



Business & Professional Regulation Subcommittee

**Tuesday, March 18, 2014
12:30 PM
12 HOB**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professional Regulation Subcommittee

Start Date and Time: Tuesday, March 18, 2014 12:30 pm
End Date and Time: Tuesday, March 18, 2014 02:30 pm
Location: 12 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 807 Residential Properties by Civil Justice Subcommittee, Moraitis
HB 1191 Telephone Solicitation by Cruz

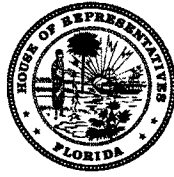
Consideration of the following proposed committee substitute(s):

PCS for HB 29 -- Mobile Home Park Lot Tenancies
PCS for HB 411 -- Labor Pools

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, March 17, 2014.

By request of the Chair, all Business & Professional Regulation Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 17, 2014.

NOTICE FINALIZED on 03/14/2014 16:14 by Ellinor.Martha



The Florida House of Representatives

Regulatory Affairs Committee

Business & Professional Regulation Subcommittee

Will Weatherford
Speaker

Debbie Mayfield
Chair

AGENDA

March 18, 2014
12 House Office Building
12:30 PM – 2:30 PM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. CS/HB 807 by *Civil Justice Subcommittee; Rep. Moraitis*
Residential Properties
- IV. HB 1191 by *Rep. Cruz*
Telephone Solicitation
- V. PCS for HB 29 by *Business & Professional Regulation Subcommittee*
Mobile Home Park Lot Tenancies
- VI. PCS for HB 411 by *Business & Professional Regulation Subcommittee*
Labor Pools
- VII. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 807 Residential Properties
SPONSOR(S): Civil Justice Subcommittee; Moraitis, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee		Butler BSR	Luczynski MJ
3) Judiciary Committee			

SUMMARY ANALYSIS

Relating to the statutory regulation of various forms of residential properties, this bill:

- Defines the term "timeshare project," which is a timeshare property that is also a public lodging establishment, and substitutes the new term for "timeshare plan" as appropriate.
- Specifies that the statutory notice required of a homeowners' association to renew its covenants and restrictions for an additional 30 years is sufficient.
- Provides that an amendment to the declaration of condominium that prohibits unit owners from renting their units does not apply to unit owners who vote against the measure.
- Provides that a condominium association may access an abandoned unit for the purpose of preservation of the unit and may seek appointment of a receiver to lease the unit to offset costs of maintenance.
- Broadens the information that a condominium, cooperative or homeowners' association may include in a member directory.
- Requires outgoing board members of a condominium or cooperative to relinquish possession of records and property of the association to their successors in office, and authorizes the state to enforce compliance.
- Extends condominium bulk assignee and bulk buyer provisions by one year to July 1, 2016.
- Amends cooperative law to match condominium law on financial oversight, the prohibition on office-holding if delinquent or charged with theft of association funds, and emergency powers.
- Amends homeowners' association emergency powers to parallel those of a condominium.
- Simplifies the notice requirements regarding amendments to the restrictive covenants of a homeowners' association.

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

The effective date of the bill is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The following includes the Current Situation and Effect of the Bill.

Timeshares and Public Lodging Regulation

The state Division of Hotels and Restaurants¹ regulates public lodging establishments, primarily related to health and safety issues.² A timeshare plan³ may be a "public lodging establishment"⁴ if it is rented for less than 30 days,⁵ as a "vacation rental."⁶ Timeshares and other vacation plans are more extensively regulated by the Division of Condominiums, Timeshares and Mobile Homes.⁷ Both divisions are housed in the Department of Business and Professional Regulation.⁸

A "transient public lodging establishment" is defined in s. 509.013, F.S. as:

[A]ny unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

A "vacation rental" is defined in s. 509.242, F.S., as:

[A]ny unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.

This bill defines the term "timeshare project" as:

[A] timeshare property, as defined in chapter 721, that is located in this state and that is also a transient public lodging establishment.

The bill amends s. 509.242, F.S. to remove "timeshare plans" from the definition of a "vacation rental" and to affirmatively exclude the newly created "timeshare projects" from regulation as a "vacation rental." In other sections, instances of the term "timeshare plan" have been replaced with the more appropriate term "timeshare project," and the term "timeshare project" has been included wherever the term "vacation plan" or "vacation rental" appears in the regulation of public lodging establishments.

Marketable Record Title Act (MRTA) and Homeowners Associations

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.⁹ In general, MRTA provides that any person vested with any estate in land of record for

¹ Section 509.013(1), F.S.

² Section 509.032(1), F.S.

³ Section 721.05(39), F.S.

⁴ Section 509.013(4)(a), F.S.

⁵ Section 509.013(4)(b)4., F.S.

⁶ Section 509.242(1)(c), F.S.

⁷ See generally, ch. 721, F.S.

⁸ Section 721.05(11), F.S.

⁹ *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).

30 years or more has a marketable record title free and clear of most claims. One effect of MRTA is that homeowner association covenants can lose effect unless the association timely files a renewal. A homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner in a form set by statute;¹⁰
- The notice must include notice of a meeting of the board of directors including where the directors will decide whether to renew the covenants;¹¹
- The board of directors of the association must approve the renewal by a two-thirds vote;¹²
- Notice of the renewal must be recorded in the Official Records of the county;¹³ and
- A copy of the notice must be published once a week for 2 consecutive weeks in the form and manner as other legal notices are published.¹⁴

The bill affirmatively clarifies in s. 712.05, F.S., that a homeowners' association or clerk of the circuit court is not required to provide notice other than the notice required by s. 712.06, F.S. .

Condominium Associations

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.¹⁵ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.¹⁶ 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.¹⁷ Further, it delineates condominium association bylaws, which govern the administration of the association, including, but not limited to, establishment of a quorum, voting rights, and election and removal of board members.¹⁸

Amendment to Limit or Prohibit Rentals

A condominium association may amend its declaration of condominium to limit or prohibit units from being leased.¹⁹ Current law provides that any such amendment only applies to a unit whose owner has consented to the restriction, or to an owner who purchased the unit after the restriction was enacted.

The bill amends s. 718.110(13), F.S., to provide that any amendment to the declaration of condominium that limits or prohibits rental of a unit applies to all units in the condominium association, including unit owners who did not vote for the amendment, but does not apply to unit owners who voted against the amendment until that unit transfers ownership.

Access to an Abandoned Condominium Unit

A condominium association has the right to access each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements, to any portion of a unit maintained by the association pursuant to the declaration, or as necessary to prevent damage to the

¹⁰ Section 712.06(1)(b), F.S.

¹¹ Section 712.05(1), F.S.

¹² *Id.*

¹³ Section 712.06(2), F.S.

¹⁴ Section 712.06(3)(b), F.S.

¹⁵ Section 718.103(11), F.S.

¹⁶ Section 718.104(2), F.S.

¹⁷ Section 718.104(5), F.S.

¹⁸ Section 718.112, F.S.

¹⁹ *Woodside Village Condominium Ass'n, Inc. v. Jahren*, 806 So.2d 452 (Fla. 2002).

common elements or to a unit. The bill amends s. 718.111(5), F.S., to add that the condominium association also has a right of access to an abandoned unit to:

- Inspect the unit and adjoining common elements;
- Make repairs to the unit or to the common elements serving the unit, as needed;
- Repair the unit if mold or deterioration is present;
- Turn on the utilities for the unit; or
- Otherwise maintain, preserve, or protect the unit and adjoining common elements.

A unit is presumed to be abandoned if the unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or no tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

Before entry, the association must give at least 2 days' notice of the association's intent to enter the unit, which must be mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to a unit owner who has consented to receive notice by electronic transmission.

The association may recover from the unit owner any costs incurred by the association. The association may place a lien against the unit to enforce collection of the expense.

The association may petition a court of competent jurisdiction to appoint a receiver and may lease an abandoned unit for the benefit of the association to offset the association's expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney's fees.

