage
1603 payments are currently being made. Notice shall be sent to such
1604 person if the address provided in the original recorded mortgage
1605 document is different from the name and address of the mortgagee
1606 or assignee of the mortgage as shown by the public record. The
1607 association is deemed to have complied with this requirement by
1608 making the written request of the parcel owners required under
1609 this subparagraph. Any notices required to be sent to the
1610 mortgagees under this subparagraph shall be sent to all
1611 available addresses provided to the association.
1612 4. Any notice to the mortgagees required under
1613 subparagraph 3. may be sent by a method that establishes proof
1614 of delivery, and any mortgagee who fails to respond within 60
1615 days after the date of mailing is deemed to have consented to
1616 the amendment.

1617 5. For those amendments requiring mortgagee consent on or
1618 after July 1, 2012, in the event mortgagee consent is provided
1619 other than by properly recorded joinder, such consent shall be
1620 evidenced by affidavit of the association recorded in the public
1621 records of the county in which the declaration is recorded.
1622 6. Any amendment adopted without the required consent of a
1623 mortgagee is voidable only by a mortgagee who was entitled to
1624 notice and an opportunity to consent. An action to void an
1625 amendment is subject to the statute of limitations beginning 5
1626 years after the date of discovery as to the amendments described
1627 in subparagraph 1. and 5 years after the date of recordation of
1628 the certificate of amendment for all other amendments. This
1629 subparagraph applies to all mortgages, regardless of the date of
1630 recordation of the mortgage.
1631 (9) ~~(a)~~ ELECTIONS AND BOARD VACANCIES.—
1632 (a) Elections of directors must be conducted in accordance
1633 with the procedures set forth in the governing documents of the
1634 association. All members of the association are eligible to
1635 serve on the board of directors, and a member may nominate
1636 himself or herself as a candidate for the board at a meeting
1637 where the election is to be held or, if the election process
1638 allows voting by absentee ballot, in advance of the balloting.
1639 Except as otherwise provided in the governing documents, boards
1640 of directors must be elected by a plurality of the votes cast by
1641 eligible voters. Any challenge to the election process must be
1642 commenced within 60 days after the election results are
1643 announced.
1644 (b) A person who is delinquent in the payment of any fee,

1645 fine, or other monetary obligation to the association for more
1646 than 90 days is not eligible for board membership. A person who
1647 has been convicted of any felony in this state or in a United
1648 States District or Territorial Court, or has been convicted of
1649 any offense in another jurisdiction which would be considered a
1650 felony if committed in this state, is not eligible for board
1651 membership unless such felon's civil rights have been restored
1652 for at least 5 years as of the date on which such person seeks
1653 election to the board. The validity of any action by the board
1654 is not affected if it is later determined that a member of the
1655 board is ineligible for board membership.
1656 (c) Any election dispute between a member and an
1657 association must be submitted to mandatory binding arbitration
1658 with the division. Such proceedings must be conducted in the
1659 manner provided by s. 718.1255 and the procedural rules adopted
1660 by the division. Unless otherwise provided in the bylaws, any
1661 vacancy occurring on the board before the expiration of a term
1662 may be filled by an affirmative vote of the majority of the
1663 remaining directors, even if the remaining directors constitute
1664 less than a quorum, or by the sole remaining director. In the
1665 alternative, a board may hold an election to fill the vacancy,
1666 in which case the election procedures must conform to the
1667 requirements of the governing documents. Unless otherwise
1668 provided in the bylaws, a board member appointed or elected
1669 under this section is appointed for the unexpired term of the
1670 seat being filled. Filling vacancies created by recall is
1671 governed by s. 720.303(10) and rules adopted by the division.

1672 (d) Within 90 days after being elected or appointed to the
1673 board, each new director shall certify in writing to the
1674 secretary of the association that he or she has read the
1675 association's declaration of covenants' conditions and
1676 restrictions, articles of incorporation, bylaws, and current
1677 written policies; that he or she will work to uphold such
1678 documents and policies to the best of his or her ability; and
1679 that he or she will faithfully discharge his or her fiduciary
1680 responsibility to the association's members. Within 90 days
1681 after being elected or appointed to the board, in lieu of this
1682 written certification, the newly elected or appointed director
1683 may submit a certificate of having satisfactorily completed the
1684 educational curriculum administered by a division-approved
1685 education provider within 1 year before or 90 days after the
1686 date of election or appointment. The educational certificate is
1687 valid and does not have to be resubmitted as long as the
1688 director serves on the board without interruption. A director
1689 who fails to timely file the written certification or
1690 educational certificate is suspended from service on the board
1691 until he or she complies with this paragraph. The board may
1692 temporarily fill the vacancy during the period of suspension.
1693 The secretary shall cause the association to retain a director's
1694 written certification or educational certificate for inspection
1695 by the members for 5 years after a director's election or the
1696 duration of the director's tenure, whichever is longer. Failure
1697 to have such written certification or educational certificate on
1698 file does not affect the validity of any board action.

1699 Section 19. Paragraphs (b) and (d) of subsection (2) of
1700 section 720.3085, Florida Statutes, are amended to read:
1701 720.3085 Payment for assessments; lien claims.—
1702 (2)
1703 (b) A parcel owner, regardless of how the parcel owner has
1704 acquired title, including, but not limited to, by purchase at a
1705 foreclosure sale, is jointly and severally liable with the
1706 previous parcel owner for all unpaid assessments, late fees,
1707 interest, costs, and reasonable attorney fees incurred by the
1708 association in an attempt to collect all such amounts that came
1709 due up to the time of transfer of title. This liability is
1710 without prejudice to any right the present parcel owner may have
1711 to recover any amounts paid by the present owner from the
1712 previous owner.
1713 (d) An association, or its successor or assignee, that
1714 acquires title to a parcel through the foreclosure of its lien
1715 for assessments is not liable for any unpaid assessments, late
1716 fees, interest, or reasonable attorney ~~attorney's~~ fees and costs
1717 that came due before the association's acquisition of title in
1718 favor of any other association, as defined in s. 718.103(2) or
1719 s. 720.301(9), which holds a ~~superior~~ lien interest on the
1720 parcel. This paragraph is intended to clarify existing law.
1721 Section 20. This act shall take effect July 1, 2012.

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

hb0319-00

HB 385

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 385 Sovereign Immunity
SPONSOR(S): Gaetz and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Bond NB	Bond NB
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

A physician on duty in a hospital emergency room or trauma center is required by federal and state law to evaluate any individual who presents himself or herself as needing medical treatment, and provide emergency medical treatment, regardless of whether the individual pays or has the ability to pay for such services. This bill makes legislative findings declaring that these physicians are agents of the government performing a government duty.

Sovereign immunity is a legal concept that protects governments and government contractors from being sued without their consent. This bill extends sovereign immunity protection to those physicians working in a hospital emergency room or trauma center. A physician covered by the sovereign immunity protection is required to reimburse the state for all claims and costs, and the failure to reimburse the state is grounds for discipline against the medical license.

This bill does not appear to have a fiscal impact on local governments. This bill has an unknown potential negative fiscal impact on state government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - In General

In general, a person has a common law cause of action against another for personal injury occasioned by the other's negligence. The term "medical malpractice" refers to personal injury lawsuits related to negligence committed by medical professionals. Negligence actions in general are governed by ch. 768, F.S.; medical malpractice actions are also governed by ch. 766, F.S.

Background - Mandated Emergency Medical Treatment

Under current law, certain health care providers are obligated under state and federal law to provide emergency services.

Section 395.1041(3)(a), F.S., requires every general hospital which has an emergency department to provide emergency services and care for any emergency medical condition when:

- Any person requests emergency services and care; or
- Emergency services and care are requested on behalf of a person by an emergency medical services provider who is rendering care to or transporting the person; or by another hospital when such hospital is seeking a medically necessary transfer.

Section 395.1041(3)(f), F.S., requires emergency services and care to be provided regardless of whether the patient is insured or otherwise able to pay for services.

Section 401.45, F.S(1), F.S. provides that a licensed basic life support service, advanced life support service, or air ambulance service may not deny needed prehospital treatment or transport for an emergency medical condition to any person.

Similarly, federal law requires hospitals to provide a "medical screening evaluation" regardless of an individual's ability to pay.[1]

Background - Existing Liability Limits Related to Emergency Medical Treatment

Section 768.13, F.S., provides immunity from civil liability to:

- Any person, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S., a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment. The applicable standard of care is that the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances;

[1] 42 U.S.C. s. 1395dd., which reads at subsection (a):

> In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

- Any hospital, any employee of such hospital working in a clinical area within the facility and providing patient care, and any person licensed to practice medicine who in good faith renders medical care or treatment necessitated by a sudden, unexpected situation or occurrence resulting in a serious medical condition demanding immediate medical attention, for which the patient enters the hospital through its emergency room or trauma center or necessitated by a public health emergency declared pursuant to s. 381.00315, F.S. The applicable standard of care is that the hospital or employee provided or failed to provide medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another. The immunity provided does not apply to specified acts or omissions.

- Any person who is licensed to practice medicine, while acting as a staff member or with professional clinical privileges at a nonprofit medical facility, other than a hospital, or while performing health screening services, for care and treatment provided gratuitously in such capacity. The applicable standard of care is that the person acts as a reasonably prudent person licensed to practice medicine would have acted under the same or similar circumstances.

Section 766.118(4), F.S., limits noneconomic damages[2] related to medical malpractice occasioned by a medical practitioner providing emergency services and care to $150,000 per claimant and $300,000 per incident.

Background - Sovereign Immunity

Sovereign Immunity is a "doctrine which precludes bringing suit against the government without its consent."[3] The Florida Constitution recognizes that the concept of sovereign immunity applies to the state[4], although the state may waive its immunity through an enactment of general law.[5] Sovereign immunity extends to all subdivisions of the state, including counties and school boards.

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions. According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of [the] state . . . . "

Section 768.28(5), F.S., imposes a $200,000 limit on the government's liability to a single person, and a $300,000 total limit on liability for claims arising out of a single incident. These limits have been upheld as constitutional.[6]

An injured party may obtain a judgment in excess of the statutory limits, but cannot enforce payment above the limit. The Legislature may, by general law, provide for payment in excess of the statutory cap by virtue of a claims bill.[7] The courts have explained:

> Even if he is able to obtain a judgment against the Department of Transportation in excess of the settlement amount and goes to the legislature to seek a claims bill with the judgment in hand, this does not mean that the liability of the Department has been conclusively established. The legislature will still conduct its own independent hearing to determine whether public funds would be expended, much like a non jury trial. After all this, the legislature, in its discretion, may still decline to grant him any relief.[8]

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[2] Noneconomic damages are often referred to as "pain and suffering." The statute does not limit economic damages, which include quantifiable expenses such as medical bills, expenses, and lost wages.
[3] Blacks Law Dictionary, at 1396 (6th ed. 1990).
[4] Article X, s. 13, Fla.Const.
[5] *See generally* Gerald T. Wetherington and Donald I. Pollock, *Tort Suits Against Government Entities in Florida*, 44 U.Fla.L.Rev. 1 (1992).
[6] *Berek v. Metropolitan Dade County*, 422 So.2d 838 (Fla. 1982); *Cauley v. City of Jacksonville*, 403 So.2d 379 (Fla. 1981).
[7] *See generally* D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, FLA.B.J. 8 (April 1988).
[8] *Gerard v. Dept. of Transportation*, 472 So.2d 1170 (Fla. 1985).

Section 768.28(9)(b)2., F.S., defines the term "officer, employee, or agent" (which are the persons to whom sovereign immunity applies). Several identified groups are included in the definition, including health care providers when providing contract services pursuant to s. 766.1115, F.S. That section provides that certain health care providers who contract with the state are considered agents of the state, and thus entitled to the protection of sovereign immunity.

