



Civil Justice Subcommittee

Thursday, February 7, 2013

8:00 AM

404 HOB

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Thursday, February 07, 2013 08:00 am

End Date and Time: Thursday, February 07, 2013 12:00 pm

Location: 404 HOB

Duration: 4.00 hrs

Consideration of the following bill(s):

PCS for HB 73 -- Residential Properties

HB 87 Mortgage Foreclosures by Passidomo

HB 175 Condominiums by Fitzenhagen

HB 179 Eminent Domain Proceedings by Young

HB 351 Application of Foreign Law in Certain Cases by Metz

Consideration of the following proposed committee bill(s):

PCB CJS 13-01 -- Terms of Court

NOTICE FINALIZED on 01/31/2013 16:14 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 73 Residential Properties
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 436

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

SUMMARY ANALYSIS

This PCS amends laws relating to condominiums, cooperatives, and homeowners' associations. Specifically, it:

- Removes the requirement that certain elevators be retrofitted to meet certain building codes by 2015;
- Requires the association to allow members who are entitled to copy official records to utilize smartphones, tablets, portable scanners, or other technology capable of scanning or taking pictures at no charge to the member;
- Permits board members to serve two-year board terms, if provided for by the association's bylaws or articles of incorporation;
- Allows timeshare condominium associations to use proxies during elections;
- Requires board secretaries to maintain directors' educational certificates for at least five years;
- Allows condominium boards to install code-compliant hurricane doors and other types of code-compliant hurricane protection, and includes these items as common expenses of the condominium;
- Allows extra time for the completion of planned additional phases to a condominium;
- Provides for the creation of a condominium within a condominium;
- Allows the Condominium Ombudsman and his or her staff to engage in other professions;
- Limits challenges to association member election or recall results to within 60 days after the results are released;
- Provides that a first mortgagee may be liable to the condominium or homeowners' association if title is foreclosed due to unpaid late fees, interest, costs, and reasonable attorneys fees, however the first mortgagee cannot be held liable for these fees and costs;
- Provides that associations may not suspend delinquent members from using certain common elements;
- Removes the requirement that a homeowners' association member or parcel owner submit a written request to speak at an association meeting, prior to the meeting;
- Conforms certain provisions to make the laws of condominiums, cooperatives, and homeowners' associations consistent in certain areas; and
- Otherwise contains numerous technical and clarifying changes throughout.

The PCS does not appear to create a fiscal impact on state or local governments.

The PCS provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., that is comprised of units which are individually owned, but have an undivided share of access to common facilities.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 similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, 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.³ Further, it delineates condominium association bylaws, which governs the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.⁴

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners which operates or maintains real property in which unit owners have use rights.⁵ The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."⁶

Cooperatives

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 business entity, and the property's residents own shares of the company, reflecting their equity in the real estate.⁷

Like condominiums, cooperatives are created by cooperative documents and include articles of incorporation of the association, bylaws, a ground lease or any other underlying lease, a 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 these bylaws or other cooperative documents, and are run by a board of administration.⁹

Homeowners' Associations

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, 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.¹⁰

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ Section 718.104(5), F.S.

⁴ Section 718.112, F.S.

⁵ Section 718.103(2), 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 720.301(9), F.S.

Similar to condominiums and cooperatives, homeowners' associations are administered by an elected board of directors.¹¹ 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 those documents.¹²

Elevator Safety

Current Situation

Current law provides that elevators in condominiums, cooperatives, and other multi-family residential buildings that were issued certificates of occupancy as of July 1, 2008, are exempt from retroactive application of future updates to the Elevator Safety Code (ASME A17.1 and A17.3) until either July 1, 2015, or until the elevator is replaced or requires major modification, whichever occurs first. These exempted elevators need not comply with future provisions of the Elevator Safety Code until July 1, 2015, so long as the elevator does not require major modification or replacement.¹³ The division is still in the rulemaking process to define "major modification."¹⁴

Effect of Proposed Changes

The PCS amends s. 399.02(9), to remove the July 1, 2015, end date for the elevator safety code enforcement exemption, essentially creating a permanent exemption to compliance with future updates to the Elevator Safety Code for specified elevators. However, an exempted elevator is required to comply with all updated provisions of the Elevator Safety Code after it is replaced or substantially modified.

Condominiums

These provisions of the PCS apply only to condominium associations:

Board Members

Current Situation

Current law requires board members to serve one-year terms, unless the bylaws allow for and a majority of the total voting interests of the condominium vote for board members to serve staggered terms of no more than two years. Current law makes any person who is delinquent in the payment of any fee, fine, or special or regular assessment ineligible to serve as a board member.¹⁵

Effect of Proposed Changes

The PCS amends s. 718.112(2)(d)2., to allow association board members to serve two-year board terms provided for by the bylaws or articles of incorporation, eliminating the requirement that the membership conduct an annual vote to authorize 2-year terms.

The PCS also amends s. 718.112(2)(d)2., F.S., to make a person ineligible for condominium board membership when the person owes *any* monetary obligation to the board, and prevents the board from listing that person on the election ballot.

¹¹ See ss. 720.303 and 720.307, F.S.

¹² See ss. 720.301 and 720.303, F.S.

¹³ Section 399.02(9), F.S.

¹⁴ Department of Business and Professional Regulation 2012 Legislative Analysis Form, October 25, 2011, on file with subcommittee staff.

¹⁵ *Id.*

Proxy Voting Exemption

Current Situation

Current law provides that condominium board members must be elected by written ballot or voting machine. Unless otherwise provided in ch. 718, F.S., proxies may not be used in board member elections.¹⁶

Effect of Proposed Changes

The PCS amends s. 718.112(2)(d)4., F.S., to provide an exemption to the subparagraph for timeshare condominium boards. Specifically, it allows proxy voting for timeshare condominium board elections.

Association Recordkeeping Requirements

Current Situation

Within 90 days after a condominium board member is elected or appointed to the board of administration, he or she must certify in writing that he or she has read the association's governing documents and current written policies, he or she will work to uphold the documents and policies, and he or she will maintain fiduciary responsibility to the association's members. In lieu of the written certification, the director can obtain certification from a division-approved educational provider. Currently, the certification must be maintained for five years after the director's election.¹⁷

Effect of Proposed Changes

The PCS amends s. 718.112(2)(d)4.b., F.S. to require that a director's certification be maintained for either five years after the director's election, or for the duration of the director's uninterrupted tenure, whichever is longer.

Windstorm Protection

Current Situation

Under current law, a condominium board must adopt hurricane shutter specifications for its buildings. The board may also approve the installation of hurricane shutters, impact glass, and code-compliant windows.¹⁸ Unless otherwise provided in the declaration, the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters or other hurricane protection by the board pursuant to that provision is a common expense.¹⁹

Effect of Proposed Changes

This PCS amends s. 718.113(5)(a), F.S., to allow a condominium board to also approve the installation of code-compliant doors and other types of code-compliant hurricane protection. In addition, the PCS amends s. 718.115(1)(e), F.S., to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection as common expenses of the condominium.

¹⁶ Section 718.112(2)(d)4., F.S.

¹⁷ Section 718.112(2)(d)4.b., F.S.

¹⁸ Section 718.113(5)(a), F.S.

¹⁹ Section 718.115(1)(e), F.S.

Phase Condominiums

Current Situation

A developer may develop a condominium in phases if the original declaration of condominium, or an amendment to that declaration, provides for and describes in detail all anticipated phases and the impact that the completion of subsequent phases will have upon the initial phase. In addition, the time period for completion of the proposed phases cannot exceed seven years from the date of the recording of the declaration. If the phases are not added within seven years from the date of the recording of the declaration, the right to add additional phases expires.²⁰

Effect of Proposed Changes

The PCS amends s. 718.403(1), F.S., to provide that the unit owners may extend the seven-year period to allow for an additional three years for completion, beginning at the end of the original period. The vote to extend must occur within the last three years of the original seven-year period. The amendment to the declaration to extend the seven-year period is not an amendment, subject to s. 718.110(4), F.S., which requires approval of all unit owners in the condominium. Rather, it is a general amendment to the declaration, requiring approval by at least two-thirds of the unit owners, pursuant to s. 718.110(1)(a), F.S.

Secondary Condominiums

Current Situation

The Florida Condominium Act does not currently address the concept of primary and secondary condominiums or condominiums within condominium parcels.

Effect of Proposed Changes

The PCS creates s. 718.406, F.S., to allow for the development of a secondary condominium within one or more condominium units pursuant to a secondary condominium declaration. Unless the declaration of condominium of the primary condominium provides otherwise, no secondary condominium can be created, and no amendment to the primary condominium declaration may permit secondary condominiums to be created, unless approved by the primary condominium unit owners and lien-holders.²¹ Once approved, the primary condominium association, the owner of the subdivided parcel, and the holders of liens upon the subdivided parcel shall have approval rights regarding the creation of the secondary condominium and its 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. Moreover, the secondary condominium association represents its unit owners in the primary condominium association, with the president of the secondary condominium association casting the secondary association's vote in the primary condominium association.

The primary condominium association may furnish insurance required by s. 718.111(11), F.S., for both the primary and secondary condominium if the primary condominium declaration allows it, and the board of the primary condominium association is permitted to adopt hurricane shutter and other hurricane protection specifications for both the primary and secondary condominium. Further, common expenses due the primary condominium association with respect to a subdivided unit are a 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.

²⁰ Section 718.403(1), F.S.

²¹ See s. 718.110, F.S.

Finally, an owner or mortgagee of a unit in a secondary condominium must register with the primary condominium in order to receive notices of delinquencies of, or foreclosure against, the secondary condominium due to non-payment by the subdivided parcel owner, and of release of the unit in the secondary condominium from any such delinquency or foreclosure.

Ombudsman

Current Situation

In 2004, the Legislature re-created the Office of the Condominium Ombudsman.²² The Ombudsman is an attorney appointed by the Governor who is charged with certain duties, including but 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.²³

The Ombudsman, along with office staff, is 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.²⁴ Essentially, an officer or full-time employee of the Ombudsman's office may not actively engage in any other business or profession.

Effect of Proposed Changes

The PCS amends s. 718.5011(2), F.S., to provide that an officer or full-time employee of the Ombudsman's office may engage in another business or profession, so long as it does not directly or indirectly relate to or conflict with his or her work in the Ombudsman's office.

Homeowners' Associations

This provision of the PCS applies only to homeowners' associations:

²² Chapter 2004-385, L.O.F.

²³ Section 718.5012, F.S.

²⁴ Section 718.5011(2), F.S.

Members' Right to Speak

Current Situation

In order to speak at a homeowners' association meeting, current law requires that a member and/or parcel owner first provide written notice to the association. The notice must be received prior to the meeting; if this written request is not received, a member may not speak at the meeting.²⁵

Effect of Proposed Changes

The PCS amends s. 720.306(6), F.S., to eliminate the requirement that homeowners' association members and/or parcel owners submit a written request to speak at the association meeting, prior to the meeting. Members and parcel owners may speak if present at the meeting.

Changes to Laws Related to Condominiums, Cooperatives, and Homeowners' Associations

This PCS makes uniform changes to certain aspects of the Condominium Act, the Cooperative Act, and the statute governing Homeowners' Associations.

Official Records

Current Situation

Current law requires condominium associations, cooperatives, and homeowners' associations to maintain the official records of the association within the state. These records are open to inspection by any association member or authorized representative at any time. The right to inspection includes the right to copies at the reasonable expense of the member.²⁶

Effect of Proposed Changes

The PCS amends ss. 718.111(12)(c), 719.104(2)(b), and 720.303(5), F.S., to provide a member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member.

Election and Recall Challenge Procedures

Current Situation

Current law allows any member of a condominium, cooperative, or homeowners' board to be recalled and removed from office by a majority of all the voting interests.²⁷ If a recall is approved by a majority of all voting interests at a meeting or by an agreement in writing, the board must notice and hold a board meeting within five business days; at that meeting, the board must determine whether to certify the recall.²⁸

If the board fails to notice and/or hold a board meeting within five business days, the recall will automatically be deemed effective.²⁹ Currently, there is no specified procedure regarding challenging the validity of the recall. Moreover, there are no time limitations regarding challenging an election process, generally.

²⁵ Section 720.306(6), F.S.

²⁶ See ss. 718.111(12)(c), 719.104(2)(b), and 720.303(5), F.S.

²⁷ See ss. 718.112(2)(j), 719.106(1)(f) and 720.303(10)(b)1., F.S.

²⁸ See ss. 718.112(2)(j)1., 719.106(1)(f)1., and 720.303(10)(b)5.c.2., F.S.

²⁹ See ss. 718.112(2)(j)4., 719.106(1)(f)4., and 720.303(10)(c)2.f., F.S.

Current law requires condominium board members to certify in writing to the secretary of the association within 90 days of election that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies. Alternatively, the new board member may complete a department-approved education curriculum.³⁰

For a condominium, a person who is delinquent in the payment of any fee, fine, or special or regular assessment is not eligible for board membership.³¹

Effect of Proposed Changes

The PCS creates ss. 718.112(2)(j)5., 719.106(1)(f)5., and 720.303(10)(g), F.S., which allow a unit or parcel owner representative to file a petition challenging the board's failure to act on a recall. The petition must be filed within 60 days after the expiration of the applicable five-business-day period. The review of the petition is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

Similarly, the PCS creates ss. 718.112(2)(j)7., 719.106(1)(f)7., and 720.303(10)(k), F.S., which allow a board member who has been recalled to file a petition challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified, and must name the condominium, cooperative, or homeowners' association and the unit owner representative as respondents. The PCS prohibits the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (Division) from accepting a recall petition, regardless of the reason for filing, if there is 60 or fewer days until the scheduled reelection of the board member sought to be recalled, or when 60 or fewer days have elapsed since the election of the board member that sought to be recalled.

The PCS also creates s. 718.112(2)(d)4.c., F.S., and amends ss. 719.106(1)(d)1. and 720.306(9)(a), F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced.

The PCS amends s. 719.106(1)(d)1., F.S., to require cooperative board members to certify in writing to the secretary of the association within 90 days of election that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies. Alternatively, the new board member may complete a department-approved education curriculum. This conforms the law respecting cooperatives to current condominium law in this regard.

Limitation on Use of Common Elements

Current Situation

Condominiums, cooperatives, and homeowners' associations own common elements and facilities. Under current law, these entities are able to take action against owners and/or residents that do not comply with the provisions of the declaration bylaws, or reasonable rules. Sanctions may include suspending, for a reasonable time, the right of a unit owner, tenant, or guest to use the common elements, common facilities, or any other association property.³²

³⁰ See s. 718.112(2)(d)4.b., F.S.

³¹ See ss. 718.112(2)(d)2., F.S.

³² See ss. 718.303(3), 719.303(3), and 720.305(2).

Effect of Proposed Changes

The PCS limits which common elements the association may restrict the unit owner, tenant, or guest from using. Specifically, the PCS 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;
- Parking spaces; and
- Elevators.

The PCS does not include the 'elevators' provision in regards to homeowners' associations, 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 from the parcel, including the right to park.

Conforming Laws Related to Condominiums, Cooperatives, and Homeowners' Associations

This PCS conforms certain aspects of the Condominium Act, the Cooperative Act, and/or the statute governing Homeowners' Associations.

Cooperative and Homeowners' Association Records

Current Situation

Pursuant to s. 719.104(2), F.S., the official records of a cooperative association must be open to inspection by any association member or authorized representative; however, certain records are not accessible to unit owners. Exempted information includes:

- Records that were prepared by an association attorney, records that reflect a mental impression, conclusion, litigation strategy or legal theory, or records that were prepared exclusively for imminent litigation or administrative proceedings;
- Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit; and
- Medical records of unit owners.³³

Effect of Proposed Changes

The PCS amends s. 719.104(2)(c), F.S., to clarify that records protected by attorney-client privilege, as provided in s. 90.502, F.S., and work-product privilege are exempt from disclosure. Further, the PCS includes several other records that may not be accessible to unit owners, including:

- Personnel records of association employees;
- Identifying information of a unit owner, other than the address provided to fulfill the association's notice requirements;
- Electronic security measures that are used by the association to safeguard data, such as passwords; and
- The software and operating system used by the association, as the data is part of the official records of the association.

The PCS also amends s. 720.303(5)(c)3., F.S., to exempt personnel records of management company employees from disclosure by members, in conformity with current condominium and proposed cooperative law.³⁴

These provisions substantially mirror the Condominium Act.

Amendment of Documents

Current Situation

Current law allows condominiums, cooperatives, and homeowners' associations, through the declaration of condominium, cooperative documents, and bylaws, to establish procedures for amending said documents.³⁵ Specifically, the Condominium Act provides that for any mortgage entered into after October 1, 2007, provisions in the declaration, articles of incorporation, or bylaws that require mortgagee consent in matters that do not affect the rights or interests of the mortgagee are rendered unenforceable.³⁶ The Act specifically delineates which matters mortgagee consent will still be required for and provides procedures for obtaining mortgagee consent for those matters.³⁷

Effect of Proposed Changes

The PCS creates ss. 719.1055(7), F.S., and 720.306(1)(d), F.S., to provide substantially the same provisions regarding mortgage approval for both cooperatives and homeowners' associations.

Board Meetings for the Purpose of Discussing Personnel Matters

Current Situation

Generally, association meetings are open to unit owners.³⁸ Pursuant to the Condominium Act, a condominium board may close meetings from the public when the board meets with the association's attorney to seek legal advice or when the board meeting is held for the purpose of discussing personnel matters.³⁹ Conversely, cooperatives are only able to close meetings from the public when it is meeting with the board's attorney.⁴⁰

Effect of Proposed Changes

The PCS amends s. 719.106(1)(c), F.S., to make cooperative law consistent with condominiums regarding a meeting held for the purpose of discussing personnel matters.

First Mortgagee Liability for Assessments

Current Situation

Under the Condominium Act, the first mortgagee, usually the previous owner's bank or lender, or its successors or assignees who acquire title to a unit by foreclosure/deed in lieu of foreclosure, may be liable to the association if the foreclosure is due to unpaid assessments.⁴¹ However, the liability is limited to the lesser of:

³⁴ See ss. 718.111(12)(c) and

³⁵ See ss. 718.110, 719.1055, and 720.306, F.S.

³⁶ Section 718.110(11), F.S.

³⁷ *Id.*

³⁸ See ss. 718.112(2)(c), 719.106(1)(c), and 720.306(6), F.S.

³⁹ Section 718.112(1)(c)3., F.S.

⁴⁰ Section 719.106(1)(c), F.S.

⁴¹ See s. 718.116(1)(b), F.S.

- Unpaid assessments that accrued within the previous twelve months; or
- One percent of the original mortgage debt.⁴²

This liability only attaches if the lender is joined with the association as a defendant in the foreclosure action.⁴³

Effect of Proposed Changes

The PCS creates ss. 719.108(3) and (4), F.S., to make cooperatives consistent with condominiums regarding lender liability after foreclosure..

Other

This PCS contains numerous technical and clarifying changes throughout.

B. SECTION DIRECTORY:

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

Section 2 amends s. 718.111, F.S., relating to official records.

Section 3 amends s. 718.112, F.S., relating to bylaws.

Section 4 amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters; display of religious decorations.

Section 5 amends s. 718.115, F.S., relating to common expenses and common surplus.

Section 6 amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 7 amends s. 718.403, F.S., relating to phase condominiums.

Section 8 creates s. 718.406, F.S., relating to condominiums created within condominium parcels.

Section 9 amends s. 718.5011, F.S., relating to ombudsman; appointment; administration.

Section 10 amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 11 amends s. 719.1055, F.S., relating to amendment of cooperative documents; alteration and acquisition of property.

Section 12 amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

Section 13 amends s. 719.303, F.S., relating to obligations of owners.

Section 14 amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 15 amends s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

⁴² *Id.*

⁴³ *Id.*

Section 16 amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 17 provides an effective date of July 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:

Section 1 of this PCS, 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:

None.

B. RULE-MAKING AUTHORITY:

The PCS 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 residential properties; amending s.
 3 399.02, F.S.; exempting certain elevators from
 4 specific code update requirements; amending s.
 5 718.111, F.S.; revising the requirement for physical
 6 documents to be provided to an association member;
 7 increasing the minimum total annual revenues required
 8 for different categories of financial statements;
 9 amending s. 718.112, F.S.; revising provisions
 10 relating to the terms of condominium board of
 11 administration members; revising condominium unit
 12 owner meeting notice requirements; providing for
 13 nonapplicability to associations governing timeshare
 14 condominiums of certain provisions relating to
 15 elections of board members; revising recordkeeping
 16 requirements of a condominium association board;
 17 requiring commencement of challenges to an election
 18 within a specified period; providing requirements for
 19 challenging the failure of a board to duly notice and
 20 hold the required board meeting or to file the
 21 required petition for a recall; providing requirements
 22 for recalled board members to challenge the recall;
 23 prohibiting the Divisions of Florida Condominiums,
 24 Timeshares, and Mobile Homes of the Department of
 25 Business and Professional Regulation from accepting
 26 recall petitions for filing under certain
 27 circumstances; amending s. 718.113, F.S.; providing
 28 requirements for a condominium association board

29 relating to the installation of hurricane shutters,
 30 impact glass, code-compliant windows or doors, and
 31 other types of code-compliant hurricane protection
 32 under certain circumstances; amending s. 718.115,
 33 F.S.; conforming provisions to changes made by the
 34 act; amending s. 718.303, F.S.; revising provisions
 35 relating to imposing remedies against a noncompliant
 36 or delinquent condominium unit owner or member;
 37 amending s. 718.403, F.S.; providing requirements for
 38 the completion of phase condominiums; creating s.
 39 718.406, F.S.; providing definitions; providing
 40 requirements for condominiums created within
 41 condominium parcels; providing for the establishment
 42 of primary condominium and secondary condominium
 43 units; providing requirements for association
 44 declarations; authorizing a primary condominium
 45 association to provide insurance and adopt hurricane
 46 shutter or hurricane protection specifications under
 47 certain conditions; providing requirements relating to
 48 assessments; providing for resolution of conflicts
 49 between primary condominium declarations and secondary
 50 condominium declarations; providing requirements
 51 relating to common expenses due the primary
 52 condominium association; amending s. 718.5011, F.S.;
 53 revising the restriction on officers and full-time
 54 employees of the ombudsman from engaging in other
 55 businesses or profession; amending s. 719.104, F.S.;
 56 revising the requirement for physical documents to be

57 provided to an association member; specifying
 58 additional records that are not accessible to unit
 59 owners; amending s. 719.1055, F.S.; revising
 60 provisions relating to the amendment of cooperative
 61 documents; providing legislative findings and a
 62 finding of compelling state interest; providing
 63 criteria for a consent or joinder to an amendment;
 64 requiring notice regarding proposed amendments to
 65 mortgagees; providing criteria for notification;
 66 providing for voiding certain amendments; amending s.
 67 719.106, F.S.; revising applicability of certain board
 68 of administration meeting requirements; requiring
 69 commencement of challenges to an election within a
 70 specified period; providing requirements for
 71 challenging the failure of a board to duly notice and
 72 hold the required board meeting or to file the
 73 required petition for a recall; providing requirements
 74 for recalled board members to challenge the recall;
 75 prohibiting the division from accepting recall
 76 petitions for filing under certain circumstances;
 77 providing education requirements for board members;
 78 amending s. 719.303, F.S.; revising provisions
 79 relating to imposing remedies against a noncompliant
 80 or delinquent cooperative unit owner or member;
 81 amending s. 720.303, F.S.; revising the requirement
 82 for physical documents to be provided to an
 83 association member; increasing the minimum total
 84 annual revenues required for different categories of

85 financial statements; revising the types of records
 86 that are not accessible to homeowners' association
 87 members and parcel owners; providing requirements for
 88 challenging the failure of a board to duly notice and
 89 hold the required board meeting or to file the
 90 required petition for a recall; providing requirements
 91 for recalled board members to challenge the recall;
 92 prohibiting the division from accepting recall
 93 petitions for filing under certain circumstances;
 94 amending s. 720.305, F.S.; revising provisions
 95 relating to imposing remedies against a noncompliant
 96 or delinquent homeowners' association member and
 97 parcel owner; amending s. 720.306, F.S.; revising
 98 provisions relating to the amendment of homeowners'
 99 association declarations; providing legislative
 100 findings and a finding of compelling state interest;
 101 providing criteria for consent or joinder to an
 102 amendment; requiring notice to mortgages regarding
 103 proposed amendments; providing criteria for
 104 notification; providing for voiding certain
 105 amendments; revising provisions relating to right to
 106 speak at a homeowners' association meeting; requiring
 107 commencement of challenges to an election within a
 108 specified period; providing an effective date.

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

111
 112 Section 1. Subsection (9) of section 399.02, Florida

113 Statutes, is amended to read:

114 399.02 General requirements.—

115 (9) Updates to the Safety Code for Existing Elevators and
 116 Escalators, ASME A17.1 and A17.3, which require Phase II
 117 Firefighters' Service on elevators may not be enforced ~~until~~
 118 ~~July 1, 2015, or~~ until the elevator is replaced or requires
 119 major modification, ~~whichever occurs first,~~ on elevators in
 120 condominiums or multifamily residential buildings, including
 121 those that are part of a continuing care facility licensed under
 122 chapter 651, or similar retirement community with apartments,
 123 having a certificate of occupancy by the local building
 124 authority that was issued before July 1, 2008. This exception
 125 does not prevent an elevator owner from requesting a variance
 126 from the applicable codes ~~before or after July 1, 2015.~~ This
 127 subsection does not prohibit the division from granting
 128 variances pursuant to s. 120.542 and subsection (8). The
 129 division shall adopt rules to administer this subsection.

130 Section 2. Paragraph (c) of subsection (12) and paragraphs
 131 (a) and (b) of subsection (13) of section 718.111, Florida
 132 Statutes, is amended to read:

133 718.111 The association.—

134 (12) OFFICIAL RECORDS.—

135 (c) The official records of the association are open to
 136 inspection by any association member or the authorized
 137 representative of such member at all reasonable times. The right
 138 to inspect the records includes the right to make or obtain
 139 copies, at the reasonable expense, if any, of the member. The
 140 association may adopt reasonable rules regarding the frequency,

141 time, location, notice, and manner of record inspections and
 142 copying. The failure of an association to provide the records
 143 within 10 working days after receipt of a written request
 144 creates a rebuttable presumption that the association willfully
 145 failed to comply with this paragraph. A unit owner who is denied
 146 access to official records is entitled to the actual damages or
 147 minimum damages for the association's willful failure to comply.
 148 Minimum damages are \$50 per calendar day for up to 10 days,
 149 beginning on the 11th working day after receipt of the written
 150 request. The failure to permit inspection entitles any person
 151 prevailing in an enforcement action to recover reasonable
 152 attorney's fees from the person in control of the records who,
 153 directly or indirectly, knowingly denied access to the records.
 154 Any person who knowingly or intentionally defaces or destroys
 155 accounting records that are required by this chapter to be
 156 maintained during the period for which such records are required
 157 to be maintained, or who knowingly or intentionally fails to
 158 create or maintain accounting records that are required to be
 159 created or maintained, with the intent of causing harm to the
 160 association or one or more of its members, is personally subject
 161 to a civil penalty pursuant to s. 718.501(1)(d). The association
 162 shall maintain an adequate number of copies of the declaration,
 163 articles of incorporation, bylaws, and rules, and all amendments
 164 to each of the foregoing, as well as the question and answer
 165 sheet as described in s. 718.504 and year-end financial
 166 information required under this section, on the condominium
 167 property to ensure their availability to unit owners and
 168 prospective purchasers, and may charge its actual costs for

169 preparing and furnishing these documents to those requesting the
 170 documents. Any association member or the authorized
 171 representative of such member may utilize smartphones, tablets,
 172 portable scanners, or other technology capable of scanning or
 173 taking pictures in lieu of the association providing copies to
 174 the association member or the authorized representative of such
 175 member. In no event should the association be able to charge a
 176 member or the member's authorized representative for the use of
 177 his or her portable devices. Notwithstanding this paragraph, the
 178 following records are not accessible to unit owners:

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

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

192 3. Personnel records of association or management company
 193 employees, including, but not limited to, disciplinary, payroll,
 194 health, and insurance records. For purposes of this
 195 subparagraph, the term "personnel records" does not include
 196 written employment agreements with an association employee or

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

199 4. Medical records of unit owners.