Responsibility for Damage to the Condominium

A condominium association is required to maintain a property insurance policy covering loss or damage to the condominium.²⁰ At one time, the split between association responsibility for loss and owner responsibility was set in the declaration of condominium, but that required insurance companies to review condominium documents when writing coverage and inevitably led to gaps where neither the association nor a member would have insurance for a loss, or led to unnecessary double coverage. Section 718.111(11)(f), F.S., resolves these insurance provisions by providing a clear split between association coverage and unit owner coverage. Where a covered loss to association property occurs, the association is responsible for the repair as a common expense. The bill amends s. 718.111(11)(j), F.S., to provide that where a loss occurs that is not an insurable event, the responsibility for the repair is as set forth in the declaration of condominium or the bylaws. Therefore, the split of responsibility in s. 718.111(11)(f), F.S., only covers insurable events.

Condominium Association Directory

Condominium law requires the association to keep and maintain certain records.²¹ In general, all records of the association are open for copying and inspection by any member of the association.²² However, certain records, including names and phone numbers of unit owners, are confidential.

Some associations publish a unit owner directory for the convenience of the members. An association may publish such a directory that includes unit owners' names, unit addresses, and a phone number. A

²⁰ Section 718.111(11)(d), F.S.

²¹ See generally, s. 718.111(12), F.S.

²² Section 718.111(12)(c), F.S.

unit owner may opt out of being published in the directory. The bill provides that multiple phone numbers may be published, and provides that a unit owner may consent to having other contact information published.²³

Association Records

The bill creates s. 718.111(12)(f), F.S., to provide that an outgoing board member or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The Division of Florida Condominiums, Timeshares and Mobile Homes may enforce this requirement by impose a civil penalty²⁴ against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Meetings of the Board of Directors

Current law contemplates that most meetings of the directors will be in person, but meeting through use of a teleconference is allowed provided a speakerphone is used. The bill amends s. 718.112(2)(b)5., F.S., to also allow real-time videoconferencing, or similar real-time electronic or video communication, in lieu of physical appearance at the meeting. Directors who appear electronically count toward establishing a quorum and may vote. The bill also amends s. 718.112(2)(c), F.S., to allow board members to communicate via e-mail, although e-mail voting is not allowed.

The bill amends s. 718.112, F.S., to clarify the language to provide that if 20 percent of the voting interests within the condominium association petition the board to address an item of business that the Board needs to put such item on its agenda for its next regular or special board meeting within 60 days, but that such meeting does not need to occur within 60 days.

Bulk Assignee and Bulk Buyer Provisions

Bulk assignees and bulk buyers are real estate investors who buy seven or more condominium units from a developer.²⁵ Regular condominium law requires turnover of association control to the owners when a developer has sold a percentage of the units, but the requirement of an early turnover discourages investors from buying distressed units. To encourage investors to rehabilitate financially troubled condominiums, the bulk assignee and bulk buyer provisions in ss. 718.701-.708, F.S., delay the turnover requirement and provide other legal protections to bulk assignees and bulk buyers. These protections are currently set to expire by a requirement that the bulk transfer occur no later than July 1, 2015. The bill amends s. 718.707, F.S., to extend the acquisition deadline to July 1, 2016.

Cooperative Associations

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned of record by the cooperative association,²⁶ and individual units are leased to the residents, who own shares in the cooperative association.²⁷ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives are, in practice, operated in a fashion very similar to condominiums, and the laws regulating cooperatives are in many instances nearly identical.

²³ Other contact information is a broad term that could include email address, instant message (IM) addresses, Twitter names, or any other form of communication that may exist or be invented.

²⁴ Section 718.501(1)(d)6., F.S., provides for a civil penalty of up to \$5,000. The section also provides that a person who complies with an order of the division within 10 days may not be penalized.

²⁵ Section 718.703, F.S.

²⁶ Section 719.103(2), F.S.

²⁷ Section 719.103(26), F.S.

The bill changes cooperative law in the same manner that condominium law is being changed by the bill (see description above) in the following aspects:

- Owner records and directories; and,
- The requirement that an outgoing board or committee member relinquish official records and property of the association.

The bill amends cooperative law to match previous changes to condominium law in the following aspects:

- The bill increases the cooperative association audit deadlines and thresholds at s. 719.104(4)(a), F.S. to match those at s. 718.111(13), F.S.
- The bill creates at s. 719.106(1)(a)2., F.S., a prohibition on holding office in the cooperative upon delinquency in payment of monies owned to the association, or upon arrest for a felony theft or embezzlement charge involving association funds, to match the same requirement at s. 718.112(2)(o), F.S.
- The bill creates s. 719.128, F.S., to give a cooperative association the same emergency powers as a condominium association under s. 718.1265, F.S.

Homeowners' Associations

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.²⁸ There is no state agency directly regulating homeowners' associations.

The bill changes homeowners' association law in the same manner that condominium law is being changed by this bill (see description above) with respect to owner records and directories.

The bill changes homeowners' association law to match previous changes to condominium law by creating s. 720.316, F.S., to give a homeowners' association the emergency powers similar to those granted a condominium association under s. 718.1265, F.S. However, where the emergency powers of a condominium association (current law) or a cooperative association (created by the bill) include the right to enter individual units, this bill does not grant to a homeowners' association the right to entry into individual homes.

Amendment to Governing Documents of a Homeowners Association.

A homeowners' association may amend its governing documents. The process for amendment, and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. A homeowners' association must furnish each member with a copy of an amendment within 30 days of recording.²⁹

The bill provides that, in lieu of furnishing all members with a copy of the amendment, and if a draft copy was furnished to the members prior to adoption, the association may provide notice that the amendment was adopted. The notice must refer to the local recording information and must offer to furnish a copy on request and without charge.

B. SECTION DIRECTORY:

Section 1 amends s. 509.013, F.S., regarding definitions.

²⁸ Section 720.301(9), F.S.

²⁹ Section 720.306(1)(b), F.S.

Section 2 amends s. 509.032, F.S., regarding duties.

Section 3 amends s. 509.221, F.S., regarding sanitary regulations.

Section 4 amends s. 509.241, F.S., regarding licenses required; exceptions.

Section 5 amends s. 509.242, F.S., regarding public lodging establishments; classifications.

Section 6 amends s. 509.251, F.S., regarding license fees.

Section 7 amends s. 712.05, F.S., regarding effect of filing notice.

Section 8 amends s. 718.110, F.S., regarding amendment of declaration; correction of error or omission in declaration by circuit court.

Section 9 amends s. 718.111, F.S., regarding the association.

Section 10 amends s. 718.112, F.S., regarding bylaws.

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

Section 12 amends s. 719.104, F.S., regarding cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 13 amends s. 719.106, F.S., regarding bylaws; cooperative ownership.

Section 14 creates s. 719.128, F.S., regarding association emergency powers.

Section 15 amends s. 720.303, F.S., regarding association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

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

Section 17 creates s. 720.316, F.S., regarding association emergency powers.

Section 18 provides an effective date of July 1, 2014.

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:

The bill creates a matter that the state may investigate and prosecute regarding condominium and cooperative associations, namely, the requirement for outgoing directors to return records and property to the association. It is unknown how often directors fail to return records, and the division's analysis indicates that the fiscal impact is unknown.³⁰ Typical enforcement policy is to first warn and give an opportunity to cure. It is estimated that this enforcement would be infrequent and that in those infrequent instances most subjects of enforcement would immediately comply with the requirement to return records and property. Accordingly, the impact is likely minimal to none.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill appears to require minimal rulemaking. DBPR appears to have sufficient current rulemaking authority to implement any rules that may be required.³¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The amendment provides a definition for "timeshare project" and substitutes it for "timeshare plan" where appropriate, provides that in the absence of an insurable event, the association or the unit owners will be responsible for repairs, as determined by the declaration of condominium or bylaws, provides that an association may print all telephone numbers of a member, and makes other grammatical and technical changes. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

³⁰ 2014 Department of Business and Professional Regulation Legislative Bill Analysis of SB 798, the Senate companion, dated February 20, 2014, on file with the House of Representatives Civil Justice Subcommittee.