Florida law confers sovereign immunity protection to a number of other persons who perform public services, including:

- Persons or organizations providing shelter space without compensation during an emergency.[9]
- A health care entity providing services as part of a school nurse services contract.[10]
- Members of the Florida Health Services Corps who provide medical care to indigent persons in medically underserved areas.[11]
- A person under contract to review materials, make site visits or provide expert testimony regarding complaints or applications received by the Department of Health or the Department of Business and Professional Regulation.[12]
- A business contracted with by the Department of Business and Professional Regulation under the Management Privatization Act.[13]
- Physicians retained by the Florida State Boxing Commission.[14]
- Health care providers under contract to provide uncompensated care to indigent state residents.[15]
- Health care providers or vendors under contract with the Department of Corrections to provide inmate care.[16]
- An operator, dispatcher, or other person or entity providing security or maintenance for rail services in the South Florida Rail Corridor, under contract with the Tri-County Commuter Rail Authority the Department of Transportation.[17]
- Professional firms that provide monitoring and inspection services of work required for state roadway, bridge or other transportation facility projects.[18]
- A provider or vendor under contract with the Department of Juvenile Justice to provide juvenile and family services. [19]
- Health care practitioners under contract with state universities to provide medical services to student athletes.[20]

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[9] Section 252.51, F.S.
[10] Section 381.0056(10), F.S.
[11] Section 381.0302(11), F.S.
[12] Sections 455.221(3) and 456.009(3), F.S.
[13] Section 455.32(4), F.S.
[14] Section 548.046(1), F.S.
[15] Section 768.28(9)(b), F.S.
[16] Section 768.28(10)(a), F.S.
[17] Section 768.28(10)(d), F.S.
[18] Section 768.28(10)(e), F.S.
[19] Section 768.28(11)(a), F.S.
[20] Section 768.28(12)(a), F.S.

- A not-for-profit college or university that owns or operates an accredited medical school or any of its employees or agents that have agreed in an affiliation agreement or other contract to provide patient services as agents of a teaching hospital which is owned or operated by the state, a county, a municipality, a public health trust, a special taxing district, any other governmental entity having health care responsibilities, or a not-for-profit entity that operates such facilities as an agent of that governmental entity under a lease or other contract.[21]

Effect of Bill - Extension of Sovereign Immunity

This bill amends s. 768.28, F.S., to extend the protection of sovereign immunity to all physicians compelled to provide medical services in emergency settings.

The sovereign immunity law only applies to a person who is an "officer, employee or agent" of the state. This bill amends the definition of an officer, employee or agent of the state to include any person who is an emergency health care provider providing emergency health care mandated by ss. 395.1041 or 401.45, F.S.

The bill defines, and thus limits, the term "health care provider" to include only persons who are licensed under ch. 458 or 459, F.S. Those chapters regulate physicians and osteopathic physicians, respectively.

The bill defines, and thus limits the protections of the bill, to "emergency medical services", which is

> [A]ll screenings, examinations, and evaluations by a physician, hospital, or other person or entity acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, and the care, treatment, surgery, or other medical services provided to relieve or eliminate the emergency medical condition, including all medical services to eliminate the likelihood that the emergency medical condition will deteriorate or recur without further medical attention within a reasonable period of time.

Effect of Bill - Repayment

The bill requires a covered emergency health care provider to reimburse the state for judgments, settlement costs and all other liabilities incurred by the state. Repayment is limited to the statutory sovereign immunity limits ($200,000 per person, and a total of $300,000 for all claims related to a single incident). The failure of a physician to timely repay the state is grounds for emergency suspension of the medical license. The Department of Health must suspend the license if the physician is more than 30 days delinquent. The bill allows for payment plans in lieu of full payment.

Effective Date

The bill is effective upon becoming law, and applies only to causes of action that accrue on or after that date.

B. SECTION DIRECTORY:

Section 1 provides legislative findings.

Section 2 amends s. 768.28, F.S., regarding sovereign immunity for emergency health care workers.

Section 3 provides an effective date of upon becoming law.

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[21] Section 768.28(10)(f), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   Unknown likely negative fiscal impact on state expenditures. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may lower the cost to physicians for obtaining medical malpractice insurance coverage, and may lower possible recoveries by persons injured due to medical malpractice.

D. FISCAL COMMENTS:

State government will incur costs to investigate and cover the claims for health care providers providing services in an emergency room or trauma center in Florida. The state agency or division responsible for such claims is the Division of Risk Management in the Department of Financial Services. Although the bill requires responsible physicians to reimburse the state up to a limit, it is possible that state government may incur losses for uncollectible reimbursements.[22] The potential uncollectible amount cannot be reliably estimated.[23]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The 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.

[22] Situations that may lead to state financial loss include death, bankruptcy or insolvency of the physician. It is also possible that the claim plus claims handling expense could exceed the reimbursement limit.

[23] In reviewing similar bills in the past: In 2001 DFS estimated the potential loss as "UNKNOWN" (See analysis of 2011 HB 623 dated 2/22/2011) with little comment. In 2010 DFS estimated the potential loss at $34.5 million, but that version of the bill required the state to pay all claims handing expenses (See Senate bill analysis of 2010 SB 1474 dated 3/22/2010).

2. Other:

Article 1, s. 21, Fla. Const., provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Supreme Court has in the past found that this provision limits the ability of the Legislature to amend tort law. In the leading case, the Florida Supreme Court first explained the constitutional limitation on the ability of the Legislature to abolish a civil cause of action:

> We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[24]

A damages cap regarding a cause of action similarly may run afoul of art. I, s. 21, Fla.Const.,[25] but creation of alternative recovery systems may be constitutional.[26]

B. RULE-MAKING AUTHORITY:

The bill does not provide any new rulemaking authority. It is unclear whether existing rulemaking authority is sufficient.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In calendar year 2010, there were 8,119,010 emergency room visits in the state.[27] Also in 2010, there were 2,520 medical malpractice claims closed, of which 318 (12.6%) were identified as having occurred in an emergency room setting.[28]

A 2007 study by the Senate Committee on Health Regulation regarding the availability of physicians to work in emergency rooms found:

> [I]n general, physicians are reluctant to provide emergency on-call coverage due to the negative impact on their lifestyle, the perceived hostile medical malpractice climate, and the inability to obtain adequate compensation for services rendered. All of these reasons are disincentives to assuming liability for treating emergency patients previously unknown to the physician.[29]

The bill requires a covered emergency health care provider to reimburse the state for judgments, settlement costs and all other liabilities incurred by the state. It is unclear whether an emergency health care provider has grounds or a means by which to object to defense strategies, settlements, or unreasonable costs.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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[24] *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).
[25] *Smith v. Dept. of Ins.*, 507 So.2d 1080 (Fla. 1987).
[26] *Lasky v. State Farm Ins. Co.*, 296 So.2d 9 (Fla. 1974)(automobile no-fault insurance law); *Mahoney v. Sears, Roebuck & Co.*, 440 So.2d 1285 (Fla. 1983)(workers compensation law).
[27] http://www.floridahealthfinder.gov/researchers/OrderData/order-note.aspx#emergency accessed November 30, 2011.
[28] *Florida Office of Insurance Regulation, 2011 Annual Report – October 1, 2011, Medical Malpractice Financial Information Closed Claim Database and Rate Filings*, at page 44.
[29] Senate interim report 2008-138, at page 1.

1 A bill to be entitled
2 An act relating to sovereign immunity; providing
3 legislative findings and intent; amending s. 768.28,
4 F.S.; providing sovereign immunity to emergency health
5 care providers acting pursuant to obligations imposed
6 by specified statutes; providing an exception;
7 providing that emergency health care providers are
8 agents of the state and requiring them to indemnify
9 the state up to the specified liability limits;
10 providing for sanctions against emergency health care
11 providers who fail to comply with indemnification
12 obligations; providing definitions; providing
13 applicability; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Legislative findings and intent.—
18 (1) The Legislature finds and declares it to be of vital
19 importance that emergency services and care be provided by
20 hospitals, physicians, and emergency medical services providers
21 to every person in need of such care. The Legislature finds that
22 providers of emergency services and care are critical elements
23 in responding to disaster and emergency situations that may
24 affect local communities, the state, and the country. The
25 Legislature recognizes the importance of maintaining a viable
26 system of providing for the emergency medical needs of the
27 state's residents and visitors. The Legislature and the Federal
28 Government have required such providers of emergency medical

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

29 services and care to provide emergency services and care to all
30 persons who present themselves to hospitals seeking such care.
31 (2) The Legislature has further mandated that emergency
32 medical treatment may not be denied by emergency medical
33 services providers to persons who have or are likely to have an
34 emergency medical condition. Such governmental requirements have
35 imposed a unilateral obligation for providers of emergency
36 services and care to provide services to all persons seeking
37 emergency care without ensuring payment or other consideration
38 for provision of such care. The Legislature also recognizes that
39 providers of emergency services and care provide a significant
40 amount of uncompensated emergency medical care in furtherance of
41 such governmental interest.
42 (3) The Legislature finds that a significant proportion of
43 the residents of this state who are uninsured or are Medicaid or
44 Medicare recipients are unable to access needed health care on
45 an elective basis because health care providers fear the
46 increased risk of medical malpractice liability. The Legislature
47 finds that such patients, in order to obtain medical care, are
48 frequently forced to seek care through providers of emergency
49 medical services and care.
50 (4) The Legislature finds that providers of emergency
51 medical services and care in this state have reported
52 significant problems with respect to the affordability of
53 professional liability insurance, which is more expensive in
54 this state than the national average. The Legislature further
55 finds that a significant number of specialist physicians have
56 resigned from serving on hospital staffs or have otherwise

57 declined to provide on-call coverage to hospital emergency
58 departments due to the increased exposure to medical malpractice
59 liability created by treating such emergency department
60 patients, thereby creating a void that has an adverse effect on
61 emergency patient care.
62 (5) It is the intent of the Legislature that hospitals,
63 emergency medical services providers, and physicians be able to
64 ensure that patients who may need emergency medical treatment
65 and who present themselves to hospitals for emergency medical
66 services and care have access to such needed services.
67 Section 2. Subsection (9) of section 768.28, Florida
68 Statutes, is amended to read:
69 768.28 Waiver of sovereign immunity in tort actions;
70 recovery limits; limitation on attorney fees; statute of
71 limitations; exclusions; indemnification; risk management
72 programs.—
73 (9)(a) No officer, employee, or agent of the state or of
74 any of its subdivisions shall be held personally liable in tort
75 or named as a party defendant in any action for any injury or
76 damage suffered as a result of any act, event, or omission of
77 action in the scope of her or his employment or function, unless
78 such officer, employee, or agent acted in bad faith or with
79 malicious purpose or in a manner exhibiting wanton and willful
80 disregard of human rights, safety, or property. However, such
81 officer, employee, or agent shall be considered an adverse
82 witness in a tort action for any injury or damage suffered as a
83 result of any act, event, or omission of action in the scope of
84 her or his employment or function. The exclusive remedy for

85 injury or damage suffered as a result of an act, event, or
86 omission of an officer, employee, or agent of the state or any
87 of its subdivisions or constitutional officers shall be by
88 action against the governmental entity, or the head of such
89 entity in her or his official capacity, or the constitutional
90 officer of which the officer, employee, or agent is an employee,
91 unless such act or omission was committed in bad faith or with
92 malicious purpose or in a manner exhibiting wanton and willful
93 disregard of human rights, safety, or property. The state or its
94 subdivisions shall not be liable in tort for the acts or
95 omissions of an officer, employee, or agent committed while
96 acting outside the course and scope of her or his employment or
97 committed in bad faith or with malicious purpose or in a manner
98 exhibiting wanton and willful disregard of human rights, safety,
99 or property.
100 (b) As used in this subsection, the term:
101 1. "Employee" includes any volunteer firefighter.
102 2. "Officer, employee, or agent" includes, but is not
103 limited to:~~,~~
104 a. Any health care provider when providing services
105 pursuant to s. 766.1115; any member of the Florida Health
106 Services Corps, as defined in s. 381.0302, who provides
107 uncompensated care to medically indigent persons referred by the
108 Department of Health; any nonprofit independent college or
109 university located and chartered in this state which owns or
110 operates an accredited medical school, and its employees or
111 agents, when providing patient services pursuant to paragraph
112 (10)(f); and any public defender or her or his employee or