200 5. Social security numbers, driver's license numbers,
 201 credit card numbers, e-mail addresses, telephone numbers,
 202 facsimile numbers, emergency contact information, addresses of a
 203 unit owner other than as provided to fulfill the association's
 204 notice requirements, and other personal identifying information
 205 of any person, excluding the person's name, unit designation,
 206 mailing address, property address, and any address, e-mail
 207 address, or facsimile number provided to the association to
 208 fulfill the association's notice requirements. However, an owner
 209 may consent in writing to the disclosure of protected
 210 information described in this subparagraph. The association is
 211 not liable for the inadvertent disclosure of information that is
 212 protected under this subparagraph if the information is included
 213 in an official record of the association and is voluntarily
 214 provided by an owner and not requested by the association.

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

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

221 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 222 the fiscal year, or annually on a date provided in the bylaws,
 223 the association shall prepare and complete, or contract for the
 224 preparation and completion of, a financial report for the

225 preceding fiscal year. Within 21 days after the final financial
 226 report is completed by the association or received from the
 227 third party, but not later than 120 days after the end of the
 228 fiscal year or other date as provided in the bylaws, the
 229 association shall mail to each unit owner at the address last
 230 furnished to the association by the unit owner, or hand deliver
 231 to each unit owner, a copy of the financial report or a notice
 232 that a copy of the financial report will be mailed or hand
 233 delivered to the unit owner, without charge, upon receipt of a
 234 written request from the unit owner. The division shall adopt
 235 rules setting forth uniform accounting principles and standards
 236 to be used by all associations and addressing the financial
 237 reporting requirements for multicondominium associations. The
 238 rules must include, but not be limited to, standards for
 239 presenting a summary of association reserves, including a good
 240 faith estimate disclosing the annual amount of reserve funds
 241 that would be necessary for the association to fully fund
 242 reserves for each reserve item based on the straight-line
 243 accounting method. This disclosure is not applicable to reserves
 244 funded via the pooling method. In adopting such rules, the
 245 division shall consider the number of members and annual
 246 revenues of an association. Financial reports shall be prepared
 247 as follows:

248 (a) An association that meets the criteria of this
 249 paragraph shall prepare a complete set of financial statements
 250 in accordance with generally accepted accounting principles. The
 251 financial statements must be based upon the association's total
 252 annual revenues, as follows:

253 1. An association with total annual revenues of \$200,000
 254 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
 255 compiled financial statements.

256 2. An association with total annual revenues of at least
 257 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall
 258 prepare reviewed financial statements.

259 3. An association with total annual revenues of \$500,000
 260 ~~\$400,000~~ or more shall prepare audited financial statements.

261 (b)1. An association with total annual revenues of less
 262 than \$200,000 ~~\$100,000~~ shall prepare a report of cash receipts
 263 and expenditures.

264 2. An association that operates fewer than 75 units,
 265 regardless of the association's annual revenues, shall prepare a
 266 report of cash receipts and expenditures in lieu of financial
 267 statements required by paragraph (a).

268 3. A report of cash receipts and disbursements must
 269 disclose the amount of receipts by accounts and receipt
 270 classifications and the amount of expenses by accounts and
 271 expense classifications, including, but not limited to, the
 272 following, as applicable: costs for security, professional and
 273 management fees and expenses, taxes, costs for recreation
 274 facilities, expenses for refuse collection and utility services,
 275 expenses for lawn care, costs for building maintenance and
 276 repair, insurance costs, administration and salary expenses, and
 277 reserves accumulated and expended for capital expenditures,
 278 deferred maintenance, and any other category for which the
 279 association maintains reserves.

280 (c) An association may prepare, without a meeting of or

281 approval by the unit owners:

282 1. Compiled, reviewed, or audited financial statements, if
 283 the association is required to prepare a report of cash receipts
 284 and expenditures;

285 2. Reviewed or audited financial statements, if the
 286 association is required to prepare compiled financial
 287 statements; or

288 3. Audited financial statements if the association is
 289 required to prepare reviewed financial statements.

290 (d) If approved by a majority of the voting interests
 291 present at a properly called meeting of the association, an
 292 association may prepare:

293 1. A report of cash receipts and expenditures in lieu of a
 294 compiled, reviewed, or audited financial statement;

295 2. A report of cash receipts and expenditures or a
 296 compiled financial statement in lieu of a reviewed or audited
 297 financial statement; or

298 3. A report of cash receipts and expenditures, a compiled
 299 financial statement, or a reviewed financial statement in lieu
 300 of an audited financial statement.

301
 302 Such meeting and approval must occur before the end of the
 303 fiscal year and is effective only for the fiscal year in which
 304 the vote is taken, except that the approval may also be
 305 effective for the following fiscal year. With respect to an
 306 association to which the developer has not turned over control
 307 of the association, all unit owners, including the developer,
 308 may vote on issues related to the preparation of financial

309 reports for the first 2 fiscal years of the association's
 310 operation, beginning with the fiscal year in which the
 311 declaration is recorded. Thereafter, all unit owners except the
 312 developer may vote on such issues until control is turned over
 313 to the association by the developer. Any audit or review
 314 prepared under this section shall be paid for by the developer
 315 if done before turnover of control of the association. An
 316 association may not waive the financial reporting requirements
 317 of this section for more than 3 consecutive years.

318 Section 3. Paragraphs (d) and (j) of subsection (2) of
 319 section 718.112, Florida Statutes, are amended to read:

320 718.112 Bylaws.—

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

324 (d) Unit owner meetings.—

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

331 2. Unless the bylaws provide otherwise, a vacancy on the
 332 board caused by the expiration of a director's term shall be
 333 filled by electing a new board member, and the election must be
 334 by secret ballot. An election is not required if the number of
 335 vacancies equals or exceeds the number of candidates. For
 336 purposes of this paragraph, the term "candidate" means an

337 eligible person who has timely submitted the written notice, as
 338 described in sub-subparagraph 4.a., of his or her intention to
 339 become a candidate. Except in a timeshare condominium, or if the
 340 staggered term of a board member does not expire until a later
 341 annual meeting, or if all members' terms would otherwise expire
 342 but there are no candidates, the terms of all board members
 343 expire at the annual meeting, and such members may stand for
 344 reelection unless prohibited by the bylaws. If the bylaws or
 345 articles of incorporation permit ~~staggered~~ terms of no more than
 346 2 years ~~and upon approval of a majority of the total voting~~
 347 ~~interests~~, the association board members may serve 2-year
 348 ~~staggered~~ terms. If the number of board members whose terms
 349 expire at the annual meeting equals or exceeds the number of
 350 candidates, the candidates become members of the board effective
 351 upon the adjournment of the annual meeting. Unless the bylaws
 352 provide otherwise, any remaining vacancies shall be filled by
 353 the affirmative vote of the majority of the directors making up
 354 the newly constituted board even if the directors constitute
 355 less than a quorum or there is only one director. In a
 356 condominium association of more than 10 units or in a
 357 condominium association that does not include timeshare units or
 358 timeshare interests, coowners of a unit may not serve as members
 359 of the board of directors at the same time unless they own more
 360 than one unit or unless there are not enough eligible candidates
 361 to fill the vacancies on the board at the time of the vacancy.
 362 Any unit owner desiring to be a candidate for board membership
 363 must comply with sub-subparagraph 4.a. and must be eligible to
 364 be a candidate to serve on the board of directors at the time of

365 the deadline for submitting a notice of intent to run in order
 366 to have his or her name listed as a proper candidate on the
 367 ballot or to serve on the board. A person who has been suspended
 368 or removed by the division under this chapter, or who is
 369 delinquent in the payment of any monetary obligation due to the
 370 association fee, fine, or special or regular assessment as
 371 provided in paragraph (n), is not eligible to be a candidate for
 372 board membership and shall not be listed on the election ballot.
 373 A person who has been convicted of any felony in this state or
 374 in a United States District or Territorial Court, or who has
 375 been convicted of any offense in another jurisdiction which
 376 would be considered a felony if committed in this state, is not
 377 eligible for board membership unless such felon's civil rights
 378 have been restored for at least 5 years as of the date such
 379 person seeks election to the board. The validity of an action by
 380 the board is not affected if it is later determined that a board
 381 member is ineligible for board membership due to having been
 382 convicted of a felony.

383 3. The bylaws must provide the method of calling meetings
 384 of unit owners, including annual meetings. Written notice must
 385 include an agenda, must be mailed, hand delivered, or
 386 electronically transmitted to each unit owner at least 14 days
 387 before the annual meeting, and must be posted in a conspicuous
 388 place on the condominium property at least 14 continuous days
 389 before the annual meeting. Upon notice to the unit owners, the
 390 board shall, by duly adopted rule, designate a specific location
 391 on the condominium property or association property where all
 392 notices of unit owner meetings shall be posted. This requirement

393 does not apply if there is no condominium property or
 394 association property for posting notices. In lieu of, or in
 395 addition to, the physical posting of meeting notices, the
 396 association may, by reasonable rule, adopt a procedure for
 397 conspicuously posting and repeatedly broadcasting the notice and
 398 the agenda on a closed-circuit cable television system serving
 399 the condominium association. However, if broadcast notice is
 400 used in lieu of a notice posted physically on the condominium
 401 property, the notice and agenda must be broadcast at least four
 402 times every broadcast hour of each day that a posted notice is
 403 otherwise required under this section. If broadcast notice is
 404 provided, the notice and agenda must be broadcast in a manner
 405 and for a sufficient continuous length of time so as to allow an
 406 average reader to observe the notice and read and comprehend the
 407 entire content of the notice and the agenda. Unless a unit owner
 408 waives in writing the right to receive notice of the annual
 409 meeting, such notice must be hand delivered, mailed, or
 410 electronically transmitted to each unit owner. Notice for
 411 meetings and notice for all other purposes must be mailed to
 412 each unit owner at the address last furnished to the association
 413 by the unit owner, or hand delivered to each unit owner.
 414 However, if a unit is owned by more than one person, the
 415 association must provide notice to the address that the
 416 developer identifies for that purpose and thereafter as one or
 417 more of the owners of the unit advise the association in
 418 writing, or if no address is given or the owners of the unit do
 419 not agree, to the address provided on the deed of record. An
 420 officer of the association, or the manager or other person

421 providing notice of the association meeting, must provide an
 422 affidavit or United States Postal Service certificate of
 423 mailing, to be included in the official records of the
 424 association affirming that the notice was mailed or hand
 425 delivered in accordance with this provision.

426 4. The members of the board shall be elected by written
 427 ballot or voting machine. Proxies may not be used in electing
 428 the board in general elections or elections to fill vacancies
 429 caused by recall, resignation, or otherwise, unless otherwise
 430 provided in this chapter. This subparagraph does not apply to an
 431 association governing a timeshare condominium.

432 a. At least 60 days before a scheduled election, the
 433 association shall mail, deliver, or electronically transmit, by
 434 separate association mailing or included in another association
 435 mailing, delivery, or transmission, including regularly
 436 published newsletters, to each unit owner entitled to a vote, a
 437 first notice of the date of the election. Any unit owner or
 438 other eligible person desiring to be a candidate for the board
 439 must give written notice of his or her intent to be a candidate
 440 to the association at least 40 days before a scheduled election.
 441 Together with the written notice and agenda as set forth in
 442 subparagraph 3., the association shall mail, deliver, or
 443 electronically transmit a second notice of the election to all
 444 unit owners entitled to vote, together with a ballot that lists
 445 all candidates. Upon request of a candidate, an information
 446 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 447 furnished by the candidate at least 35 days before the election,
 448 must be included with the mailing, delivery, or transmission of

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449 the ballot, with the costs of mailing, delivery, or electronic
450 transmission and copying to be borne by the association. The
451 association is not liable for the contents of the information
452 sheets prepared by the candidates. In order to reduce costs, the
453 association may print or duplicate the information sheets on
454 both sides of the paper. The division shall by rule establish
455 voting procedures consistent with this sub-subparagraph,
456 including rules establishing procedures for giving notice by
457 electronic transmission and rules providing for the secrecy of
458 ballots. Elections shall be decided by a plurality of ballots
459 cast. There is no quorum requirement; however, at least 20
460 percent of the eligible voters must cast a ballot in order to
461 have a valid election. A unit owner may not permit any other
462 person to vote his or her ballot, and any ballots improperly
463 cast are invalid. A unit owner who violates this provision may
464 be fined by the association in accordance with s. 718.303. A
465 unit owner who needs assistance in casting the ballot for the
466 reasons stated in s. 101.051 may obtain such assistance. The
467 regular election must occur on the date of the annual meeting.
468 Notwithstanding this sub-subparagraph, an election is not
469 required unless more candidates file notices of intent to run or
470 are nominated than board vacancies exist.

471 b. Within 90 days after being elected or appointed to the
472 board, each newly elected or appointed director shall certify in
473 writing to the secretary of the association that he or she has
474 read the association's declaration of condominium, articles of
475 incorporation, bylaws, and current written policies; that he or
476 she will work to uphold such documents and policies to the best

477 of his or her ability; and that he or she will faithfully
 478 discharge his or her fiduciary responsibility to the
 479 association's members. In lieu of this written certification,
 480 within 90 days after being elected or appointed to the board,
 481 the newly elected or appointed director may submit a certificate
 482 of having satisfactorily completed the educational curriculum
 483 administered by a division-approved condominium education
 484 provider within 1 year before or 90 days after the date of
 485 election or appointment. The written certification or
 486 educational certificate is valid and does not have to be
 487 resubmitted as long as the director serves on the board without
 488 interruption. A director who fails to timely file the written
 489 certification or educational certificate is suspended from
 490 service on the board until he or she complies with this sub-
 491 subparagraph. The board may temporarily fill the vacancy during
 492 the period of suspension. The secretary shall cause the
 493 association to retain a director's written certification or
 494 educational certificate for inspection by the members for 5
 495 years after a director's election or the duration of the
 496 director's uninterrupted tenure, whichever is longer. Failure to
 497 have such written certification or educational certificate on
 498 file does not affect the validity of any board action.

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

501 5. Any approval by unit owners called for by this chapter
 502 or the applicable declaration or bylaws, including, but not
 503 limited to, the approval requirement in s. 718.111(8), must be
 504 made at a duly noticed meeting of unit owners and is subject to

505 all requirements of this chapter or the applicable condominium
 506 documents relating to unit owner decisionmaking, except that
 507 unit owners may take action by written agreement, without
 508 meetings, on matters for which action by written agreement
 509 without meetings is expressly allowed by the applicable bylaws
 510 or declaration or any law that provides for such action.

511 6. Unit owners may waive notice of specific meetings if
 512 allowed by the applicable bylaws or declaration or any law. If
 513 authorized by the bylaws, notice of meetings of the board of
 514 administration, unit owner meetings, except unit owner meetings
 515 called to recall board members under paragraph (j), and
 516 committee meetings may be given by electronic transmission to
 517 unit owners who consent to receive notice by electronic
 518 transmission.

519 7. Unit owners have the right to participate in meetings
 520 of unit owners with reference to all designated agenda items.
 521 However, the association may adopt reasonable rules governing
 522 the frequency, duration, and manner of unit owner participation.

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

526 9. Unless otherwise provided in the bylaws, any vacancy
 527 occurring on the board before the expiration of a term may be
 528 filled by the affirmative vote of the majority of the remaining
 529 directors, even if the remaining directors constitute less than
 530 a quorum, or by the sole remaining director. In the alternative,
 531 a board may hold an election to fill the vacancy, in which case
 532 the election procedures must conform to sub-subparagraph 4.a.

533 unless the association governs 10 units or fewer and has opted
 534 out of the statutory election process, in which case the bylaws
 535 of the association control. Unless otherwise provided in the
 536 bylaws, a board member appointed or elected under this section
 537 shall fill the vacancy for the unexpired term of the seat being
 538 filled. Filling vacancies created by recall is governed by
 539 paragraph (j) and rules adopted by the division.

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

545
 546 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 547 association of 10 or fewer units may, by affirmative vote of a
 548 majority of the total voting interests, provide for different
 549 voting and election procedures in its bylaws, which may be by a
 550 proxy specifically delineating the different voting and election
 551 procedures. The different voting and election procedures may
 552 provide for elections to be conducted by limited or general
 553 proxy.

554 (j) Recall of board members.—Subject to ~~the provisions of~~
 555 s. 718.301, any member of the board of administration may be
 556 recalled and removed from office with or without cause by the
 557 vote or agreement in writing by a majority of all the voting
 558 interests. A special meeting of the unit owners to recall a
 559 member or members of the board of administration may be called
 560 by 10 percent of the voting interests giving notice of the

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

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

576 2. If the proposed recall is by an agreement in writing by
 577 a majority of all voting interests, the agreement in writing or
 578 a copy thereof shall be served on the association by certified
 579 mail or by personal service in the manner authorized by chapter
 580 48 and the Florida Rules of Civil Procedure. The board of
 581 administration shall duly notice and hold a meeting of the board
 582 within 5 full business days after receipt of the agreement in
 583 writing. At the meeting, the board shall either certify the
 584 written agreement to recall a member or members of the board, in
 585 which case such member or members shall be recalled effective
 586 immediately and shall turn over to the board within 5 full
 587 business days any and all records and property of the
 588 association in their possession, or proceed as described in

589 | subparagraph 3.

590 | 3. If the board determines not to certify the written
 591 | agreement to recall a member or members of the board, or does
 592 | not certify the recall by a vote at a meeting, the board shall,
 593 | within 5 full business days after the meeting, file with the
 594 | division a petition for arbitration pursuant to the procedures
 595 | in s. 718.1255. For the purposes of this section, the unit
 596 | owners who voted at the meeting or who executed the agreement in
 597 | writing shall constitute one party under the petition for
 598 | arbitration. If the arbitrator certifies the recall as to any
 599 | member or members of the board, the recall will be effective
 600 | upon mailing of the final order of arbitration to the
 601 | association. If the association fails to comply with the order
 602 | of the arbitrator, the division may take action pursuant to s.
 603 | 718.501. Any member or members so recalled shall deliver to the
 604 | board any and all records of the association in their possession
 605 | within 5 full business days after ~~of~~ the effective date of the
 606 | recall.

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

614 | 5. If the board fails to duly notice and hold the required
 615 | meeting or fails to file the required petition, the unit owner
 616 | representative may file a petition pursuant to s. 718.1255

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

623 6.5- If a vacancy occurs on the board as a result of a
 624 recall or removal and less than a majority of the board members
 625 are removed, the vacancy may be filled by the affirmative vote
 626 of a majority of the remaining directors, notwithstanding any
 627 provision to the contrary contained in this subsection. If
 628 vacancies occur on the board as a result of a recall and a
 629 majority or more of the board members are removed, the vacancies
 630 shall be filled in accordance with procedural rules to be
 631 adopted by the division, which rules need not be consistent with
 632 this subsection. The rules must provide procedures governing the
 633 conduct of the recall election as well as the operation of the
 634 association during the period after a recall but before ~~prior to~~
 635 the recall election.

636 7. A board member who has been recalled may file a
 637 petition pursuant to s. 718.1255 challenging the validity of the
 638 recall. The petition must be filed within 60 days after the
 639 recall is deemed certified. The association and the unit owner
 640 representative shall be named as the respondents.

641 8. The division may not accept for filing a recall
 642 petition, whether filed pursuant to subparagraph 1.,
 643 subparagraph 2., subparagraph 5., or subparagraph 7. and
 644 regardless of whether the recall was certified, when there are

645 60 or fewer days until the scheduled reelection of the board
 646 member sought to be recalled or when 60 or fewer days have
 647 elapsed since the election of the board member sought to be
 648 recalled.

649 Section 4. Subsection (5) of section 718.113, Florida
 650 Statutes, is amended to read:

651 718.113 Maintenance; limitation upon improvement; display
 652 of flag; hurricane shutters and protection; display of religious
 653 decorations.-

654 (5) Each board of administration shall adopt hurricane
 655 shutter specifications for each building within each condominium
 656 operated by the association which shall include color, style,
 657 and other factors deemed relevant by the board. All
 658 specifications adopted by the board must comply with the
 659 applicable building code.

660 (a) The board may, subject to ~~the provisions of s.~~
 661 718.3026~~7~~, and the approval of a majority of voting interests of
 662 the condominium, install hurricane shutters, impact glass, ~~or~~
 663 ~~either~~ code-compliant windows or doors, or other types of code-
 664 compliant hurricane protection that comply ~~complies~~ with or
 665 exceed ~~exceeds~~ the applicable building code. However, a vote of
 666 the owners is not required if the maintenance, repair, and
 667 replacement of hurricane shutters, impact glass, ~~or other~~ code-
 668 compliant windows or doors, or other types of code-compliant
 669 hurricane protection are the responsibility of the association
 670 pursuant to the declaration of condominium. If hurricane
 671 protection or laminated glass or window film architecturally
 672 designed to function as hurricane protection that ~~which~~ complies

673 with or exceeds the current applicable building code has been
 674 previously installed, the board may not install hurricane
 675 shutters, ~~hurricane protection, or impact glass, or other code-~~
 676 compliant windows or doors, or other types of code-compliant
 677 hurricane protection except upon approval by a majority vote of
 678 the voting interests.

679 (b) The association is responsible for the maintenance,
 680 repair, and replacement of the hurricane shutters, impact glass,
 681 code-compliant windows or doors, or other types of code-
 682 compliant hurricane protection authorized by this subsection if
 683 such property ~~hurricane shutters or other hurricane protection~~
 684 is the responsibility of the association pursuant to the
 685 declaration of condominium. If the hurricane shutters, impact
 686 glass, code-compliant windows or doors, or other types of code-
 687 compliant hurricane protection ~~authorized by this subsection~~ are
 688 the responsibility of the unit owners pursuant to the
 689 declaration of condominium, the maintenance, repair, and
 690 replacement of such items are the responsibility of the unit
 691 owner.

692 (c) The board may operate shutters, impact glass, code-
 693 compliant windows or doors, or other types of code-compliant
 694 hurricane protection installed pursuant to this subsection
 695 without permission of the unit owners only if such operation is
 696 necessary to preserve and protect the condominium property and
 697 association property. The installation, replacement, operation,
 698 repair, and maintenance of such shutters, impact glass, code-
 699 compliant windows or doors, or other types of code-complaint
 700 hurricane protection in accordance with the procedures set forth

701 in this paragraph are not a material alteration to the common
 702 elements or association property within the meaning of this
 703 section.

704 (d) Notwithstanding any other provision in the condominium
 705 documents, if approval is required by the documents, a board may
 706 not refuse to approve the installation or replacement of
 707 hurricane shutters, impact glass, code-compliant windows or
 708 doors, or other types of code-compliant hurricane protection by
 709 a unit owner conforming to the specifications adopted by the
 710 board.

711 Section 5. Paragraph (e) of subsection (1) of section
 712 718.115, Florida Statutes, is amended to read:

713 718.115 Common expenses and common surplus.—

714 (1)

715 (e) The expense of installation, replacement, operation,
 716 repair, and maintenance of hurricane shutters, impact glass,
 717 code-compliant windows or doors, or other types of code-
 718 compliant hurricane protection by the board pursuant to s.
 719 718.113(5) constitutes ~~shall constitute~~ a common expense as
 720 ~~defined herein~~ and shall be collected as provided in this
 721 section if the association is responsible for the maintenance,
 722 repair, and replacement of the hurricane shutters, impact glass,
 723 code-compliant windows or doors, or other types of code-
 724 compliant hurricane protection pursuant to the declaration of
 725 condominium. However, if the maintenance, repair, and
 726 replacement of the hurricane shutters, impact glass, code-
 727 compliant windows or doors, or other types of code-compliant
 728 hurricane protection are ~~is~~ the responsibility of the unit

729 owners pursuant to the declaration of condominium, the cost of
 730 the installation of the hurricane shutters, impact glass, code-
 731 compliant windows or doors, or other types of code-compliant
 732 hurricane protection ~~is~~ shall not be a common expense ~~and, but~~
 733 shall be charged individually to the unit owners based on the
 734 cost of installation of the hurricane shutters, impact glass,
 735 code-compliant windows or doors, or other types of code-
 736 compliant hurricane protection appurtenant to the unit.
 737 Notwithstanding ~~the provisions of~~ s. 718.116(9), and regardless
 738 of whether or not the declaration requires the association or
 739 unit owners to maintain, repair, or replace hurricane shutters,
 740 impact glass, code-compliant windows or doors, or other types of
 741 code-compliant hurricane protection, a unit owner who has
 742 previously installed hurricane shutters in accordance with s.
 743 718.113(5) that comply with the current applicable building code
 744 shall receive a credit when the shutters are installed; a unit
 745 owner who has previously installed impact glass or code-
 746 compliant windows or doors that comply with the current
 747 applicable building code shall receive a credit when the impact
 748 glass or code-compliant windows or doors are installed; and a
 749 unit owner who has installed, other types of code-compliant
 750 hurricane protection that comply with the current applicable
 751 building code shall receive a credit when the same type of other
 752 code-compliant hurricane protection is installed, and the or
 753 ~~laminated glass architecturally designed to function as~~
 754 ~~hurricane protection, which hurricane shutters or other~~
 755 ~~hurricane protection or laminated glass comply with the current~~
 756 ~~applicable building code, shall receive a credit shall be equal~~

757 to the pro rata portion of the assessed installation cost
 758 assigned to each unit. However, such unit owner remains ~~shall~~
 759 ~~remain~~ responsible for the pro rata share of expenses for
 760 hurricane shutters, impact glass, code-compliant windows or
 761 doors, or other types of code-compliant hurricane protection
 762 installed on common elements and association property by the
 763 board pursuant to s. 718.113(5), and remains ~~shall remain~~
 764 responsible for a pro rata share of the expense of the
 765 replacement, operation, repair, and maintenance of such
 766 shutters, impact glass, code-compliant windows or doors, or
 767 other types of code-complaint hurricane protection.

768 Section 6. Paragraph (a) of subsection (3) of section
 769 718.303, Florida Statutes, is amended to read:

770 718.303 Obligations of owners and occupants; remedies.-

771 (3) The association may levy reasonable fines for the
 772 failure of the owner of the unit or its occupant, licensee, or
 773 invitee to comply with any provision of the declaration, the
 774 association bylaws, or reasonable rules of the association. A
 775 fine may not become a lien against a unit. A fine may be levied
 776 on the basis of each day of a continuing violation, with a
 777 single notice and opportunity for hearing. However, the fine may
 778 not exceed \$100 per violation, or \$1,000 in the aggregate.

779 (a) An association may suspend, for a reasonable period of
 780 time, the right of a unit owner, or a unit owner's tenant,
 781 guest, or invitee, to use the common elements, common
 782 facilities, or any other association property for failure to
 783 comply with any provision of the declaration, the association
 784 bylaws, or reasonable rules of the association. This paragraph

785 does not apply to limited common elements intended to be used
 786 only by that unit, common elements needed to access the unit,
 787 utility services provided to the unit, parking spaces, or
 788 elevators.