³¹ *Id.*

1 A bill to be entitled
 2 An act relating to residential properties; amending s.
 3 509.013, F.S.; revising the definition of the term
 4 "public lodging establishment"; amending s. 509.032,
 5 F.S.; providing that timeshare projects are not
 6 subject to annual inspection requirements; amending s.
 7 509.221, F.S.; providing nonapplicability of certain
 8 public lodging establishment requirements to timeshare
 9 projects; amending s. 509.241, F.S.; providing that a
 10 condominium association that does not own any units
 11 classified as timeshare projects is not required to
 12 apply for or receive a public lodging establishment
 13 license; amending s. 509.242, F.S.; revising the
 14 definition of the term "public lodging establishment"
 15 to include a "timeshare project"; deleting reference
 16 to the term "timeshare plan" in the definition of
 17 "vacation rental"; defining the term "timeshare
 18 project"; amending s. 509.251, F.S.; providing that
 19 timeshare projects within separate buildings or at
 20 separate locations but managed by one licensed agent
 21 may be combined in a single license application;
 22 amending s. 712.05, F.S.; clarifying existing law
 23 relating to marketable record title; amending s.
 24 718.110, F.S.; providing that an amendment to a
 25 declaration relating to rental condominium units does
 26 not apply to unit owners who vote against the

27 | amendment; amending s. 718.111, F.S.; authorizing an
 28 | association to inspect and repair abandoned
 29 | condominium units; providing conditions to determine
 30 | if a unit is abandoned; providing a mechanism for an
 31 | association to recover costs associated with
 32 | maintaining an abandoned unit; providing that in the
 33 | absence of an insurable event, the association or unit
 34 | owners are responsible for repairs; providing that an
 35 | owner may consent in writing to the disclosure of
 36 | certain contact information; requiring an outgoing
 37 | condominium association board or committee member to
 38 | relinquish all official records and property of the
 39 | association within a specified time; providing a civil
 40 | penalty for failing to relinquish such records and
 41 | property; amending s. 718.112, F.S.; providing that a
 42 | board or committee member's participation in a meeting
 43 | via real-time videoconferencing, Internet-enabled
 44 | videoconferencing, or similar electronic or video
 45 | communication counts toward a quorum and that such
 46 | member may vote as if physically present; prohibiting
 47 | the board from voting via e-mail; amending s. 718.707,
 48 | F.S.; extending the date by which a condominium parcel
 49 | must be acquired in order for a person to be
 50 | classified as a bulk assignee or bulk buyer; amending
 51 | s. 719.104, F.S.; providing that an owner may consent
 52 | in writing to the disclosure of certain contact

53 information; requiring an outgoing cooperative
 54 association board or committee member to relinquish
 55 all official records and property of the association
 56 within a specified time; providing a civil penalty for
 57 failing to relinquish such records and property;
 58 providing dates by which financial reports for an
 59 association must be completed; specifying that members
 60 must receive copies of financial reports; requiring
 61 specific types of financial statements for
 62 associations of varying sizes; providing exceptions;
 63 providing a mechanism for waiving or increasing
 64 financial reporting requirements; amending s. 719.106,
 65 F.S.; providing for suspension from office of a
 66 director or officer who is charged with one or more of
 67 certain felony offenses; providing procedures for
 68 filling such vacancy or reinstating such member under
 69 specific circumstances; providing a mechanism for a
 70 person who is convicted of a felony to be eligible for
 71 board membership; creating s. 719.128, F.S.; providing
 72 emergency powers of a cooperative association;
 73 amending s. 720.303, F.S.; providing that an owner may
 74 consent in writing to the disclosure of certain
 75 contact information; amending s. 720.306, F.S.;;
 76 providing for specified notice to members in lieu of
 77 copies of an amendment; creating s. 720.316, F.S.;;
 78 providing emergency powers of a homeowners'

79 | association; providing an effective date.

80 |

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

82 |

83 | Section 1. Paragraph (b) of subsection (4) of section

84 | 509.013, Florida Statutes, is amended to read:

85 | 509.013 Definitions.—As used in this chapter, the term:

86 | (4) (a) "Public lodging establishment" includes a transient
87 | public lodging establishment as defined in subparagraph 1. and a
88 | nontransient public lodging establishment as defined in
89 | subparagraph 2.

90 | 1. "Transient public lodging establishment" means any
91 | unit, group of units, dwelling, building, or group of buildings
92 | within a single complex of buildings which is rented to guests
93 | more than three times in a calendar year for periods of less
94 | than 30 days or 1 calendar month, whichever is less, or which is
95 | advertised or held out to the public as a place regularly rented
96 | to guests.

97 | 2. "Nontransient public lodging establishment" means any
98 | unit, group of units, dwelling, building, or group of buildings
99 | within a single complex of buildings which is rented to guests
100 | for periods of at least 30 days or 1 calendar month, whichever
101 | is less, or which is advertised or held out to the public as a
102 | place regularly rented to guests for periods of at least 30 days
103 | or 1 calendar month.

104 |

105 License classifications of public lodging establishments, and
 106 the definitions therefor, are set out in s. 509.242. For the
 107 purpose of licensure, the term does not include condominium
 108 common elements as defined in s. 718.103.

109 (b) The following are excluded from the definitions in
 110 paragraph (a):

111 1. Any dormitory or other living or sleeping facility
 112 maintained by a public or private school, college, or university
 113 for the use of students, faculty, or visitors.

114 2. Any facility certified or licensed and regulated by the
 115 Agency for Health Care Administration or the Department of
 116 Children and Family Services or other similar place regulated
 117 under s. 381.0072.

118 3. Any place renting four rental units or less, unless the
 119 rental units are advertised or held out to the public to be
 120 places that are regularly rented to transients.

121 4. Any unit or group of units in a condominium,
 122 cooperative, or timeshare project plan and any individually or
 123 collectively owned one-family, two-family, three-family, or
 124 four-family dwelling house or dwelling unit that is rented for
 125 periods of at least 30 days or 1 calendar month, whichever is
 126 less, and that is not advertised or held out to the public as a
 127 place regularly rented for periods of less than 1 calendar
 128 month, provided that no more than four rental units within a
 129 single complex of buildings are available for rent.

130 5. Any migrant labor camp or residential migrant housing

131 | permitted by the Department of Health under ss. 381.008-
 132 | 381.00895.

133 | 6. Any establishment inspected by the Department of Health
 134 | and regulated by chapter 513.

135 | 7. Any nonprofit organization that operates a facility
 136 | providing housing only to patients, patients' families, and
 137 | patients' caregivers and not to the general public.

138 | 8. Any apartment building inspected by the United States
 139 | Department of Housing and Urban Development or other entity
 140 | acting on the department's behalf that is designated primarily
 141 | as housing for persons at least 62 years of age. The division
 142 | may require the operator of the apartment building to attest in
 143 | writing that such building meets the criteria provided in this
 144 | subparagraph. The division may adopt rules to implement this
 145 | requirement.

146 | 9. Any roominghouse, boardinghouse, or other living or
 147 | sleeping facility that may not be classified as a hotel, motel,
 148 | timeshare project, vacation rental, nontransient apartment, bed
 149 | and breakfast inn, or transient apartment under s. 509.242.

150 | Section 2. Paragraph (a) of subsection (2) of section
 151 | 509.032, Florida Statutes, is amended to read:

152 | 509.032 Duties.—

153 | (2) INSPECTION OF PREMISES.—

154 | (a) The division has responsibility and jurisdiction for
 155 | all inspections required by this chapter. The division has
 156 | responsibility for quality assurance. Each licensed

157 establishment shall be inspected at least biannually, except for
 158 transient and nontransient apartments, which shall be inspected
 159 at least annually, and shall be inspected at such other times as
 160 the division determines is necessary to ensure the public's
 161 health, safety, and welfare. The division shall establish a
 162 system to determine inspection frequency. Public lodging units
 163 classified as vacation rentals or timeshare projects are not
 164 subject to this requirement but shall be made available to the
 165 division upon request. If, during the inspection of a public
 166 lodging establishment classified for renting to transient or
 167 nontransient tenants, an inspector identifies vulnerable adults
 168 who appear to be victims of neglect, as defined in s. 415.102,
 169 or, in the case of a building that is not equipped with
 170 automatic sprinkler systems, tenants or clients who may be
 171 unable to self-preserve in an emergency, the division shall
 172 convene meetings with the following agencies as appropriate to
 173 the individual situation: the Department of Health, the
 174 Department of Elderly Affairs, the area agency on aging, the
 175 local fire marshal, the landlord and affected tenants and
 176 clients, and other relevant organizations, to develop a plan
 177 which improves the prospects for safety of affected residents
 178 and, if necessary, identifies alternative living arrangements
 179 such as facilities licensed under part II of chapter 400 or
 180 under chapter 429.