113 agent, including, among others, an assistant public defender and
114 an investigator.
115 b. Any emergency health care provider acting pursuant to
116 obligations imposed by s. 395.1041 or s. 401.45, except for
117 persons or entities that are otherwise covered under this
118 section.
119 (c)1. Emergency health care providers are agents of the
120 state and shall indemnify the state for any judgments,
121 settlement costs, or other liabilities incurred, only up to the
122 liability limits in subsection (5).
123 2. Any emergency health care provider who is licensed by
124 the state and who fails to indemnify the state after reasonable
125 notice and written demand to do so is subject to an emergency
126 suspension order of the regulating authority having jurisdiction
127 over the licensee.
128 3. The Department of Health shall issue an emergency order
129 suspending the license of any licensee under its jurisdiction or
130 any licensee of a regulatory board within the Department of
131 Health who fails to comply within 30 days after receipt by the
132 department of a notice from the Division of Risk Management of
133 the Department of Financial Services that the licensee has
134 failed to satisfy her or his obligation to indemnify the state
135 or enter into a repayment agreement with the state for costs
136 under this subsection. The terms of such agreement must provide
137 assurance of repayment of the obligation which is satisfactory
138 to the state. For licensees within the Division of Medical
139 Quality Assurance of the Department of Health, failure to comply

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140 with this paragraph constitutes grounds for disciplinary action
141 under each respective practice act and under s. 456.072(1)(k).
142 4. As used in this subsection, the term:
143 a. "Emergency health care provider" means a physician
144 licensed under chapter 458 or chapter 459.
145 b. "Emergency medical services" means all screenings,
146 examinations, and evaluations by a physician, hospital, or other
147 person or entity acting pursuant to obligations imposed by s.
148 395.1041 or s. 401.45, and the care, treatment, surgery, or
149 other medical services provided to relieve or eliminate the
150 emergency medical condition, including all medical services to
151 eliminate the likelihood that the emergency medical condition
152 will deteriorate or recur without further medical attention
153 within a reasonable period of time.
154 (d) ~~(c)~~ For purposes of the waiver of sovereign immunity
155 only, a member of the Florida National Guard is not acting
156 within the scope of state employment when performing duty under
157 the provisions of Title 10 or Title 32 of the United States Code
158 or other applicable federal law; and neither the state nor any
159 individual may be named in any action under this chapter arising
160 from the performance of such federal duty.
161 (e) ~~(d)~~ The employing agency of a law enforcement officer
162 as defined in s. 943.10 is not liable for injury, death, or
163 property damage effected or caused by a person fleeing from a
164 law enforcement officer in a motor vehicle if:
165 1. The pursuit is conducted in a manner that does not
166 involve conduct by the officer which is so reckless or wanting
167 in care as to constitute disregard of human life, human rights,

168 safety, or the property of another;
169 2. At the time the law enforcement officer initiates the
170 pursuit, the officer reasonably believes that the person fleeing
171 has committed a forcible felony as defined in s. 776.08; and
172 3. The pursuit is conducted by the officer pursuant to a
173 written policy governing high-speed pursuit adopted by the
174 employing agency. The policy must contain specific procedures
175 concerning the proper method to initiate and terminate high-
176 speed pursuit. The law enforcement officer must have received
177 instructional training from the employing agency on the written
178 policy governing high-speed pursuit.
179 Section 3. This act shall take effect upon becoming a law,
180 and shall apply to any cause of action accruing on or after that
181 date.

PCS/HB 549

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 549 Alimony
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 748

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

SUMMARY ANALYSIS

Alimony provides financial support to a financially dependent former spouse. The primary basis for determining alimony is whether there is need and ability to pay. There are four different types of alimony: bridge-the-gap alimony, rehabilitative alimony, durational alimony, and permanent alimony.

A court may grant a request to modify alimony where there is a change in circumstances or the financial ability of the parties. It may also reduce or terminate an award of alimony based on its specific written findings that the spouse receiving alimony has entered into a supportive relationship with another person.

The bill amends current law on alimony and divorce to:

- Limit suit money.
- Change the term "permanent alimony" to "long-term" alimony.
- Limit the types of alimony that may be awarded concurrently.
- Remove the statutory authority of a court to consider adultery when determining alimony.
- Require written findings justifying factors regarding an alimony award.
- Modify the factors used in determining alimony.
- Create a presumption that the parties will have a lower standard of living after divorce.
- Require that the cost of security for an alimony award be deducted from the award.
- Modify the line between moderate-term and long-term marriage from 17 to 20 years.
- Create a presumption in favor of durational alimony over long-term alimony.
- Require that an alimony award may not require the person paying the award to have a lower standard of living than the person receiving alimony.
- Require retroactive modification or termination of alimony upon proof of a supportive relationship if the obligee denies the relationship or any material facts related to the relationship.
- Create a rebuttable presumption that alimony terminates upon retirement of the obligor, which may be overcome by a written finding of exceptional circumstances.
- Create a presumptive retirement age of 67.
- Prohibit factoring the income or assets of a new spouse of the obligor.
- Prohibit modification based solely on a reduction in child support.
- Require a person receiving alimony to maximize the potential for rehabilitation.
- Allow bifurcation of a case if the case is pending more than 180 days.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Alimony - In General

Alimony provides financial support to a financially dependent former spouse.[1] In Florida, the primary basis for determining alimony is whether there is need and ability to pay; alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay.[2] Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.[3]

Section 61.08(2), F.S., provides factors that a court must consider in awarding alimony. These factors include:

- The standard of living established during the marriage;
- The duration of the marriage;
- The age and the physical and emotional condition of each party;
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each;
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment;
- The contribution of each party to the marriage, including, but not limited, services rendered in homemaking, child care, education, and career building of the other party;
- The responsibilities each party will have with regard to any minor children they have in common;
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable nondeductible payment;
- All sources of income available to either party, including income available to either party through investments of any asset held by that party; and
- Any other factor necessary to do equity and justice between the parties.

For purposes of determining alimony, there is a rebuttable presumption that:

- A short-term marriage is a marriage having a duration of less than seven years;
- A moderate-term marriage is a marriage having a duration of greater than seven years but less than seventeen years; and
- A long-term marriage is a marriage having a duration of seventeen years or greater.[4]

Florida law provides for four types of alimony; bridge-the-gap alimony,[5] rehabilitative alimony,[6] durational alimony,[7] and permanent alimony.[8]

- Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single.[9]

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[1] Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla.B.J. 71, 71 (Oct. 2004).
[2] *Id.*
[3] *Id.*
[4] Section 61.08(4), F.S.
[5] Section 61.08(5), F.S.
[6] Section 61.08(6), F.S.
[7] Section 61.08(7), F.S.
[8] Section 61.08(8), F.S.
[9] Section 60.08(5), F.S.

- Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.[10]
- Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration.
- Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following dissolution of marriage.

Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in s. 61.08(2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in s. 61.08(2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties.[11]

The bill changes divorce and alimony laws as follows:

Alimony Pendente Lite and Suit Money

Alimony Pendente Lite is temporary alimony awarded to a spouse during pendency of a dissolution of marriage action to furnish said spouse the means of living so he or she may not become a charge upon the state while the case is being adjudicated.[12] Suit money is a spouse's payment to the other spouse to cover his or her reasonable attorney's fees in a divorce action.[13] Current law provides that in every proceeding for dissolution of marriage, a party may claim alimony and suit money. If a court grants a request for alimony or suit money, the only restriction to such a determination is that the award and fees be a reasonable sum.

The bill provides that suit money may not exceed either $7,000 or the reasonable value of the representation of the party paying the fee, whichever is greater.

Award of Multiple Types of Alimony

Current law at s. 61.08(1), F.S., provides that a court may award multiple forms of alimony. This bill limits awards of multiple forms of alimony to combination of bridge-the-gap and rehabilitative alimony.

Adultery

Section 61.08(1), F.S., provides that a court may also consider the adultery of either party and the circumstances surrounding that adultery in determining an award of alimony.[14] However, adultery is not a bar to entitlement to alimony[15] and marital misconduct may not be used as a basis for alimony unless the misconduct causes a depletion of marital assets.[16] This bill deletes the statutory authorization for a court to consider adultery by either spouse in determining the amount of alimony.

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[10] Section 60.08(6)(a), F.S.
[11] Section 61.08(8), F.S.
[12] *See Grace v. Grace*, 162 So.2d 314, 320 (Fla. 1st DCA 1964).
[13] Black's Law Dictionary (9th ed. 2009).
[14] Section 61.08(1), F.S.
[15] *See Coltea v. Coltea*, 856 So.2d 1047 (Fla. 4th DCA).
[16] *See Noah v. Noah*, 491 So.2d 1124 (Fla. 1986) (holding that the trial court erred in distributing virtually all assets to the wife on the basis of her husband's adultery where there was no evidence that the adultery depleted the family resources or that the emotional devastation visited on the wife translated into her having a greater financial need).

Alimony Awards and Written Findings

This bill requires that a court awarding alimony must make written findings regarding:

- The need for and ability to pay alimony.
- Application of the factors listed in s. 61.08(2), F.S.
- Additional equitable factors relied upon by the court in making an alimony award.
- The relative incomes and standards of living of the parties.
- Rehabilitation efforts and imputation of income to the spouse during and after rehabilitation.

Modification of Factors Regarding Alimony

Section 61.08(2), F.S., lists 10 factors that a court must consider when determining any alimony award (see above for comprehensive list of the factors). This bill amends the factors as follows:

- The standard of living factor is amended to specify that the standard of living of each party must be considered.
- The financial resources factor is amended to delete the ability of the court to look to nonmarital assets.
- The tax treatment factor is amended to require that an alimony award must be tax deductible by the payor and taxable to the recipient.
- The sources of income factor is amended to limit the court to only considering income from assets acquired during the marriage;
- The bill adds a new factor to require that a court must consider the standard of living of each party after the application of the alimony award. In addition, the bill creates a rebuttable presumption that both parties will have a lower standard of living after divorce than the standard of living enjoyed during the marriage.

Security for an Alimony Award

Section 61.08(3), F.S., provides that the court may protect an alimony award by requiring the obligor to purchase life insurance or post a bond. This bill provides that the cost of life insurance or a bond must be deducted from the alimony award, provides that any requirement of insurance or a bond may be modified separately, and specifies that a requirement for life insurance or a bond ends when the term of alimony ends.

Length of Marriage

Section 61.08(4), F.S., utilizes the length of the marriage in years to determine whether the marriage is considered short-term, moderate term, or long-term. The types of alimony available are dependent upon which of these categories applies. This bill:

- Removes the language creating a legal presumption, thereby making the length in years determinative (that is, eliminating judicial discretion).
- Redefines the line between moderate-term marriage and long-term marriage from 17 to 20 years.

Changes to Durational Alimony

The bill:

- Creates a presumption in favor of durational alimony over long-term alimony.
- Provides that durational alimony is not authorized following a short-term marriage.
- Requires modification or termination upon a substantial change in circumstances or upon the existence of a supportive relationship.

- Removes the requirement that a party prove "exceptional circumstances" in order to modify the alimony award.

Changes to Permanent Alimony

Permanent alimony continues until the death of the obligor, death of the obligee, remarriage of the obligee, or termination by a court. This bill changes the term "permanent alimony" to "long-term" alimony. The bill also:

- Changes the requirement that long-term alimony provide for the needs and necessities of life as they were established during the marriage, to a requirement that such alimony provide for the needs and necessities of life.
- Deletes the requirement that the court must find that no other form of alimony is fair and reasonable.
- Requires a court to modify the award based on a substantial change in circumstances.