789 Section 7. Subsection (1) of section 718.403, Florida
 790 Statutes, is amended to read:

791 718.403 Phase condominiums.—

792 (1) Notwithstanding ~~the provisions of s. 718.110, a~~
 793 developer may develop a condominium in phases, if the original
 794 declaration of condominium submitting the initial phase to
 795 condominium ownership or an amendment to the declaration which
 796 has been approved by all of the unit owners and unit mortgagees
 797 provides for and describes in detail all anticipated phases; the
 798 impact, if any, which the completion of subsequent phases would
 799 have upon the initial phase; and the time period ~~(which may not~~
 800 ~~exceed 7 years from the date of recording the declaration of~~
 801 ~~condominium)~~ within which all phases must be added to the
 802 condominium and comply with the requirements of this section and
 803 at the end of which the right to add additional phases expires.

804 (a) All phases must be added to the condominium within 7
 805 years after the date of recording the original declaration of
 806 condominium submitting the initial phase to condominium
 807 ownership unless an amendment extending the 7-year period is
 808 approved by the unit owners.

809 (b) An amendment to extend the 7-year period requires the
 810 approval of the owners necessary to amend the declaration of
 811 condominium consistent with s. 718.110(1)(a). An extension of
 812 the 7-year period may be submitted for approval only during the

813 last 3 years of the 7-year period.

814 (c) An amendment must describe the period within which all
 815 phases must be added to the condominium and such period may not
 816 exceed 10 years after the date of recording the original
 817 declaration of condominium submitting the initial phase to
 818 condominium ownership.

819 (d) Notwithstanding s. 718.110, an amendment extending the
 820 7-year period is not an amendment subject to s. 718.110(4).

821 Section 8. Section 718.406, Florida Statutes, is created
 822 to read:

823 718.406 Condominiums created within condominium parcels.--

824 (1) Unless otherwise expressed in the declaration of
 825 condominium, if a condominium is created within a condominium
 826 parcel, the term:

827 (a) "Primary condominium" means any condominium that is
 828 not a secondary condominium and contains one or more subdivided
 829 parcels.

830 (b) "Primary condominium association" means any entity
 831 that operates a primary condominium.

832 (c) "Primary condominium declaration" means the instrument
 833 or instruments by which a primary condominium is created, as
 834 they are from time to time amended.

835 (d) "Secondary condominium" means one or more condominium
 836 parcels that have been submitted to condominium ownership
 837 pursuant to a secondary condominium declaration.

838 (e) "Secondary condominium association" means any entity
 839 responsible for the operation of a secondary condominium.

840 (f) "Secondary condominium declaration" means the

841 instrument or instruments by which a secondary condominium is
 842 created, as they are from time to time amended.

843 (g) "Secondary unit" means a unit that is part of a
 844 secondary condominium.

845 (h) "Subdivided parcel" means a condominium parcel in a
 846 primary condominium that has been submitted to condominium
 847 ownership pursuant to a secondary condominium declaration.

848 (2) Unless otherwise provided in the primary condominium
 849 declaration, if a condominium parcel is a subdivided parcel, the
 850 secondary condominium association responsible for operating the
 851 secondary condominium upon the subdivided parcel shall act on
 852 behalf of all of the unit owners of secondary units in the
 853 secondary condominium and shall exercise all rights of the
 854 secondary unit owners in the primary condominium association,
 855 other than the right of possession of the secondary unit. The
 856 secondary condominium association shall designate a
 857 representative who shall cast the vote of the subdivided parcel
 858 in the primary condominium association and, if no person is
 859 designated by the secondary condominium association to cast such
 860 vote, the vote shall be cast by the president of the secondary
 861 condominium association or the designee of the president.

862 (3) Unless otherwise provided in the primary condominium
 863 declaration as originally recorded, no secondary condominium may
 864 be created upon any condominium parcel in the primary
 865 condominium, and no amendment to the primary condominium
 866 declaration may permit secondary condominiums to be created upon
 867 parcels in the primary condominium, unless the record owners of
 868 a majority of the condominium parcels join in the execution of

869 the amendment.

870 (4) If the primary condominium declaration permits the
 871 creation of a secondary condominium and a condominium parcel in
 872 the primary condominium is being submitted for condominium
 873 ownership to create a secondary condominium upon the primary
 874 condominium parcel, the approval of the board of administration
 875 of the primary condominium association is required in order to
 876 create the secondary condominium on the primary condominium
 877 parcel. Unless otherwise provided in the primary condominium
 878 declaration, the owners of condominium parcels in the primary
 879 condominium that will not be part of the proposed secondary
 880 condominium and the holders of liens upon such primary
 881 condominium parcels shall not have approval rights regarding the
 882 creation of the secondary condominium or the contents of the
 883 secondary condominium declaration being submitted. Only the
 884 board of administration of the primary condominium association,
 885 the owner of the subdivided parcel, and the holders of liens
 886 upon the subdivided parcel shall have approval rights regarding
 887 the creation of the secondary condominium and the contents of
 888 the secondary condominium declaration. In order for the
 889 recording of the secondary condominium declaration to be
 890 effective to create the secondary condominium, the board of
 891 administration of the primary condominium association, the owner
 892 of the subdivided parcel, and all holders of liens on the
 893 subdivided parcel must execute the secondary condominium
 894 declaration for the purpose of evidencing their approval.

895 (5) An owner of a secondary unit is subject to both the
 896 primary condominium declaration and the secondary condominium

897 declaration.

898 (6) The primary condominium association may provide
 899 insurance required by s. 718.111(11) for common elements and
 900 other improvements within the secondary condominium if the
 901 primary condominium declaration permits the primary condominium
 902 association to provide such insurance for the benefit of the
 903 condominium property included in the subdivided parcel, in lieu
 904 of such insurance being provided by the secondary condominium
 905 association.

906 (7) Unless otherwise provided in the primary condominium
 907 declaration, the board of administration of the primary
 908 condominium association may adopt hurricane shutter or hurricane
 909 protection specifications for each building within which
 910 subdivided parcels are located and govern any subdivided parcels
 911 in the primary condominium.

912 (8) Any unit owner of, or holder of a first mortgage on, a
 913 secondary unit may register such unit owner's or mortgagee's
 914 interest in the secondary unit with the primary condominium
 915 association by delivering written notice to the primary
 916 condominium association. Once registered, the primary
 917 condominium association must provide written notice to such
 918 secondary unit owner and his, her, or its first mortgagee at
 919 least 30 days before instituting any foreclosure action against
 920 the subdivided parcel in which the secondary unit owner and his,
 921 her, or its first mortgagee hold an interest for failure of the
 922 subdivided parcel owner to pay any assessments or other amounts
 923 due to the primary condominium association. A foreclosure action
 924 against a subdivided parcel is not effective without an

925 affidavit indicating that written notice of the foreclosure was
 926 timely sent to the names and addresses of secondary unit owners
 927 and first mortgagees registered with the primary condominium
 928 association pursuant to this subsection. The registered
 929 secondary unit owner or mortgagee has a right to pay the
 930 proportionate amount of the delinquent assessment attributable
 931 to the secondary unit in which the registered unit owner or
 932 mortgagee holds an interest. Upon such payment, the primary
 933 condominium association is obligated to promptly modify or
 934 partially release the record of lien on the primary condominium
 935 association so that the lien no longer encumbers such secondary
 936 unit. Alternatively, a registered secondary unit owner or
 937 mortgagee may pay the amount of all delinquent assessments
 938 attributed to the subdivided parcel and seek reimbursement for
 939 all such amounts paid and all costs incurred from the secondary
 940 condominium association, including, without limitation, the
 941 costs of collection other than the share allocable to the
 942 secondary unit on behalf of which such payment was made.

943 (9) In the event of a conflict between the primary
 944 condominium declaration and the secondary condominium
 945 declaration, the primary condominium declaration controls.

946 (10) All common expenses due to the primary condominium
 947 association with respect to a subdivided parcel are a common
 948 expense of the secondary condominium association and shall be
 949 collected by the secondary condominium association from its
 950 members and paid to the primary condominium association.

951 Section 9. Subsection (2) of section 718.5011, Florida
 952 Statutes, is amended to read:

953 718.5011 Ombudsman; appointment; administration.-
 954 (2) The Governor shall appoint the ombudsman. The
 955 ombudsman must be an attorney admitted to practice before the
 956 Florida Supreme Court and shall serve at the pleasure of the
 957 Governor. A vacancy in the office shall be filled in the same
 958 manner as the original appointment. An officer or full-time
 959 employee of the ombudsman's office may not actively engage in
 960 any other business or profession that directly or indirectly
 961 relates to or conflicts with his or her work in the ombudsman's
 962 office; serve as the representative of any political party,
 963 executive committee, or other governing body of a political
 964 party; serve as an executive, officer, or employee of a
 965 political party; receive remuneration for activities on behalf
 966 of any candidate for public office; or engage in soliciting
 967 votes or other activities on behalf of a candidate for public
 968 office. The ombudsman or any employee of his or her office may
 969 not become a candidate for election to public office unless he
 970 or she first resigns from his or her office or employment.

971 Section 10. Paragraphs (b) and (c) of subsection (2) of
 972 section 719.104, Florida Statutes, are amended to read:

973 719.104 Cooperatives; access to units; records; financial
 974 reports; assessments; purchase of leases.-

975 (2) OFFICIAL RECORDS.-

976 (b) The official records of the association shall be
 977 maintained within the state. The records of the association
 978 shall be made available to a unit owner within 5 working days
 979 after receipt of written request by the board or its designee.
 980 This paragraph may be complied with by having a copy of the

981 | official records available for inspection or copying on the
 982 | cooperative property. Any association member or the authorized
 983 | representative of such member may utilize smartphones, tablets,
 984 | portable scanners, or other technology capable of scanning or
 985 | taking pictures in lieu of the association providing copies to
 986 | the association member or the authorized representative of such
 987 | member. In no event should the association be able to charge a
 988 | member or the member's authorized representative for the use of
 989 | his or her portable devices.

990 | (c) The official records of the association shall be open
 991 | to inspection by any association member or the authorized
 992 | representative of such member at all reasonable times. Failure
 993 | to permit inspection of the association records as provided in
 994 | this subsection ~~herein~~ entitles any person prevailing in an
 995 | enforcement action to recover reasonable attorney ~~attorney's~~
 996 | fees from the person in control of the records who, directly or
 997 | indirectly, knowingly denies access to the records for
 998 | inspection. The right to inspect the records includes the right
 999 | to make or obtain copies, at the reasonable expense, if any, of
 1000 | the association member. The association may adopt reasonable
 1001 | rules regarding the frequency, time, location, notice, and
 1002 | manner of record inspections and copying. The failure of an
 1003 | association to provide the records within 10 working days after
 1004 | receipt of a written request creates a rebuttable presumption
 1005 | that the association willfully failed to comply with this
 1006 | paragraph. A unit owner who is denied access to official records
 1007 | is entitled to the actual damages or minimum damages for the
 1008 | association's willful failure to comply with this paragraph. The

1009 minimum damages shall be \$50 per calendar day up to 10 days, the
 1010 calculation to begin on the 11th day after receipt of the
 1011 written request. The association shall maintain an adequate
 1012 number of copies of the declaration, articles of incorporation,
 1013 bylaws, and rules, and all amendments to each of the foregoing,
 1014 as well as the question and answer sheet provided for in s.
 1015 719.504, on the cooperative property to ensure their
 1016 availability to unit owners and prospective purchasers, and may
 1017 charge its actual costs for preparing and furnishing these
 1018 documents to those requesting the same. Notwithstanding ~~the~~
 1019 ~~provisions of~~ this paragraph, the following records shall not be
 1020 accessible to unit owners:

1021 1. Any record protected by the lawyer-client privilege as
 1022 provided in s. 90.502; protected by the work-product privilege,
 1023 including any record ~~A record that was~~ prepared by an
 1024 association attorney or prepared at the attorney's express
 1025 direction; reflecting ~~that reflects~~ a mental impression,
 1026 conclusion, litigation strategy, or legal theory of the attorney
 1027 or the association; or ~~that was~~ prepared exclusively for civil
 1028 or criminal litigation or for adversarial administrative
 1029 proceedings or in anticipation of imminent civil or criminal
 1030 litigation or imminent adversarial administrative proceedings,
 1031 until the conclusion of the litigation or adversarial
 1032 administrative proceedings.

1033 2. Information obtained by an association in connection
 1034 with the approval of the lease, sale, or other transfer of a
 1035 unit.

1036 3. Medical records of unit owners.

1037 4. Personnel records of association employees, including,
 1038 but not limited to, disciplinary, payroll, health, and insurance
 1039 records. For purposes of this subparagraph, the term "personnel
 1040 records" does not include written employment agreements with an
 1041 association employee or budgetary or financial records that
 1042 indicate the compensation paid to an association employee.

1043 5. Social security numbers, driver license numbers, credit
 1044 card numbers, e-mail addresses, telephone numbers, emergency
 1045 contact information, any addresses of a unit owner other than
 1046 addresses provided to fulfill the association's notice
 1047 requirements, and other personal identifying information of any
 1048 person, excluding the person's name, unit designation, mailing
 1049 address, and property address.

1050 6. Any electronic security measures that are used by the
 1051 association to safeguard data, including passwords.

1052 7. The software and operating system used by the
 1053 association which allows manipulation of data, even if the owner
 1054 owns a copy of the same software used by the association. The
 1055 data is part of the official records of the association.

1056 Section 11. Subsection (7) is added to section 719.1055,
 1057 Florida Statutes, to read:

1058 719.1055 Amendment of cooperative documents; alteration
 1059 and acquisition of property.—

1060 (7) The Legislature finds that the procurement of
 1061 mortgagee consent to amendments that do not affect the rights or
 1062 interests of mortgagees is an unreasonable and substantial
 1063 logistical and financial burden on the unit owners and that
 1064 there is a compelling state interest in enabling the members of

1065 an association to approve amendments to the association's
 1066 cooperative documents through legal means. Accordingly, and
 1067 notwithstanding any provision of this subsection to the
 1068 contrary:

1069 (a) As to any mortgage recorded on or after July 1, 2013,
 1070 any provision in the association's cooperative documents that
 1071 requires the consent or joinder of some or all mortgagees of
 1072 units or any other portion of the association's common areas to
 1073 amend the association's cooperative documents or for any other
 1074 matter is enforceable only as to amendments to the association's
 1075 cooperative documents that adversely affect the priority of the
 1076 mortgagee's lien or the mortgagee's rights to foreclose its lien
 1077 or that otherwise materially affect the rights and interests of
 1078 the mortgagees.

1079 (b) As to mortgages recorded before July 1, 2013, any
 1080 existing provisions in the association's cooperative documents
 1081 requiring mortgagee consent are enforceable.

1082 (c) In securing consent or joinder, the association is
 1083 entitled to rely upon the public records to identify the holders
 1084 of outstanding mortgages. The association may use the address
 1085 provided in the original recorded mortgage document, unless
 1086 there is a different address for the holder of the mortgage in a
 1087 recorded assignment or modification of the mortgage, which
 1088 recorded assignment or modification must reference the official
 1089 records book and page on which the original mortgage was
 1090 recorded. Once the association has identified the recorded
 1091 mortgages of record, the association shall, in writing, request
 1092 of each unit owner whose unit is encumbered by a mortgage of

1093 record any information that the owner has in his or her
 1094 possession regarding the name and address of the person to whom
 1095 mortgage payments are currently being made. Notice shall be sent
 1096 to such person if the address provided in the original recorded
 1097 mortgage document is different from the name and address of the
 1098 mortgagee or assignee of the mortgage as shown by the public
 1099 record. The association is deemed to have complied with this
 1100 requirement by making the written request of the unit owners
 1101 required under this paragraph. Any notices required to be sent
 1102 to the mortgagees under this paragraph shall be sent to all
 1103 available addresses provided to the association.

1104 (d) Any notice to the mortgagees required under paragraph
 1105 (c) may be sent by a method that establishes proof of delivery,
 1106 and any mortgagee who fails to respond within 60 days after the
 1107 date of mailing is deemed to have consented to the amendment.

1108 (e) For those amendments requiring mortgagee consent on or
 1109 after July 1, 2013, in the event mortgagee consent is provided
 1110 other than by properly recorded joinder, such consent shall be
 1111 evidenced by affidavit of the association recorded in the public
 1112 records of the county in which the declaration is recorded.

1113 (f) Any amendment adopted without the required consent of
 1114 a mortgagee is voidable only by a mortgagee who was entitled to
 1115 notice and an opportunity to consent. An action to void an
 1116 amendment is subject to the statute of limitations beginning 5
 1117 years after the date of discovery as to the amendments described
 1118 in paragraph (a) and 5 years after the date of recordation of
 1119 the certificate of amendment for all other amendments. This
 1120 paragraph applies to all mortgages, regardless of the date of

1121 | recording of the mortgage.

1122 | Section 12. Paragraphs (c), (d), and (f) of subsection (1)
 1123 | of section 719.106, Florida Statutes, are amended to read:

1124 | 719.106 Bylaws; cooperative ownership.—

1125 | (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
 1126 | documents shall provide for the following, and if they do not,
 1127 | they shall be deemed to include the following:

1128 | (c) Board of administration meetings.—Meetings of the
 1129 | board of administration at which a quorum of the members is
 1130 | present shall be open to all unit owners. Any unit owner may
 1131 | tape record or videotape meetings of the board of
 1132 | administration. The right to attend such meetings includes the
 1133 | right to speak at such meetings with reference to all designated
 1134 | agenda items. The division shall adopt reasonable rules
 1135 | governing the tape recording and videotaping of the meeting. The
 1136 | association may adopt reasonable written rules governing the
 1137 | frequency, duration, and manner of unit owner statements.
 1138 | Adequate notice of all meetings shall be posted in a conspicuous
 1139 | place upon the cooperative property at least 48 continuous hours
 1140 | preceding the meeting, except in an emergency. Any item not
 1141 | included on the notice may be taken up on an emergency basis by
 1142 | at least a majority plus one of the members of the board. Such
 1143 | emergency action shall be noticed and ratified at the next
 1144 | regular meeting of the board. However, written notice of any
 1145 | meeting at which nonemergency special assessments, or at which
 1146 | amendment to rules regarding unit use, will be considered shall
 1147 | be mailed, delivered, or electronically transmitted to the unit
 1148 | owners and posted conspicuously on the cooperative property not

1149 | less than 14 days before ~~prior~~ to the meeting. Evidence of
 1150 | compliance with this 14-day notice shall be made by an affidavit
 1151 | executed by the person providing the notice and filed among the
 1152 | official records of the association. Upon notice to the unit
 1153 | owners, the board shall by duly adopted rule designate a
 1154 | specific location on the cooperative property upon which all
 1155 | notices of board meetings shall be posted. In lieu of or in
 1156 | addition to the physical posting of notice of any meeting of the
 1157 | board of administration on the cooperative property, the
 1158 | association may, by reasonable rule, adopt a procedure for
 1159 | conspicuously posting and repeatedly broadcasting the notice and
 1160 | the agenda on a closed-circuit cable television system serving
 1161 | the cooperative association. However, if broadcast notice is
 1162 | used in lieu of a notice posted physically on the cooperative
 1163 | property, the notice and agenda must be broadcast at least four
 1164 | times every broadcast hour of each day that a posted notice is
 1165 | otherwise required under this section. When broadcast notice is
 1166 | provided, the notice and agenda must be broadcast in a manner
 1167 | and for a sufficient continuous length of time so as to allow an
 1168 | average reader to observe the notice and read and comprehend the
 1169 | entire content of the notice and the agenda. Notice of any
 1170 | meeting in which regular assessments against unit owners are to
 1171 | be considered for any reason shall specifically contain a
 1172 | statement that assessments will be considered and the nature of
 1173 | any such assessments. Meetings of a committee to take final
 1174 | action on behalf of the board or to make recommendations to the
 1175 | board regarding the association budget are subject to the
 1176 | provisions of this paragraph. Meetings of a committee that does

1177 not take final action on behalf of the board or make
 1178 recommendations to the board regarding the association budget
 1179 are subject to the provisions of this section, unless those
 1180 meetings are exempted from this section by the bylaws of the
 1181 association. Notwithstanding any other law to the contrary, the
 1182 requirement that board meetings and committee meetings be open
 1183 to the unit owners does not apply ~~is inapplicable~~ to board or
 1184 committee meetings held for the purpose of discussing personnel
 1185 matters or meetings between the board or a committee and the
 1186 association's attorney, with respect to proposed or pending
 1187 litigation, if ~~when~~ the meeting is held for the purpose of
 1188 seeking or rendering legal advice.

1189 (d) Shareholder meetings.—There shall be an annual meeting
 1190 of the shareholders. All members of the board of administration
 1191 shall be elected at the annual meeting unless the bylaws provide
 1192 for staggered election terms or for their election at another
 1193 meeting. Any unit owner desiring to be a candidate for board
 1194 membership must comply with subparagraph 1. The bylaws must
 1195 provide the method for calling meetings, including annual
 1196 meetings. Written notice, which must incorporate an
 1197 identification of agenda items, shall be given to each unit
 1198 owner at least 14 days before the annual meeting and posted in a
 1199 conspicuous place on the cooperative property at least 14
 1200 continuous days preceding the annual meeting. Upon notice to the
 1201 unit owners, the board must by duly adopted rule designate a
 1202 specific location on the cooperative property upon which all
 1203 notice of unit owner meetings are posted. In lieu of or in
 1204 addition to the physical posting of the meeting notice, the

1205 association may, by reasonable rule, adopt a procedure for
 1206 conspicuously posting and repeatedly broadcasting the notice and
 1207 the agenda on a closed-circuit cable television system serving
 1208 the cooperative association. However, if broadcast notice is
 1209 used in lieu of a posted notice, the notice and agenda must be
 1210 broadcast at least four times every broadcast hour of each day
 1211 that a posted notice is otherwise required under this section.
 1212 If broadcast notice is provided, the notice and agenda must be
 1213 broadcast in a manner and for a sufficient continuous length of
 1214 time to allow an average reader to observe the notice and read
 1215 and comprehend the entire content of the notice and the agenda.
 1216 Unless a unit owner waives in writing the right to receive
 1217 notice of the annual meeting, the notice of the annual meeting
 1218 must be sent by mail, hand delivered, or electronically
 1219 transmitted to each unit owner. An officer of the association
 1220 must provide an affidavit or United States Postal Service
 1221 certificate of mailing, to be included in the official records
 1222 of the association, affirming that notices of the association
 1223 meeting were mailed, hand delivered, or electronically
 1224 transmitted, in accordance with this provision, to each unit
 1225 owner at the address last furnished to the association.

1226 1. The board of administration shall be elected by written
 1227 ballot or voting machine. A proxy may not be used in electing
 1228 the board of administration in general elections or elections to
 1229 fill vacancies caused by recall, resignation, or otherwise
 1230 unless otherwise provided in this chapter. At least 60 days
 1231 before a scheduled election, the association shall mail,
 1232 deliver, or transmit, whether by separate association mailing,

1233 delivery, or electronic transmission or included in another
 1234 association mailing, delivery, or electronic transmission,
 1235 including regularly published newsletters, to each unit owner
 1236 entitled to vote, a first notice of the date of the election.
 1237 Any unit owner or other eligible person desiring to be a
 1238 candidate for the board of administration must give written
 1239 notice to the association at least 40 days before a scheduled
 1240 election. Together with the written notice and agenda as set
 1241 forth in this section, the association shall mail, deliver, or
 1242 electronically transmit a second notice of election to all unit
 1243 owners entitled to vote, together with a ballot that ~~which~~ lists
 1244 all candidates. Upon request of a candidate, the association
 1245 shall include an information sheet, no larger than 8 1/2 inches
 1246 by 11 inches, which must be furnished by the candidate at least
 1247 35 days before the election, to be included with the mailing,
 1248 delivery, or electronic transmission of the ballot, with the
 1249 costs of mailing, delivery, or transmission and copying to be
 1250 borne by the association. The association is not liable for the
 1251 contents of the information sheets provided by the candidates.
 1252 In order to reduce costs, the association may print or duplicate
 1253 the information sheets on both sides of the paper. The division
 1254 shall by rule establish voting procedures consistent with this
 1255 subparagraph, including rules establishing procedures for giving
 1256 notice by electronic transmission and rules providing for the
 1257 secrecy of ballots. Elections shall be decided by a plurality of
 1258 those ballots cast. There is no quorum requirement. However, at
 1259 least 20 percent of the eligible voters must cast a ballot in
 1260 order to have a valid election. A unit owner may not permit any

1261 other person to vote his or her ballot, and any such ballots
 1262 improperly cast are invalid. A unit owner who needs assistance
 1263 in casting the ballot for the reasons stated in s. 101.051 may
 1264 obtain assistance in casting the ballot. Any unit owner
 1265 violating this provision may be fined by the association in
 1266 accordance with s. 719.303. The regular election must occur on
 1267 the date of the annual meeting. This subparagraph does not apply
 1268 to timeshare cooperatives. Notwithstanding this subparagraph, an
 1269 election and balloting are not required unless more candidates
 1270 file a notice of intent to run or are nominated than vacancies
 1271 exist on the board. Any challenge to the election process must
 1272 be commenced within 60 days after the election results are
 1273 announced. Within 90 days after being elected or appointed to
 1274 the board, each new director shall certify in writing to the
 1275 secretary of the association that he or she has read the
 1276 association's bylaws, articles of incorporation, proprietary
 1277 lease, and current written policies; that he or she will work to
 1278 uphold such documents and policies to the best of his or her
 1279 ability; and that he or she will faithfully discharge his or her
 1280 fiduciary responsibility to the association's members. Within 90
 1281 days after being elected or appointed to the board, in lieu of
 1282 this written certification, the newly elected or appointed
 1283 director may submit a certificate of having satisfactorily
 1284 completed the educational curriculum administered by an
 1285 education provider as approved by the division pursuant to the
 1286 requirements established in chapter 718 within 1 year before or
 1287 90 days after the date of election or appointment. The
 1288 educational certificate is valid and does not have to be

1289 resubmitted as long as the director serves on the board without
 1290 interruption. A director who fails to timely file the written
 1291 certification or educational certificate is suspended from
 1292 service on the board until he or she complies with this sub-
 1293 subparagraph. The board may temporarily fill the vacancy during
 1294 the period of suspension. The secretary shall cause the
 1295 association to retain a director's written certification or
 1296 educational certificate for inspection by the members for 5
 1297 years after a director's election or the duration of the
 1298 director's uninterrupted tenure, whichever is longer. Failure to
 1299 have such written certification or educational certificate on
 1300 file does not affect the validity of any board action.

1301 2. Any approval by unit owners called for by this chapter,
 1302 or the applicable cooperative documents, must be made at a duly
 1303 noticed meeting of unit owners and is subject to this chapter or
 1304 the applicable cooperative documents relating to unit owner
 1305 decisionmaking, except that unit owners may take action by
 1306 written agreement, without meetings, on matters for which action
 1307 by written agreement without meetings is expressly allowed by
 1308 the applicable cooperative documents or law which provides for
 1309 the unit owner action.

1310 3. Unit owners may waive notice of specific meetings if
 1311 allowed by the applicable cooperative documents or law. If
 1312 authorized by the bylaws, notice of meetings of the board of
 1313 administration, shareholder meetings, except shareholder
 1314 meetings called to recall board members under paragraph (f), and
 1315 committee meetings may be given by electronic transmission to
 1316 unit owners who consent to receive notice by electronic

1317 transmission.