181 Section 3. Subsection (9) of section 509.221, Florida
 182 Statutes, is amended to read:

183 509.221 Sanitary regulations.—

184 (9) Subsections (2), (5), and (6) do not apply to any
 185 facility or unit classified as a vacation rental, ~~or~~
 186 nontransient apartment, or timeshare project as described in s.
 187 509.242(1)(c), ~~and~~ (d), and (g).

188 Section 4. Subsection (2) of section 509.241, Florida
 189 Statutes, is amended to read:

190 509.241 Licenses required; exceptions.—

191 (2) APPLICATION FOR LICENSE.—Each person who plans to open
 192 a public lodging establishment or a public food service
 193 establishment shall apply for and receive a license from the
 194 division prior to the commencement of operation. A condominium
 195 association, as defined in s. 718.103, which does not own any
 196 units classified as vacation rentals or timeshare projects under
 197 s. 509.242(1)(c) or (g) is not required to apply for or receive
 198 a public lodging establishment license.

199 Section 5. Subsection (1) of section 509.242, Florida
 200 Statutes, is amended to read:

201 509.242 Public lodging establishments; classifications.—

202 (1) A public lodging establishment shall be classified as
 203 a hotel, motel, nontransient apartment, transient apartment, bed
 204 and breakfast inn, timeshare project, or vacation rental if the
 205 establishment satisfies the following criteria:

206 (a) Hotel.—A hotel is any public lodging establishment
 207 containing sleeping room accommodations for 25 or more guests
 208 and providing the services generally provided by a hotel and

209 recognized as a hotel in the community in which it is situated
 210 or by the industry.

211 (b) Motel.—A motel is any public lodging establishment
 212 which offers rental units with an exit to the outside of each
 213 rental unit, daily or weekly rates, offstreet parking for each
 214 unit, a central office on the property with specified hours of
 215 operation, a bathroom or connecting bathroom for each rental
 216 unit, and at least six rental units, and which is recognized as
 217 a motel in the community in which it is situated or by the
 218 industry.

219 (c) Vacation rental.—A vacation rental is any unit or
 220 group of units in a condominium or, cooperative, ~~or timeshare~~
 221 ~~plan~~ or any individually or collectively owned single-family,
 222 two-family, three-family, or four-family house or dwelling unit
 223 that is also a transient public lodging establishment but that
 224 is not a timeshare project.

225 (d) Nontransient apartment.—A nontransient apartment is a
 226 building or complex of buildings in which 75 percent or more of
 227 the units are available for rent to nontransient tenants.

228 (e) Transient apartment.—A transient apartment is a
 229 building or complex of buildings in which more than 25 percent
 230 of the units are advertised or held out to the public as
 231 available for transient occupancy.

232 (f) Bed and breakfast inn.—A bed and breakfast inn is a
 233 family home structure, with no more than 15 sleeping rooms,
 234 which has been modified to serve as a transient public lodging

235 establishment, which provides the accommodation and meal
 236 services generally offered by a bed and breakfast inn, and which
 237 is recognized as a bed and breakfast inn in the community in
 238 which it is situated or by the hospitality industry.

239 (g) Timeshare project.—A timeshare project is a timeshare
 240 property, as defined in chapter 721, that is located in this
 241 state and that is also a transient public lodging establishment.

242 Section 6. Subsection (1) of section 509.251, Florida
 243 Statutes, is amended to read:

244 509.251 License fees.—

245 (1) The division shall adopt, by rule, a schedule of fees
 246 to be paid by each public lodging establishment as a
 247 prerequisite to issuance or renewal of a license. Such fees
 248 shall be based on the number of rental units in the
 249 establishment. The aggregate fee per establishment charged any
 250 public lodging establishment shall not exceed \$1,000; however,
 251 the fees described in paragraphs (a) and (b) may not be included
 252 as part of the aggregate fee subject to this cap. Vacation
 253 rental units or timeshare projects within separate buildings or
 254 at separate locations but managed by one licensed agent may be
 255 combined in a single license application, and the division shall
 256 charge a license fee as if all units in the application are in a
 257 single licensed establishment. The fee schedule shall require an
 258 establishment which applies for an initial license to pay the
 259 full license fee if application is made during the annual
 260 renewal period or more than 6 months prior to the next such

261 renewal period and one-half of the fee if application is made 6
 262 months or less prior to such period. The fee schedule shall
 263 include fees collected for the purpose of funding the
 264 Hospitality Education Program, pursuant to s. 509.302, which are
 265 payable in full for each application regardless of when the
 266 application is submitted.

267 (a) Upon making initial application or an application for
 268 change of ownership, the applicant shall pay to the division a
 269 fee as prescribed by rule, not to exceed \$50, in addition to any
 270 other fees required by law, which shall cover all costs
 271 associated with initiating regulation of the establishment.

272 (b) A license renewal filed with the division within 30
 273 days after the expiration date shall be accompanied by a
 274 delinquent fee as prescribed by rule, not to exceed \$50, in
 275 addition to the renewal fee and any other fees required by law.
 276 A license renewal filed with the division more than 30 but not
 277 more than 60 days after the expiration date shall be accompanied
 278 by a delinquent fee as prescribed by rule, not to exceed \$100,
 279 in addition to the renewal fee and any other fees required by
 280 law.

281 Section 7. Subsection (1) of section 712.05, Florida
 282 Statutes, is amended to read:

283 712.05 Effect of filing notice.-

284 (1) A ~~Any~~ person claiming an interest in land or a
 285 homeowners' association desiring to preserve a ~~any~~ covenant or
 286 restriction may preserve and protect the same from

287 | extinguishment by the operation of this act by filing for
 288 | record, during the 30-year period immediately following the
 289 | effective date of the root of title, a written notice, ~~in~~
 290 | ~~writing~~, in accordance with this chapter. Such ~~the provisions~~
 291 | ~~hereof~~, which notice preserves ~~shall have the effect of so~~
 292 | ~~preserving~~ such claim of right or such covenant or restriction
 293 | or portion of such covenant or restriction for up to a period of
 294 | ~~not longer than~~ 30 years after filing the notice ~~same~~ unless the
 295 | notice is filed again ~~filed~~ as required in this chapter ~~herein~~.
 296 | A person's ~~No~~ disability or lack of knowledge of any kind may
 297 | not on the part of anyone shall delay the commencement of or
 298 | suspend the running of the ~~said~~ 30-year period. Such notice may
 299 | be filed for record by the claimant or by any other person
 300 | acting on behalf of a ~~any~~ claimant who is:

- 301 | (a) Under a disability;;
- 302 | (b) Unable to assert a claim on his or her behalf;; or
- 303 | (c) One of a class, but whose identity cannot be
- 304 | established or is uncertain at the time of filing such notice of
- 305 | claim for record.

306 |
 307 | Such notice may be filed by a homeowners' association only if
 308 | the preservation of such covenant or restriction or portion of
 309 | such covenant or restriction is approved by at least two-thirds
 310 | of the members of the board of directors of an incorporated
 311 | homeowners' association at a meeting for which a notice, stating
 312 | the meeting's time and place and containing the statement of

313 marketable title action described in s. 712.06(1)(b), was mailed
 314 or hand delivered to members of the homeowners' association at
 315 least not less than 7 days before ~~prior to~~ such meeting. The
 316 homeowners' association or clerk of the circuit court is not
 317 required to provide notice other than as provided under s.
 318 712.06(3). The preceding sentence is intended to clarify
 319 existing law.