Evaluation of Relative Standards of Living

Section 61.08(9), F.S., requires that an award of alimony may not leave the payor with significantly less net income than the net income of the recipient, absent exceptional circumstances. This bill amends this provision to provide that an award may not leave the payor with less net income or with a lower standard of living than the recipient. The bill also removes the ability of a court to consider exceptional circumstances. The court must make written findings regarding the relative incomes and standards of living of the parties.

Modification of Alimony Based on the Existence of a Supportive Relationship

A court may grant a request to modify alimony where the moving party shows "a permanent, unanticipated, substantial change in financial circumstances in one or both of the parties."[17] One form of change of circumstances warranting modification of an alimony award is the existence of a supportive relationship. A court may reduce or terminate an award of alimony based on its specific written findings that, since the granting of a divorce and the award of alimony, the spouse receiving alimony, or the obligee, has entered into a supportive relationship with a person with whom he or she resides. Section 61.14(2), F.S., enumerates factors a court must consider when determining whether a supportive relationship exists between the obligee and the individual with whom said former spouse resides (i.e. the extent to which the obligee and the person hold themselves out as a married couple). The spouse paying spousal support, or the obligor, has the burden to prove that a supportive relationship exists.

The bill amends the statutory guidelines regarding enforcement and modification of an alimony award relating to instances where an obligee enters into a supportive relationship following an award of alimony. Current law provides that modification is discretionary, the bill provides that a court must reduce or terminate an award upon specific written findings by the court that a supportive relationship has existed between the obligee and a person with whom the obligee resides.

If the obligee denies or fails to admit any material fact regarding the existence of a supportive relationship when he or she knew or should have known about the material fact, and the obligor subsequently proves the existence of the material fact the court must:

- Enter an order modifying the alimony award retroactive to the beginning of the supportive relationship;
- Award the obligor a refund of all alimony the obligor actually paid to the oblige from the beginning of the supportive relationship; and
- Award the obligor reasonable costs and attorneys fees incurred in providing the fact.

[17] *Townsend v. Townsend*, 585 So.2d 468 (Fla. 2d DCA 1991).

If the obligee denied the existence of a supportive relationship and the obligor subsequently proves the existence of a supportive relationship, the court must:

- Order termination of the alimony award retroactive to the beginning of the supportive relationship;
- Award the obligor a refund of all the alimony the obligor actually paid to the obligee from the beginning of the supportive relationship; and
- Award to the obligor reasonable costs and attorneys fees incurred in proving the existence of the supportive relationship.

In addition, a court may not reserve jurisdiction to later reinstate alimony when it terminates alimony based on the existence of a supportive relationship.

Retirement of the Obligor

The bill creates a rebuttable presumption that alimony terminates upon retirement of the obligor, which may be overcome by a written finding of exceptional circumstances. The obligor may file a petition for termination or modification of the alimony award effective upon the retirement date. If the presumption is overcome, the court must modify the alimony award based on the circumstances of the parties after retirement of the obligor and the factors set out in s. 61.08(2), F.S. The bill also creates a rebuttable presumption that the normal retirement age is 67.

Other Changes Regarding Alimony Awards

Regarding alimony awards, the bill also requires that:

- If an obligor remarries or resides with another person, the income and assets of the obligor's spouse or person with whom the obligor resides may not be considered in a modification action regarding such obligor;
- If a court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later modification or termination of child support payments.
- A court must require a person receiving alimony to maximize the reasonable potential for rehabilitation and impute all income to the obligee that could be reasonably earned both before and after rehabilitation. In addition, it must make written findings concerning the reasonable potential of the obligee for rehabilitation and the amount of income that should be imputed to the obligee.

Bifuration of Divorce Action

Bifurcation is a split procedure in which the court grants a dissolution of marriage and reserves jurisdiction regarding property settlement, debts, alimony and child support. A party might petition the court for bifurcation of a case where the party would like to expedite the divorce so he or she can remarry. Current case law discourages the use of bifurcation. Specifically, in *Claughton v. Claughton*, the Florida Supreme Court explained:

> [W]e believe trial judges should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children. The convenience of one of the parties for an early remarriage does not justify its use.[18]

[18] *Claughton v. Claughton*, 393 So.2d 1061, 1062 (Fla. 1981).

The bill provides that a court must grant a request to bifurcate the divorce, thus dissolving the marriage and reserving jurisdiction to determine all issues other than dissolution, if more than 180 days have elapsed since the action of dissolution was filed.

B. SECTION DIRECTORY:

Section 1 amends s. 61.071, F.S., regarding suit money.

Section 2 amends s. 61.08, F.S., relating to alimony.

Section 3 amends s. 61.14, F.S., regarding supportive relationships.

Section 4 amends s. 61.19, F.S., relating to bifurcation.

Section 5 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

This bill may increase the courts' workload in dissolution of marriage cases. For instance, the bill requires written findings for determinations of alimony.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

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 dissolution of marriage; amending
3 s. 61.071, F.S.; limiting awards of suit money in
4 dissolution of marriage cases; amending s. 61.08,
5 F.S.; revising factors to be considered for alimony
6 awards; requiring a court to make certain written
7 findings concerning alimony; revising factors to be
8 considered in whether to award alimony or maintenance;
9 requiring a court to consider the standard of living
10 of both parties when awarding alimony; revising
11 provisions for the tax treatment and consequences of
12 alimony; creating a rebuttable presumption that both
13 parties will have a lower standard of living after
14 dissolution of marriage; revising provisions relating
15 to the protection of awards of alimony; revising
16 provisions for awards of bridge-the-gap alimony and
17 durational alimony; redesignating permanent alimony as
18 long-term alimony and revising provisions relating to
19 its award; requiring written findings regarding the
20 standard of living of the parties after dissolution of
21 marriage; amending s. 61.14, F.S.; revising provisions
22 relating to the effect of a supportive relationship on
23 an award of alimony; requiring refund of alimony paid
24 and an award of costs and fees should recipient of
25 alimony deny existence of a supportive relationship
26 that is later found to exist or deny material facts
27 relating to a supportive relationship that are later
28 found to be true; prohibiting a court from reserving

29 jurisdiction to reinstate alimony award in the future
30 should the supportive relationship end; providing that
31 income and assets of the obligor's spouse or person
32 with whom the obligor resides may not be considered in
33 the redetermination in a modification action;
34 providing that if the court orders alimony concurrent
35 with a child support order, the alimony award may not
36 be modified due to the termination of child support;
37 providing that attaining of retirement age is a
38 substantial change in circumstances; creating
39 rebuttable presumption that alimony terminates upon
40 retirement of the obligor; providing for recalculation
41 of an alimony award if the presumption is rebutted;
42 requiring a court to consider the reasonable potential
43 of a person for rehabilitation to maximize earning
44 potential; requiring written findings regarding
45 rehabilitation; amending s. 61.19, F.S.; requiring
46 bifurcation of a dissolution of marriage case if the
47 case is more than 180 days past filing; providing for
48 interpretation; providing an effective date.
49
50 Be It Enacted by the Legislature of the State of Florida:
51
52 Section 1. Section 61.071, Florida Statutes, is amended to
53 read:
54 61.071 Alimony pendente lite; suit money.—In every
55 proceeding for dissolution of the marriage, a party may claim
56 alimony and suit money in the petition or by motion, and if the

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

V

57 petition is well founded, the court shall allow a reasonable sum
58 therefor. If a party in any proceeding for dissolution of
59 marriage claims alimony or suit money in his or her answer or by
60 motion, and the answer or motion is well founded, the court
61 shall allow a reasonable sum therefor. Suit money pursuant to
62 this section may not exceed the greater of $7,000 or the
63 reasonable value of the representation of the party paying the
64 fee.
65 Section 2. Section 61.08, Florida Statutes, is amended to
66 read:
67 61.08 Alimony.—
68 (1) In a proceeding for dissolution of marriage under s.
69 61.052(1)(a), the court may grant alimony to either party, which
70 alimony may be bridge-the-gap, rehabilitative, durational, or
71 long-term ~~permanent~~ in nature or a ~~any~~ combination of bridge-
72 the-gap and rehabilitative ~~these forms of~~ alimony where
73 appropriate. In any award of alimony, the court may order
74 periodic payments or payments in lump sum or both. ~~The court may~~
75 ~~consider the adultery of either spouse and the circumstances~~
76 ~~thereof in determining the amount of alimony, if any, to be~~
77 ~~awarded.~~ In all dissolution actions, the court shall include
78 findings of fact relative to the factors enumerated in
79 subsection (2) supporting an award or denial of alimony.
80 (2) In determining whether to award alimony or
81 maintenance, the court shall first make, in writing, a specific
82 factual determination as to whether either party has an actual
83 need for alimony or maintenance and whether either party has the
84 ability to pay alimony or maintenance. If the court finds that a

85 party has a need for alimony or maintenance and that the other
86 party has the ability to pay alimony or maintenance, then in
87 determining the proper type and amount of alimony or maintenance
88 under subsections (5)-(8), the court shall consider and make
89 written findings regarding all relevant factors, including~~, but~~
90 ~~not limited to~~:
91 (a) The standard of living of each party established
92 during the marriage.
93 (b) The duration of the marriage.
94 (c) The age and the physical and emotional condition of
95 each party.
96 (d) The financial resources of each party, only to include
97 ~~including the nonmarital and~~ the marital assets and liabilities
98 distributed to each.
99 (e) The earning capacities, educational levels, vocational
100 skills, and employability of the parties and, when applicable,
101 the time necessary for either party to acquire sufficient
102 education or training to enable such party to find appropriate
103 employment.
104 (f) The contribution of each party to the marriage,
105 including, but not limited to, services rendered in homemaking,
106 child care, education, and career building of the other party.
107 (g) The responsibilities each party will have with regard
108 to any minor children they have in common.
109 (h) The tax treatment and consequences to both parties of
110 any alimony award, which award must be deductible by the payor
111 and taxable to the recipient ~~including the designation of all or~~
112 ~~a portion of the payment as a nontaxable, nondeductible payment~~.

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

113 (i) All sources of income available to either party,
114 including income available to either party through investments
115 of any asset held by that party that were acquired during the
116 marriage.
117 (j) The standard of living of each party after the
118 application of the alimony award. There shall be a rebuttable
119 presumption that both parties will necessarily have a lower
120 standard of living after divorce than the standard of living
121 that they enjoyed during the marriage.
122 (k) ~~(j)~~ Any other factor necessary to do equity and justice
123 between the parties, provided that such factor is specifically
124 identified in the award with findings of fact justifying the
125 application of the factor.
126 (3) To the extent necessary to protect an award of alimony,
127 the court may order any party who is ordered to pay alimony to
128 purchase or maintain a life insurance policy or a bond, or to
129 otherwise secure such alimony award with any other assets which
130 may be suitable for that purpose. The cost of life insurance or
131 a bond shall be deducted from the alimony award. Requirements
132 pursuant to this subsection are separately modifiable pursuant
133 to s. 61.14, and terminate upon termination of the award of
134 alimony.
135 (4) For purposes of determining alimony, ~~there is a~~
136 ~~rebuttable presumption that~~ a short-term marriage is a marriage
137 having a duration of less than 7 years, a moderate-term marriage
138 is a marriage having a duration of greater than 7 years but less
139 than 20 ~~17~~ years, and long-term marriage is a marriage having a
140 duration of 20 ~~17~~ years or greater. The length of a marriage is