1318 4. Unit owners have the right to participate in meetings
 1319 of unit owners with reference to all designated agenda items.
 1320 However, the association may adopt reasonable rules governing
 1321 the frequency, duration, and manner of unit owner participation.

1322 5. Any unit owner may tape record or videotape meetings of
 1323 the unit owners subject to reasonable rules adopted by the
 1324 division.

1325 6. Unless otherwise provided in the bylaws, a vacancy
 1326 occurring on the board before the expiration of a term may be
 1327 filled by the affirmative vote of the majority of the remaining
 1328 directors, even if the remaining directors constitute less than
 1329 a quorum, or by the sole remaining director. In the alternative,
 1330 a board may hold an election to fill the vacancy, in which case
 1331 the election procedures must conform to the requirements of
 1332 subparagraph 1. unless the association has opted out of the
 1333 statutory election process, in which case the bylaws of the
 1334 association control. Unless otherwise provided in the bylaws, a
 1335 board member appointed or elected under this subparagraph shall
 1336 fill the vacancy for the unexpired term of the seat being
 1337 filled. Filling vacancies created by recall is governed by
 1338 paragraph (f) and rules adopted by the division.

1339
 1340 Notwithstanding subparagraphs (b)2. and (d)1., an association
 1341 may, by the affirmative vote of a majority of the total voting
 1342 interests, provide for a different voting and election procedure
 1343 in its bylaws, which vote may be by a proxy specifically
 1344 delineating the different voting and election procedures. The

1345 different voting and election procedures may provide for
 1346 elections to be conducted by limited or general proxy.

1347 (f) Recall of board members.—Subject to ~~the provisions of~~
 1348 s. 719.301, any member of the board of administration may be
 1349 recalled and removed from office with or without cause by the
 1350 vote or agreement in writing by a majority of all the voting
 1351 interests. A special meeting of the voting interests to recall
 1352 any member of the board of administration may be called by 10
 1353 percent of the unit owners giving notice of the meeting as
 1354 required for a meeting of unit owners, and the notice shall
 1355 state the purpose of the meeting. Electronic transmission may
 1356 not be used as a method of giving notice of a meeting called in
 1357 whole or in part for this purpose.

1358 1. If the recall is approved by a majority of all voting
 1359 interests by a vote at a meeting, the recall shall be effective
 1360 as provided in this paragraph herein. The board shall duly
 1361 notice and hold a board meeting within 5 full business days
 1362 after ~~of~~ the adjournment of the unit owner meeting to recall one
 1363 or more board members. At the meeting, the board shall either
 1364 certify the recall, in which case such member or members shall
 1365 be recalled effective immediately and shall turn over to the
 1366 board within 5 full business days any and all records and
 1367 property of the association in their possession, or shall
 1368 proceed as set forth in subparagraph 3.

1369 2. If the proposed recall is by an agreement in writing by
 1370 a majority of all voting interests, the agreement in writing or
 1371 a copy thereof shall be served on the association by certified
 1372 mail or by personal service in the manner authorized by chapter

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1373 48 and the Florida Rules of Civil Procedure. The board of
 1374 administration shall duly notice and hold a meeting of the board
 1375 within 5 full business days after receipt of the agreement in
 1376 writing. At the meeting, the board shall either certify the
 1377 written agreement to recall members of the board, in which case
 1378 such members shall be recalled effective immediately and shall
 1379 turn over to the board, within 5 full business days, any and all
 1380 records and property of the association in their possession, or
 1381 proceed as described in subparagraph 3.

1382 3. If the board determines not to certify the written
 1383 agreement to recall members of the board, or does not certify
 1384 the recall by a vote at a meeting, the board shall, within 5
 1385 full business days after the board meeting, file with the
 1386 division a petition for binding arbitration pursuant to the
 1387 procedures of s. 719.1255. For purposes of this paragraph, the
 1388 unit owners who voted at the meeting or who executed the
 1389 agreement in writing shall constitute one party under the
 1390 petition for arbitration. If the arbitrator certifies the recall
 1391 as to any member of the board, the recall shall be effective
 1392 upon mailing of the final order of arbitration to the
 1393 association. If the association fails to comply with the order
 1394 of the arbitrator, the division may take action pursuant to s.
 1395 719.501. Any member so recalled shall deliver to the board any
 1396 and all records and property of the association in the member's
 1397 possession within 5 full business days after ~~of~~ the effective
 1398 date of the recall.

1399 4. If the board fails to duly notice and hold a board
 1400 meeting within 5 full business days after ~~of~~ service of an

1401 agreement in writing or within 5 full business days after ~~of~~ the
 1402 adjournment of the unit owner recall meeting, the recall shall
 1403 be deemed effective and the board members so recalled shall
 1404 immediately turn over to the board any and all records and
 1405 property of the association.

1406 5. If the board fails to duly notice and hold the required
 1407 meeting or fails to file the required petition, the unit owner
 1408 representative may file a petition pursuant to s. 719.1255
 1409 challenging the board's failure to act. The petition must be
 1410 filed within 60 days after the expiration of the applicable 5-
 1411 full-business-day period. The review of a petition under this
 1412 subparagraph is limited to the sufficiency of service on the
 1413 board and the facial validity of the written agreement or
 1414 ballots filed.

1415 ~~6.5.~~ If a vacancy occurs on the board as a result of a
 1416 recall and less than a majority of the board members are
 1417 removed, the vacancy may be filled by the affirmative vote of a
 1418 majority of the remaining directors, notwithstanding any
 1419 provision to the contrary contained in this chapter. If
 1420 vacancies occur on the board as a result of a recall and a
 1421 majority or more of the board members are removed, the vacancies
 1422 shall be filled in accordance with procedural rules to be
 1423 adopted by the division, which rules need not be consistent with
 1424 this chapter. The rules must provide procedures governing the
 1425 conduct of the recall election as well as the operation of the
 1426 association during the period after a recall but before ~~prior to~~
 1427 the recall election.

1428 7. A board member who has been recalled may file a

1429 petition pursuant to s. 719.1255 challenging the validity of the
 1430 recall. The petition must be filed within 60 days after the
 1431 recall is deemed certified. The association and the unit owner
 1432 representative shall be named as the respondents.

1433 8. The division may not accept for filing a recall
 1434 petition, whether filed pursuant to subparagraph 1.,
 1435 subparagraph 2., subparagraph 5., or subparagraph 7. And
 1436 regardless of whether the recall was certified, when there are
 1437 60 or fewer days until the scheduled reelection of the board
 1438 member sought to be recalled or when 60 or fewer days have not
 1439 elapsed since the election of the board member sought to be
 1440 recalled.

1441 Section 13. Paragraph (a) of subsection (3) of section
 1442 719.303, Florida Statutes, is amended to read:

1443 719.303 Obligations of owners.—

1444 (3) The association may levy reasonable fines for failure
 1445 of the unit owner or the unit's occupant, licensee, or invitee
 1446 to comply with any provision of the cooperative documents or
 1447 reasonable rules of the association. A fine may not become a
 1448 lien against a unit. A fine may be levied on the basis of each
 1449 day of a continuing violation, with a single notice and
 1450 opportunity for hearing. However, the fine may not exceed \$100
 1451 per violation, or \$1,000 in the aggregate.

1452 (a) An association may suspend, for a reasonable period of
 1453 time, the right of a unit owner, or a unit owner's tenant,
 1454 guest, or invitee, to use the common elements, common
 1455 facilities, or any other association property for failure to
 1456 comply with any provision of the cooperative documents or

1457 reasonable rules of the association. This paragraph does not
 1458 apply to limited common elements intended to be used only by
 1459 that unit, common elements needed to access the unit, utility
 1460 services provided to the unit, parking spaces, or elevators.

1461 Section 14. Paragraph (c) of subsection (5), and
 1462 subsections (7) and (10) of section 720.303, Florida Statutes,
 1463 are amended to read:

1464 720.303 Association powers and duties; meetings of board;
 1465 official records; budgets; financial reporting; association
 1466 funds; recalls.—

1467 (5) INSPECTION AND COPYING OF RECORDS.—The official
 1468 records shall be maintained within the state and must be open to
 1469 inspection and available for photocopying by members or their
 1470 authorized agents at reasonable times and places within 10
 1471 business days after receipt of a written request for access.
 1472 This subsection may be complied with by having a copy of the
 1473 official records available for inspection or copying in the
 1474 community. If the association has a photocopy machine available
 1475 where the records are maintained, it must provide parcel owners
 1476 with copies on request during the inspection if the entire
 1477 request is limited to no more than 25 pages. Any association
 1478 member or the authorized representative of such member may
 1479 utilize smartphones, tablets, portable scanners, or other
 1480 technology capable of scanning or taking pictures in lieu of the
 1481 association providing copies to the association member or the
 1482 authorized representative of such member. In no event should
 1483 the association be able to charge a member or the member's
 1484 authorized representative for the use of his or her portable

1485 | devices.

1486 | (c) The association may adopt reasonable written rules
 1487 | governing the frequency, time, location, notice, records to be
 1488 | inspected, and manner of inspections, but may not require a
 1489 | parcel owner to demonstrate any proper purpose for the
 1490 | inspection, state any reason for the inspection, or limit a
 1491 | parcel owner's right to inspect records to less than one 8-hour
 1492 | business day per month. The association may impose fees to cover
 1493 | the costs of providing copies of the official records,
 1494 | including, without limitation, the costs of copying. The
 1495 | association may charge up to 50 cents per page for copies made
 1496 | on the association's photocopier. If the association does not
 1497 | have a photocopy machine available where the records are kept,
 1498 | or if the records requested to be copied exceed 25 pages in
 1499 | length, the association may have copies made by an outside
 1500 | vendor or association management company personnel and may
 1501 | charge the actual cost of copying, including any reasonable
 1502 | costs involving personnel fees and charges at an hourly rate for
 1503 | vendor or employee time to cover administrative costs to the
 1504 | vendor or association. The association shall maintain an
 1505 | adequate number of copies of the recorded governing documents,
 1506 | to ensure their availability to members and prospective members.
 1507 | Notwithstanding this paragraph, the following records are not
 1508 | accessible to members or parcel owners:

1509 | 1. Any record protected by the lawyer-client privilege as
 1510 | described in s. 90.502 and any record protected by the work-
 1511 | product privilege, including, but not limited to, a record
 1512 | prepared by an association attorney or prepared at the

1513 attorney's express direction which reflects a mental impression,
 1514 conclusion, litigation strategy, or legal theory of the attorney
 1515 or the association and which was prepared exclusively for civil
 1516 or criminal litigation or for adversarial administrative
 1517 proceedings or which was prepared in anticipation of such
 1518 litigation or proceedings until the conclusion of the litigation
 1519 or proceedings.

1520 2. Information obtained by an association in connection
 1521 with the approval of the lease, sale, or other transfer of a
 1522 parcel.

1523 3. Personnel records of association or management company
 1524 ~~the association's~~ employees, including, but not limited to,
 1525 disciplinary, payroll, health, and insurance records. For
 1526 purposes of this subparagraph, the term "personnel records" does
 1527 not include written employment agreements with an association or
 1528 management company employee or budgetary or financial records
 1529 that indicate the compensation paid to an association or
 1530 management company employee.

1531 4. Medical records of parcel owners or community
 1532 residents.

1533 5. Social security numbers, driver ~~driver's~~ license
 1534 numbers, credit card numbers, electronic mailing addresses,
 1535 telephone numbers, facsimile numbers, emergency contact
 1536 information, any addresses for a parcel owner other than as
 1537 provided for association notice requirements, and other personal
 1538 identifying information of any person, excluding the person's
 1539 name, parcel designation, mailing address, and property address.
 1540 However, an owner may consent in writing to the disclosure of

1541 | protected information described in this subparagraph. The
 1542 | association is not liable for the disclosure of information that
 1543 | is protected under this subparagraph if the information is
 1544 | included in an official record of the association and is
 1545 | voluntarily provided by an owner and not requested by the
 1546 | association.

1547 | 6. Any electronic security measure that is used by the
 1548 | association to safeguard data, including passwords.

1549 | 7. The software and operating system used by the
 1550 | association which allows the manipulation of data, even if the
 1551 | owner owns a copy of the same software used by the association.
 1552 | The data is part of the official records of the association.

1553 | (7) FINANCIAL REPORTING.—Within 90 days after the end of
 1554 | the fiscal year, or annually on the date provided in the bylaws,
 1555 | the association shall prepare and complete, or contract with a
 1556 | third party for the preparation and completion of, a financial
 1557 | report for the preceding fiscal year. Within 21 days after the
 1558 | final financial report is completed by the association or
 1559 | received from the third party, but not later than 120 days after
 1560 | the end of the fiscal year or other date as provided in the
 1561 | bylaws, the association shall, within the time limits set forth
 1562 | in subsection (5), provide each member with a copy of the annual
 1563 | financial report or a written notice that a copy of the
 1564 | financial report is available upon request at no charge to the
 1565 | member. Financial reports shall be prepared as follows:

1566 | (a) An association that meets the criteria of this
 1567 | paragraph shall prepare or cause to be prepared a complete set
 1568 | of financial statements in accordance with generally accepted

1569 accounting principles as adopted by the Board of Accountancy.
 1570 The financial statements shall be based upon the association's
 1571 total annual revenues, as follows:

1572 1. An association with total annual revenues of \$200,000
 1573 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
 1574 compiled financial statements.

1575 2. An association with total annual revenues of at least
 1576 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall
 1577 prepare reviewed financial statements.

1578 3. An association with total annual revenues of \$500,000
 1579 ~~\$400,000~~ or more shall prepare audited financial statements.

1580 (b)1. An association with total annual revenues of less
 1581 than \$200,000 ~~\$100,000~~ shall prepare a report of cash receipts
 1582 and expenditures.

1583 2. An association in a community of fewer than 50 parcels,
 1584 regardless of the association's annual revenues, may prepare a
 1585 report of cash receipts and expenditures in lieu of financial
 1586 statements required by paragraph (a) unless the governing
 1587 documents provide otherwise.

1588 3. A report of cash receipts and disbursement must
 1589 disclose the amount of receipts by accounts and receipt
 1590 classifications and the amount of expenses by accounts and
 1591 expense classifications, including, but not limited to, the
 1592 following, as applicable: costs for security, professional, and
 1593 management fees and expenses; taxes; costs for recreation
 1594 facilities; expenses for refuse collection and utility services;
 1595 expenses for lawn care; costs for building maintenance and
 1596 repair; insurance costs; administration and salary expenses; and

1597 reserves if maintained by the association.

1598 (10) RECALL OF DIRECTORS.—

1599 (a)1. Regardless of any provision to the contrary
 1600 contained in the governing documents, subject to the provisions
 1601 of s. 720.307 regarding transition of association control, any
 1602 member of the board of directors may be recalled and removed
 1603 from office with or without cause by a majority of the total
 1604 voting interests.

1605 2. When the governing documents, including the
 1606 declaration, articles of incorporation, or bylaws, provide that
 1607 only a specific class of members is entitled to elect a board
 1608 director or directors, only that class of members may vote to
 1609 recall those board directors so elected.

1610 (b)1. Board directors may be recalled by an agreement in
 1611 writing or by written ballot without a membership meeting. The
 1612 agreement in writing or the written ballots, or a copy thereof,
 1613 shall be served on the association by certified mail or by
 1614 personal service in the manner authorized by chapter 48 and the
 1615 Florida Rules of Civil Procedure.

1616 2. The board shall duly notice and hold a meeting of the
 1617 board within 5 full business days after receipt of the agreement
 1618 in writing or written ballots. At the meeting, the board shall
 1619 either certify the written ballots or written agreement to
 1620 recall a director or directors of the board, in which case such
 1621 director or directors shall be recalled effective immediately
 1622 and shall turn over to the board within 5 full business days any
 1623 and all records and property of the association in their
 1624 possession, or proceed as described in paragraph (d).

1625 3. When it is determined by the department pursuant to
 1626 binding arbitration proceedings that an initial recall effort
 1627 was defective, written recall agreements or written ballots used
 1628 in the first recall effort and not found to be defective may be
 1629 reused in one subsequent recall effort. However, in no event is
 1630 a written agreement or written ballot valid for more than 120
 1631 days after it has been signed by the member.

1632 4. Any rescission or revocation of a member's written
 1633 recall ballot or agreement must be in writing and, in order to
 1634 be effective, must be delivered to the association before the
 1635 association is served with the written recall agreements or
 1636 ballots.

1637 5. The agreement in writing or ballot shall list at least
 1638 as many possible replacement directors as there are directors
 1639 subject to the recall, when at least a majority of the board is
 1640 sought to be recalled; the person executing the recall
 1641 instrument may vote for as many replacement candidates as there
 1642 are directors subject to the recall.

1643 (c)1. If the declaration, articles of incorporation, or
 1644 bylaws specifically provide, the members may also recall and
 1645 remove a board director or directors by a vote taken at a
 1646 meeting. If so provided in the governing documents, a special
 1647 meeting of the members to recall a director or directors of the
 1648 board of administration may be called by 10 percent of the
 1649 voting interests giving notice of the meeting as required for a
 1650 meeting of members, and the notice shall state the purpose of
 1651 the meeting. Electronic transmission may not be used as a method
 1652 of giving notice of a meeting called in whole or in part for

1653 | this purpose.

1654 | 2. The board shall duly notice and hold a board meeting
 1655 | within 5 full business days after the adjournment of the member
 1656 | meeting to recall one or more directors. At the meeting, the
 1657 | board shall certify the recall, in which case such member or
 1658 | members shall be recalled effective immediately and shall turn
 1659 | over to the board within 5 full business days any and all
 1660 | records and property of the association in their possession, or
 1661 | shall proceed as set forth in subparagraph (d).

1662 | (d) If the board determines not to certify the written
 1663 | agreement or written ballots to recall a director or directors
 1664 | of the board or does not certify the recall by a vote at a
 1665 | meeting, the board shall, within 5 full business days after the
 1666 | meeting, file with the department a petition for binding
 1667 | arbitration pursuant to the applicable procedures in ss.
 1668 | 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For
 1669 | the purposes of this section, the members who voted at the
 1670 | meeting or who executed the agreement in writing shall
 1671 | constitute one party under the petition for arbitration. If the
 1672 | arbitrator certifies the recall as to any director or directors
 1673 | of the board, the recall will be effective upon mailing of the
 1674 | final order of arbitration to the association. The director or
 1675 | directors so recalled shall deliver to the board any and all
 1676 | records of the association in their possession within 5 full
 1677 | business days after the effective date of the recall.

1678 | (e) If a vacancy occurs on the board as a result of a
 1679 | recall and less than a majority of the board directors are
 1680 | removed, the vacancy may be filled by the affirmative vote of a

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1681 majority of the remaining directors, notwithstanding any
 1682 provision to the contrary contained in this subsection or in the
 1683 association documents. If vacancies occur on the board as a
 1684 result of a recall and a majority or more of the board directors
 1685 are removed, the vacancies shall be filled by members voting in
 1686 favor of the recall; if removal is at a meeting, any vacancies
 1687 shall be filled by the members at the meeting. If the recall
 1688 occurred by agreement in writing or by written ballot, members
 1689 may vote for replacement directors in the same instrument in
 1690 accordance with procedural rules adopted by the division, which
 1691 rules need not be consistent with this subsection.

1692 (f) If the board fails to duly notice and hold a board
 1693 meeting within 5 full business days after service of an
 1694 agreement in writing or within 5 full business days after the
 1695 adjournment of the member recall meeting, the recall shall be
 1696 deemed effective and the board directors so recalled shall
 1697 immediately turn over to the board all records and property of
 1698 the association.

1699 (g) If the board fails to duly notice and hold the
 1700 required meeting or fails to file the required petition, the
 1701 unit owner representative may file a petition pursuant to s.
 1702 718.1255 challenging the board's failure to act. The petition
 1703 must be filed within 60 days after the expiration of the
 1704 applicable 5-full-business-day period. The review of a petition
 1705 under this paragraph is limited to the sufficiency of service on
 1706 the board and the facial validity of the written agreement or
 1707 ballots filed.

1708 ~~(h)~~ (g) If a director who is removed fails to relinquish

1709 his or her office or turn over records as required under this
 1710 section, the circuit court in the county where the association
 1711 maintains its principal office may, upon the petition of the
 1712 association, summarily order the director to relinquish his or
 1713 her office and turn over all association records upon
 1714 application of the association.

1715 (i)~~(h)~~ The minutes of the board meeting at which the board
 1716 decides whether to certify the recall are an official
 1717 association record. The minutes must record the date and time of
 1718 the meeting, the decision of the board, and the vote count taken
 1719 on each board member subject to the recall. In addition, when
 1720 the board decides not to certify the recall, as to each vote
 1721 rejected, the minutes must identify the parcel number and the
 1722 specific reason for each such rejection.

1723 (j)~~(i)~~ When the recall of more than one board director is
 1724 sought, the written agreement, ballot, or vote at a meeting
 1725 shall provide for a separate vote for each board director sought
 1726 to be recalled.

1727 (k) A board member who has been recalled may file a
 1728 petition pursuant to ss. 718.112(2)(j) and 718.1255 and the
 1729 rules adopted challenging the validity of the recall. The
 1730 petition must be filed within 60 days after the recall is deemed
 1731 certified. The association and the unit owner representative
 1732 shall be named as respondents.

1733 (l) The division may not accept for filing a recall
 1734 petition, whether filed pursuant to paragraph (b), paragraph
 1735 (c), paragraph (g), or paragraph (k) and regardless of whether
 1736 the recall was certified, when there are 60 or fewer days until

1737 the scheduled reelection of the board member sought to be
 1738 recalled or when 60 or fewer days have not elapsed since the
 1739 election of the board member sought to be recalled.

1740 Section 15. Paragraph (a) of subsection (2) of section
 1741 720.305, Florida Statutes, is amended to read:

1742 720.305 Obligations of members; remedies at law or in
 1743 equity; levy of fines and suspension of use rights.—

1744 (2) The association may levy reasonable fines of up to
 1745 \$100 per violation against any member or any member's tenant,
 1746 guest, or invitee for the failure of the owner of the parcel or
 1747 its occupant, licensee, or invitee to comply with any provision
 1748 of the declaration, the association bylaws, or reasonable rules
 1749 of the association. A fine may be levied for each day of a
 1750 continuing violation, with a single notice and opportunity for
 1751 hearing, except that the fine may not exceed \$1,000 in the
 1752 aggregate unless otherwise provided in the governing documents.
 1753 A fine of less than \$1,000 may not become a lien against a
 1754 parcel. In any action to recover a fine, the prevailing party is
 1755 entitled to reasonable attorney ~~attorney's~~ fees and costs from
 1756 the nonprevailing party as determined by the court.

1757 (a) An association may suspend, for a reasonable period of
 1758 time, the right of a member, or a member's tenant, guest, or
 1759 invitee, to use common areas and facilities for the failure of
 1760 the owner of the parcel or its occupant, licensee, or invitee to
 1761 comply with any provision of the declaration, the association
 1762 bylaws, or reasonable rules of the association. This paragraph
 1763 does not apply to that portion of common areas used to provide
 1764 access or utility services to the parcel. A suspension may not

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1765 impair the right of an owner or tenant of a parcel to have
 1766 vehicular and pedestrian ingress to and egress from the parcel,
 1767 including, but not limited to, the right to park.

1768 Section 16. Paragraph (d) is added to subsection (1) of
 1769 section 720.306, Florida Statutes, and subsection (6) and
 1770 paragraph (a) of subsection (9) of that section are amended to
 1771 read:

1772 720.306 Meetings of members; voting and election
 1773 procedures; amendments.--

1774 (1) QUORUM; AMENDMENTS. -

1775 (d) The Legislature finds that the procurement of
 1776 mortgagee consent to amendments that do not affect the rights or
 1777 interests of mortgagees is an unreasonable and substantial
 1778 logistical and financial burden on the parcel owners and that
 1779 there is a compelling state interest in enabling the members of
 1780 an association to approve amendments to the association's
 1781 governing documents through legal means. Accordingly, and
 1782 notwithstanding any provision of this paragraph to the contrary:

1783 1. As to any mortgage recorded on or after July 1, 2013,
 1784 any provision in the association's governing documents that
 1785 requires the consent or joinder of some or all mortgagees of
 1786 parcels or any other portion of the association's common areas
 1787 to amend the association's governing documents or for any other
 1788 matter is enforceable only as to amendments to the association's
 1789 governing documents that adversely affect the priority of the
 1790 mortgagee's lien or the mortgagee's rights to foreclose its lien
 1791 or that otherwise materially affect the rights and interests of
 1792 the mortgagees.

1793 2. As to mortgages recorded before July 1, 2013, any
 1794 existing provisions in the association's governing documents
 1795 requiring mortgagee consent are enforceable.

1796 3. In securing consent or joinder, the association is
 1797 entitled to rely upon the public records to identify the holders
 1798 of outstanding mortgages. The association may use the address
 1799 provided in the original recorded mortgage document, unless
 1800 there is a different address for the holder of the mortgage in a
 1801 recorded assignment or modification of the mortgage, which
 1802 recorded assignment or modification must reference the official
 1803 records book and page on which the original mortgage was
 1804 recorded. Once the association has identified the recorded
 1805 mortgages of record, the association shall, in writing, request
 1806 of each parcel owner whose parcel is encumbered by a mortgage of
 1807 record any information that the owner has in his or her
 1808 possession regarding the name and address of the person to whom
 1809 mortgage payments are currently being made. Notice shall be sent
 1810 to such person if the address provided in the original recorded
 1811 mortgage document is different from the name and address of the
 1812 mortgagee or assignee of the mortgage as shown by the public
 1813 record. The association is deemed to have complied with this
 1814 requirement by making the written request of the parcel owners
 1815 required under this subparagraph. Any notices required to be
 1816 sent to the mortgagees under this subparagraph shall be sent to
 1817 all available addresses provided to the association.

1818 4. Any notice to the mortgagees required under
 1819 subparagraph 3. may be sent by a method that establishes proof
 1820 of delivery, and any mortgagee who fails to respond within 60

1821 days after the date of mailing is deemed to have consented to
 1822 the amendment.

1823 5. For those amendments requiring mortgagee consent on or
 1824 after July 1, 2013, in the event mortgagee consent is provided
 1825 other than by properly recorded joinder, such consent shall be
 1826 evidenced by affidavit of the association recorded in the public
 1827 records of the county in which the declaration is recorded.

1828 6. Any amendment adopted without the required consent of a
 1829 mortgagee is voidable only by a mortgagee who was entitled to
 1830 notice and an opportunity to consent. An action to void an
 1831 amendment is subject to the statute of limitations beginning 5
 1832 years after the date of discovery as to the amendments described
 1833 in subparagraph 1. and 5 years after the date of recordation of
 1834 the certificate of amendment for all other amendments. This
 1835 subparagraph applies to all mortgages, regardless of the date of
 1836 recordation of the mortgage.

1837 (6) RIGHT TO SPEAK.—Members and parcel owners have the
 1838 right to attend all membership meetings and to speak at any
 1839 meeting with reference to all items opened for discussion or
 1840 included on the agenda. Notwithstanding any provision to the
 1841 contrary in the governing documents or any rules adopted by the
 1842 board or by the membership, a member and a parcel owner have the
 1843 right to speak for at least 3 minutes on any item, ~~provided that~~
 1844 ~~the member or parcel owner submits a written request to speak~~
 1845 ~~prior to the meeting.~~ The association may adopt written
 1846 reasonable rules governing the frequency, duration, and other
 1847 manner of member and parcel owner statements, which rules must
 1848 be consistent with this subsection.