320 Section 8. Subsection (13) of section 718.110, Florida
 321 Statutes, is amended to read:

322 718.110 Amendment of declaration; correction of error or
 323 omission in declaration by circuit court.-

324 (13) An amendment that prohibits ~~prohibiting~~ unit owners
 325 from renting their units or altering the duration of the rental
 326 term or that specifies or limits ~~specifying or limiting~~ the
 327 number of times unit owners are entitled to rent their units
 328 during a specified period does not apply ~~applies only~~ to unit
 329 owners who voted against ~~consent to~~ the amendment. However, such
 330 amendment applies to unit owners who consented to the amendment,
 331 who failed to cast a vote, or ~~and unit owners who~~ acquired
 332 ~~acquire~~ title to their units after the effective date of the
 333 ~~that~~ amendment.

334 Section 9. Subsection (5), paragraph (j) of subsection
 335 (11), and paragraph (c) of subsection (12) of section 718.111,
 336 Florida Statutes, are amended, and paragraph (f) is added to
 337 subsection (12) of that section, to read:

338 718.111 The association.-

339 (5) RIGHT OF ACCESS TO UNITS.—

340 (a) The association has the irrevocable right of access to
 341 each unit during reasonable hours, when necessary for the
 342 maintenance, repair, or replacement of any common elements or of
 343 any portion of a unit to be maintained by the association
 344 pursuant to the declaration or as necessary to prevent damage to
 345 the common elements or to a unit ~~or units~~.

346 (b)1. In addition to the association's right of access in
 347 paragraph (a) and regardless of whether authority is provided in
 348 the declaration or other recorded condominium documents, an
 349 association, at the sole discretion of the board, may enter an
 350 abandoned unit to inspect the unit and adjoining common
 351 elements; make repairs to the unit or to the common elements
 352 -serving the unit, as needed; repair the unit if mold or
 353 deterioration is present; turn on the utilities for the unit; or
 354 otherwise maintain, preserve, or protect the unit and adjoining
 355 common elements. For purposes of this paragraph, a unit is
 356 presumed to be abandoned if:

357 a. The unit is the subject of a foreclosure action and no
 358 tenant appears to have resided in the unit for at least 4
 359 continuous weeks without prior written notice to the
 360 association; or

361 b. No tenant appears to have resided in the unit for 2
 362 consecutive months without prior written notice to the
 363 association, and the association is unable to contact the owner
 364 or determine the whereabouts of the owner after reasonable

365 inquiry.

366 2. Except in the case of an emergency, an association may
 367 not enter an abandoned unit until 2 days after notice of the
 368 association's intent to enter the unit has been mailed or hand-
 369 delivered to the owner at the address of the owner as reflected
 370 in the records of the association. The notice may be given by
 371 electronic transmission to unit owners who previously consented
 372 to receive notice by electronic transmission.

373 3. Any expense incurred by an association pursuant to this
 374 paragraph is chargeable to the unit owner and enforceable as an
 375 assessment pursuant to s. 718.116, and the association may use
 376 its lien authority provided by s. 718.116 to enforce collection
 377 of the expense.

378 4. The association may petition a court of competent
 379 jurisdiction to appoint a receiver and may lease out an
 380 abandoned unit for the benefit of the association to offset
 381 against the rental income the association's costs and expenses
 382 of maintaining, preserving, and protecting the unit and the
 383 adjoining common elements, including the costs of the
 384 receivership and all unpaid assessments, interest,
 385 administrative late fees, costs, and reasonable attorney fees.

386 (11) INSURANCE.—In order to protect the safety, health,
 387 and welfare of the people of the State of Florida and to ensure
 388 consistency in the provision of insurance coverage to
 389 condominiums and their unit owners, this subsection applies to
 390 every residential condominium in the state, regardless of the

391 date of its declaration of condominium. It is the intent of the
 392 Legislature to encourage lower or stable insurance premiums for
 393 associations described in this subsection.

394 (j) Any portion of the condominium property that must be
 395 insured by the association against property loss pursuant to
 396 paragraph (f) which is damaged by an insurable event shall be
 397 reconstructed, repaired, or replaced as necessary by the
 398 association as a common expense. In the absence of an insurable
 399 event, the association or the unit owners shall be responsible
 400 for the reconstruction, repair, or replacement, as determined by
 401 the provisions of the declaration or bylaws. All property
 402 insurance deductibles, uninsured losses, and other damages in
 403 excess of property insurance coverage under the property
 404 insurance policies maintained by the association are a common
 405 expense of the condominium, except that:

406 1. A unit owner is responsible for the costs of repair or
 407 replacement of any portion of the condominium property not paid
 408 by insurance proceeds if such damage is caused by intentional
 409 conduct, negligence, or failure to comply with the terms of the
 410 declaration or the rules of the association by a unit owner, the
 411 members of his or her family, unit occupants, tenants, guests,
 412 or invitees, without compromise of the subrogation rights of the
 413 insurer.

414 2. The provisions of subparagraph 1. regarding the
 415 financial responsibility of a unit owner for the costs of
 416 repairing or replacing other portions of the condominium

417 | property also apply to the costs of repair or replacement of
 418 | personal property of other unit owners or the association, as
 419 | well as other property, whether real or personal, which the unit
 420 | owners are required to insure.

421 | 3. To the extent the cost of repair or reconstruction for
 422 | which the unit owner is responsible under this paragraph is
 423 | reimbursed to the association by insurance proceeds, and the
 424 | association has collected the cost of such repair or
 425 | reconstruction from the unit owner, the association shall
 426 | reimburse the unit owner without the waiver of any rights of
 427 | subrogation.

428 | 4. The association is not obligated to pay for
 429 | reconstruction or repairs of property losses as a common expense
 430 | if the property losses were known or should have been known to a
 431 | unit owner and were not reported to the association until after
 432 | the insurance claim of the association for that property was
 433 | settled or resolved with finality, or denied because it was
 434 | untimely filed.

435 | (12) OFFICIAL RECORDS.—

436 | (c) The official records of the association are open to
 437 | inspection by any association member or the authorized
 438 | representative of such member at all reasonable times. The right
 439 | to inspect the records includes the right to make or obtain
 440 | copies, at the reasonable expense, if any, of the member. The
 441 | association may adopt reasonable rules regarding the frequency,
 442 | time, location, notice, and manner of record inspections and

443 copying. The failure of an association to provide the records
 444 within 10 working days after receipt of a written request
 445 creates a rebuttable presumption that the association willfully
 446 failed to comply with this paragraph. A unit owner who is denied
 447 access to official records is entitled to the actual damages or
 448 minimum damages for the association's willful failure to comply.
 449 Minimum damages are \$50 per calendar day for up to 10 days,
 450 beginning on the 11th working day after receipt of the written
 451 request. The failure to permit inspection entitles any person
 452 prevailing in an enforcement action to recover reasonable
 453 attorney fees from the person in control of the records who,
 454 directly or indirectly, knowingly denied access to the records.
 455 Any person who knowingly or intentionally defaces or destroys
 456 accounting records that are required by this chapter to be
 457 maintained during the period for which such records are required
 458 to be maintained, or who knowingly or intentionally fails to
 459 create or maintain accounting records that are required to be
 460 created or maintained, with the intent of causing harm to the
 461 association or one or more of its members, is personally subject
 462 to a civil penalty pursuant to s. 718.501(1)(d). The association
 463 shall maintain an adequate number of copies of the declaration,
 464 articles of incorporation, bylaws, and rules, and all amendments
 465 to each of the foregoing, as well as the question and answer
 466 sheet as described in s. 718.504 and year-end financial
 467 information required under this section, on the condominium
 468 property to ensure their availability to unit owners and

469 prospective purchasers, and may charge its actual costs for
 470 preparing and furnishing these documents to those requesting the
 471 documents. An association shall allow a member or his or her
 472 authorized representative to use a portable device, including a
 473 smartphone, tablet, portable scanner, or any other technology
 474 capable of scanning or taking photographs, to make an electronic
 475 copy of the official records in lieu of the association's
 476 providing the member or his or her authorized representative
 477 with a copy of such records. The association may not charge a
 478 member or his or her authorized representative for the use of a
 479 portable device. Notwithstanding this paragraph, the following
 480 records are not accessible to unit owners:

481 1. Any record protected by the lawyer-client privilege as
 482 described in s. 90.502 and any record protected by the work-
 483 product privilege, including a record prepared by an association
 484 attorney or prepared at the attorney's express direction, which
 485 reflects a mental impression, conclusion, litigation strategy,
 486 or legal theory of the attorney or the association, and which
 487 was prepared exclusively for civil or criminal litigation or for
 488 adversarial administrative proceedings, or which was prepared in
 489 anticipation of such litigation or proceedings until the
 490 conclusion of the litigation or proceedings.