141 the period of time from the date of marriage until the date of
142 filing of an action for dissolution of marriage.
143 (5) Bridge-the-gap alimony may be awarded to assist a
144 party by providing support to allow the party to make a
145 transition from being married to being single. Bridge-the-gap
146 alimony is designed to assist a party with legitimate
147 identifiable short-term needs, and the length of an award may
148 not exceed 2 years. An award of bridge-the-gap alimony
149 terminates upon the death of either party or upon the remarriage
150 of the party receiving alimony. An award of bridge-the-gap
151 alimony shall not be modifiable in amount or duration.
152 (6)(a) Rehabilitative alimony may be awarded to assist a
153 party in establishing the capacity for self-support through
154 either:
155 1. The redevelopment of previous skills or credentials; or
156 2. The acquisition of education, training, or work
157 experience necessary to develop appropriate employment skills or
158 credentials.
159 (b) In order to award rehabilitative alimony, there must
160 be a specific and defined rehabilitative plan which shall be
161 included as a part of any order awarding rehabilitative alimony.
162 (c) An award of rehabilitative alimony shall ~~may~~ be
163 modified or terminated in accordance with s. 61.14 based upon a
164 substantial change in circumstances, upon noncompliance with the
165 rehabilitative plan, or upon completion of the rehabilitative
166 plan.
167 (7) There shall be a presumption in favor of durational
168 alimony over long-term ~~may be awarded when permanent periodic~~

169 alimony ~~is inappropriate~~. The purpose of durational alimony is
170 to provide a party with economic assistance for a set period of
171 time following a marriage of ~~short or~~ moderate duration or
172 following a marriage of long duration if there is no ongoing
173 need for support on a long-term ~~permanent~~ basis as provided in
174 subsection (8). An award of durational alimony terminates upon
175 the death of either party or upon the remarriage of the party
176 receiving alimony. The amount of an award of durational alimony
177 shall ~~may~~ be modified or terminated based upon a substantial
178 change in circumstances or upon the existence of a supportive
179 relationship in accordance with s. 61.14. ~~However,~~ The length of
180 an award of durational alimony may not ~~be modified except under~~
181 ~~exceptional circumstances and may not~~ exceed the length of the
182 marriage.
183 (8) Long-term ~~Permanent~~ alimony may be awarded to provide
184 for the needs and necessities of life ~~as they were established~~
185 ~~during the marriage of the parties~~ for a party who lacks the
186 financial ability to meet his or her needs and necessities of
187 life following a dissolution of marriage. Long-term ~~Permanent~~
188 alimony may be awarded following a marriage of long duration if
189 such an award is appropriate upon consideration of the factors
190 set forth in subsection (2), following a marriage of moderate
191 duration if such an award is appropriate based upon clear and
192 convincing evidence after consideration of the factors set forth
193 in subsection (2), or following a marriage of short duration if
194 there are written findings of exceptional circumstances. In
195 awarding long-term ~~permanent~~ alimony, the court shall include a
196 finding that no other form of alimony will provide for the needs

197 and necessities of life of the recipient ~~is fair and reasonable~~
198 ~~under the circumstances of the parties~~. An award of long-term
199 ~~permanent~~ alimony terminates upon the death of either party, ~~or~~
200 upon the remarriage of the party receiving alimony, or as
201 provided in subsection (12). An award shall ~~may~~ be modified or
202 terminated based upon a substantial change in circumstances or
203 upon the existence of a supportive relationship in accordance
204 with s. 61.14.
205 (9) Notwithstanding any other law to the contrary, an ~~The~~
206 award of alimony may not leave the payor with ~~significantly~~ less
207 net income or with a lower standard of living than the ~~net~~
208 ~~income of the~~ recipient ~~unless there are written findings of~~
209 ~~exceptional circumstances~~. The court shall make written findings
210 regarding the relative incomes and standards of living citing to
211 record evidence and to this subsection.
212 (10)(a) With respect to any order requiring the payment of
213 alimony entered on or after January 1, 1985, unless the
214 provisions of paragraph (c) or paragraph (d) apply, the court
215 shall direct in the order that the payments of alimony be made
216 through the appropriate depository as provided in s. 61.181.
217 (b) With respect to any order requiring the payment of
218 alimony entered before January 1, 1985, upon the subsequent
219 appearance, on or after that date, of one or both parties before
220 the court having jurisdiction for the purpose of modifying or
221 enforcing the order or in any other proceeding related to the
222 order, or upon the application of either party, unless the
223 provisions of paragraph (c) or paragraph (d) apply, the court
224 shall modify the terms of the order as necessary to direct that

225 payments of alimony be made through the appropriate depository
226 as provided in s. 61.181.
227 (c) If there is no minor child, alimony payments need not
228 be directed through the depository.
229 (d)1. If there is a minor child of the parties and both
230 parties so request, the court may order that alimony payments
231 need not be directed through the depository. In this case, the
232 order of support shall provide, or be deemed to provide, that
233 either party may subsequently apply to the depository to require
234 that payments be made through the depository. The court shall
235 provide a copy of the order to the depository.
236 2. If the provisions of subparagraph 1. apply, either
237 party may subsequently file with the depository an affidavit
238 alleging default or arrearages in payment and stating that the
239 party wishes to initiate participation in the depository
240 program. The party shall provide copies of the affidavit to the
241 court and the other party or parties. Fifteen days after receipt
242 of the affidavit, the depository shall notify all parties that
243 future payments shall be directed to the depository.
244 3. In IV-D cases, the IV-D agency shall have the same
245 rights as the obligee in requesting that payments be made
246 through the depository.
247 Section 3. Paragraph (b) of subsection (1) of section
248 61.14, Florida Statutes, is amended, paragraphs (c) and (d) are
249 added to subsection (11), and subsection (12) is added to that
250 section, to read:
251 61.14 Enforcement and modification of support,
252 maintenance, or alimony agreements or orders.—

253 (1)
254 (b)1. The court must ~~may~~ reduce or terminate an award of
255 alimony upon specific written findings by the court that since
256 the granting of a divorce and the award of alimony a supportive
257 relationship has existed between the obligee and a person with
258 whom the obligee resides. On the issue of whether alimony should
259 be reduced or terminated under this paragraph, the burden is on
260 the obligor to prove by a preponderance of the evidence that a
261 supportive relationship exists.
262 2. In determining whether an existing award of alimony
263 should be reduced or terminated because of an alleged supportive
264 relationship between an obligee and a person who is not related
265 by consanguinity or affinity and with whom the obligee resides,
266 the court shall elicit the nature and extent of the relationship
267 in question. The court shall give consideration, without
268 limitation, to circumstances, including, but not limited to, the
269 following, in determining the relationship of an obligee to
270 another person:
271 a. The extent to which the obligee and the other person
272 have held themselves out as a married couple by engaging in
273 conduct such as using the same last name, using a common mailing
274 address, referring to each other in terms such as "my husband"
275 or "my wife," or otherwise conducting themselves in a manner
276 that evidences a permanent supportive relationship.
277 b. The period of time that the obligee has resided with
278 the other person in a permanent place of abode.

279 c. The extent to which the obligee and the other person
280 have pooled their assets or income or otherwise exhibited
281 financial interdependence.
282 d. The extent to which the obligee or the other person has
283 supported the other, in whole or in part.
284 e. The extent to which the obligee or the other person has
285 performed valuable services for the other.
286 f. The extent to which the obligee or the other person has
287 performed valuable services for the other's company or employer.
288 g. Whether the obligee and the other person have worked
289 together to create or enhance anything of value.
290 h. Whether the obligee and the other person have jointly
291 contributed to the purchase of any real or personal property.
292 i. Evidence in support of a claim that the obligee and the
293 other person have an express agreement regarding property
294 sharing or support.
295 j. Evidence in support of a claim that the obligee and the
296 other person have an implied agreement regarding property
297 sharing or support.
298 k. Whether the obligee and the other person have provided
299 support to the children of one another, regardless of any legal
300 duty to do so.
301 3. This paragraph does not abrogate the requirement that
302 every marriage in this state be solemnized under a license, does
303 not recognize a common law marriage as valid, and does not
304 recognize a de facto marriage. This paragraph recognizes only
305 that relationships do exist that provide economic support
306 equivalent to a marriage and that alimony terminable on

307 remarriage may be reduced or terminated upon the establishment
308 of equivalent equitable circumstances as described in this
309 paragraph. The existence of a conjugal relationship, though it
310 may be relevant to the nature and extent of the relationship, is
311 not necessary for the application of the provisions of this
312 paragraph.
313 4. If the obligee denies or fails to admit any material
314 fact regarding the existence of a supportive relationship in
315 circumstances where the obligee knew or should have known about
316 the material fact, and the obligor subsequently proves the
317 existence of the material fact, the court shall in the form of a
318 civil judgment:
319 a. Order modification of the alimony award retroactive to
320 the beginning of the supportive relationship;
321 b. Award to the obligor a refund of all of the alimony the
322 obligor actually paid to the obligee from the beginning of the
323 supportive relationship; and
324 c. Award to the obligor reasonable costs and attorneys fees
325 incurred in proving the fact.
326 5. If the obligee denies the existence of a supportive
327 relationship, and the obligor subsequently proves the existence
328 of a supportive relationship, the court shall order termination
329 of the alimony award retroactive to the beginning of the
330 supportive relationship; shall award to the obligor a refund of
331 all of the alimony the obligor actually paid to the obligee from
332 the beginning of the supportive relationship; and shall award to
333 the obligor reasonable costs and attorneys fees incurred in

334 proving the existence of the supportive relationship. An award
335 under this subparagraph shall be a civil judgment.
336 6. A court terminating an alimony award based on the
337 existence of a supportive relationship may not reserve
338 jurisdiction to later reinstate alimony.
339 (11)
340 (c) If the obligor remarries or resides with another
341 person, the income and assets of the obligor's spouse or person
342 with whom the obligor resides may not be considered in a
343 modification action regarding such obligor.
344 (d) If the court orders alimony payable concurrent with a
345 child support order, the alimony award may not be modified
346 solely because of a later modification or termination of child
347 support payments.
348 (12) The fact that an obligor has reached the normal
349 retirement age shall be considered a substantial change in
350 circumstances as a matter of law. There is a rebuttable
351 presumption that the normal retirement age for purposes of this
352 subsection is upon attaining the age of 67 years. In
353 anticipation of retirement, the obligor may file a petition for
354 termination or modification of the alimony award effective upon
355 the retirement date. There is a rebuttable presumption that
356 alimony terminates upon retirement of the obligor, which may
357 only be overcome by a written finding of exceptional
358 circumstances. If this presumption is overcome, the court shall
359 modify the alimony award based on the circumstances of the
360 parties after retirement of the obligor and based on the factors
361 in subsection (2).

362 (13) In any alimony award, the court shall require an
363 obligee to maximize both his or her reasonable potential for
364 rehabilitation and reasonable earning capacity, and shall impute
365 all income to the obligee that could be reasonably earned after
366 achieving maximum rehabilitation and reasonably increasing
367 earning capacity. The court shall make written findings of fact
368 concerning the reasonable potential of the obligee for
369 rehabilitation and the amount of income that should be imputed
370 to the obligee.
371 Section 4. Section 61.19, Florida Statutes, is amended to
372 read:
373 61.19 Entry of judgment of dissolution of marriage, delay
374 period; bifurcation.—
375 (1) No final judgment of dissolution of marriage may be
376 entered until at least 20 days have elapsed from the date of
377 filing the original petition for dissolution of marriage; but
378 the court, on a showing that injustice would result from this
379 delay, may enter a final judgment of dissolution of marriage at
380 an earlier date.
381 (2) If more than 180 days has elapsed since the filing of
382 an action for dissolution, on the request of either spouse the
383 court shall enter an order bifurcating the action and, if legal
384 grounds for dissolution are proved, the court shall enter a
385 judgment dissolving the marriage and reserving jurisdiction to
386 determine all issues other than dissolution. It is the intent of
387 the legislature that the decision in *Claughton v. Claughton*, 393
388 So.2d 1061 (Fla. 1981) shall not prevent bifurcation or entry of
389 a final judgment pursuant to this subsection.

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

V

390 Section 5. This act shall take effect July 1, 2012.

HB 609

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 609 Wage Protection for Employees
SPONSOR(S): Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 862

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad DC	Bond NB
2) Community & Military Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Wage theft is a term used to describe the failure of an employer to pay any portion of wages due to an employee. Federal and state laws provide extensive protection from wage theft through various acts including the Federal Fair Labor Standards Act and Florida's minimum wage laws.