1849 (9)~~(a)~~ ELECTIONS AND BOARD VACANCIES.—
 1850 (a) Elections of directors must be conducted in accordance
 1851 with the procedures set forth in the governing documents of the
 1852 association. All members of the association are eligible to
 1853 serve on the board of directors, and a member may nominate
 1854 himself or herself as a candidate for the board at a meeting
 1855 where the election is to be held or, if the election process
 1856 allows voting by absentee ballot, in advance of the balloting.
 1857 Except as otherwise provided in the governing documents, boards
 1858 of directors must be elected by a plurality of the votes cast by
 1859 eligible voters. Any challenge to the election process must be
 1860 commenced within 60 days after the election results are
 1861 announced.



1862 Section 17. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 87 Mortgage Foreclosures

SPONSOR(S): Passidomo and others

TIED BILLS: None **IDEN./SIM. BILLS:** None

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

SUMMARY ANALYSIS

The foreclosure crisis has impacted Florida's economy and negatively affected the judicial branch, in terms of both funding and caseload. Foreclosing on a mortgage in Florida is a long process. The average length of time between the first foreclosure filing and bank repossession is 853 days while the national average is 414 days. The caseload backlog is not spread evenly across the state. Certain circuits, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits.

Current law provides for an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. If the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.

As to foreclosure of real property, the bill:

- Reduces the statute of limitations for deficiency judgments on a foreclosure action from five years to one year and limits the recoverable amount of the deficiency in some cases.
- Requires the plaintiff in a foreclosure action to provide information to the court upon filing of the case regarding lost, destroyed or stolen promissory notes.
- Provides finality of a mortgage foreclosure judgment for certain purchasers of a property at a foreclosure sale while allowing for damages in some instances.
- Amends the expedited foreclosure process to allow all lienholders to use the procedures, instead of just the mortgagee; reduces the number of hearings from 2 to 1; and prohibits service by publication when using the expedited process, unless the property is abandoned.
- Allows any party to request a case management conference to expedite the lawsuit.
- Defines adequate protections where there is a lost, destroyed or stolen note.

The bill applies to existing mortgages and to pending cases.

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

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The foreclosure crisis has greatly impacted the economy of the state of Florida. It has also negatively affected the judicial branch, in terms of both funding and caseload. Florida has the largest share of foreclosure inventory of any state in the nation, with 305,766 properties in some stage of foreclosure or bank-owned as of the end of 2012.¹ Seven of the top 10 highest foreclosure markets in the nation are in Florida, with Palm-Bay-Melbourne-Titusville having the highest rate of foreclosure of any metro area in the nation.²

Foreclosing on a mortgage in Florida is an unusually long process. Florida trails only New York and New Jersey in terms of the length of time between the first foreclosure filing and bank repossession, at 853 days. The national average is less than half that, at 414 days.³

The state court system is struggling with a backlog of foreclosure cases. In 2005, before the housing market crash, there were only 57,106 foreclosure filings statewide. By 2009, the number of filings exploded to 399,118. Courts did not have the resources to quickly and efficiently deal with this litigation explosion. Due to constitutional and statutory requirements to provide speedy trials to criminal defendants, civil filings take the brunt of any caseload backlog.⁴ There had been a significant decline in filings in fiscal year 2010-11 due to problems with title and the robo-signing situation⁵, with only 155,380 filings, compared to 338,281 in 2009-10 and a peak of 403,473 in 2008-09, but filings have begun to increase as those issues are worked out by mortgage servicers, with 186,651 filings in 2011-12 and more expected this year.⁶

Furthermore, the caseload backlog is not spread evenly across the state. While the statewide average is 11.02% of residential loans in foreclosure, certain areas, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits. For instance, Miami-Dade has 15.56% of loans in foreclosure compared to only 5.26% in Sumter County.⁷

Foreclosure Procedure

The foreclosure procedure is governed by statutory process and the rules of civil procedure. It is initiated by the lender or servicer, known as a mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

¹ RealtyTrac, 4th quarter data, presented to the Civil Justice Subcommittee by the Legislature's Office of Demographics and Research on January 24, 2013.

² *Id.*

³ *Id.*

⁴ Florida Office of the State Courts Administrator, *Summary Reporting System (SRS)*, August 19, 2011.

⁵ Susan Miller, *RealtyTrac: Robo-signing Scandal Cuts into 2010 Foreclosures*, South Florida Business Journal, January 13, 2011. <http://www.bizjournals.com/southflorida/news/2011/01/13/realtytrac-robo-signing-scandal-cuts.html> (last viewed February 1, 2013).

⁶ RealtyTrac, 4th quarter data, presented to the Civil Justice Subcommittee by the Legislature's Office of Demographics and Research on January 24, 2013.

⁷ *Id.*

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint⁸, which must allege that the plaintiff is the present owner and holder of the note and mortgage⁹, contain a copy of the note and mortgage¹⁰, and allege a statement of default,¹¹ along with a filing fee¹² and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.¹³
- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.¹⁴
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.¹⁵
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.¹⁶
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, the court renders a final judgment.¹⁷
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.¹⁸
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.¹⁹
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least five days prior to the sale.²⁰
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.²¹
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.²²
- After 10 days, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure²³, and the court may, in its discretion, enter a deficiency decree in the amount of the fair market value of the security received and the amount of the debt.²⁴

Alternative Foreclosure Procedure

Section 702.10, F.S., creates an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. The following is a brief outline of this alternative foreclosure process:

⁸ Rule 1.944, Fla. R. Civ. P.

⁹ *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

¹⁰ Rule 1.130(a), Fla. R. Civ. P.

¹¹ *Siahpoosh v. Nor Props.*, 666 So.2d 988, 989 (Fla. 4th DCA 1996).

¹² The filing fee for foreclosure actions depends on the value of the claim. When the claim is for \$50,000 or less, the fee is \$395; when the claim is over \$50,000 but less than \$250,000, the fee is \$900; and when the claim is \$250,000 or more, the fee is \$1900, according to s. 28.241(1)(d), F.S.

¹³ Section 48.23, F.S.

¹⁴ Rule 1.070(j), Fla. R. Civ. P. See also chs. 48 and 49, F.S.

¹⁵ Rule 1.040(a)(1), Fla. R. Civ. P.

¹⁶ Rule 1.1510(a), Fla. R. Civ. P.

¹⁷ Section 45.031, F.S.

¹⁸ Section 702.01, F.S. The summary judgment motion is optional. A plaintiff can elect to go to trial without the filing of a summary judgment motion.

¹⁹ Section 45.031(1)(a), F.S.

²⁰ Section 45.031, F.S.

²¹ Section 45.031(8), F.S.

²² Section 45.031(8), F.S.

²³ Section 45.031, F.S.

²⁴ Section 702.06, F.S.

- After a complaint has been filed, the plaintiff may request an order to show cause for the entry of final judgment and the court must immediately review the complaint.²⁵
- If the court finds that the complaint is verified, and alleges a proper cause of action, the court must issue an order directing the defending the show cause why a final judgment should not be entered.²⁶
- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication, and no later than 60 days after the date of service.²⁷
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.²⁸
- The court need not hold a hearing for determination of reasonable attorney fees if the requested fees do not exceed 3% of the principal owed on the note at the time of filing.²⁹
- The court may enter a final judgment if the defendant has waived the right to be heard or has not shown cause why a final judgment should not be entered.³⁰

Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.³¹

- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication.³²
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.³³
- The court may enter an order requiring payment or an order to vacate if the defendant has waived the right to be heard.³⁴
- If the court finds that the defendant has not waived the right to be heard, after reviewing affidavits and evidence, the court can determine if the plaintiff is likely to prevail in the foreclosure action, and enter an order requiring the defendant to make the payments or provide another remedy.³⁵
- The court order must be stayed pending final adjudication of the claims if the defendant posts bond with the court in the amount equal to the unpaid balance of the mortgage.³⁶

Effect of the Bill

Alternative Foreclosure Procedure

The bill amends s. 702.10, F.S., the alternative foreclosure procedure, with the following changes:

- Any lienholder, not just the mortgagee, may initiate the procedure.
- Upon filing, the court must immediately review the request and the court filing in chambers without a hearing.

²⁵ Section 702.10(1), F.S.

²⁶ *Id.* While this appears to create a right to the order to show cause, many courts interpret this subsection to require an initial hearing.

²⁷ Section 702.10(1)(a), F.S.

²⁸ Section 702.10(1)(b), F.S.

²⁹ Section 702.10(1)(c), F.S.

³⁰ Section 702.10(1)(d), F.S.

³¹ Section 702.10(2), F.S.

³² Section 702.10(2)(a), F.S.

³³ Section 702.10(2)(b), F.S.

³⁴ Section 702.10(2)(c), F.S.

³⁵ Section 702.10(2)(d), F.S.

³⁶ *Id.*

- If the court finds that the complaint is verified, complies with s. 702.015, F.S., and alleges a cause of action, the court must promptly issue an order to show cause why a final judgment should not be entered.
- The date for the hearing may not occur sooner than the later of 20 days after service of the order or 45 days after the service of the initial complaint, or no sooner than 55 days after the first publication if service is obtained by publication.
- Provides that the order to show cause must state that if a defendant files defenses, the hearing time will be used to hear and consider the defendant's motion and arguments, and that the order must state that the court may enter an order of final judgment of foreclosure at the hearing, and if such a determination is entered, the court must enter a final judgment ordering the clerk of the court to conduct a foreclosure sale.
- Allows the court to enter a final judgment of foreclosure without the need for further hearing if the plaintiff is entitled to a final judgment and upon filing of the original note or satisfaction of the conditions for establishing a lost note or upon a showing that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument.
- Provides legislative intent that the alternative procedure may run simultaneously with other court procedures.
- Provides a rebuttable presumption that a homestead property is an owner-occupied residential property.
- Limits an order to show cause why an order to make payments during the pendency of the foreclosure or an order to vacate as to an owner-occupied residence.

The bill also requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity with s. 702.10, F.S.

Adequate Protections for Lost, Destroyed, or Stolen Notes in a Mortgage Foreclosure

The bill creates s. 702.11, F.S., providing reasonable means of providing adequate protection under s. 673.3091, F.S., which is the UCC provision relating to the enforcement of a lost, destroyed or stolen instrument. As it relates to a mortgage foreclosure, an adequate protection would include:

- A written indemnification agreement by a person reasonably believe to be sufficiently solvent to honor such an obligation;
- A surety bond;
- A letter of credit issued by a financial institution;
- A deposit of cash collateral with the clerk of the court; or
- Such other security as the court may deem appropriate under the circumstances.

Any security given must be on terms and in amounts set by the court and must run through the applicable statute of limitations for enforcement of the note. The security also must indemnify the maker of the note against any loss or damage that might occur by reason of a claim by another person to enforce the note. Recovery of damages and costs and attorney fees may be sought against the person who wrongly claims to be the holder of a lost, stolen, or destroyed note or against the adequate protections described above. The actual holder of the note need not pursue recovery against the maker of the note or any guarantor.

Deficiency Judgments

Under current law, a lender has 5 years from the foreclosure sale to file a deficiency action.³⁷ This bill amends s. 95.11, F.S., to provide a one-year statute of limitations for an action to enforce a claim of a deficiency related to a note secured by a mortgage against residential property that is a one-family to

³⁷ Section 95.11(2), F.S.
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four-family dwelling unit. The limitations period begins on the 11th day after a foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

This bill amends s. 702.06, F.S., to limit a deficiency decree to the difference between the judgment amount, or in the case of a short sale, the outstanding debt, and the fair market value of the property on the date of sale. This appears to codify the current practice of the courts when rendering a deficiency judgment.³⁸ The bill also eliminates the common law recovery of such a deficiency when the court in the foreclosure action grants or denies a claim for a deficiency judgment. This provision appears to simplify the language of the current law without providing a substantive change in the law.³⁹

Lost, Destroyed or Stolen Notes

The bill creates s. 702.015, F.S., to provide that every complaint in a foreclosure proceeding on residential real property designed principally for one to four families must contain affirmative allegations expressly made by the plaintiff that the plaintiff is the holder of the original note or must allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note. If the plaintiff is not the holder of the note, the complaint must describe the authority of the plaintiff and identify the document that grants the plaintiff to file the complaint on behalf of the holder of the note.

The plaintiff must file either the original promissory note or certification that the plaintiff is in physical possession of the original note, unless it is lost, destroyed or stolen. In such a case, the complaint must contain an affidavit that details a clear chain of all assignments, set forth facts showing the plaintiff is entitled to enforce the note, and include exhibits providing evidence of the acquisition, ownership and possession of the note. The bill requires adequate protection to the plaintiff under the Uniform Commercial Code (UCC).⁴⁰

Finality of Mortgage Foreclosure Judgment

The bill creates s. 702.036, F.S., to provide for finality of mortgage foreclosure judgments. This provision protects bona fide purchasers of a property at a foreclosure sale and ensures the validity of the title where a party seeks to set aside, invalidate, or challenge the validity of a final judgment or to establish or reestablish a lien. Under current law, an innocent purchaser could be at risk of losing a property he purchased in good faith. Under this bill, as long as the party seeking relief was properly served, final judgment was entered, and the appeals periods have run as to the final judgment with no appeals having been filed, and the purchaser was not affiliated with the foreclosing lender or owner, the party may recover monetary damages, but may not disturb the title, thus protecting the innocent purchaser and providing security in title. The bill does not limit the right to other forms of relief that do not adversely affect the ownership of title.

After foreclosure of a mortgage based on a lost, destroyed or stolen note, a person who was not a party to the foreclosure action but claims to be the actual holder of the note has no claim against the property after it is conveyed to a bona fide purchaser for valuable consideration who is not affiliated with the foreclosing lender or owner. However, the actual holder may pursue recovery from any adequate protection as required by the UCC.⁴¹ The actual holder may also pursue damages from the party who wrongfully claimed to be the owner or holder of the promissory note, from the maker of the note, or any other person against whom the actual holder may have a claim.

³⁸ See *Trustees of Central States Southeast and Southwest Areas, Pension Fund v. Indico Corp.*, 401 So. 2d 904 (Fla 1st DCA 1981).

³⁹ See *Cragin v. Ocean & Lake Realty Co.*, 101 So. 795 (Fla. 1931).

⁴⁰ Section 673.3091, F.S., contains the provision relating to the enforcement of lost, destroyed, or stolen instruments. This provision was adopted as part of the Uniform Commercial Code (UCC). The UCC comments on the provision, as reported by Florida Statutes Annotated, indicate that adequate protection is a "flexible concept," and "the type of adequate protection that is reasonable in the circumstances may depend on the degree of certainty about the facts in the case."

⁴¹ *Id.*

B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2 provides dates of application for section 1 of the bill.

Section 3 creates s. 702.015, F.S., relating to elements of complaint; lost, destroyed or stolen note affidavit.

Section 4 creates s. 702.036, F.S., relating to finality of mortgage foreclosure judgment.

Section 5 amends s. 702.06, F.S., relating to deficiency decree; common-law suit to recover deficiency.

Section 6 amends s. 702.10, F.S., relating to order to show cause; entry of final judgment of foreclosure; payment during foreclosure.

Section 7 creates s. 702.11, F.S., relating to adequate protections for lost, destroyed, or stolen notes in mortgage foreclosure.

Section 8 provides legislative findings that some of the provisions of the bill are remedial in nature while others apply to causes of action pending on the effective date of the act.

Section 9 provides an effective date of upon becoming a law.

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 direct economic impact on the private sector.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator anticipates an undetermined near-term expenditure of court resources due to an anticipated spike in filings because of the shortened statute of limitations for bringing actions, with undetermined revenue due to the associated filing fees.⁴²

⁴² Office of State Courts Administrator, 2013 Judicial Impact Statement for HB 0087, Jan. 18, 2013 on file with Civil Justice Subcommittee.

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 appear to create a need for rulemaking. The bill requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity to s. 702.10, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

29 "lienholder"; providing requirements and procedures
 30 with respect to an order directed to defendants to
 31 show cause why a final judgment of foreclosure should
 32 not be entered; providing that certain failures by a
 33 defendant to make certain filings or to make certain
 34 appearances may have specified legal consequences;
 35 requiring the court to enter a final judgment of
 36 foreclosure and order a foreclosure sale under certain
 37 circumstances; revising a restriction on a mortgagee
 38 to request a court to order a mortgagor defendant to
 39 make payments or to vacate the premises during an
 40 action to foreclose on residential real estate to
 41 provide that the restriction applies to all but owner-
 42 occupied residential property; providing a presumption
 43 regarding owner-occupied residential property;
 44 requesting the Supreme Court to adopt rules and forms
 45 for use in expedited foreclosure proceedings; creating
 46 s. 702.11, F.S.; providing requirements for reasonable
 47 means of providing adequate protection under s.
 48 673.3091, F.S., in mortgage foreclosures of certain
 49 residential properties; providing for liability of
 50 persons who wrongly claim to be holders of or entitled
 51 to enforce a lost, stolen, or destroyed note and cause
 52 the mortgage secured thereby to be foreclosed in
 53 certain circumstances; providing for construction and
 54 applicability; providing an effective date.

55
 56 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (b) of subsection (2) of section 95.11, Florida Statutes, is amended, and paragraph (h) is added to subsection (5) of that section, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of paragraph (5)(e), s. 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an action for a deficiency judgment governed by paragraph (5)(h).

(5) WITHIN ONE YEAR.—

(h) An action to enforce a claim of a deficiency related to a note secured by a mortgage against a residential property that is a one-family to four-family dwelling unit. The limitations period shall commence on the 11th day after the foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

Section 2. The amendments made by this act to s. 95.11, Florida Statutes, apply to any action commenced on or after July 1, 2013, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(2)(b), Florida Statutes, before the amendments made by this act may be commenced no later than 5 years after the action accrued but in no event later than July 1, 2014, and if the

85 action is not commenced by that date, it is barred by the
 86 amendments made by this act.

87 Section 3. Section 702.015, Florida Statutes, is created
 88 to read:

89 702.015 Elements of complaint; lost, destroyed, or stolen
 90 note affidavit.-

91 (1) The Legislature intends that this section expedite the
 92 foreclosure process by ensuring initial disclosure of a
 93 plaintiff's status and the facts supporting that status, thereby
 94 ensuring the availability of documents necessary to the
 95 prosecution of the case.

96 (2) A complaint that seeks to foreclose a mortgage or
 97 other lien on residential real property, including individual
 98 units of condominiums and cooperatives, designed principally for
 99 occupation by from one to four families which secures a
 100 promissory note must:

101 (a) Contain affirmative allegations expressly made by the
 102 plaintiff at the time the proceeding is commenced that the
 103 plaintiff is the holder of the original note secured by the
 104 mortgage; or

105 (b) Allege with specificity the factual basis by which the
 106 plaintiff is a person entitled to enforce the note under s.
 107 673.3011.

108 (3) If a party has been delegated the authority to
 109 institute a mortgage foreclosure action on behalf of the holder
 110 of the note, the complaint shall describe the authority of the
 111 plaintiff and identify, with specificity, the document that
 112 grants the plaintiff the authority to act on behalf of the

113 holder of the note. This subsection is intended to require
 114 initial disclosure of status and pertinent facts and not to
 115 modify law regarding standing or real parties in interest.

116 (4) If the plaintiff is in physical possession of the
 117 original promissory note, the plaintiff must file with the
 118 court, contemporaneously with and as a condition precedent to
 119 the filing of the complaint for foreclosure, certification,
 120 under penalty of perjury, that the plaintiff is in physical
 121 possession of the original promissory note. The certification
 122 must set forth the physical location of the note, the name and
 123 title of the individual giving the certification, the name of
 124 the person who personally verified such physical possession, and
 125 the time and date on which the possession was verified. Correct
 126 copies of the note and all allonges to the note must be attached
 127 to the certification. The original note and the allonges must be
 128 filed with the court before the entry of any judgment of
 129 foreclosure or judgment on the note.

130 (5) If the plaintiff seeks to enforce a lost, destroyed,
 131 or stolen instrument, an affidavit executed under penalty of
 132 perjury must be attached to the complaint. The affidavit must:

133 (a) Detail a clear chain of all endorsements or
 134 assignments of the promissory note that is the subject of the
 135 action.

136 (b) Set forth facts showing that the plaintiff is entitled
 137 to enforce a lost, destroyed, or stolen instrument pursuant to
 138 s. 673.3091. Adequate protection as required under s.
 139 673.3091(2) shall be provided before the entry of final
 140 judgment.

141 (c) Include as exhibits to the affidavit such copies of
 142 the note and the allonges to the note, audit reports showing
 143 physical receipt of the original note, or other evidence of the
 144 acquisition, ownership, and possession of the note as may be
 145 available to the plaintiff.

146 (6) The court may sanction the plaintiff for failure to
 147 comply with this section.

148 (7) This section does not apply to any foreclosure
 149 proceeding involving timeshare interests under part III of
 150 chapter 721.

151 Section 4. Section 702.036, Florida Statutes, is created
 152 to read:

153 702.036 Finality of mortgage foreclosure judgment.—

154 (1)(a) In any action or proceeding in which a party seeks
 155 to set aside, invalidate, or challenge the validity of a final
 156 judgment of foreclosure of a mortgage or to establish or
 157 reestablish a lien or encumbrance on the property in abrogation
 158 of the final judgment of foreclosure of a mortgage, the court
 159 shall treat such request solely as a claim for monetary damages
 160 and may not grant relief that adversely affects the quality or
 161 character of the title to the property, if:

162 1. The party seeking relief from the final judgment of
 163 foreclosure of the mortgage was properly served in the
 164 foreclosure lawsuit as provided in chapter 48 or chapter 49.

165 2. The final judgment of foreclosure of the mortgage was
 166 entered as to the property.

167 3. All applicable appeals periods have run as to the final
 168 judgment of foreclosure of the mortgage with no appeals having

169 been taken or any appeals having been finally resolved.

170 4. The property has been acquired for value, by a person
 171 not affiliated with the foreclosing lender or the foreclosed
 172 owner, at a time in which no lis pendens regarding the suit to
 173 set aside, invalidate, or challenge the foreclosure appears in
 174 the official records of the county where the property was
 175 located.

176 (b) This subsection does not limit the right to pursue any
 177 other relief to which a person may be entitled, including, but
 178 not limited to, compensatory damages, punitive damages,
 179 statutory damages, consequential damages, injunctive relief, or
 180 fees and costs, which does not adversely affect the ownership of
 181 the title to the property as vested in the unaffiliated
 182 purchaser for value.

183 (2) For purposes of this section, the following, without
 184 limitation, shall be considered persons affiliated with the
 185 foreclosing lender:

186 (a) The foreclosing lender or any loan servicer for the
 187 loan being foreclosed;

188 (b) Any past or present owner or holder of the loan being
 189 foreclosed;

190 (c) Any maintenance company, holding company, foreclosure
 191 services company, or law firm under contract to any entity
 192 listed in paragraph (a), paragraph (b), or this paragraph, with
 193 regard to the loan being foreclosed; or

194 (d) Any parent entity, subsidiary, or other person who
 195 directly, or indirectly through one or more intermediaries,
 196 controls or is controlled by, or is under common control with,

197 any entity listed in paragraph (a), paragraph (b), or paragraph
 198 (c).

199 (3) After foreclosure of a mortgage based upon the
 200 enforcement of a lost, destroyed, or stolen note, a person who
 201 is not a party to the underlying foreclosure action but who
 202 claims to be the actual holder of the promissory note secured by
 203 the foreclosed mortgage has no claim against the foreclosed
 204 property after it is conveyed for valuable consideration to a
 205 person not affiliated with the foreclosing lender or the
 206 foreclosed owner. This section does not preclude the actual
 207 holder of the note from pursuing recovery from any adequate
 208 protection given pursuant to s. 673.3091 or from the party who
 209 wrongfully claimed to be the owner or holder of the promissory
 210 note under s. 702.11(2) or otherwise, from the maker of the
 211 note, or from any other person against whom it may have a claim
 212 relating to the note.

213 Section 5. Section 702.06, Florida Statutes, is amended to
 214 read:

215 702.06 Deficiency decree; common-law suit to recover
 216 deficiency.—In all suits for the foreclosure of mortgages
 217 heretofore or hereafter executed the entry of a deficiency
 218 decree for any portion of a deficiency, should one exist, may
 219 not exceed the difference between the judgment amount, or in the
 220 case of a short sale, the outstanding debt, and the fair market
 221 value of the property on the date of sale. ~~shall be within the~~
 222 sound judicial discretion of the court, but The complainant
 223 shall also have the right to sue at common law to recover such
 224 deficiency, unless the court in the foreclosure action has

225 ~~granted or denied a claim for a deficiency judgment provided no~~
 226 ~~suit at law to recover such deficiency shall be maintained~~
 227 ~~against the original mortgagor in cases where the mortgage is~~
 228 ~~for the purchase price of the property involved and where the~~
 229 ~~original mortgagee becomes the purchaser thereof at foreclosure~~
 230 ~~sale and also is granted a deficiency decree against the~~
 231 ~~original mortgagor.~~

232 Section 6. Section 702.10, Florida Statutes, is amended to
 233 read:

234 702.10 Order to show cause; entry of final judgment of
 235 foreclosure; payment during foreclosure.—

236 (1) A lienholder ~~After a complaint in a foreclosure~~
 237 ~~proceeding has been filed, the mortgagee may request an order to~~
 238 ~~show cause for the entry of final judgment in a foreclosure~~
 239 ~~action. For purposes of this section, the term "lienholder"~~
 240 ~~includes the plaintiff and a defendant to the action who holds a~~
 241 ~~lien encumbering the property or a defendant who, by virtue of~~
 242 ~~its status as a condominium association, cooperative~~
 243 ~~association, or homeowners' association, may file a lien against~~
 244 ~~the real property subject to foreclosure. Upon filing, and the~~
 245 ~~court shall immediately review the request and the court file in~~
 246 ~~chambers and without a hearing complaint.~~ If, upon examination
 247 of the court file ~~complaint~~, the court finds that the complaint
 248 is verified, complies with s. 702.015, and alleges a cause of
 249 action to foreclose on real property, the court shall promptly
 250 issue an order directed to the other parties named in the action
 251 ~~defendant~~ to show cause why a final judgment of foreclosure
 252 should not be entered.

253 (a) The order shall:

254 1. Set the date and time for a hearing ~~on the order~~ to

255 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~

256 ~~set~~ sooner than the later of 20 days after ~~the~~ service of the

257 order to show cause or 45 days after service of the initial

258 complaint. When service is obtained by publication, the date for

259 the hearing may not be set sooner than 30 days after the first

260 publication. ~~The hearing must be held within 60 days after the~~

261 ~~date of service. Failure to hold the hearing within such time~~

262 ~~does not affect the validity of the order to show cause or the~~

263 ~~jurisdiction of the court to issue subsequent orders.~~

264 2. Direct the time within which service of the order to

265 show cause and the complaint must be made upon the defendant.

266 3. State that the filing of defenses by a motion,

267 responsive pleading, affidavits, or other papers ~~or by a~~

268 ~~verified or sworn answer at or before the hearing to show cause~~

269 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~

270 ~~attached~~ final judgment.

271 4. State that a ~~the~~ defendant has the right to file

272 affidavits or other papers before ~~at~~ the time of the hearing to

273 show cause and may appear personally or by way of an attorney at

274 the hearing.