491 2. Information obtained by an association in connection
 492 with the approval of the lease, sale, or other transfer of a
 493 unit.

494 3. Personnel records of association or management company

495 employees, including, but not limited to, disciplinary, payroll,
 496 health, and insurance records. For purposes of this
 497 subparagraph, the term "personnel records" does not include
 498 written employment agreements with an association employee or
 499 management company, or budgetary or financial records that
 500 indicate the compensation paid to an association employee.

501 4. Medical records of unit owners.

502 5. Social security numbers, driver's license numbers,
 503 credit card numbers, e-mail addresses, telephone numbers,
 504 facsimile numbers, emergency contact information, addresses of a
 505 unit owner other than as provided to fulfill the association's
 506 notice requirements, and other personal identifying information
 507 of any person, excluding the person's name, unit designation,
 508 mailing address, property address, and any address, e-mail
 509 address, or facsimile number provided to the association to
 510 fulfill the association's notice requirements. Notwithstanding
 511 the restrictions in this subparagraph, an association may print
 512 and distribute to parcel owners a directory containing the name,
 513 parcel address, and all telephone numbers ~~number~~ of each parcel
 514 owner. However, an owner may exclude his or her telephone
 515 numbers ~~number~~ from the directory by so requesting in writing to
 516 the association. An owner may consent in writing to the
 517 disclosure of other contact information described in this
 518 subparagraph. The association is not liable for the inadvertent
 519 disclosure of information that is protected under this
 520 subparagraph if the information is included in an official

521 record of the association and is voluntarily provided by an
 522 owner and not requested by the association.

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

525 7. The software and operating system used by the
 526 association which allow the manipulation of data, even if the
 527 owner owns a copy of the same software used by the association.
 528 The data is part of the official records of the association.

529 (f) An outgoing board or committee member must relinquish
 530 all official records and property of the association in his or
 531 her possession or under his or her control to the incoming board
 532 within 5 days after the election. The division shall impose a
 533 civil penalty as set forth in s. 718.501(1)(d)6. against an
 534 outgoing board or committee member who willfully and knowingly
 535 fails to relinquish such records and property.

536 Section 10. Paragraphs (b) and (c) of subsection (2) of
 537 section 718.112, Florida Statutes, are amended to read:

538 718.112 Bylaws.—

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

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

543 1. Unless a lower number is provided in the bylaws, the
 544 percentage of voting interests required to constitute a quorum
 545 at a meeting of the members is a majority of the voting
 546 interests. Unless otherwise provided in this chapter or in the

547 | declaration, articles of incorporation, or bylaws, and except as
548 | provided in subparagraph (d)4., decisions shall be made by a
549 | majority of the voting interests represented at a meeting at
550 | which a quorum is present.

551 | 2. Except as specifically otherwise provided herein, unit
552 | owners may not vote by general proxy, but may vote by limited
553 | proxies substantially conforming to a limited proxy form adopted
554 | by the division. A voting interest or consent right allocated to
555 | a unit owned by the association may not be exercised or
556 | considered for any purpose, whether for a quorum, an election,
557 | or otherwise. Limited proxies and general proxies may be used to
558 | establish a quorum. Limited proxies shall be used for votes
559 | taken to waive or reduce reserves in accordance with
560 | subparagraph (f)2.; for votes taken to waive the financial
561 | reporting requirements of s. 718.111(13); for votes taken to
562 | amend the declaration pursuant to s. 718.110; for votes taken to
563 | amend the articles of incorporation or bylaws pursuant to this
564 | section; and for any other matter for which this chapter
565 | requires or permits a vote of the unit owners. Except as
566 | provided in paragraph (d), a proxy, limited or general, may not
567 | be used in the election of board members. General proxies may be
568 | used for other matters for which limited proxies are not
569 | required, and may be used in voting for nonsubstantive changes
570 | to items for which a limited proxy is required and given.
571 | Notwithstanding this subparagraph, unit owners may vote in
572 | person at unit owner meetings. This subparagraph does not limit

573 the use of general proxies or require the use of limited proxies
 574 for any agenda item or election at any meeting of a timeshare
 575 condominium association.

576 3. Any proxy given is effective only for the specific
 577 meeting for which originally given and any lawfully adjourned
 578 meetings thereof. A proxy is not valid longer than 90 days after
 579 the date of the first meeting for which it was given and may be
 580 revoked. ~~Every proxy is revocable~~ at any time at the pleasure of
 581 the unit owner executing it.

582 4. A member of the board of administration or a committee
 583 may submit in writing his or her agreement or disagreement with
 584 any action taken at a meeting that the member did not attend.
 585 This agreement or disagreement may not be used as a vote for or
 586 against the action taken or to create a quorum.

587 5. A ~~If any of the~~ board or committee member's
 588 participation in a meeting via telephone, real-time
 589 videoconferencing, or similar real-time electronic or video
 590 communication counts toward a quorum, and such member may vote
 591 as if physically present ~~members meet by telephone conference,~~
 592 ~~those board or committee members may be counted toward obtaining~~
 593 ~~a quorum and may vote by telephone.~~ A telephone speaker must be
 594 used so that the conversation of such ~~those~~ members may be heard
 595 by the board or committee members attending in person as well as
 596 by any unit owners present at a meeting.

597 (c) *Board of administration meetings.*—Meetings of the
 598 board of administration at which a quorum of the members is

599 present are open to all unit owners. Members of the board of
 600 administration may use e-mail as a means of communication but
 601 may not cast a vote on an association matter via e-mail. A unit
 602 owner may tape record or videotape the meetings. The right to
 603 attend such meetings includes the right to speak at such
 604 meetings with reference to all designated agenda items. The
 605 division shall adopt reasonable rules governing the tape
 606 recording and videotaping of the meeting. The association may
 607 adopt written reasonable rules governing the frequency,
 608 duration, and manner of unit owner statements.

609 1. Adequate notice of all board meetings, which must
 610 specifically identify all agenda items, must be posted
 611 conspicuously on the condominium property at least 48 continuous
 612 hours before the meeting except in an emergency. If 20 percent
 613 of the voting interests petition the board to address an item of
 614 business, the board, within 60 days after receipt of the
 615 petition, shall place the item on the agenda at its next regular
 616 board meeting or at a special meeting called for that purpose of
 617 ~~the board, but not later than 60 days after the receipt of the~~
 618 ~~petition, shall place the item on the agenda.~~ An ~~Any~~ item not
 619 included on the notice may be taken up on an emergency basis by
 620 a vote of at least a majority plus one of the board members.
 621 Such emergency action must be noticed and ratified at the next
 622 regular board meeting. However, written notice of a ~~any~~ meeting
 623 at which a nonemergency special assessment assessments, or an ~~at~~
 624 ~~which~~ amendment to rules regarding unit use, will be considered

625 must be mailed, delivered, or electronically transmitted to the
 626 unit owners and posted conspicuously on the condominium property
 627 at least 14 days before the meeting. Evidence of compliance with
 628 this 14-day notice requirement must be made by an affidavit
 629 executed by the person providing the notice and filed with the
 630 official records of the association. Upon notice to the unit
 631 owners, the board shall, by duly adopted rule, designate a
 632 specific location on the condominium or association property
 633 where all notices of board meetings must ~~are to~~ be posted. If
 634 there is no condominium property or association property where
 635 notices can be posted, notices shall be mailed, delivered, or
 636 electronically transmitted to each unit owner at least 14 days
 637 before the meeting ~~to the owner of each unit~~. In lieu of or in
 638 addition to the physical posting of the notice on the
 639 condominium property, the association may, by reasonable rule,
 640 adopt a procedure for conspicuously posting and repeatedly
 641 broadcasting the notice and the agenda on a closed-circuit cable
 642 television system serving the condominium association. However,
 643 if broadcast notice is used in lieu of a notice physically
 644 posted on condominium property, the notice and agenda must be
 645 broadcast at least four times every broadcast hour of each day
 646 that a posted notice is otherwise required under this section.
 647 If broadcast notice is provided, the notice and agenda must be
 648 broadcast in a manner and for a sufficient continuous length of
 649 time so as to allow an average reader to observe the notice and
 650 read and comprehend the entire content of the notice and the

651 agenda. Notice of any meeting in which regular or special
 652 assessments against unit owners are to be considered ~~for any~~
 653 ~~reason~~ must specifically state that assessments will be
 654 considered and provide the nature, estimated cost, and
 655 description of the purposes for such assessments.