Counties and municipalities have broad home rule powers that allow the local governments to enact ordinances as long as the subject matter is not preempted to the state. Preemption may either be express or implied.

The bill provides that the regulation of wage theft is expressly preempted to the state.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Wage Theft

"Wage theft" is a general term sometimes used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Some examples of wage theft include:

- Employee is paid below the state or federal minimum wage.
- Employee is paid partial wages or not paid at all.
- Non-exempt employee is not paid time and half for overtime hours.
- Employee is misclassified as an independent contractor.
- Employee does not receive final paycheck after employment is terminated.

There are a variety of federal and state laws that protects employees from wage theft including, but not limited to, the Fair Labor Standards Act and Florida minimum wage laws.

Worker Protection: Federal and State

Both federal[1] and state laws provide protection to workers who are employed by private and governmental entities. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.

Fair Labor Standards Act of 1938

The Fair Labor Standards Act (FLSA)[2] establishes a federal minimum wage and requires employers to pay time and half to its employees for overtime time hours worked. The FLSA establishes standards for minimum wages,[3] overtime pay,[4] recordkeeping,[5] and child labor.[6] The FLSA applies to most classes of workers.[7]

[1] A list of examples of federal laws that protect employees is located at: http://www.dol.gov/compliance/laws/main.htm (Last visited November 28, 2011). Examples include: *The Davis-Bacon and Related Acts* (requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of $2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area); *The McNamara-O'Hara Service Contract Act* (The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of $2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement); *The Migrant and Seasonal Agricultural Workers Protection Act* (provides employment-related protections to migrant and seasonal agricultural workers); *The Contract Work Hours and Safety Standards Act* (requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek); *The Copeland "Anti-Kickback" Act* (prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract).
[2] 29 U.S.C Ch. 8.
[3] 29 U.S.C. §206.
[4] 29 U.S.C. §207.
[5] 29 U.S.C. §211.
[6] 29 U.S.C. §212.
[7] The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at http://www.dol.gov/compliance/guide/minwage.htm (Last visited February 24, 2011).

The FLSA provides that:

> Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.[8]

If an employee works more than forty hours in a week, then the employer must pay at least time and half for those hours over forty. A failure to pay is a violation of the FLSA.[9]

The FLSA also establishes a federal minimum wage in the United States.[10] The federal minimum wage is the lowest hourly wage that can be paid in the United States. A state may set the rate higher than the federal minimum, but not lower.[11]

The FLSA also provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;[12]
- Criminal prosecutions by the United States Department of Justice;[13] or
- Private lawsuits by employees, or workers, which includes individual lawsuits and collective actions.[14]

The FLSA provides that an employer who violates section 206 (minimum wage) or section 207 (maximum hours) is liable to the employee in the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages.[15] An employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.[16]

State Protection of Workers

State law provides for protection of workers, including anti-discrimination, work safety and a state minimum wage. The state minimum wage was passed as a constitutional amendment[17] and the implementation language is located in s. 448.110, F.S.

Article X, s. 24(c) of the state constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida." If an employer does not pay the state minimum wage, the amendment provides that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages withheld. A court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs.

The current state minimum wage is $7.67 per hour, which is the federal rate.[18] Federal law requires the payment of the higher of the federal or state minimum wage.[19]

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[8] 29 U.S.C. §207(a)(1).
[9] There are several classes of exempt employees from the overtime requirement of the FLSA. For examples of exempt employees see http://www.dol.gov/compliance/guide/minwage.htm (Last visited November 28, 2011).
[10] 29 U.S.C. §206.
[11] 29 U.S.C. §218(a).
[12] 29 U.S.C. §216(c).
[13] 29 U.S.C. §216(a).
[14] 29 U.S.C. §216(b).
[15] 29 U.S.C. §216(b).
[16] 29 U.S.C. §216(b).
[17] See Article X, s. 24 of the Florida Constitution (adopted in 2004).
[18] See Agency for Workforce Innovation Website for information regarding the current minimum wage in the State of Florida. http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices (Last visited November 28, 2011).

In addition, any worker may sue in contract for unpaid wages. If the worker wins, he or she must be awarded costs and attorney fees.[20]

Home Rule and Preemption

Article VIII ss. 1 and 2, of the state constitution, establishes two types of local governments: counties[21] and municipalities. The local governments have wide authority to enact various ordinances to accomplish their local needs.[22] Under home rule powers, a municipality or county may legislate concurrently with the Legislature on any subject which has not been preempted to the state.

Preemption essentially takes a topic or field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the state.[23] Florida law recognizes two types of preemption: express and implied.[24] Express preemption requires a specific legislative statement and cannot be implied or inferred.[25] Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.

The absence of express preemption does not bar a court from a finding of preemption by implication. A court will look at two factors to determine if the subject matter has been preempted by the Legislature:

- Whether the Legislative scheme is so pervasive as to evidence an intent to preempt the particular area; and
- Whether there are strong public policy reasons for finding an area to be preempted by the Legislature.[26]

In order to determine whether a legislative scheme is pervasive, a court will look at several factors including the nature of the subject matter, the need for state uniformity, and the scope and purpose of the state legislation.[27] For instance, the Florida Supreme Court has found implied preemption in the area of public records.[28]

There is no apparent express preemption of wage laws to the federal and state governments. It is possible that a court could find that the numerous existing laws regarding employee wages are an implied preemption of the subject.

Effect of the Bill

The bill provides that the regulation of wage theft is expressly preempted to the state. It also defines "wage theft" as an illegal or improper underpayment or nonpayment of a worker's wages, salaries, commissions, or other similar form of compensation.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law, providing for preemption of wage theft to the state.

Section 2 provides an effective date of July 1, 2012.

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[19] 29 U.S.C. §218(a).
[20] See s. 448.08, F.S.
[21] There are two different types of counties in Florida; a charter county and a non-charter county.
[22] Article VIII of the state constitution establishes the powers of chartered counties, non-charter counties and municipalities. Chapters 125 and 166, F.S., provides the additional powers and constraints of counties and municipalities.
[23] *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006).
[24] *Id.*
[25] *Id.*
[26] *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 851.
[27] *See Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[28] *See Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984) (holding that the legislative scheme of the Public Records Act preempted the law relating to production of records for inspection).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Miami-Dade County has enacted an ordinance regulating wage theft.[29] The ordinance is enforced by the county's Department of Small Business Development (SBD).[30] In March 2011, the Florida Retail Federation filed suit to challenge the constitutionality of the Miami ordinance.[31] The Palm Beach County

[29] Miami-Dade County Code of Ordinances, Chapter 22.

[30] *See* CYNTHIA S. HERNANDEZ, RESEARCH INSTITUTE ON SOCIAL AND ECONOMIC POLICY, WAGE THEFT IN FLORIDA: A REAL PROBLEM WITH REAL SOLUTIONS 3 (2010).

[31] *Fla. Retail Fed'n, Inc, v. Miami Dade County*, No. 2010-42326-CA-01 (Aug. 4, 2010).

Commission has considered enacting a similar ordinance, but has postponed a final vote pending the outcome of the Miami-Dade Case.[32]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[32] Jennifer Sorentrue, Palm Beach County Commission Postpones Vote on Wage Theft Law but Directs Staff to Study and Report, THE PALM BEACH POST, Feb. 1, 2011, http://www.palmbeachpost.com/news/palm-beach-county-commission-postpones-vote-on-wage-1224613.html; Andy Reid, Religious group: Palm Beach County's wage theft fight falls short, ORLANDO SENTINEL, Nov. 10, 2011, http://www.orlandosentinel.com/news/local/fl-stealing-wages-palm-20111110,0,1072806.story.

1 A bill to be entitled
2 An act relating to wage protection for employees;
3 prohibiting a county, municipality, or political
4 subdivision from adopting or maintaining in effect a
5 law, ordinance, or rule that creates requirements,
6 regulations, or processes for the purpose of
7 addressing wage theft; preempting such activities to
8 the state; defining the term "wage theft"; providing
9 an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. (1) A county, municipality, or political
14 subdivision of the state may not adopt or maintain in effect any
15 law, ordinance, or rule that creates requirements, regulations,
16 or processes for the purpose of addressing wage theft. The
17 regulation of wage theft by counties, municipalities, or
18 political subdivisions is expressly preempted to the state.
19 (2) As used in this section, the term "wage theft" means
20 an illegal or improper underpayment or nonpayment of an
21 individual worker's wages, salaries, commissions, or other
22 similar form of compensation.
23 Section 2. This act shall take effect July 1, 2012.

HB 631

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 631 Terms of Courts
SPONSOR(S): Weinstein
TIED BILLS: None **IDEN./SIM. BILLS:** SB 462

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

SUMMARY ANALYSIS

Terms of court were enacted to ensure that the circuit judges traveled to each of the counties on a regular basis. While terms of court were a necessity in the days of difficult travel and slow communications, the concept is long outdated and unnecessary.

CS/HB 7023 repeals statutory requirements for terms of court and makes conforming changes.

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

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

At one time, circuit court judges literally "rode the circuit," travelling from one county seat to the next for the purpose of conducting court. In a day of difficult travel and slow communications, it was important that the circuit judge show up on a date certain to conduct the court's business.[1] Terms of court were developed to fill that need, and were required by the state constitution[2] until Article V was substantially rewritten in 1957. Current law creates two or more terms of court in each of the counties. See ss. 26.22-.365, F.S.

In the past, on the first day of the term of court the circuit judge would conduct a ceremonial opening of the term of court, the clerk would summon a new grand jury, the sheriff would bring in the prisoners for a docket sounding, and the work of the circuit court would commence. The circuit judge was generally expected to stay in town until the judicial work was complete, but also was required to leave in time to make it to the next county for the start of that county's term of court. After the circuit judge left town, the court was considered "in vacation." A circuit judge is fined $50 a day for every day he or she is late starting a term of court.[3]

In the early days of the state, work as a supreme court justice was a part-time occupation. The justices similarly held terms of court in order that they have a fixed time to travel to Tallahassee to conduct appellate sessions. The concept for terms of court was adopted in statute when the intermediate district courts of appeal were created in 1957. Section 35.11, F.S., requires each of the district courts of appeal to meet at least once in every regular term in each judicial circuit within the district.

Today, terms of court are an archaic concept. It does not appear that any of the courts formally open a term of court with the traditional ceremony. Circuit judges come and go from each of the counties as needed and far more often than once every six months. Two of the five district courts of appeal are known to regularly travel the district for the purpose of conducting oral argument. It is unknown when the last time a circuit judge was fined for nonappearance at the first day of a term.

Reference to terms of court is still relevant today for two purposes: designating the terms of local grand juries and limiting withdrawal of an appellate mandate.

Historically, although not explicitly required by statute, the terms of a grand jury coincide with the term of the court.

In the appellate courts, the terms of court limit an appellate court's ability to withdraw a mandate, a rare procedure. The Florida Supreme Court in 1932 explained the scope and limits of the power to withdraw:

> But, be that as it may, a majority of the court have reached the conclusion that the correct rule, which should be recognized and applied in such situation, is that the jurisdiction of this court, like the jurisdiction of courts generally, persists to the end of the term, and then terminates, but that, during the term at which a judgment of this court is

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[1] See http://www.leoncountyfl.gov/2ndcircuit/index.php?Page=FirstHundred.php, which describes the history of the Second Judicial Circuit, including how the terms of court provided for the circuit judge to travel down the Apalachicola River, and were changed to accommodate the arrival of steamboat service along the river (last accessed February 14, 2011).

[2] Article V, s. 8 of the Constitution of 1885 included this sentence: "Such Judge shall hold at least two terms of his court in each county within his Circuit every year, at such times and places as shall be prescribed by law, and may hold special terms."