275 5. State that, if a ~~the~~ defendant files defenses by a

276 motion, a verified or sworn answer, affidavits, or other papers

277 or appears personally or by way of an attorney at the time of

278 the hearing, the hearing time will ~~may~~ be used to hear and

279 consider the defendant's motion, answer, affidavits, other

280 papers, and other evidence and argument as may be presented by

281 the defendant or the defendant's attorney. The order shall also
 282 state that the court may enter an order of final judgment of
 283 foreclosure at the hearing and order the clerk of the court to
 284 conduct a foreclosure sale.

285 6. State that, if a ~~the~~ defendant fails to appear at the
 286 hearing to show cause or fails to file defenses by a motion or
 287 by a verified or sworn answer or files an answer not contesting
 288 the foreclosure, such ~~the~~ defendant may be considered to have
 289 waived the right to a hearing, and in such case, the court may
 290 enter a default against such defendant and, if appropriate, a
 291 final judgment of foreclosure ordering the clerk of the court to
 292 conduct a foreclosure sale.

293 7. State that if the mortgage provides for reasonable
 294 attorney attorney's fees and the requested attorney attorney's
 295 fees do not exceed 3 percent of the principal amount owed at the
 296 time of filing the complaint, it is unnecessary for the court to
 297 hold a hearing or adjudge the requested attorney attorney's fees
 298 to be reasonable.

299 8. Attach the form of the proposed final judgment of
 300 foreclosure which the movant requests the court to will enter,
 301 ~~if the defendant waives the right to be heard at the hearing on~~
 302 ~~the order to show cause. The form may contain blanks for the~~
 303 court to enter the amounts due.

304 9. Require the party seeking final judgment mortgagee to
 305 serve a copy of the order to show cause on the other parties the
 306 ~~mortgager~~ in the following manner:

307 a. If a party the mortgager has been served pursuant to
 308 chapter 48 with the complaint and original process, or the other

309 party is the plaintiff in the action, service of the order to
 310 show cause on that party ~~order~~ may be made in the manner
 311 provided in the Florida Rules of Civil Procedure.

312 b. If a defendant ~~the mortgager~~ has not been served
 313 pursuant to chapter 48 with the complaint and original process,
 314 the order to show cause, together with the summons and a copy of
 315 the complaint, shall be served on the party ~~mortgager~~ in the
 316 same manner as provided by law for original process.

317
 318 Any final judgment of foreclosure entered under this subsection
 319 is for in rem relief only. ~~Nothing in~~ This subsection does not
 320 ~~shall~~ preclude the entry of a deficiency judgment where
 321 otherwise allowed by law. The Legislature intends that this
 322 alternative procedure may run simultaneously with other court
 323 procedures.

324 (b) The right to be heard at the hearing to show cause is
 325 waived if a ~~the~~ defendant, after being served as provided by law
 326 with an order to show cause, engages in conduct that clearly
 327 shows that the defendant has relinquished the right to be heard
 328 on that order. The defendant's failure to file defenses by a
 329 motion or by a sworn or verified answer, affidavits, or other
 330 papers or to appear personally or by way of an attorney at the
 331 hearing duly scheduled on the order to show cause presumptively
 332 constitutes conduct that clearly shows that the defendant has
 333 relinquished the right to be heard. If a defendant files
 334 defenses by a motion, ~~or by a verified or sworn answer,~~
 335 affidavits, or other papers or presents evidence at or before
 336 the hearing, which would be sufficient to preclude the entry of

337 a summary judgment, such action constitutes cause and precludes
 338 the entry of a final judgment at the hearing to show cause.

339 (c) In a mortgage foreclosure proceeding, when a final
 340 ~~default~~ judgment of foreclosure has been entered against the
 341 mortgagor and the note or mortgage provides for the award of
 342 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
 343 court to hold a hearing or adjudge the requested attorney
 344 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
 345 percent of the principal amount owed on the note or mortgage at
 346 the time of filing, even if the note or mortgage does not
 347 specify the percentage of the original amount that would be paid
 348 as liquidated damages.

349 (d) If the court finds that all defendants have ~~the~~
 350 ~~defendant has~~ waived the right to be heard as provided in
 351 paragraph (b), the court shall promptly enter a final judgment
 352 of foreclosure without the need for further hearing if the
 353 plaintiff has shown entitlement to a final judgment and upon the
 354 filing with the court of the original note, satisfaction of the
 355 conditions for establishment of a lost note, or upon a showing
 356 to the court that the obligation to be foreclosed is not
 357 evidenced by a promissory note or other negotiable instrument.
 358 If the court finds that a ~~the~~ defendant has not waived the right
 359 to be heard on the order to show cause, the court shall ~~then~~
 360 determine whether there is cause not to enter a final judgment
 361 of foreclosure. If the court finds that the defendant has not
 362 shown cause, the court shall promptly enter a judgment of
 363 foreclosure. If the time allotted for the hearing is
 364 insufficient, the court may announce at the hearing a date and

365 time for the continued hearing. Only the parties who appear,
 366 individually or through an attorney, at the initial hearing must
 367 be notified of the date and time of the continued hearing.

368 (2) Except as provided in paragraph (i), as part of any ~~in~~
 369 an action for foreclosure, and in addition to any other relief
 370 that the court may award ~~other than residential real estate,~~ the
 371 plaintiff ~~the mortgagee~~ may request that the court enter an
 372 order directing the mortgagor defendant to show cause why an
 373 order to make payments during the pendency of the foreclosure
 374 proceedings or an order to vacate the premises should not be
 375 entered.

376 (a) The order shall:

377 1. Set the date and time for hearing on the order to show
 378 cause. However, the date for the hearing may ~~shall~~ not be set
 379 sooner than 20 days after the service of the order. If ~~Where~~
 380 service is obtained by publication, the date for the hearing may
 381 ~~shall~~ not be set sooner than 30 days after the first
 382 publication.

383 2. Direct the time within which service of the order to
 384 show cause and the complaint shall be made upon each ~~the~~
 385 defendant.

386 3. State that a ~~the~~ defendant has the right to file
 387 affidavits or other papers at the time of the hearing and may
 388 appear personally or by way of an attorney at the hearing.

389 4. State that, if a ~~the~~ defendant fails to appear at the
 390 hearing to show cause and fails to file defenses by a motion or
 391 by a verified or sworn answer, the defendant is ~~may be~~ deemed to
 392 have waived the right to a hearing and in such case the court

393 may enter an order to make payment or vacate the premises.

394 5. Require the movant mortgagee to serve a copy of the
 395 order to show cause on the defendant mortgagor in the following
 396 manner:

397 a. If a defendant ~~the mortgagor~~ has been served with the
 398 complaint and original process, service of the order may be made
 399 in the manner provided in the Florida Rules of Civil Procedure.

400 b. If a defendant ~~the mortgagor~~ has not been served with
 401 the complaint and original process, the order to show cause,
 402 together with the summons and a copy of the complaint, shall be
 403 served on the defendant mortgagor in the same manner as provided
 404 by law for original process.

405 (b) The right of a defendant to be heard at the hearing to
 406 show cause is waived if the defendant, after being served as
 407 provided by law with an order to show cause, engages in conduct
 408 that clearly shows that the defendant has relinquished the right
 409 to be heard on that order. A ~~The~~ defendant's failure to file
 410 defenses by a motion or by a sworn or verified answer or to
 411 appear at the hearing duly scheduled on the order to show cause
 412 presumptively constitutes conduct that clearly shows that the
 413 defendant has relinquished the right to be heard.

414 (c) If the court finds that a ~~the~~ defendant has waived the
 415 right to be heard as provided in paragraph (b), the court may
 416 promptly enter an order requiring payment in the amount provided
 417 in paragraph (f) or an order to vacate.

418 (d) If the court finds that the mortgagor has not waived
 419 the right to be heard on the order to show cause, the court
 420 shall, at the hearing on the order to show cause, consider the

421 affidavits and other showings made by the parties appearing and
 422 make a determination of the probable validity of the underlying
 423 claim alleged against the mortgagor and the mortgagor's
 424 defenses. If the court determines that the plaintiff mortgagee
 425 is likely to prevail in the foreclosure action, the court shall
 426 enter an order requiring the mortgagor to make the payment
 427 described in paragraph (e) to the plaintiff mortgagee and
 428 provide for a remedy as described in paragraph (f). However, the
 429 order shall be stayed pending final adjudication of the claims
 430 of the parties if the mortgagor files with the court a written
 431 undertaking executed by a surety approved by the court in an
 432 amount equal to the unpaid balance of the lien being foreclosed
 433 ~~the mortgage on the property~~, including all principal, interest,
 434 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
 435 ~~mortgagee~~.

436 (e) If ~~In the event~~ the court enters an order requiring
 437 the mortgagor to make payments to the plaintiff mortgagee,
 438 payments shall be payable at such intervals and in such amounts
 439 provided for in the mortgage instrument before acceleration or
 440 maturity. The obligation to make payments pursuant to any order
 441 entered under this subsection shall commence from the date of
 442 the motion filed under this section ~~hereunder~~. The order shall
 443 be served upon the mortgagor no later than 20 days before the
 444 date specified for the first payment. The order may permit, but
 445 ~~may shall~~ not require, the plaintiff mortgagee to take all
 446 appropriate steps to secure the premises during the pendency of
 447 the foreclosure action.

448 (f) If ~~In the event~~ the court enters an order requiring

449 payments, the order shall also provide that the plaintiff is
 450 ~~mortgagee shall be~~ entitled to possession of the premises upon
 451 the failure of the mortgagor to make the payment required in the
 452 order unless at the hearing on the order to show cause the court
 453 finds good cause to order some other method of enforcement of
 454 its order.

455 (g) All amounts paid pursuant to this section shall be
 456 credited against the mortgage obligation in accordance with the
 457 terms of the loan documents; ~~provided, however, that any~~
 458 payments made under this section do shall not constitute a cure
 459 of any default or a waiver or any other defense to the mortgage
 460 foreclosure action.

461 (h) Upon the filing of an affidavit with the clerk that
 462 the premises have not been vacated pursuant to the court order,
 463 the clerk shall issue to the sheriff a writ for possession which
 464 shall be governed by ~~the provisions of~~ s. 83.62.

465 (i) This subsection does not apply to foreclosure of an
 466 owner-occupied residence. For purposes of this paragraph, there
 467 is a rebuttable presumption that a residential property for
 468 which a homestead exemption for taxation was granted according
 469 to the certified rolls of the latest assessment by the county
 470 property appraiser, before the filing of the foreclosure action,
 471 is an owner-occupied residential property.

472 (3) The Supreme Court is requested to amend the Florida
 473 Rules of Civil Procedure to provide for expedited foreclosure
 474 proceedings in conformity with this section and is requested to
 475 develop and publish forms for use under this section.

476 Section 7. Section 702.11, Florida Statutes, is created to

477 read:

478 702.11 Adequate protections for lost, destroyed, or stolen
 479 notes in mortgage foreclosure.—

480 (1) In connection with a mortgage foreclosure, the
 481 following constitute reasonable means of providing adequate
 482 protection under s. 673.3091 if so found by the court:

483 (a) A written indemnification agreement by a person
 484 reasonably believed sufficiently solvent to honor such an
 485 obligation;

486 (b) A surety bond;

487 (c) A letter of credit issued by a financial institution;

488 (d) A deposit of cash collateral with the clerk of the
 489 court; or

490 (e) Such other security as the court may deem appropriate
 491 under the circumstances.

492
 493 Any security given shall be on terms and in amounts set by the
 494 court, for a time period through the running of the statute of
 495 limitations for enforcement of the underlying note, and
 496 conditioned to indemnify and hold harmless the maker of the note
 497 against any loss or damage, including principal, interest, and
 498 attorney fees and costs, that might occur by reason of a claim
 499 by another person to enforce the note.

500 (2) Any person who wrongly claims to be the holder of or
 501 pursuant to s. 673.3011 to be entitled to enforce a lost,
 502 stolen, or destroyed note and causes the mortgage secured
 503 thereby to be foreclosed is liable to the actual holder of the
 504 note, without limitation to any adequate protections given, for

505 actual damages suffered together with attorney fees and costs of
 506 the actual holder of the note in enforcing rights under this
 507 subsection. In addition, the actual holder of the note may
 508 pursue recovery directly against any adequate protections given.

509 (a) The actual holder of the note is not required to
 510 pursue recovery against the maker of the note or any guarantor
 511 thereof as a condition precedent to pursuing remedies under this
 512 section.

513 (b) This section does not limit or restrict the ability of
 514 the actual holder of the note to pursue any other claims or
 515 remedies it may have against the maker, the person who wrongly
 516 claimed to be the holder, or any person who facilitated or
 517 participated in the claim to the note or enforcement thereof.

518 Section 8. The Legislature finds that this act is remedial
 519 in nature and applies to all mortgages encumbering real property
 520 and all promissory notes secured by a mortgage, whether executed
 521 before, on, or after the effective date of this act. In
 522 addition, the Legislature finds that s. 702.015, Florida
 523 Statutes, as created by this act, applies to cases filed on or
 524 after July 1, 2013; however, the amendments to s. 702.10,
 525 Florida Statutes, and the creation of s. 702.11, Florida
 526 Statutes, by this act, apply to causes of action pending on the
 527 effective date of this act.

528 Section 9. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 175 Condominiums
SPONSOR(S): Fitzenhagen
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary <i>JML</i>	Bond <i>YB</i>
2) Business & Professional Regulation Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A condominium is created by the filing of a declaration of condominium in the county property records. Under current practice, condominium developers wait to record the declaration of condominium until the completion of construction. This practice is followed because unit dimensions may be modified during construction and because developers wish to delay the start time of various statutory deadlines. However, this practice creates a conflict with the federal Interstate Land Sales Full Disclosure Act.

The bill amends the condominium law to provide for recording the declaration of condominium before construction by amending the start times of the various statutory deadlines to commence upon the filing of a certificate of a surveyor and mapper certifying the final as-built dimensions of the units rather than upon the recording of the declaration of condominium.

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

The bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on the Formation of Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which are individually owned, but have an undivided share of access to common facilities.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 similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, 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.³ Further, it delineates condominium association bylaws, which governs the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.⁴

All persons who have record title to the interest in the land being submitted to condominium ownership must join in the execution of the declaration. Upon recordation, the developer must file the recording information with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation within 120 days.⁵

The declaration of condominium must contain a certificate of a surveyor and mapper and a graphic description of the improvements in which units are located and a plot plan thereof. Together with the declaration, this information must be in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions.⁶

Background on the Interstate Land Sales Full Disclosure Act

The federal Interstate Land Sales Full Disclosure Act (ILSFDA)⁷ provides consumer protections to individuals who purchase or lease real property in large, uncompleted housing developments, including condominiums. The act applies to both the conveying of a unit or lot and to all related marketing and sales promotional efforts.

ILSFDA requires developers to register the subdivision with the federal Bureau of Consumer Financial Protection.⁸ The developer must file a "statement of record" that contains the information required by ILSFDA and its regulations and pay a registration fee of no more than \$1,000.⁹ The Act provides several exceptions. For example, ILSFDA does not apply to the sale or lease of lots in a subdivision that contains 25 or fewer lots.¹⁰

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ Section 718.104(5), F.S.

⁴ Section 718.112, F.S.

⁵ Section 718.104(2), F.S.

⁶ Section 718.104(4)(e), F.S.

⁷ 15 U.S.C. ss. 1701-20

⁸ The Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the federal Bureau of Consumer Financial Protection all of the consumer protection functions of the Department of Housing and Urban Development (HUD) relating to the ILSFDA.

⁹ See 15 U.S.C. s. 1704 for the registration requirement, and 15 U.S.C. s. 1705 for the listing of the information that must be provided in the statement of record.

¹⁰ The exemptions are provided in 15 U.S.C. s. 1702. For a discussion of the various exemptions in the act, see Jennifer L. Dolce and William P. Sklar, *The Interstate Land Sales Full Disclosure Act's Two-Year Completion Exemption From the Condominium D*, *The Florida Bar Journal*, February 1999, Volume LXXIII, No. 2. A copy of this article is available at:

The Act specifies the information that the developers must provide to prospective purchasers or lessees. If the developer fails to provide this information, the purchaser or lessee has the right to revoke the purchase contract or lease agreement for two years from the date of the signing of the contract or agreement.¹¹ The developer must provide prospective purchasers or lessees with a description of the property which makes such lot clearly identifiable and which is in a form acceptable for recording by the appropriate public official responsible for maintaining land records in the jurisdiction in which the lot is located.¹²

Application of the Interstate Land Sales Full Disclosure Act to Condominium Sales

Of concern to condominium developers, according to the Real Property, Probate, and Trust Law Section of The Florida Bar, is the application of ILSFDA to the sale, or offering for sale, of pre-construction condominium units.

State and federal court decisions have addressed the issue of what is an acceptable description of the property under ILSFDA:

In *Bacolitsas v. 86th & 3rd Owner, LLC*, the United States Court of Appeals for the Second Circuit (New York) held that the description requirement in ISLFDA was satisfied where the purchaser was provided a plan with a detailed description of the unit that identified the dimensions and locations of all rooms and windows, the floor plan, the location of the unit within the building, and the direction the unit faced. The purchaser was also provided a draft declaration that included a metes and bounds description of the condominium and indicated the specific tax lots on which the building was to be erected. The court held that the description itself and not the agreement had to be in a form acceptable for record.¹³

In *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*, the Fourth District Court of Appeals held that ISLFDA the developer had complied with ISLA by providing the buyer a copy of the proposed declaration of condominium, which was included in the prospectus, the unit number, address, development name, site map, and floor plans. The court found that this information, which was incorporated into the contract, made the property purchased "clearly identifiable" and "in a form acceptable for recording."¹⁴

In *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*, the United States District Court for the Middle District of Florida also found that ISLFDA disclosure requirement was not violated when the developer provided a purchase contract that designated the condominium unit and the name of the development. The court held that ISLFDA requirement that the description must be in "recordable form" does not mean that the developer must provide "recording data identifying [the] declaration" as is required by s. 718.109, F.S., i.e., the developer is not required to give the purchaser the identifying reference number when the declaration is recorded.¹⁵

However, in a recent case, *Berkovich v. Vue-North Carolina, LLC*, the United States District Court for the Western District of North Carolina concluded that the purchasers had the right to revoke the contract because it did not contain a

<http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/76d28aa8f2ee03e185256aa9005d8d9a/6b94f229434c8f3885256adb005d6240?OpenDocument> (Last visited February 4, 2013).

¹¹ See 15 U.S.C. s. 1703(d).

¹² 15 U.S.C. s. 1703(d)(1).

¹³ *Bacolitsas v. 86th & 3rd Owner, LLC*, 702 F.3d 673 (C.A.2 (N.Y) 2012).

¹⁴ *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*, 82 So. 3d 924 (Fla. 4th DCA 2011).

¹⁵ *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*, 755 F.Supp.2d 1197 (M.D. Fla. 2009).

recordable legal description that included the "recoding data." Consistent with North Carolina law, the developer had provided the purchaser with a contract that included a legal description of the unit in which the unit was identified by number and the name of the condominium building as described in the declaration of condominium. The description did not include recording data from the filing recording of the declaration because North Carolina law did not allow the declaration to be filed until the construction of the condominium was substantially completed. (Florida law does not prohibit the filing of a declaration before the condominium construction is completed.) Although North Carolina law made it impractical or impossible to provide a description for the unit that included "recording data" the court held that the purchasers were entitled to the "prophylactic measure Congress granted purchasers deprived of a recordable legal description."¹⁶

Of concern to developers and legal practitioners is difficulty of satisfying the requirement of a recordable legal description, i.e., the description provided in the declaration of condominium, before the actual construction and completion of the condominium. They advise that practical necessity prevents the recording of declarations until construction is nearly complete because accurate dimensions of the building and the units cannot be determined until that point. They also advise that the historical practice has been to clearly identify in the contract the property that is being sold by use of a unit identification linked to an accompanied sketch in the sales contract and offering prospectus.

This bill conforms Florida condominium law to federal law with respect to the pre-sale period of a condominium development. Essentially, the bill displaces the current "trigger" by which the law considers the community to be complete and operation. The current triggering event is the recording of the declaration of condominium. The bill replaces the current trigger with one of two events: the recording of a certificate of a surveyor and mapper, pursuant to s. 718.104(4)(e), F.S., or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

Provisions of the Bill

Creation of a Condominium

There is a split in the circuits of the District Courts of Appeal (DCA) regarding the point in time when a condominium unit comes into existence. The 2nd DCA held that the owner of an unimproved lot in an unconstructed condominium was a unit owner and thus liable for unpaid assessments on the property because the declaration of condominium had been recorded and thus a condominium had been created.¹⁷ The 4th DCA followed the 2nd DCA's reasoning in the 1995 case, *Winkelman v. Toll*¹⁸, however two years later, the 4th DCA held that the definitions the developer used in its declaration of condominium could control whether an undeveloped parcel was a "unit within the meaning of the condominium statute."¹⁹

The bill amends s. 718.104(2), F.S., to resolve the circuit split in the District Courts in favor of the 2nd DCA interpretation and provides that a unit comes into existence upon the recording the declaration, regardless of any attempt by the declaration to do otherwise.

¹⁶ *Berkovich v. Vue-North Carolina, LLC*, 2011 WL 5037124 (W.D.N.C. 2011).

¹⁷ *Hyde Park Condominium Assoc. v. Estero Island Real Estate, Inc.*, 486 So. 2d 1 (Fla. 2d DCA 1986). See also *Estancia Condominium Ass'n, Inc. v. Sunfield Homes, Inc.*, (Fla. 2d DCA 1993).

¹⁸ *Winkelman v. Toll*, 661 So. 2d 102 (Fla. 4th DCA 1995).

¹⁹ *RIS Inv. Group, Inc. v. Department of Business and Professional Regulation Division of Florida Land Sales Condominiums and Mobile Homes*, 695 So. 2d 357 (Fla. 4th DCA 1997).

Recording the Declaration

A recorded declaration of condominium may contain graphic descriptions of improvements when accompanied by a surveyor's certificate.²⁰ If the declaration doesn't have the certificate or the survey or graphic description of the improvements required by law, the developer must deliver a deposit to the clerk of court in the amount of an estimate of the cost of the final survey or graphic description.²¹ The clerk is to hold the money until an amendment to the declaration is recorded that complies with the certificate requirements at which time the sum of money that was held is returned to the person presenting the amendment.²² If the money is not paid within 3 years after the date the declaration was originally recorded, the clerk may notify the registered agent of the association that the sum is still available and the reason it was originally deposited.²³

This bill amends s. 718.105(4)(c), F.S., to extend the current 3-year time frame for the clerk to hold the money after the date the declaration was recorded to 5 years.

Amending the Declaration of Condominium

Current law provides that if there is an omission or error in a declaration or any other document that would affect the validity of the condominium, one or more unit owners may petition the circuit court to correct the error or omission. An action to determine whether a declaration or other condominium document complies with the mandatory requirements to form a condominium must be filed within 3 years of the declaration of condominium and the declaration and other documents will serve as effective to create a condominium as of the date the declaration was recorded, whether or not the documents substantially comply with the mandatory requirements of law.²⁴

This bill amends s. 718.110(10), F.S., to provide that the three-year time period for challenging an error or omission in a declaration begins with the recording of the surveyor certificate or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

Financial Reporting

Current law requires that if the developer has not turned over control of the association to the unit owners, all unit owners including the developer may vote on issues related to the preparation of financial reports for the first two fiscal years of the association's operation from the fiscal year the declaration is recorded.²⁵

This bill amends s. 718.111(13)(d), F.S., to provide that the financial reporting period referenced above begins at either the recording of the surveyor certificate or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

Annual Budget

Current law provides that prior to turnover of control of an association by a developer to unit owners, the developer may vote to waive reserves or reduce funding of reserves for the first two fiscal years of the association's operation, beginning with the fiscal year in which the initial declaration is recorded.²⁶

²⁰ Section 718.105(2), F.S.

²¹ Section 718.105(4)(a), F.S.

²² Section 718.105(4)(b), F.S.

²³ Section 718.105(4)(c), F.S.

²⁴ Section 718.110(10), F.S.

²⁵ Section 718.111(13), F.S.

²⁶ Section 718.112.(2)(f), F.S.

This bill amends s. 718.112(2)(f), F.S., to allow the developer to vote to waive reserves or reduce funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year of the recording of the surveyor's certificate or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

Association Powers

Current law provides that an association may enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, to be stated and fully described in the declaration. After the declaration has been recorded, any such agreements which are not entered into within 12 months of the recording of the declaration are a material alteration or substantial addition to the association's property, and such an agreement cannot be entered into without vote of a majority of the total voting interests of the association.²⁷

This bill amends s. 718.114, F.S., to require a majority vote for such agreements after 12 months of the recording of the surveyor's certificate or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

Transfer of Association Control

Current law provides that if unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer are entitled to elect at least one-third of the members of the board. Unit owners other than the developer are entitled to elect at least a majority of the members of the board upon the earliest of:

- Three years after 50 percent of the units that will ultimately be operated by the association have been conveyed;
- Three months after 90 percent of the units that will ultimately be operated by the association have been conveyed;
- When all the units that will ultimately be operated by the association have been completed, some of them have been conveyed, and none of the others are being offered for sale by the developer;
- When the developer files a petition seeking bankruptcy protection;
- When a receiver for the developer is appointed by the circuit court and the receivership is not dismissed within 30 days of the appointment; or
- Seven years after the declaration of condominium is recorded, or seven years after the first declaration of condominium is recorded, for condominiums that may ultimately operate more than one condominium, or for a phase condominium, 7 years after the declaration creating the initial phase is recorded.

This bill amends s. 718.301(1), F.S., to conform the final triggering event listed above to the remainder of the bill. Instead of the declaration of condominium, the seven-year period begins with either the recording of the surveyor's certificate or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

Phase Condominiums

Current law provides that all phases of a phase condominium must be added to the condominium within 7 years of the recording of the declaration of condominium.

This bill amends s. 718.403(1), F.S., to begin the 7-year period for adding phases to a phase condominium with either the recording of the surveyor's certificate or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first. The bill also allows unit owners to vote to approve an amendment extending the 7-year period during the final 3 years of the 7-year period. The total time to add all phases may not exceed 10 years from the recording of the surveyor's certificate or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

B. SECTION DIRECTORY:

Section 1 amends s. 718.104, F.S., relating to creation of condominiums.

Section 2 amends s. 718.105, F.S., relating to recording of declaration.

Section 3 amends s. 718.110, F.S., relating to amendment of declaration.

Section 4 amends s. 718.111, F.S., relating to the association.

Section 5 amends s. 718.112, F.S., relating to bylaws.

Section 6 amends s. 718.114, F.S., relating to association powers.

Section 7 amends s. 718.301, F.S., relating to transfer of association control.

Section 8 amends s. 718.403, F.S., relating to phase condominiums.

Section 9 provides an effective date of upon becoming a law.

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 conflicts with FACR 61B-23.001(9) and will require rulemaking to conform the rule to the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

29 association; making technical changes; amending s.
 30 718.403, F.S.; revising the conditions under which a
 31 developer may amend a declaration of condominium
 32 governing a phase condominium; providing for an
 33 extension of the 7-year period for the completion of a
 34 phase; providing requirements for the adoption of an
 35 amendment; providing that an amendment adopted
 36 pursuant to this section is exempt from other
 37 requirements of law; providing an effective date.

38

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

40

41 Section 1. Subsection (2) of section 718.104, Florida
 42 Statutes, is amended to read:

43 718.104 Creation of condominiums; contents of
 44 declaration.—Every condominium created in this state shall be
 45 created pursuant to this chapter.