656 2. Meetings of a committee to take final action on behalf
 657 of the board or make recommendations to the board regarding the
 658 association budget are subject to this paragraph. Meetings of a
 659 committee that does not take final action on behalf of the board
 660 or make recommendations to the board regarding the association
 661 budget are subject to this section, unless those meetings are
 662 exempted from this section by the bylaws of the association.

663 3. Notwithstanding any other law, the requirement that
 664 board meetings and committee meetings be open to the unit owners
 665 does not apply to:

666 a. Meetings between the board or a committee and the
 667 association's attorney, with respect to proposed or pending
 668 litigation, if the meeting is held for the purpose of seeking or
 669 rendering legal advice; or

670 b. Board meetings held for the purpose of discussing
 671 personnel matters.

672 Section 11. Section 718.707, Florida Statutes, is amended
 673 to read:

674 718.707 Time limitation for classification as bulk
 675 assignee or bulk buyer.—A person acquiring condominium parcels
 676 may not be classified as a bulk assignee or bulk buyer unless

677 | the condominium parcels were acquired on or after July 1, 2010,
 678 | but before July 1, 2016 ~~2015~~. The date of such acquisition shall
 679 | be determined by the date of recording a deed or other
 680 | instrument of conveyance for such parcels in the public records
 681 | of the county in which the condominium is located, or by the
 682 | date of issuing a certificate of title in a foreclosure
 683 | proceeding with respect to such condominium parcels.

684 | Section 12. Paragraph (c) of subsection (2) and subsection
 685 | (4) of section 719.104, Florida Statutes, are amended, and
 686 | paragraph (e) is added to subsection (2) of that section, to
 687 | read:

688 | 719.104 Cooperatives; access to units; records; financial
 689 | reports; assessments; purchase of leases.-

690 | (2) OFFICIAL RECORDS.-

691 | (c) The official records of the association are open to
 692 | inspection by any association member or the authorized
 693 | representative of such member at all reasonable times. The right
 694 | to inspect the records includes the right to make or obtain
 695 | copies, at the reasonable expense, if any, of the association
 696 | member. The association may adopt reasonable rules regarding the
 697 | frequency, time, location, notice, and manner of record
 698 | inspections and copying. The failure of an association to
 699 | provide the records within 10 working days after receipt of a
 700 | written request creates a rebuttable presumption that the
 701 | association willfully failed to comply with this paragraph. A
 702 | unit owner who is denied access to official records is entitled

703 | to the actual damages or minimum damages for the association's
 704 | willful failure to comply. The minimum damages are \$50 per
 705 | calendar day for up to 10 days, beginning on the 11th working
 706 | day after receipt of the written request. The failure to permit
 707 | inspection entitles any person prevailing in an enforcement
 708 | action to recover reasonable attorney fees from the person in
 709 | control of the records who, directly or indirectly, knowingly
 710 | denied access to the records. Any person who knowingly or
 711 | intentionally defaces or destroys accounting records that are
 712 | required by this chapter to be maintained during the period for
 713 | which such records are required to be maintained, or who
 714 | knowingly or intentionally fails to create or maintain
 715 | accounting records that are required to be created or
 716 | maintained, with the intent of causing harm to the association
 717 | or one or more of its members, is personally subject to a civil
 718 | penalty pursuant to s. 719.501(1)(d). The association shall
 719 | maintain an adequate number of copies of the declaration,
 720 | articles of incorporation, bylaws, and rules, and all amendments
 721 | to each of the foregoing, as well as the question and answer
 722 | sheet as described in s. 719.504 and year-end financial
 723 | information required by the department, on the cooperative
 724 | property to ensure their availability to unit owners and
 725 | prospective purchasers, and may charge its actual costs for
 726 | preparing and furnishing these documents to those requesting the
 727 | same. An association shall allow a member or his or her
 728 | authorized representative to use a portable device, including a

729 | smartphone, tablet, portable scanner, or any other technology
730 | capable of scanning or taking photographs, to make an electronic
731 | copy of the official records in lieu of the association
732 | providing the member or his or her authorized representative
733 | with a copy of such records. The association may not charge a
734 | member or his or her authorized representative for the use of a
735 | portable device. Notwithstanding this paragraph, the following
736 | records shall not be accessible to unit owners:

737 | 1. Any record protected by the lawyer-client privilege as
738 | described in s. 90.502 and any record protected by the work-
739 | product privilege, including any record prepared by an
740 | association attorney or prepared at the attorney's express
741 | direction which reflects a mental impression, conclusion,
742 | litigation strategy, or legal theory of the attorney or the
743 | association, and which was prepared exclusively for civil or
744 | criminal litigation or for adversarial administrative
745 | proceedings, or which was prepared in anticipation of such
746 | litigation or proceedings until the conclusion of the litigation
747 | or proceedings.

748 | 2. Information obtained by an association in connection
749 | with the approval of the lease, sale, or other transfer of a
750 | unit.

751 | 3. Personnel records of association or management company
752 | employees, including, but not limited to, disciplinary, payroll,
753 | health, and insurance records. For purposes of this
754 | subparagraph, the term "personnel records" does not include

755 | written employment agreements with an association employee or
 756 | management company, or budgetary or financial records that
 757 | indicate the compensation paid to an association employee.

758 | 4. Medical records of unit owners.

759 | 5. Social security numbers, driver license numbers, credit
 760 | card numbers, e-mail addresses, telephone numbers, facsimile
 761 | numbers, emergency contact information, addresses of a unit
 762 | owner other than as provided to fulfill the association's notice
 763 | requirements, and other personal identifying information of any
 764 | person, excluding the person's name, unit designation, mailing
 765 | address, property address, and any address, e-mail address, or
 766 | facsimile number provided to the association to fulfill the
 767 | association's notice requirements. Notwithstanding the
 768 | restrictions in this subparagraph, an association may print and
 769 | distribute to parcel owners a directory containing the name,
 770 | parcel address, and all telephone numbers ~~number~~ of each parcel
 771 | owner. However, an owner may exclude his or her telephone
 772 | numbers ~~number~~ from the directory by so requesting in writing to
 773 | the association. An owner may consent in writing to the
 774 | disclosure of other contact information described in this
 775 | subparagraph. The association is not liable for the inadvertent
 776 | disclosure of information that is protected under this
 777 | subparagraph if the information is included in an official
 778 | record of the association and is voluntarily provided by an
 779 | owner and not requested by the association.

780 | 6. Electronic security measures that are used by the

781 | association to safeguard data, including passwords.

782 | 7. The software and operating system used by the
783 | association which allow the manipulation of data, even if the
784 | owner owns a copy of the same software used by the association.
785 | The data is part of the official records of the association.

786 | (e) An outgoing board or committee member must relinquish
787 | all official records and property of the association in his or
788 | her possession or under his or her control to the incoming board
789 | within 5 days after the election. The division shall impose a
790 | civil penalty as set forth in s. 719.501(1)(d) against an
791 | outgoing board or committee member who willfully and knowingly
792 | fails to relinquish such records and property.