[3] Section 26.39, F.S.

rendered, this court has jurisdiction and power which it may exercise, as the circumstances and justice of the case may require, to reconsider, revise, reform, or modify its own judgments for the purpose of making the same accord with law and justice, and that it has power to recall its own mandate for the purpose of enabling it to exercise such jurisdiction and power in a proper case.[4]

Under current law, a mandate may only be withdrawn during the current term of the appellate court, which leads to the odd result of some appellate court opinions being subject to withdrawal for nearly six months while others may only be subject to withdrawal for a few days.

Effect of Bill

The bill repeals statutory terms of court applicable to the circuit courts, district courts of appeal, and the Supreme Court. It also makes the following conforming changes:

- Repeals the fine for nonattendance by a circuit judge.
- Repeals a requirement that a circuit judge call the docket at the end of the term.
- Repeals a requirement that district courts of appeal hear oral arguments in each of the judicial circuits in every term of court.
- Repeals a requirement that criminal cases be heard in the term before civil cases.
- Repeals a requirement that a criminal case be heard in the same term of court that the indictment was handed down unless the court holds the case to the next term for good cause.
- Removes references to terms of court in statutes regarding county sheriffs.
- Removes references to terms of court in the definitions of three crimes.
- Removes references to terms of court in the statute on contempt of court.
- Removes the requirement that a criminal defendant show up on the first day of a term of court if the appearance bond is unclear.
- Requires the chief judge of the circuit to set the terms of a grand jury.
- Removes reference to terms of court in statute requiring a witness in a criminal case to appear in court.

The bill creates two new conforming statutes. These new sections:

- Allow the Supreme Court to establish terms of court for the Supreme Court and for the lower courts, if the court wishes.
- Provide in statute that an appellate court may withdraw a mandate for up to 120 days after it is filed with the lower court. The conditions upon which withdrawal is allowed are taken from the case law quoted above.

B. SECTION DIRECTORY:

Section 1 repeals ss. 25.051, 26.21, 26.22, 26.23, 26.24, 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33, 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365, 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05 and 907.055, F.S.

Section 2 amends s. 26.46, F.S., regarding jurisdiction of a resident judge.

Section 3 amends s. 27.04, F.S., regarding witnesses in a criminal case.

Section 4 amends s. 30.12, F.S., regarding the power to appoint a sheriff.

Section 5 amends s. 30.15, F.S., regarding powers, duties and obligations of the sheriff.

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[4] *Chapman v. St. Stephens Protestant Episcopal Church, Inc.*, 138 So. 630 (Fla. 1932). The *Chapman* case specifically provides that the power to withdraw a mandate may be limited by statute.

Section 6 amends s. 34.13, F.S., regarding methods of prosecution.

Section 7 amends s. 35.05, F.S., regarding the headquarters of a district court of appeal.

Section 8 amends s. 38.23, F.S., regarding contempt of court.

Section 9 creates s. 43.43, F.S., regarding terms of court.

Section 10 creates s. 43.44, F.S., regarding mandates of appellate courts.

Section 11 amends s. 112.19, F.S., regarding law enforcement officers.

Section 12 amends s. 206.15, F.S., regarding court costs.

Section 13 amends s. 450.121, F.S., regarding child labor law.

Section 14 amends s. 831.10, F.S., regarding forged bills.

Section 15 amends s. 831.17, F.S., regarding offenses.

Section 16 amends s. 877.08, F.S., regarding coin-operated machines.

Section 17 amends s. 902.19, F.S., regarding when prosecutor liable for costs.

Section 18 amends s. 903.32, F.S., regarding defects in a criminal bond.

Section 19 amends s. 905.01, F.S., regarding grand jury terms.

Section 20 amends s. 905.09, F.S., regarding discharge and recall of a grand jury.

Section 21 amends s. 905.095, F.S., regarding extension of a grand jury term.

Section 22 amends s. 914.03, F.S., regarding attendance of witnesses.

Section 23 amends s. 924.065, F.S., regarding appearance bonds.

Section 24 amends s. 932.47, F.S., regarding information filed by a prosecuting attorney.

Section 25 provides an effective date of January 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

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 terms of courts; repealing s.
3 25.051, F.S., relating to regular terms of the Supreme
4 Court; repealing s. 26.21, F.S., relating to terms of
5 the circuit courts; repealing s. 26.22, F.S., relating
6 to terms of the First Judicial Circuit; repealing s.
7 26.23, F.S., relating to terms of the Second Judicial
8 Circuit; repealing s. 26.24, F.S., relating to terms
9 of the Third Judicial Circuit; repealing s. 26.25,
10 F.S., relating to terms of the Fourth Judicial
11 Circuit; repealing s. 26.26, F.S., relating to terms
12 of the Fifth Judicial Circuit; repealing s. 26.27,
13 F.S., relating to terms of the Sixth Judicial Circuit;
14 repealing s. 26.28, F.S., relating to terms of the
15 Seventh Judicial Circuit; repealing s. 26.29, F.S.,
16 relating to terms of the Eighth Judicial Circuit;
17 repealing s. 26.30, F.S., relating to terms of the
18 Ninth Judicial Circuit; repealing s. 26.31, F.S.,
19 relating to terms of the Tenth Judicial Circuit;
20 repealing s. 26.32, F.S., relating to terms of the
21 Eleventh Judicial Circuit; repealing s. 26.33, F.S.,
22 relating to terms of the Twelfth Judicial Circuit;
23 repealing s. 26.34, F.S., relating to terms of the
24 Thirteenth Judicial Circuit; repealing s. 26.35, F.S.,
25 relating to terms of the Fourteenth Judicial Circuit;
26 repealing s. 26.36, F.S., relating to terms of the
27 Fifteenth Judicial Circuit; repealing s. 26.361, F.S.,
28 relating to terms of the Sixteenth Judicial Circuit;

29 repealing s. 26.362, F.S., relating to terms of the
30 Seventeenth Judicial Circuit; repealing s. 26.363,
31 F.S., relating to terms of the Eighteenth Judicial
32 Circuit; repealing s. 26.364, F.S., relating to terms
33 of the Nineteenth Judicial Circuit; repealing s.
34 26.365, F.S., relating to terms of the Twentieth
35 Judicial Circuit; repealing s. 26.37, F.S., relating
36 to requiring a judge to attend the first day of each
37 term of the circuit court; repealing s. 26.38, F.S.,
38 relating to a requirement for a judge to state a
39 reason for nonattendance; repealing s. 26.39, F.S.,
40 relating to the penalty for nonattendance of the
41 judge; repealing s. 26.40, F.S., relating to
42 adjournment of the circuit court upon nonattendance of
43 the judge; repealing s. 26.42, F.S., relating to
44 calling all cases on the docket at the end of each
45 term; repealing s. 35.10, F.S., relating to regular
46 terms of the district courts of appeal; repealing s.
47 35.11, F.S., relating to special terms of the district
48 courts of appeal; repealing s. 907.05, F.S., relating
49 to a requirement that criminal trials be heard in the
50 term of court prior to civil cases; repealing s.
51 907.055, F.S., relating to a requirement that persons
52 in custody be arraigned and tried in the term of court
53 unless good cause is shown; amending ss. 26.46, 27.04,
54 30.12, 30.15, 34.13, 35.05, and 38.23, F.S.;
55 conforming provisions to changes made by the act;
56 creating s. 43.43, F.S.; allowing the Supreme Court to

57 set terms of court for the Supreme Court, district
58 courts of appeal, and circuit courts; creating s.
59 43.44, F.S.; providing that appellate courts may
60 withdraw a mandate within 120 days after its issuance;
61 amending ss. 112.19, 206.215, 450.121, 831.10, 831.17,
62 877.08, 902.19, 903.32, 905.01, 905.09, 905.095,
63 914.03, 924.065, and 932.47, F.S.; conforming
64 provisions to changes made by the act; providing an
65 effective date.
66
67 Be It Enacted by the Legislature of the State of Florida:
68
69 Section 1. Sections 25.051, 26.21, 26.22, 26.23, 26.24,
70 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33,
71 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365,
72 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and
73 907.055, Florida Statutes, are repealed.
74 Section 2. Section 26.46, Florida Statutes, is amended to
75 read:
76 26.46 Jurisdiction of resident judge after assignment.—
77 When a circuit judge is assigned to another circuit, none of the
78 circuit judges in such other circuit shall, because of such
79 assignment, be deprived of or affected in his or her
80 jurisdiction other than to the extent essential so as not to
81 conflict with the authority of the temporarily assigned circuit
82 judge as to the particular case or cases or class of cases~~, or~~
83 ~~in presiding at the particular term or part of term named or~~
84 ~~specified in the assignment~~.

85 Section 3. Section 27.04, Florida Statutes, is amended to
86 read:
87 27.04 Summoning and examining witnesses for state.—The
88 state attorney shall have summoned all witnesses required on
89 behalf of the state; and he or she is allowed the process of his
90 or her court to summon witnesses from throughout the state to
91 appear before the state attorney ~~in or out of term time~~ at such
92 convenient places in the state attorney's judicial circuit and
93 at such convenient times as may be designated in the summons, to
94 testify before him or her as to any violation of the law upon
95 which they may be interrogated, and he or she is empowered to
96 administer oaths to all witnesses summoned to testify by the
97 process of his or her court or who may voluntarily appear before
98 the state attorney to testify as to any violation or violations
99 of the law.
100 Section 4. Section 30.12, Florida Statutes, is amended to
101 read:
102 30.12 Power to appoint sheriff.—Whenever any sheriff in
103 the state shall fail to attend, in person or by deputy, ~~any term~~
104 ~~of~~ the circuit court or county court of the county, from
105 sickness, death, or other cause, the judge attending said court
106 may appoint an interim ~~a~~ sheriff, who shall assume all the
107 responsibilities, perform all the duties, and receive the same
108 compensation as if he or she had been duly appointed sheriff~~,~~
109 for only the ~~said~~ term of nonattendance ~~court~~ and no longer.
110 Section 5. Paragraph (c) of subsection (1) of section
111 30.15, Florida Statutes, is amended to read:
112 30.15 Powers, duties, and obligations.—

113 (1) Sheriffs, in their respective counties, in person or
114 by deputy, shall:
115 (c) Attend all sessions ~~terms~~ of the circuit court and
116 county court held in their counties.
117 Section 6. Subsection (2) of section 34.13, Florida
118 Statutes, is amended to read:
119 34.13 Method of prosecution.—
120 (2) Upon the finding of indictments by the grand jury for
121 crimes cognizable by the county court, the clerk of the court,
122 without any order therefor, shall docket the same on the trial
123 docket of the county court ~~on or before the first day of its~~
124 ~~next succeeding term~~.
125 Section 7. Subsection (2) of section 35.05, Florida
126 Statutes, is amended to read:
127 35.05 Headquarters.—
128 (2) A district court of appeal may designate other
129 locations within its district as branch headquarters for the
130 conduct of the business of the court ~~in special or regular term~~
131 and as the official headquarters of its officers or employees
132 pursuant to s. 112.061.
133 Section 8. Section 38.23, Florida Statutes, is amended to
134 read:
135 38.23 Contempt ~~Contempts~~ defined.—A refusal to obey any
136 legal order, mandate or decree, made or given by any judge
137 ~~either in term time or in vacation~~ relative to any of the
138 business of the ~~said~~ court, after due notice thereof, is ~~shall~~
139 ~~be considered~~ a contempt, punishable ~~and punished~~ accordingly.
140 ~~But nothing said or written, or published, in vacation, to or of~~