46 (2) A condominium is created by recording a declaration in
 47 the public records of the county where the land is located,
 48 executed and acknowledged with the requirements for a deed. All
 49 persons who have record title to the interest in the land being
 50 submitted to condominium ownership, or their lawfully authorized
 51 agents, must join in the execution of the declaration. Upon the
 52 recording of the declaration, or an amendment adding a phase to
 53 the condominium under s. 718.403(6), all units described in the
 54 declaration or phase amendment as being located in or on the
 55 land then being submitted to condominium ownership shall come
 56 into existence, regardless of the state of completion of planned

57 improvements in which the units may be located or any other
 58 requirement or description that a declaration may provide. Upon
 59 recording the declaration of condominium pursuant to this
 60 section, the developer shall file the recording information with
 61 the division within 120 calendar days on a form prescribed by
 62 the division.

63 Section 2. Paragraph (c) of subsection (4) of section
 64 718.105, Florida Statutes, is amended to read:

65 718.105 Recording of declaration.—

66 (4)

67 (c) If the sum of money held by the clerk has not been
 68 paid to the developer or association as provided in paragraph
 69 (b) within 5 ~~3~~ years after the date the declaration was
 70 originally recorded, the clerk may notify, in writing, the
 71 registered agent of the association that the sum is still
 72 available and the purpose for which it was deposited. If the
 73 association does not record the certificate within 90 days after
 74 the clerk has given the notice, the clerk may disburse the money
 75 to the developer. If the developer cannot be located, the clerk
 76 shall disburse the money to the Division of Florida
 77 Condominiums, Timeshares, and Mobile Homes for deposit in the
 78 Division of Florida Condominiums, Timeshares, and Mobile Homes
 79 Trust Fund.

80 Section 3. Subsection (10) of section 718.110, Florida
 81 Statutes, is amended to read:

82 718.110 Amendment of declaration; correction of error or
 83 omission in declaration by circuit court.—

84 (10) If there is an omission or error in a declaration of

85 condominium, or any other document required to establish the
 86 condominium, and the ~~which~~ omission or error would affect the
 87 valid existence of the condominium, the circuit court may ~~has~~
 88 ~~jurisdiction to~~ entertain a petition of one or more of the unit
 89 owners in the condominium, or of the association, to correct the
 90 error or omission, and the action may be a class action. The
 91 court may require that one or more methods of correcting the
 92 error or omission be submitted to the unit owners to determine
 93 the most acceptable correction. All unit owners, the
 94 association, and the mortgagees of a first mortgage of record
 95 must be joined as parties to the action. Service of process on
 96 unit owners may be by publication, but the plaintiff must
 97 furnish every unit owner not personally served with process with
 98 a copy of the petition and final decree of the court by
 99 certified mail, return receipt requested, at the unit owner's
 100 last known residence address. If an action to determine whether
 101 the declaration or another condominium document complies with
 102 the mandatory requirements for the formation of a condominium is
 103 not brought within 3 years of the recording of the certificate
 104 of a surveyor and mapper pursuant to s. 718.104(4)(e) or the
 105 recording of an instrument that transfers title to a unit in the
 106 condominium which is not accompanied by a recorded assignment of
 107 developer rights in favor of the grantee of such unit, whichever
 108 occurs first, ~~recording of the declaration,~~ the declaration and
 109 other documents will effectively ~~shall be effective under this~~
 110 ~~chapter to~~ create a condominium, as of the date the declaration
 111 was recorded, regardless of whether ~~whether or not~~ the documents
 112 substantially comply with the mandatory requirements of law.

113 However, both before and after the expiration of this 3-year
 114 period, the circuit court has jurisdiction to entertain a
 115 petition permitted under this subsection for the correction of
 116 the documentation, and other methods of amendment may be
 117 utilized to correct the errors or omissions at any time.

118 Section 4. Paragraph (d) of subsection (13) of section
 119 718.111, Florida Statutes, is amended to read:

120 718.111 The association.—

121 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 122 the fiscal year, or annually on a date provided in the bylaws,
 123 the association shall prepare and complete, or contract for the
 124 preparation and completion of, a financial report for the
 125 preceding fiscal year. Within 21 days after the final financial
 126 report is completed by the association or received from the
 127 third party, but not later than 120 days after the end of the
 128 fiscal year or other date as provided in the bylaws, the
 129 association shall mail to each unit owner at the address last
 130 furnished to the association by the unit owner, or hand deliver
 131 to each unit owner, a copy of the financial report or a notice
 132 that a copy of the financial report will be mailed or hand
 133 delivered to the unit owner, without charge, upon receipt of a
 134 written request from the unit owner. The division shall adopt
 135 rules setting forth uniform accounting principles and standards
 136 to be used by all associations and addressing the financial
 137 reporting requirements for multicondominium associations. The
 138 rules must include, but not be limited to, standards for
 139 presenting a summary of association reserves, including a good
 140 faith estimate disclosing the annual amount of reserve funds

141 that would be necessary for the association to fully fund
 142 reserves for each reserve item based on the straight-line
 143 accounting method. This disclosure is not applicable to reserves
 144 funded via the pooling method. In adopting such rules, the
 145 division shall consider the number of members and annual
 146 revenues of an association. Financial reports shall be prepared
 147 as follows:

148 (d) If approved by a majority of the voting interests
 149 present at a properly called meeting of the association, an
 150 association may prepare:

151 1. A report of cash receipts and expenditures in lieu of a
 152 compiled, reviewed, or audited financial statement;

153 2. A report of cash receipts and expenditures or a
 154 compiled financial statement in lieu of a reviewed or audited
 155 financial statement; or

156 3. A report of cash receipts and expenditures, a compiled
 157 financial statement, or a reviewed financial statement in lieu
 158 of an audited financial statement.

159
 160 Such meeting and approval must occur before the end of the
 161 fiscal year and is effective only for the fiscal year in which
 162 the vote is taken, except that the approval may also be
 163 effective for the following fiscal year. If ~~With respect to an~~
 164 ~~association to which~~ the developer has not turned over control
 165 of the association, all unit owners, including the developer,
 166 may vote on issues related to the preparation of the
 167 association's financial reports ~~for the first 2 fiscal years of~~
 168 ~~the association's operation,~~ from beginning with the date of

169 incorporation of the association through the end of the second
 170 fiscal year after the fiscal year in which the certificate of a
 171 surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or
 172 an instrument that transfers title to a unit in the condominium
 173 which is not accompanied by a recorded assignment of developer
 174 rights in favor of the grantee of such unit is recorded,
 175 whichever occurs first ~~declaration is recorded~~. Thereafter, all
 176 unit owners except the developer may vote on such issues until
 177 control is turned over to the association by the developer. Any
 178 audit or review prepared under this section shall be paid for by
 179 the developer if done before turnover of control of the
 180 association. An association may not waive the financial
 181 reporting requirements of this section for more than 3
 182 consecutive years.

183 Section 5. Paragraph (f) of subsection (2) of section
 184 718.112, Florida Statutes, is amended to read:

185 718.112 Bylaws.—

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

189 (f) Annual budget.—

190 1. The proposed annual budget of estimated revenues and
 191 expenses must ~~shall~~ be detailed and must ~~shall~~ show the amounts
 192 budgeted by accounts and expense classifications, including, if
 193 applicable, but not limited to, those expenses listed in s.
 194 718.504(21). A multicondominium association shall adopt a
 195 separate budget of common expenses for each condominium the
 196 association operates and shall adopt a separate budget of common

197 expenses for the association. In addition, if the association
 198 maintains limited common elements with the cost to be shared
 199 only by those entitled to use the limited common elements as
 200 provided for in s. 718.113(1), the budget or a schedule attached
 201 to it must ~~a schedule attached thereto shall~~ show the amount
 202 budgeted for this maintenance ~~amounts budgeted therefor~~. If,
 203 after turnover of control of the association to the unit owners,
 204 any of the expenses listed in s. 718.504(21) are not applicable,
 205 they need not be listed.

206 2. In addition to annual operating expenses, the budget
 207 must ~~shall~~ include reserve accounts for capital expenditures and
 208 deferred maintenance. These accounts must ~~shall~~ include, but are
 209 not limited to, roof replacement, building painting, and
 210 pavement resurfacing, regardless of the amount of deferred
 211 maintenance expense or replacement cost, and for any other item
 212 that has a ~~for which the~~ deferred maintenance expense or
 213 replacement cost that exceeds \$10,000. The amount to be reserved
 214 must ~~shall~~ be computed using ~~by means of~~ a formula ~~which is~~
 215 based upon estimated remaining useful life and estimated
 216 replacement cost or deferred maintenance expense of each reserve
 217 item. The association may adjust replacement reserve assessments
 218 annually to take into account any changes in estimates or
 219 extension of the useful life of a reserve item caused by
 220 deferred maintenance. This subsection does not apply to an
 221 adopted budget in which the members of an association have voted
 222 ~~determined, by a majority vote at a duly called meeting of the~~
 223 ~~association,~~ to provide no reserves or less reserves than
 224 required by this subsection. However, prior to turnover of

225 control of an association by a developer to unit owners other
 226 than a developer pursuant to s. 718.301, the developer may vote
 227 to waive the reserves or reduce the funding of reserves through
 228 the period expiring at the end of the second fiscal year after
 229 the fiscal year in which the certificate of a surveyor and
 230 mapper is recorded pursuant to s. 718.104(4)(e) or an instrument
 231 that transfers title to a unit in the condominium which is not
 232 accompanied by a recorded assignment of developer rights in
 233 favor of the grantee of such unit is recorded, whichever occurs
 234 first, for the first 2 fiscal years of the association's
 235 operation, beginning with the fiscal year in which the initial
 236 declaration is recorded, after which time reserves may be waived
 237 or reduced only upon the vote of a majority of all nondeveloper
 238 voting interests voting in person or by limited proxy at a duly
 239 called meeting of the association. If a meeting of the unit
 240 owners has been called to determine whether to waive or reduce
 241 the funding of reserves, and no such result is achieved or a
 242 quorum is not attained, the reserves ~~as~~ included in the budget
 243 shall go into effect. After the turnover, the developer may vote
 244 its voting interest to waive or reduce the funding of reserves.

245 3. Reserve funds and any interest accruing thereon shall
 246 remain in the reserve account or accounts, and may ~~shall~~ be used
 247 only for authorized reserve expenditures unless their use for
 248 other purposes is approved in advance by a majority vote at a
 249 duly called meeting of the association. Prior to turnover of
 250 control of an association by a developer to unit owners other
 251 than the developer pursuant to s. 718.301, the developer-
 252 controlled association shall not vote to use reserves for

253 purposes other than that for which they were intended without
 254 the approval of a majority of all nondeveloper voting interests,
 255 voting in person or by limited proxy at a duly called meeting of
 256 the association.

257 4. The only voting interests that ~~which~~ are eligible to
 258 vote on questions that involve waiving or reducing the funding
 259 of reserves, or using existing reserve funds for purposes other
 260 than purposes for which the reserves were intended, are the
 261 voting interests of the units subject to assessment to fund the
 262 reserves in question. Proxy questions relating to waiving or
 263 reducing the funding of reserves or using existing reserve funds
 264 for purposes other than purposes for which the reserves were
 265 intended shall contain the following statement in capitalized,
 266 bold letters in a font size larger than any other used on the
 267 face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN
 268 PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY
 269 RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED
 270 SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

271 Section 6. Section 718.114, Florida Statutes, is amended
 272 to read:

273 718.114 Association powers.—An association may enter into
 274 agreements to acquire leaseholds, memberships, and other
 275 possessory or use interests in lands or facilities such as
 276 country clubs, golf courses, marinas, and other recreational
 277 facilities, regardless of whether ~~or not~~ the lands or facilities
 278 are contiguous to the lands of the condominium, if such lands
 279 and facilities are intended to provide enjoyment, recreation, or
 280 other use or benefit to the unit owners. All of these

281 leaseholds, memberships, and other possessory or use interests
 282 existing or created at the time of recording the declaration
 283 must be stated and fully described in the declaration.
 284 Subsequent to the recording of the declaration, agreements
 285 acquiring these leaseholds, memberships, or other possessory or
 286 use interests which are not entered into within 12 months of the
 287 date of the recording of the certificate of a surveyor and
 288 mapper pursuant to s. 718.104(4)(e) or the recording of an
 289 instrument that transfers title to a unit in the condominium
 290 which is not accompanied by a recorded assignment of developer
 291 rights in favor of the grantee of such unit, whichever occurs
 292 first, are following the recording of the declaration are a
 293 material alteration or substantial addition to the real property
 294 that is association property, and the association may not
 295 acquire or enter into such agreements except upon a vote of, or
 296 written consent by, a majority of the total voting interests or
 297 as authorized by the declaration as provided in s. 718.113. The
 298 declaration may provide that the rental, membership fees,
 299 operations, replacements, and other expenses are common expenses
 300 and may impose covenants and restrictions concerning their use
 301 and may contain other provisions not inconsistent with this
 302 chapter. A condominium association may conduct bingo games as
 303 provided in s. 849.0931.

304 Section 7. Subsections (1) and (4) of section 718.301,
 305 Florida Statutes, are amended to read:

306 718.301 Transfer of association control; claims of defect
 307 by association.—

308 (1) If unit owners other than the developer own 15 percent

309 or more of the units in a condominium that will be operated
 310 ultimately by an association, the unit owners other than the
 311 developer are entitled to elect at least one-third of the
 312 members of the board of administration of the association. Unit
 313 owners other than the developer are entitled to elect at least a
 314 majority of the members of the board of administration of an
 315 association, upon the first to occur of any of the following
 316 events:

317 (a) Three years after 50 percent of the units that will be
 318 operated ultimately by the association have been conveyed to
 319 purchasers;

320 (b) Three months after 90 percent of the units that will
 321 be operated ultimately by the association have been conveyed to
 322 purchasers;

323 (c) When all the units that will be operated ultimately by
 324 the association have been completed, some of them have been
 325 conveyed to purchasers, and none of the others are being offered
 326 for sale by the developer in the ordinary course of business;

327 (d) When some of the units have been conveyed to
 328 purchasers and none of the others are being constructed or
 329 offered for sale by the developer in the ordinary course of
 330 business;

331 (e) When the developer files a petition seeking protection
 332 in bankruptcy;

333 (f) When a receiver for the developer is appointed by a
 334 circuit court and is not discharged within 30 days after such
 335 appointment, unless the court determines within 30 days after
 336 appointment of the receiver that transfer of control would be

337 detrimental to the association or its members; or
 338 (g) Seven years after the date of the recording of the
 339 certificate of a surveyor and mapper pursuant to s.
 340 718.104(4)(e) or the recording of an instrument that transfers
 341 title to a unit in the condominium which is not accompanied by a
 342 recorded assignment of developer rights in favor of the grantee
 343 of such unit, whichever occurs first; ~~recording of the~~
 344 ~~declaration of condominium;~~ or, in the case of an association
 345 that may ultimately operate more than one condominium, 7 years
 346 after the date of the recording of the certificate of a surveyor
 347 and mapper pursuant to s. 718.104(4)(e) or the recording of an
 348 instrument that transfers title to a unit which is not
 349 accompanied by a recorded assignment of developer rights in
 350 favor of the grantee of such unit, whichever occurs first,
 351 ~~recording of the declaration~~ for the first condominium it
 352 operates; or, in the case of an association operating a phase
 353 condominium created pursuant to s. 718.403, 7 years after the
 354 date of the recording of the certificate of a surveyor and
 355 mapper pursuant to s. 718.104(4)(e) or the recording of an
 356 instrument that transfers title to a unit which is not
 357 accompanied by a recorded assignment of developer rights in
 358 favor of the grantee of such unit, whichever occurs first
 359 ~~recording of the declaration creating the initial phase,~~
 360 ~~whichever occurs first.~~ The developer is entitled to elect at
 361 least one member of the board of administration of an
 362 association as long as the developer holds for sale in the
 363 ordinary course of business at least 5 percent, in condominiums
 364 with fewer than 500 units, and 2 percent, in condominiums with

365 | more than 500 units, of the units in a condominium operated by
 366 | the association. After the developer relinquishes control of the
 367 | association, the developer may exercise the right to vote any
 368 | developer-owned units in the same manner as any other unit owner
 369 | except for purposes of reacquiring control of the association or
 370 | selecting the majority members of the board of administration.

371 | (4) At the time that unit owners other than the developer
 372 | elect a majority of the members of the board of administration
 373 | of an association, the developer shall relinquish control of the
 374 | association, and the unit owners shall accept control.
 375 | Simultaneously, or for the purposes of paragraph (c) not more
 376 | than 90 days thereafter, the developer shall deliver to the
 377 | association, at the developer's expense, all property of the
 378 | unit owners and of the association which is held or controlled
 379 | by the developer, including, but not limited to, the following
 380 | items, if applicable, as to each condominium operated by the
 381 | association:

382 | (a)1. The original or a photocopy of the recorded
 383 | declaration of condominium and all amendments thereto. If a
 384 | photocopy is provided, it must ~~shall~~ be certified by affidavit
 385 | of the developer or an officer or agent of the developer as
 386 | being a complete copy of the actual recorded declaration.

387 | 2. A certified copy of the articles of incorporation of
 388 | the association or, if the association was created prior to the
 389 | effective date of this act and it is not incorporated, copies of
 390 | the documents creating the association.

391 | 3. A copy of the bylaws.

392 | 4. The minute books, including all minutes, and other

393 books and records of the association, if any.

394 5. Any house rules and regulations that ~~which~~ have been
 395 promulgated.

396 (b) Resignations of officers and members of the board of
 397 administration who are required to resign because the developer
 398 is required to relinquish control of the association.

399 (c) The financial records, including financial statements
 400 of the association, and source documents from the incorporation
 401 of the association through the date of turnover. The records
 402 must ~~shall~~ be audited for the period from the incorporation of
 403 the association or from the period covered by the last audit, if
 404 an audit has been performed for each fiscal year since
 405 incorporation, by an independent certified public accountant.
 406 All financial statements must ~~shall~~ be prepared in accordance
 407 with generally accepted accounting principles and must ~~shall~~ be
 408 audited in accordance with generally accepted auditing
 409 standards, as prescribed by the Florida Board of Accountancy,
 410 pursuant to chapter 473. The accountant performing the audit
 411 shall examine to the extent necessary supporting documents and
 412 records, including the cash disbursements and related paid
 413 invoices to determine if expenditures were for association
 414 purposes and the billings, cash receipts, and related records to
 415 determine that the developer was charged and paid the proper
 416 amounts of assessments.

417 (d) Association funds or control thereof.

418 (e) All tangible personal property that is property of the
 419 association, which is represented by the developer to be part of
 420 the common elements or which is ostensibly part of the common

421 elements, and an inventory of that property.

422 (f) A copy of the plans and specifications utilized in the
 423 construction or remodeling of improvements and the supplying of
 424 equipment to the condominium and in the construction and
 425 installation of all mechanical components serving the
 426 improvements and the site with a certificate in affidavit form
 427 of the developer or the developer's agent or an architect or
 428 engineer authorized to practice in this state that such plans
 429 and specifications represent, to the best of his or her
 430 knowledge and belief, the actual plans and specifications
 431 utilized in the construction and improvement of the condominium
 432 property and for the construction and installation of the
 433 mechanical components serving the improvements. If the
 434 condominium property has been declared a condominium more than 3
 435 years after the completion of construction or remodeling of the
 436 improvements, the requirements of this paragraph do not apply.

437 (g) A list of the names and addresses, ~~of which the~~
 438 ~~developer had knowledge at any time in the development of the~~
 439 ~~condominium,~~ of all contractors, subcontractors, and suppliers
 440 utilized in the construction or remodeling of the improvements
 441 and in the landscaping of the condominium or association
 442 property which the developer had knowledge of at any time in the
 443 development of the condominium.

444 (h) Insurance policies.

445 (i) Copies of any certificates of occupancy that ~~which~~ may
 446 have been issued for the condominium property.

447 (j) Any other permits applicable to the condominium
 448 property which have been issued by governmental bodies and are

449 in force or were issued within 1 year prior to the date the unit
 450 owners other than the developer took ~~take~~ control of the
 451 association.

452 (k) All written warranties of the contractor,
 453 subcontractors, suppliers, and manufacturers, if any, that are
 454 still effective.

455 (l) A roster of unit owners and their addresses and
 456 telephone numbers, if known, as shown on the developer's
 457 records.

458 (m) Leases of the common elements and other leases to
 459 which the association is a party.

460 (n) Employment contracts or service contracts in which the
 461 association is one of the contracting parties or service
 462 contracts in which the association or the unit owners have an
 463 obligation or responsibility, directly or indirectly, to pay
 464 some or all of the fee or charge of the person or persons
 465 performing the service.

466 (o) All other contracts to which the association is a
 467 party.

468 (p) A report included in the official records, under seal
 469 of an architect or engineer authorized to practice in this
 470 state, attesting to required maintenance, useful life, and
 471 replacement costs of the following applicable common elements
 472 comprising a turnover inspection report:

- 473 1. Roof.
- 474 2. Structure.
- 475 3. Fireproofing and fire protection systems.
- 476 4. Elevators.

- 477 5. Heating and cooling systems.
- 478 6. Plumbing.
- 479 7. Electrical systems.
- 480 8. Swimming pool or spa and equipment.
- 481 9. Seawalls.
- 482 10. Pavement and parking areas.
- 483 11. Drainage systems.
- 484 12. Painting.
- 485 13. Irrigation systems.

486 (g) A copy of the certificate of a surveyor and mapper
 487 recorded pursuant to s. 718.104(4)(e) or the recorded instrument
 488 that transfers title to a unit in the condominium which is not
 489 accompanied by a recorded assignment of developer rights in
 490 favor of the grantee of such unit, whichever occurs first.

491 Section 8. Subsection (1) of section 718.403, Florida
 492 Statutes, is amended to read:

493 718.403 Phase condominiums.—

494 (1) Notwithstanding the provisions of s. 718.110, a
 495 developer may develop a condominium in phases, if the original
 496 declaration of condominium submitting the initial phase to
 497 condominium ownership or an amendment to the declaration which
 498 has been approved by all of the unit owners and unit mortgagees
 499 provides for and describes in detail all anticipated phases; the
 500 impact, if any, which the completion of subsequent phases would
 501 have upon the initial phase; and the time period ~~(which may not~~
 502 ~~exceed 7 years from the date of recording the declaration of~~
 503 ~~condominium)~~ within which all phases must be added to the
 504 condominium and comply with the requirements of this section and

505 at the end of which the right to add additional phases expires.

506 (a) All phases must be added to the condominium within 7
 507 years after the date of the recording of the certificate of a
 508 surveyor and mapper pursuant to s. 718.104(4)(e) or the
 509 recording of an instrument that transfers title to a unit in the
 510 condominium which is not accompanied by a recorded assignment of
 511 developer rights in favor of the grantee of such unit, whichever
 512 occurs first, unless the unit owners vote to approve an
 513 amendment extending the 7-year period pursuant to paragraph (b).

514 (b) An amendment to extend the 7-year period shall require
 515 the approval of the owners necessary to amend the declaration of
 516 condominium pursuant to s. 718.110(1)(a). An extension of the 7-
 517 year period may be submitted for approval only during the last 3
 518 years of the 7-year period.

519 (c) An amendment must describe the period within which all
 520 phases must be added to the condominium and such period may not
 521 exceed 10 years from the date of the recording of the
 522 certificate of a surveyor and mapper pursuant to s.
 523 718.104(4)(e) or the recording of an instrument that transfers
 524 title to a unit in the condominium which is not accompanied by a
 525 recorded assignment of developer rights in favor of the grantee
 526 of such unit, whichever occurs first.

527 (d) An amendment that extends the 7-year period pursuant
 528 to this section is not subject to the requirements of s.
 529 718.110(4).

530 Section 9. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 179 Eminent Domain Proceedings
SPONSOR(S): Young
TIED BILLS: None IDEN./SIM. BILLS: SB 322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Arguelles	Bond
2) Local & Federal Affairs Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Eminent domain refers to the power of the government to take private property for a public use. Current law allows state, local governments and specified entities ("condemning authorities") to acquire title and possession of real property before eminent domain proceedings have concluded through a process commonly referred to as "quick taking". The condemning authority must deposit the estimated value of the property with the Clerk of the Circuit Court. Current law provides that ninety percent of the interest earned through investment of the advance deposit is paid to the condemning authority.

The bill provides that ninety percent of interest earned must be paid to the party entitled to the deposit, which is typically the private property owner.

This bill may have an unknown minimal negative fiscal impact on state and local governments.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

"Eminent domain" is the fundamental power of the sovereign to take private property for a public use without the owner's consent.¹ Under the federal and state constitutions private property can only be taken for a public purpose and upon payment to the owner of the full value of such property.² State government, local governments, and certain entities (collectively referred to as "condemning authorities") all have the power of eminent domain.

In Florida there are two different types of eminent domain proceedings. In a traditional eminent domain action the condemning authority files a petition indicating the intent to take the property. The case proceeds like any other lawsuit, and eventually the case is concluded by agreement of the parties or a trial. Upon conclusion, the condemning authority pays the value and the owner transfers title and possession.³

Because of the inherent delays of the traditional process a "quick taking" process was enacted. In a "quick taking" the condemning authority must post a good faith estimate of the property in the clerk's registry and then can take immediate possession and title of the property prior to final judgment. The Clerk of the Circuit Court is authorized to invest monies that are held, even for temporary periods.⁴

Section 74.051(4), F.S., provides that ninety percent of the interest earned on deposits made under the quick take procedure are to be paid to the "petitioner." Note that the petitioner is always a condemning authority.⁵

Effect of Bill

The bill amends s. 74.051(4), F.S., to apportion the ninety percent of interest in accordance with the ultimate ownership in the deposit.

The practical effect of the bill is to effectively shift most of the interest earnings from condemning authorities to private property owners.

B. SECTION DIRECTORY:

Section 1 amends s. 74.051, F.S., regarding payment of interest earnings on quick take deposits.

Section 2 provides an effective date July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an unknown minimal negative fiscal impact on state revenues, or the bill may have no fiscal impact. See Fiscal Comments.

¹ *Storer Cable T.V. of Florida, Inc. v. Summerwinds Apartments Associates, Ltd.*, 493 So. 2d 417 (Fla. 1986).

² Art. X, § 6(a), Fla. Const.

³ Chapter 73, F.S.

⁴ *Id.*

⁵ *Id.* The other ten percent of interest is paid to the Clerk as a management fee.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an unknown minimal negative fiscal impact on local government revenues, or the bill may have no fiscal impact. See Fiscal Comments.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a minimal positive fiscal impact on private property owners in Florida who are subjected to eminent domain proceedings, or the bill may have no impact. See Fiscal Comments.

D. FISCAL COMMENTS:

At least one circuit court has ruled that property owners, not condemning authorities, are entitled to the interest notwithstanding the statute. A pending class action lawsuit is making the same allegation. If the court rules against the state in the class action, then this bill merely changes the statute to comply with the finding and there is no fiscal impact. If the courts ultimately rule in favor of condemning authorities, then this bill has a negative fiscal impact on condemning authorities, although the amount is unknown.

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:

In 2011, a Florida Circuit Court held s. 74.051(4), F.S., unconstitutional⁶ based on the ruling of the United States Supreme Court in *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980) ("The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property."). The court in *Webb's* ruled that the portion of Florida's interpleader law whereby the state kept the interest on interpleader funds was an unconstitutional taking of private property. However, another circuit court has ruled the current statute constitutional.⁷

B. RULE-MAKING AUTHORITY:

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

⁶ *Mallards Cove LLP v. Jed Pittman, Clerk of Court of Pasco County and the State of Florida, Department of Transportation*, Fla. 6th Cir. Ct. 2011).