141 ~~any judge, or of any decision made by a judge, shall in any case~~
142 ~~be construed to be a contempt.~~
143 Section 9. Section 43.43, Florida Statutes, is created to
144 read:
145 43.43 Terms of courts.—The Supreme Court may establish
146 terms of court for the Supreme Court, the district courts of
147 appeal, and the circuit courts; may authorize district courts of
148 appeal and circuit courts to establish their own terms of court;
149 or may dispense with terms of court.
150 Section 10. Section 43.44, Florida Statutes, is created to
151 read:
152 43.44 Mandate of an appeals court.—An appellate court has
153 the jurisdiction and power, as the circumstances and justice of
154 the case may require, to reconsider, revise, reform, or modify
155 its own judgments for the purpose of making the same accord with
156 law and justice. Accordingly, an appellate court has the power
157 to recall its own mandate for the purpose of allowing it to
158 exercise such jurisdiction and power in a proper case. A mandate
159 may not be recalled more than 120 days after it is filed with
160 the lower tribunal.
161 Section 11. Paragraph (b) of subsection (1) of section
162 112.19, Florida Statutes, is amended to read:
163 112.19 Law enforcement, correctional, and correctional
164 probation officers; death benefits.—
165 (1) Whenever used in this section, the term:
166 (b) "Law enforcement, correctional, or correctional
167 probation officer" means any officer as defined in s. 943.10(14)
168 or employee of the state or any political subdivision of the

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169 state, including any law enforcement officer, correctional
170 officer, correctional probation officer, state attorney
171 investigator, or public defender investigator, whose duties
172 require such officer or employee to investigate, pursue,
173 apprehend, arrest, transport, or maintain custody of persons who
174 are charged with, suspected of committing, or convicted of a
175 crime; and the term includes any member of a bomb disposal unit
176 whose primary responsibility is the location, handling, and
177 disposal of explosive devices. The term also includes any full-
178 time officer or employee of the state or any political
179 subdivision of the state, certified pursuant to chapter 943,
180 whose duties require such officer to serve process or to attend
181 a session ~~terms~~ of a circuit or county court as bailiff.
182 Section 12. Subsection (2) of section 206.215, Florida
183 Statutes, is amended to read:
184 206.215 Costs and expenses of proceedings.—
185 (2) The clerks of the courts performing duties under the
186 provisions aforesaid shall receive the same fees as prescribed
187 by the general law for the performance of similar duties, and
188 witnesses attending any investigation pursuant to subpoena shall
189 receive the same mileage and per diem as if attending as a
190 witness before the circuit court ~~in term time~~.
191 Section 13. Subsection (4) of section 450.121, Florida
192 Statutes, is amended to read:
193 450.121 Enforcement of Child Labor Law.—
194 (4) Grand juries ~~shall~~ have inquisitorial powers to
195 investigate violations of this chapter; also, trial court judges
196 shall specially charge the grand jury~~, at the beginning of each~~

197 ~~term of the court,~~ to investigate violations of this chapter.
198 Section 14. Section 831.10, Florida Statutes, is amended
199 to read:
200 831.10 Second conviction of uttering forged bills.—A
201 person previously ~~Whoever, having been~~ convicted of violating
202 ~~the offense mentioned in~~ s. 831.09 who is again convicted of
203 that ~~the like~~ offense is ~~committed after the former conviction,~~
204 ~~and whoever is at the same term of the court convicted upon~~
205 ~~three distinct charges of such offense, shall be deemed~~ a common
206 utterer of counterfeit bills, and shall be punished as provided
207 in s. 775.084.
208 Section 15. Section 831.17, Florida Statutes, is amended
209 to read:
210 831.17 Violation of s. 831.16; second or subsequent
211 conviction.—A person previously ~~Whoever having been~~ convicted of
212 violating ~~either of the offenses mentioned in~~ s. 831.16 who~~,~~ is
213 again convicted of violating that statute ~~either of the same~~
214 ~~offenses, committed after the former conviction, and whoever is~~
215 ~~at the same term of the court convicted upon three distinct~~
216 ~~charges of said offenses,~~ commits a felony of the second degree,
217 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
218 Section 16. Subsection (4) of section 877.08, Florida
219 Statutes, is amended to read:
220 877.08 Coin-operated vending machines and parking meters;
221 defined; prohibited acts, penalties.—
222 (4) Whoever violates ~~the provisions of~~ subsection (3) a
223 second or subsequent time commits~~, and is convicted of such~~
224 ~~second separate offense, either at the same term or a subsequent~~

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225 ~~term of court, shall be guilty of~~ a felony of the third degree,
226 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
227 Section 17. Subsection (1) of section 902.19, Florida
228 Statutes, is amended to read:
229 902.19 When prosecutor liable for costs.—
230 (1) <u>If</u> ~~When~~ a person makes a complaint before a county
231 court judge that a crime has been committed and is recognized by
232 the county court judge to appear <u>before</u> ~~at the next term of~~ the
233 court having jurisdiction to give evidence of the crime and
234 fails to appear, the person <u>is</u> ~~shall be~~ liable for all costs
235 occasioned by his or her complaint, and the county court judge
236 may <u>enter</u> ~~obtain~~ a judgment and execution for the costs as in
237 other cases.
238 Section 18. Subsection (2) of section 903.32, Florida
239 Statutes, is amended to read:
240 903.32 Defects in bond.—
241 (2) If no day, or an impossible day, is stated in a bond
242 for the defendant's appearance before a trial court judge for a
243 hearing <u>or trial</u>, the defendant shall be bound to appear 10 days
244 after receipt of notice to appear by the defendant, the
245 defendant's counsel, or any surety on the undertaking. ~~If no~~
246 ~~day, or an impossible day, is stated in a bond for the~~
247 ~~defendant's appearance for trial, the defendant shall be bound~~
248 ~~to appear on the first day of the next term of court that will~~
249 ~~commence more than 3 days after the undertaking is given.~~
250 Section 19. Section 905.01, Florida Statutes, is amended
251 to read:
252 905.01 Number and procurement of grand jury; replacement

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253 of member; term of grand jury.—
254 (1) The grand jury shall consist of not fewer than 15 nor
255 more than 21 persons. The provisions of law governing the
256 qualifications, disqualifications, excusals, drawing, summoning,
257 supplying deficiencies, compensation, and procurement of petit
258 jurors apply to grand jurors. In addition, an elected public
259 official is not eligible for service on a grand jury.
260 (2) The chief judge of any circuit court may provide for
261 the replacement of any grand juror who, for good cause, is
262 unable to complete the term of the grand jury. Such replacement
263 shall be made by appropriate order of the chief judge from the
264 list of prospective jurors from which the grand juror to be
265 replaced was selected.
266 (3) The chief judge of each ~~any~~ circuit court shall
267 regularly order ~~may dispense with~~ the convening of the grand
268 jury for a ~~at any~~ term of 6 months ~~court by filing a written~~
269 ~~order with the clerk of court directing that a grand jury not be~~
270 ~~summoned~~.
271 Section 20. Section 905.09, Florida Statutes, is amended
272 to read:
273 905.09 Discharge and recall of grand jury.—A grand jury
274 that has been dismissed may be recalled at any time during the
275 ~~same~~ term of the grand jury ~~court~~.
276 Section 21. Section 905.095, Florida Statutes, is amended
277 to read:
278 905.095 Extension of grand jury term.—Upon petition of the
279 state attorney or the foreperson of the grand jury acting on
280 behalf of a majority of the grand jurors, the circuit court may

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281 extend the term of a grand jury impaneled under this chapter
282 beyond the term ~~of court~~ in which it was originally impaneled. A
283 grand jury whose term has been extended as provided herein shall
284 have the same composition and the same powers and duties it had
285 during its original term. If ~~In the event~~ the term of the grand
286 jury is extended under this section, it shall be extended for a
287 time certain, not to exceed a total of 90 days, and only for the
288 purpose of concluding one or more specified investigative
289 matters initiated during its original term.
290 Section 22. Section 914.03, Florida Statutes, is amended
291 to read:
292 914.03 Attendance of witnesses.—A witness summoned by a
293 grand jury ~~or in a criminal case~~ shall remain in attendance
294 until excused by the grand jury. A witness summoned in a
295 criminal case shall remain in attendance until excused by the
296 court. A witness who departs without permission of the court
297 shall be in criminal contempt of court. ~~A witness shall attend~~
298 ~~each succeeding term of court until the case is terminated.~~
299 Section 23. Subsection (2) of section 924.065, Florida
300 Statutes, is amended to read:
301 924.065 Denial of motion for new trial or arrest of
302 judgment; appeal bond; supersedeas.—
303 (2) An appeal may ~~shall~~ not be a supersedeas to the
304 execution of the judgment, sentence, or order until the
305 appellant has entered into a bond with at least two sureties to
306 secure the payment of the judgment, fine, and any future costs
307 that may be adjudged by the appellate court. The bond shall be
308 conditioned on the appellant's personally answering and abiding

309 by the final order, sentence, or judgment of the appellate court
310 and, if the action is remanded, on the appellant's appearing
311 before ~~at the next term of~~ the court in which the case was
312 originally determined and not departing without leave of court.
313 Section 24. Section 932.47, Florida Statutes, is amended
314 to read:
315 932.47 Informations filed by prosecuting attorneys.—
316 Informations may be filed by the prosecuting attorney of the
317 circuit court with the clerk of the circuit court ~~in vacation or~~
318 ~~in term~~ without leave of the court first being obtained.
319 Section 25. This act shall take effect January 1, 2013.

HB 4125

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4125 Judges
SPONSOR(S): Stargel
TIED BILLS: None **IDEN./SIM. BILLS:** None

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

SUMMARY ANALYSIS

This bill repeals an 1887 law regarding the appointment of a judge ad litem upon consent of the parties after disqualification of a judge. The provision has been superseded by court rules providing for assignment of other judges in the circuit and by laws providing for voluntary binding arbitration or voluntary trial resolution.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 38.13, F.S. was first enacted in 1887. The statute provides that, where a judge is disqualified from hearing a case, the parties may agree to the selection of a private attorney to act as the judge ad litem to hear the case. The law was enacted at a time when there were few judges in the state, and disqualification could require travel to another part of the state for hearings in front of a different judge. This no longer applies.

The Chief Judge of each judicial circuit is responsible for, among other duties, the establishment of a system for assignment of judges, including the transfer of a case to a new judge upon disqualification.[1] Additionally, the parties to a lawsuit can agree to voluntary binding arbitration or voluntary trial resolution, with or without disqualification of the state court judge, which hearing is fundamentally no different than a hearing before a judge ad litem.[2]

The current Florida Rules of Judicial Administration do not address appointment of a judge ad litem or otherwise implementing s. 38.13, F.S.

This bill repeals s. 38.13, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 38.13, F.S.

Section 2 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

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[1] Rule 2.215(b)(4) of the Florida Rules of Judicial Administration.
[2] See s. 44.104, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

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 judges; repealing s. 38.13, F.S.,
3 relating to selection of judges ad litem in circuit or
4 county court; providing an effective date.
5
6 Be It Enacted by the Legislature of the State of Florida:
7
8 Section 1. Section 38.13, Florida Statutes, is repealed.
9 Section 2. This act shall take effect July 1, 2012.

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

HB 4133

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4133 District Courts of Appeal
SPONSOR(S): Gaetz
TIED BILLS: None **IDEN./SIM. BILLS:** None

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

SUMMARY ANALYSIS

This bill repeals a 1957 law that provides that a district court of appeals may enact regulations regarding the internal government of the court.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 35.07, F.S., enacted in 1957, provides that a district court of appeal "may make such regulations as necessary for the internal government of the court," provided that such regulations do not conflict with rules of practice and procedure enacted by the Supreme Court.

All entities, government or not, have the inherent power to manage their internal affairs, provided that such management complies with constitutional and statutory law. Article V, s. 2(a) of the state constitution gives the Supreme Court power to enact rules of practice and procedure regarding "the administrative supervision of all courts." The Supreme Court has enacted rules governing the internal management of the district courts.[1] Accordingly, the statute appears unnecessary.

This bill repeals s. 35.07, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 35.07, F.S.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

[1] See generally, the Florida Rules of Appellate Procedure, and the Florida Rules of Judicial Administration.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

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 district courts of appeal;
3 repealing s. 35.07, F.S., relating to the district
4 courts of appeal's authority to make rules and
5 regulations for their internal government; providing
6 an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 35.07, Florida Statutes, is repealed.
11 Section 2. This act shall take effect July 1, 2012.

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