⁷ Information from Florida DOT analysis dated January 31, 2013, on file with the Civil Justice Subcommittee. The case citation is not in the DOT analysis and is unknown.

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 eminent domain proceedings;
 3 amending s. 74.051, F.S.; revising the distribution of
 4 interest on certain deposits held by clerks of court
 5 in eminent domain proceedings; providing an effective
 6 date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (4) of section 74.051, Florida
 11 Statutes, is amended to read:

12 74.051 Hearing on order of taking.—

13 (4) The court may fix the time within which and the terms
 14 upon which the defendants shall be required to surrender
 15 possession to the petitioner, which time of possession shall be
 16 upon deposit for those defendants failing to file a request for
 17 hearing as provided herein. The order of taking shall not become
 18 effective unless the deposit of the required sum is made in the
 19 registry of the court. If the deposit is not made within 20 days
 20 from the date of the order of taking, the order shall be void
 21 and of no further effect. The clerk is authorized to invest such
 22 deposits so as to earn the highest interest obtainable under the
 23 circumstances in state or national financial institutions in
 24 Florida insured by the Federal Government. Ninety percent of the
 25 interest earned shall be apportioned in accordance with the
 26 ultimate ownership in the deposit ~~paid to the petitioner.~~

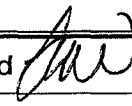
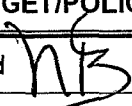
27 Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 Application of Foreign Law in Certain Cases

SPONSOR(S): Metz

TIED BILLS: None IDEN./SIM. BILLS: SB 58

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

SUMMARY ANALYSIS

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. Contracts may contain a clause which provides that disputes must be decided according to the laws of another jurisdiction, or that disputes must be adjudicated in another jurisdiction. These are known as "choice of law" and "forum selection" provisions, respectively.

Marriage contracts are enforceable as a general rule in Florida. A conflict of laws arises when parties otherwise subject to Florida's body of family law request a Florida court to enforce a marital contract according to laws of another jurisdiction. Currently, case law holds that where foreign law frustrates the public policy of this state, it will not be enforced. This bill codifies these holdings, making clear that the public policy of Florida is to protect the constitutional rights of the parties above the enforcement of a foreign law or a forum selection clause.

The bill is limited in its application to dissolution proceedings and support enforcement under The Uniform Interstate Family Support Act.

Specifically, the bill:

- Provides that any legal decision or contract provision is void and unenforceable if it is based upon a foreign law or system that does not grant the parties the same protections guaranteed by the state and federal constitutions.
- Provides that a forum selection clause in a contract violates the public policy of this state and is unenforceable if enforcement would result in a violation of constitutional protections.
- Provides that a claim of *forum non conveniens* must be denied if a court finds that granting the claim violates or would likely lead to a violation of any constitutional right of the non-claimant in the foreign forum.
- Provides that constitutional rights may be waived, but directs that waivers will be interpreted to protect the party waiving his or her rights.

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

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. "A court may take judicial notice of . . . laws of foreign nations and of an organization of nations." Section 90.202, F.S. However, even if recognized, the laws of foreign nations are not necessarily enforced unless there is a reason to do so, usually by prior agreement of the parties.

Contracts often contain clauses which provide for dispute settlement according to the laws of a certain jurisdiction. These are known as "choice of law" provisions. These may direct interpretation or enforcement of the contract according to the laws of another state, but may require adherence to the law of another country. Contracts may also contain a "forum selection clause" providing that disputes must be decided in a particular jurisdiction. These clauses compel the court to decline jurisdiction, yielding it to the other state or country. Marital contracts (ante-nuptial and post-nuptial agreements) may contain either or both such provisions, and they are enforceable in a dissolution proceeding in Florida.

A conflict of laws arises when parties otherwise subject to Florida's body of family law request a Florida court to enforce a marital contract or support order according to the law of another jurisdiction, or request that the case be transferred to another jurisdiction for decision. This bill addresses both types of provisions - the choice of substantive law to be applied and the choice of forum. It also covers the non-contractual situation which might cause a court to relinquish jurisdiction, i.e., a claim of forum non conveniens.¹ The bill is limited in its application to dissolution proceedings (Chapter 61, F.S.), and support enforcement under The Uniform Interstate Family Support Act, Chapter 88, F.S.

Foreign support orders are enforced in Florida under the Uniform Interstate Family Support Act,² which directs that as a general rule, the law of the state issuing the order governs, even if enforcement is requested in Florida.³ Likewise, Chapter 61, F.S., which governs dissolution of marriage, acknowledges the enforceability of a choice of law provision in an antenuptial agreement.⁴

If such provisions do not offend the public policy of Florida, they are enforceable, even if the law to be applied is different than Florida law.⁵ Historically, Florida courts have enforced a prenuptial contract according to the law of the place where it was entered into, unless enforcement would be contrary to public policy or unconstitutional.⁶ For example, in *Akileh v. Elchahal*,⁷ the court enforced the parties' Islamic ante-nuptial agreement, arguably a religious arrangement, since it complied with Florida contract law, and the court found nothing in the contract unconscionable.

Florida has also enacted the "Uniform Premarital Agreement Act," which directs that premarital agreements, including their choice of law provisions, are enforceable. See s. 61.079 F.S. Choice of law

¹ "Forum non conveniens is a common law doctrine addressing the problem that arises when a local court technically has jurisdiction over a suit but the cause of action may be fairly and more conveniently litigated elsewhere." *Kinney System, Inc., v. Continental Ins. Co.*, 674 So.2d 86 (Fla. 1996). See also sec. 47.122, F.S.

² Chapter 88, F.S.

³ See 28 USC sec. 1738B, which is entitled "The Full Faith and Credit for Child Support Orders Act." Federal law requires that all states recognize support orders as a matter of full faith and credit. As a side note, the recognition of a foreign support order is not absolute, but the exceptions are immaterial to this analysis.

⁴ See s. 61.079, F.S.

⁵ *McNamara v. McNamara*, 40 So.3d 78, 80 (Fla. 5th DCA 2010).

⁶ *Gessler v. Gessler*, 273 F.2d 302 (5th Cir. 1959).

⁷ 666 So.2d 246 (Fla. 2d DCA 1996).

provisions in property settlement agreements are valid and enforceable pursuant to the Uniform Interstate Family Support Act, as codified in ch. 88, F.S.⁸

However, despite these statutes, courts maintain that where the foreign law frustrates the public policy of this state, or is not established with specificity as a matter of fact,⁹ it will not be enforced. For example, where the husband sought to enforce a Danish prenuptial agreement which left nothing to the wife in the event of divorce, the court refused, "where to do so would bring harm to a Florida citizen or would frustrate an established public policy of this state."¹⁰

Effect of Proposed Changes

Section 61.079 F.S., provides that choice of law provisions in premarital agreements are enforceable in Florida.¹¹ This bill codifies current caselaw which holds generally that such agreements would not be enforced if enforcement would violate constitutional rights.

Likewise, the Uniform Interstate Family Support Act does not include support orders issued pursuant to a foreign country's law or system. It only applies to orders issued by a court in another state of the union. This bill codifies current case law, making clear that the public policy of the state in respect to all matters that might be adjudicated under these statutes is to protect constitutional rights.

The bill defines "foreign law, legal code, or system" as any law, legal code, or system of a jurisdiction outside any state or territory of the United States. The bill provides that:

- Any decision based on any law, legal code, or system that does not grant the parties affected the same fundamental liberties, rights, and privileges granted under the State Constitution and the Constitution of the United States, violates public policy of the State of Florida and is void and unenforceable.
- Any contractual provision, if severable, that provides for a choice of law, legal code, or system to govern disputes, is void and unenforceable if the system chosen includes law that would not provide the parties the same fundamental liberties, rights, and privileges granted under the State Constitution and the Constitution of the United States.
- If a contractual provision provides for a choice of forum outside the state or territory of the United States and if enforcement of that choice of forum would result in a violation of any right guaranteed by the State Constitution or Constitution of the United States, then the provision must be construed to preserve the constitutional rights of the person against whom enforcement is sought.
- A claim of *forum non conveniens* must be denied if a court of this state finds that granting the claim violates or would likely lead to a violation of any constitutional right of the nonclaimant in the foreign forum.

These provisions only apply to actual or foreseeable denials of a natural person's constitutional rights.

The bill allows for an individual to voluntarily restrict his or her fundamental liberties, rights, and privileges guaranteed by the Florida and U.S. constitutions; however, the language of any such contract or other waiver must be strictly construed in favor of preserving the individual's constitutional rights.

⁸ See generally *Keeton v. Keeton*, 807 So.2d 186 (Fla. 1st DCA 2002)(holding that property settlement agreement was enforceable in Florida with Kentucky law controlling), and *Blitz v. Florida Dept. Of Revenue ex rel. Maxwell*, 898 So.2d 121,125 (Fla. 4th DCA 2005).

⁹ See, eg., *Courtlandt Corp. v. Whitmer*, 121 So.2d 57 (Fla. 2d DCA 1960); cf. *Hieber v. Hieber*, 151 So.2d 646 (Fla. 3d DCA 1963) (law of foreign state).

¹⁰ *Gustafson v. Jensen*, 515 So.2d 1298 (Fla. 3rd DCA 1987).

¹¹ "Parties to a premarital agreement may contract with respect to . . . the choice of law governing the construction of the agreement and any other matter, including their personal rights and obligations, not in violation of either the public policy of this state or a law imposing a criminal penalty." s. 61.079, F.S.

The bill provides that it is not to be construed to:

- Require or authorize a court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters if such adjudication or prohibition would violate art. I s. 3, Fla. Const., or the First Amendment of the U.S. Constitution.
- Conflict with any federal treaty or other international agreement to which the United States is a party and such treaty or agreement preempts state law on the matter at issue.

The bill does not apply to a corporation, partnership, or other form of business association.

The bill contains a severability clause, providing that if any provision of this bill or its application is held invalid, the invalidity does not affect other provisions or applications of the bill.

B. SECTION DIRECTORY:

Section 1 creates s. 45.022, F.S., relating to application of foreign law contrary to public policy in certain cases.

Section 2 provides the act takes effect upon becoming law.

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:

Federal Preemption

The doctrine of preemption limits state action in any matter where legislation on the topic exists at the federal level. Article VI of the U.S. Constitution provides that the laws and treaties of the U.S. are the "Supreme Law of the Land," and, therefore, they preempt state law. Under the federal Full Faith and Credit for Child Support Orders Act,¹² "each state is required to enact the Uniform Interstate Family Support Act to improve the effectiveness of child support enforcement."¹³ The Full Faith and Credit for Child Support Orders Act provides for modification of child support orders issued in other states, and addresses choice of law issues in respect to orders issued in another state. It does not address orders issued by another country.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"¹⁴ and the action must pose a "great potential for disruption or embarrassment"¹⁵ to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as the United States' perception abroad.

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

¹² 28 USC sec. 1738B(a)(1)

¹³ Fla. Jur. 2d, Family Law, s. 552

¹⁴ *Zschernig v. Miller*, 389 U.S. 429, 433 (1968).

¹⁵ *Id.* at 435.

1 A bill to be entitled
 2 An act relating to application of foreign law in
 3 certain cases; creating s. 45.022, F.S.; providing
 4 intent; defining the term "foreign law, legal code, or
 5 system"; clarifying that the public policies expressed
 6 in the act apply to violations of a natural person's
 7 fundamental liberties, rights, and privileges
 8 guaranteed by the State Constitution or the United
 9 States Constitution; providing that the act does not
 10 apply to a corporation, partnership, or other form of
 11 business association, except when necessary to provide
 12 effective relief in proceedings under or relating to
 13 chapters 61 and 88, F.S.; specifying the public policy
 14 of this state in applying the choice of a foreign law,
 15 legal code, or system under certain circumstances in
 16 proceedings brought under or relating to chapters 61
 17 and 88, F.S., which relate to dissolution of marriage,
 18 support, time-sharing, the Uniform Child Custody
 19 Jurisdiction and Enforcement Act, and the Uniform
 20 Interstate Family Support Act; declaring that certain
 21 decisions rendered under such laws, codes, or systems
 22 are void; declaring that certain choice of venue or
 23 forum provisions in a contract are void; providing for
 24 the construction of a waiver by a natural person of
 25 the person's fundamental liberties, rights, and
 26 privileges guaranteed by the State Constitution or the
 27 United States Constitution; declaring that claims of
 28 forum non conveniens or related claims must be denied

29 under certain circumstances; providing that the act
 30 may not be construed to require or authorize any court
 31 to adjudicate, or prohibit any religious organization
 32 from adjudicating, ecclesiastical matters in violation
 33 of specified constitutional provisions or to conflict
 34 with any federal treaty or other international
 35 agreement to which the United States is a party to a
 36 specified extent; providing for severability;
 37 providing an effective date.

38
 39 Be It Enacted by the Legislature of the State of Florida:

40
 41 Section 1. Section 45.022, Florida Statutes, is created to
 42 read:

43 45.022 Application of foreign law contrary to public
 44 policy in certain cases.-

45 (1) While the Legislature fully recognizes the right to
 46 contract freely under the laws of this state, it also recognizes
 47 that this right may be reasonably and rationally circumscribed
 48 pursuant to the state's interest to protect and promote
 49 liberties, rights, and privileges granted under the State
 50 Constitution or the United States Constitution.

51 (2) As used in this section, the term "foreign law, legal
 52 code, or system" means any law, legal code, or system of a
 53 jurisdiction outside any state or territory of the United
 54 States, including, but not limited to, international
 55 organizations or tribunals, and applied by that jurisdiction's
 56 courts, administrative bodies, or other formal or informal

57 tribunals. The term does not include the common law and statute
 58 laws of England as described in s. 2.01 or any laws of the
 59 Native American tribes in this state.

60 (3) (a) This section applies only to actual or foreseeable
 61 denials of a natural person's fundamental liberties, rights, and
 62 privileges guaranteed by the State Constitution or the United
 63 States Constitution from the application of a foreign law, legal
 64 code, or system in proceedings brought under, pursuant to, or
 65 pertaining to the subject matter of chapter 61 or chapter 88.

66 (b) Except as necessary to provide effective relief in
 67 proceedings brought under, pursuant to, or pertaining to the
 68 subject matter of chapter 61 or chapter 88, this section does
 69 not apply to a corporation, partnership, or other form of
 70 business association.

71 (4) Any court, arbitration, tribunal, or administrative
 72 agency ruling or decision violates the public policy of this
 73 state and is void and unenforceable if the court, arbitration,
 74 tribunal, or administrative agency bases its ruling or decision
 75 in the matter at issue in whole or in part on any foreign law,
 76 legal code, or system that does not grant the parties affected
 77 by the ruling or decision the same fundamental liberties,
 78 rights, and privileges guaranteed by the State Constitution or
 79 the United States Constitution.

80 (5) (a) A contract or contractual provision, if severable,
 81 that provides for the choice of a foreign law, legal code, or
 82 system to govern some or all of the disputes between the parties
 83 to be adjudicated by a court of law or by an arbitration panel
 84 arising from the contract violates the public policy of this

85 state and is void and unenforceable if the foreign law, legal
 86 code, or system chosen includes or incorporates any substantive
 87 or procedural law, as applied to the dispute at issue, which
 88 would not grant the parties the same fundamental liberties,
 89 rights, and privileges guaranteed by the State Constitution or
 90 the United States Constitution.

91 (b) This subsection does not limit the right of a natural
 92 person in this state to voluntarily restrict or limit his or her
 93 fundamental liberties, rights, and privileges guaranteed by the
 94 State Constitution or the United States Constitution by contract
 95 or specific waiver consistent with constitutional principles,
 96 but the language of any such contract or other waiver must be
 97 strictly construed in favor of preserving such liberties,
 98 rights, and privileges.

99 (6) (a) A contract or contractual provision, if severable,
 100 that provides for the choice of venue or choice of forum outside
 101 a state or territory of the United States violates the public
 102 policy of this state and is void and unenforceable if the
 103 enforcement of the choice of venue or forum provision would
 104 result in a violation of any fundamental liberties, rights, and
 105 privileges guaranteed by the State Constitution or the United
 106 States Constitution.

107 (b) If a natural person who is subject to personal
 108 jurisdiction in this state seeks to maintain litigation,
 109 arbitration, agency, or similarly binding proceedings in this
 110 state and the courts of this state find that granting a claim of
 111 forum non conveniens or a related claim denies or would likely
 112 lead to the denial of any fundamental liberties, rights, and

113 privileges guaranteed by the State Constitution or the United
 114 States Constitution of the nonclaimant in the foreign forum with
 115 respect to the matter in dispute, it is the public policy of
 116 this state that the claim be denied.

117 (7) This section may not be construed to:

118 (a) Require or authorize any court to adjudicate, or
 119 prohibit any religious organization from adjudicating,
 120 ecclesiastical matters, including, but not limited to, the
 121 election, appointment, calling, discipline, dismissal, removal,
 122 or excommunication of a member, officer, official, priest, nun,
 123 monk, pastor, rabbi, imam, or member of the clergy of the
 124 religious organization, or determination or interpretation of
 125 the doctrine of the religious organization, if such adjudication
 126 or prohibition would violate s. 3, Art. I of the State
 127 Constitution or the First Amendment to the United States
 128 Constitution; or

129 (b) Conflict with any federal treaty or other
 130 international agreement to which the United States is a party to
 131 the extent that such federal treaty or international agreement
 132 preempts or is superior to state law on the matter at issue.

133 (8) If any provision of this section or its application to
 134 any natural person or circumstance is held invalid, the
 135 invalidity does not affect other provisions or applications of
 136 this section which can be given effect, and to that end the
 137 provisions of this section are severable.

138 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJS 13-01 Terms of Court
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Bond <i>YB</i>	Bond <i>YB</i>

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.

This PCB repeals statutory requirements for terms of court and makes conforming changes.

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

The PCB has an effective date of January 1, 2014.

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 constitution² 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 appellate courts, a mandate is the title of the document from the appellate court directing the lower court what to do based on the appellate court's decision in the case. 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 a mandate:

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 rendered, this court has jurisdiction and power which it may

¹ See <http://2ndcircuit.leoncountyfl.gov/courtHistory/firsthundred.php>, which describes the history of the Second Judicial Circuit, including how the terms of court once provided for the circuit judge to travel down the Apalachicola River, and were changed to accommodate the arrival of steamboat service allowing for easier upstream travel (last accessed January 25, 2013).

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.

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 PCB

The PCB 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. Two of those crimes relate to the penalty for a repeat offense of uttering. Those statutes are amended to reference offenses committed within a six month period (which approximates a term of court).
- 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 PCB 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 issued. The conditions upon which withdrawal is allowed are taken from the case law quoted above. The time commences upon issuance of the mandate.

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.

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, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB 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 PCB 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 PCB 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 before 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.; authorizing appellate courts to withdraw
 60 a mandate within 120 days after its issuance; amending
 61 ss. 112.19, 206.215, 450.121, 831.10, 831.17, 877.08,
 62 902.19, 903.32, 905.01, 905.09, 905.095, 914.03,
 63 924.065, and 932.47, F.S.; conforming provisions to
 64 changes made by the act; providing an effective date.

65

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

67

68 Section 1. Sections 25.051, 26.21, 26.22, 26.23, 26.24,
 69 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33,
 70 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365,
 71 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and
 72 907.055, Florida Statutes, are repealed.

73 Section 2. Section 26.46, Florida Statutes, is amended to
 74 read:

75 26.46 Jurisdiction of resident judge after assignment.—If
 76 ~~When~~ a circuit judge is assigned to another circuit, none of the
 77 circuit judges in that ~~such~~ other circuit shall, because of the
 78 ~~such~~ assignment, be deprived of or affected in his or her
 79 jurisdiction other than to the extent essential so as not to
 80 conflict with the authority of the temporarily assigned circuit
 81 judge as to the particular case or cases or class of cases, ~~or~~
 82 ~~in presiding at the particular term or part of term named or~~
 83 ~~specified in the assignment.~~

84 Section 3. Section 27.04, Florida Statutes, is amended to

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85 read:

86 27.04 Summoning and examining witnesses for state.—The
 87 state attorney shall have summoned all witnesses required on
 88 behalf of the state; and he or she is allowed the process of his
 89 or her court to summon witnesses from throughout the state to
 90 appear before the state attorney ~~in or out of term time~~ at such
 91 convenient places in the state attorney's judicial circuit and
 92 at such convenient times as may be designated in the summons, to
 93 testify before him or her as to any violation of the law upon
 94 which they may be interrogated, and he or she is empowered to
 95 administer oaths to all witnesses summoned to testify by the
 96 process of his or her court or who may voluntarily appear before
 97 the state attorney to testify as to any violation or violations
 98 of the law.

99 Section 4. Section 30.12, Florida Statutes, is amended to
 100 read:

101 30.12 Power to appoint sheriff.—~~If whenever~~ any sheriff in
 102 the state fails ~~shall fail~~ to attend, in person or by deputy,
 103 ~~any term~~ of the circuit court or county court of the county,
 104 from sickness, death, or other cause, the judge attending the
 105 ~~said~~ court may appoint an interim a sheriff, who shall assume
 106 all the responsibilities, perform all the duties, and receive
 107 the same compensation as if he or she had been duly appointed
 108 sheriff, for only the said term of nonattendance ~~court~~ and no
 109 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~~

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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 may,
 153 as the circumstances and justice of the case may require, to
 154 reconsider, revise, reform, or modify its own opinions and
 155 orders for the purpose of making the same accord with law and
 156 justice. Accordingly, an appellate court may recall its own
 157 mandate for the purpose of allowing it to exercise such
 158 jurisdiction and power in a proper case. A mandate may not be
 159 recalled more than 120 days after it has been issued.

160 Section 11. Paragraph (b) of subsection (1) of section
 161 112.19, Florida Statutes, is amended to read:

162 112.19 Law enforcement, correctional, and correctional
 163 probation officers; death benefits.—

164 (1) Whenever used in this section, the term:

165 (b) "Law enforcement, correctional, or correctional
 166 probation officer" means any officer as defined in s. 943.10(14)
 167 or employee of the state or any political subdivision of the
 168 state, including any law enforcement officer, correctional

169 officer, correctional probation officer, state attorney
 170 investigator, or public defender investigator, whose duties
 171 require such officer or employee to investigate, pursue,
 172 apprehend, arrest, transport, or maintain custody of persons who
 173 are charged with, suspected of committing, or convicted of a
 174 crime; and the term includes any member of a bomb disposal unit
 175 whose primary responsibility is the location, handling, and
 176 disposal of explosive devices. The term also includes any full-
 177 time officer or employee of the state or any political
 178 subdivision of the state, certified pursuant to chapter 943,
 179 whose duties require such officer to serve process or to attend
 180 a session ~~terms~~ of a circuit or county court as bailiff.

181 Section 12. Subsection (2) of section 206.215, Florida
 182 Statutes, is amended to read:

183 206.215 Costs and expenses of proceedings.—

184 (2) The clerks of the courts performing duties under the
 185 provisions aforesaid shall receive the same fees as prescribed
 186 by the general law for the performance of similar duties, and
 187 witnesses attending any investigation pursuant to subpoena shall
 188 receive the same mileage and per diem as if attending as a
 189 witness before the circuit court ~~in term time~~.

190 Section 13. Subsection (4) of section 450.121, Florida
 191 Statutes, is amended to read:

192 450.121 Enforcement of Child Labor Law.—

193 (4) Grand juries ~~shall~~ have inquisitorial powers to
 194 investigate violations of this chapter; also, trial court judges
 195 shall specially charge the grand jury, ~~at the beginning of each~~
 196 ~~term of the court,~~ to investigate violations of this chapter.

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197 Section 14. Section 831.10, Florida Statutes, is amended
 198 to read:

199 831.10 Second conviction of uttering forged bills.—A
 200 person previously ~~whoever, having been~~ convicted of violating
 201 ~~the offense mentioned in~~ s. 831.09 who is again convicted of
 202 that the like offense committed after the former conviction, and
 203 ~~on whoever is at the same term of the court convicted upon~~ three
 204 distinct charges of such offense committed within a 6-month
 205 period, shall be deemed a common utterer of counterfeit bills,
 206 and shall be punished as provided in s. 775.084.

207 Section 15. Section 831.17, Florida Statutes, is amended
 208 to read:

209 831.17 Violation of s. 831.16; second or subsequent
 210 conviction.—A person previously ~~whoever having been~~ convicted of
 211 violating either of the offenses mentioned in s. 831.16 who, is
 212 again convicted of violating that statute either of the same
 213 ~~offenses,~~ committed after the former conviction on, and ~~whoever~~
 214 ~~is at the same term of the court convicted upon~~ three distinct
 215 charges of such offense committed within a 6-month period said
 216 ~~offenses,~~ commits a felony of the second degree, punishable as
 217 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) If ~~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 before ~~at the next term of the~~
 233 court having jurisdiction to give evidence of the crime and
 234 fails to appear, the person is ~~shall be~~ liable for all costs
 235 occasioned by his or her complaint, and the county court judge
 236 may enter ~~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 or trial, 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

253 | of member; term of grand jury.—

254 | (1) The grand jury shall consist of no ~~not~~ fewer than 15,
 255 | but no ~~not~~ more than 21 persons. The ~~provisions of~~ law governing
 256 | the qualifications, disqualifications, excusals, drawing,
 257 | summoning, supplying deficiencies, compensation, and procurement
 258 | of petit jurors apply to grand jurors. In addition, an elected
 259 | public 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

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 under this
 284 section herein shall have the same composition and the same
 285 powers and duties it had during its original term. If ~~In the~~
 286 ~~event~~ the term of the grand jury is extended under this section,
 287 it shall be extended for a time certain, not to exceed a total
 288 of 90 days, and only for the purpose of concluding one or more
 289 specified investigative matters initiated during its original
 290 term.

291 Section 22. Section 914.03, Florida Statutes, is amended
 292 to read:

293 914.03 Attendance of witnesses.—A witness summoned by a
 294 grand jury ~~or in a criminal case~~ shall remain in attendance
 295 until excused by the grand jury. A witness summoned in a
 296 criminal case shall remain available for attendance until the
 297 case for which he or she was summoned is disposed of or until he
 298 or she is excused by the court. A witness who departs without
 299 permission of the court shall be in criminal contempt of court.
 300 ~~A witness shall attend each succeeding term of court until the~~
 301 ~~case is terminated.~~

302 Section 23. Subsection (2) of section 924.065, Florida
 303 Statutes, is amended to read:

304 924.065 Denial of motion for new trial or arrest of
 305 judgment; appeal bond; supersedeas.—

306 (2) An appeal may ~~shall~~ not be a supersedeas to the
 307 execution of the judgment, sentence, or order until the
 308 appellant has entered into a bond with at least two sureties to

309 | secure the payment of the judgment, fine, and any future costs
 310 | that may be adjudged by the appellate court. The bond shall be
 311 | conditioned on the appellant's personally answering and abiding
 312 | by the final order, sentence, or judgment of the appellate court
 313 | and, if the action is remanded, on the appellant's appearing
 314 | before ~~at the next term of~~ the court in which the case was
 315 | originally determined and not departing without leave of court.

316 | Section 24. Section 932.47, Florida Statutes, is amended
 317 | to read:

318 | 932.47 Informations filed by prosecuting attorneys.—
 319 | Informations may be filed by the prosecuting attorney of the
 320 | circuit court with the clerk of the circuit court ~~in vacation or~~
 321 | ~~in term~~ without leave of the court first being obtained.

322 | Section 25. This act shall take effect January 1, 2014.