793 | (4) FINANCIAL REPORT.—

794 | (a) Within 90 ~~60~~ days following the end of the fiscal or
795 | calendar year or annually on such date as ~~is otherwise~~ provided
796 | in the bylaws of the association, the board of administration ~~of~~
797 | ~~the association~~ shall prepare and complete, or contract with a
798 | third party to prepare and complete, a financial report covering
799 | the preceding fiscal or calendar year. Within 21 days after the
800 | financial report is completed by the association or received
801 | from the third party, but no later than 120 days after the end
802 | of the fiscal year, calendar year, or other date provided in the
803 | bylaws, the association shall provide each member with a copy of
804 | the annual financial report or a written notice that a copy of
805 | the financial report is available upon request at no charge to
806 | the member. The division shall adopt rules setting forth uniform

807 accounting principles, standards, and reporting requirements.
 808 ~~mail or furnish by personal delivery to each unit owner a~~
 809 ~~complete financial report of actual receipts and expenditures~~
 810 ~~for the previous 12 months, or a complete set of financial~~
 811 ~~statements for the preceding fiscal year prepared in accordance~~
 812 ~~with generally accepted accounting procedures. The report shall~~
 813 ~~show the amounts of receipts by accounts and receipt~~
 814 ~~classifications and shall show the amounts of expenses by~~
 815 ~~accounts and expense classifications including, if applicable,~~
 816 ~~but not limited to, the following:~~

- 817 ~~1. Costs for security;~~
- 818 ~~2. Professional and management fees and expenses;~~
- 819 ~~3. Taxes;~~
- 820 ~~4. Costs for recreation facilities;~~
- 821 ~~5. Expenses for refuse collection and utility services;~~
- 822 ~~6. Expenses for lawn care;~~
- 823 ~~7. Costs for building maintenance and repair;~~
- 824 ~~8. Insurance costs;~~
- 825 ~~9. Administrative and salary expenses; and~~
- 826 ~~10. Reserves for capital expenditures, deferred~~
 827 ~~maintenance, and any other category for which the association~~
 828 ~~maintains a reserve account or accounts.~~

829 (b) Except as provided in paragraph (c), an association
 830 whose total annual revenues meet the criteria of this paragraph
 831 shall prepare or cause to be prepared a complete set of
 832 financial statements according to the generally accepted

833 accounting principles adopted by the Board of Accountancy. The
 834 financial statements shall be as follows:

835 1. An association with total annual revenues between
 836 \$150,000 and \$299,999 shall prepare a compiled financial
 837 statement.

838 2. An association with total annual revenues between
 839 \$300,000 and \$499,999 shall prepare a reviewed financial
 840 statement.

841 3. An association with total annual revenues of \$500,000
 842 or more shall prepare an audited financial statement. The
 843 ~~division shall adopt rules that may require that the association~~
 844 ~~deliver to the unit owners, in lieu of the financial report~~
 845 ~~required by this section, a complete set of financial statements~~
 846 ~~for the preceding fiscal year. The financial statements shall be~~
 847 ~~delivered within 90 days following the end of the previous~~
 848 ~~fiscal year or annually on such other date as provided in the~~
 849 ~~bylaws. The rules of the division may require that the financial~~
 850 ~~statements be compiled, reviewed, or audited, and the rules~~
 851 ~~shall take into consideration the criteria set forth in s.~~
 852 ~~719.501(1)(j).~~

853 4. The requirement to have the financial statements
 854 compiled, reviewed, or audited does not apply to an association
 855 ~~associations~~ if a majority of the voting interests of the
 856 association present at a duly called meeting of the association
 857 have voted determined for a fiscal year to waive this
 858 requirement for the fiscal year. In an association in which

859 | turnover of control by the developer has not occurred, the
 860 | developer may vote to waive the audit requirement for the first
 861 | 2 years of ~~the~~ operation of the association, after which time
 862 | waiver of an applicable audit requirement shall be by a majority
 863 | of voting interests other than the developer. The meeting shall
 864 | be held prior to the end of the fiscal year, and the waiver
 865 | shall be effective for only one fiscal year. An association may
 866 | not waive the financial reporting requirements of this section
 867 | for more than 3 consecutive years. ~~This subsection does not~~
 868 | ~~apply to a cooperative that consists of 50 or fewer units.~~

869 | (c)1. An association with total annual revenues of less
 870 | than \$150,000 shall prepare a report of cash receipts and
 871 | expenditures.

872 | 2. An association in a community of fewer than 50 units,
 873 | regardless of the association's annual revenues, shall prepare a
 874 | report of cash receipts and expenditures in lieu of the
 875 | financial statements required by paragraph (b), unless the
 876 | declaration or other recorded governing documents provide
 877 | otherwise.

878 | 3. A report of cash receipts and expenditures must
 879 | disclose the amount of receipts by accounts and receipt
 880 | classifications and the amount of expenses by accounts and
 881 | expense classifications, including the following, as applicable:
 882 | costs for security, professional, and management fees and
 883 | expenses; taxes; costs for recreation facilities; expenses for
 884 | refuse collection and utility services; expenses for lawn care;

885 costs for building maintenance and repair; insurance costs;
 886 administration and salary expenses; and reserves, if maintained
 887 by the association.

888 (d) If at least 20 percent of the unit owners petition the
 889 board for a greater level of financial reporting than that
 890 required by this section, the association shall duly notice and
 891 hold a membership meeting within 30 days after receipt of the
 892 petition to vote on raising the level of reporting for that
 893 fiscal year. Upon approval by a majority of the voting interests
 894 represented at a meeting at which a quorum of unit owners is
 895 present, the association shall prepare an amended budget or
 896 shall adopt a special assessment to pay for the financial report
 897 regardless of any provision to the contrary in the declaration
 898 or other recorded governing documents. In addition, the
 899 association shall provide within 90 days after the meeting or
 900 the end of the fiscal year, whichever occurs later:

901 1. Compiled, reviewed, or audited financial statements, if
 902 the association is otherwise required to prepare a report of
 903 cash receipts and expenditures;

904 2. Reviewed or audited financial statements, if the
 905 association is otherwise required to prepare compiled financial
 906 statements; or

907 3. Audited financial statements, if the association is
 908 otherwise required to prepare reviewed financial statements.

909 (e) If approved by a majority of the voting interests
 910 present at a properly called meeting of the association, an

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911 association may prepare or cause to be prepared:

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

914 2. A report of cash receipts and expenditures or a
 915 compiled financial statement in lieu of a reviewed or audited
 916 financial statement; or

917 3. A report of cash receipts and expenditures, a compiled
 918 financial statement, or a reviewed financial statement in lieu
 919 of an audited financial statement.

920 Section 13. Paragraph (a) of subsection (1) of section
 921 719.106, Florida Statutes, is amended to read:

922 719.106 Bylaws; cooperative ownership.—

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

926 (a) Administration.—

927 1. The form of administration of the association shall be
 928 described, indicating the titles of the officers and board of
 929 administration and specifying the powers, duties, manner of
 930 selection and removal, and compensation, if any, of officers and
 931 board members. In the absence of such a provision, the board of
 932 administration shall be composed of five members, except in the
 933 case of cooperatives having five or fewer units, in which case
 934 in not-for-profit corporations, the board shall consist of not
 935 fewer than three members. In the absence of provisions to the
 936 contrary, the board of administration shall have a president, a

937 secretary, and a treasurer, who shall perform the duties of
 938 those offices customarily performed by officers of corporations.
 939 Unless prohibited in the bylaws, the board of administration may
 940 appoint other officers and grant them those duties it deems
 941 appropriate. Unless otherwise provided in the bylaws, the
 942 officers shall serve without compensation and at the pleasure of
 943 the board. Unless otherwise provided in the bylaws, the members
 944 of the board shall serve without compensation.

945 2. A person who has been suspended or removed by the
 946 division under this chapter, or who is delinquent in the payment
 947 of any monetary obligation due to the association, is not
 948 eligible to be a candidate for board membership and may not be
 949 listed on the ballot. A director or officer charged by
 950 information or indictment with a felony theft or embezzlement
 951 offense involving the association's funds or property is
 952 suspended from office. The board shall fill the vacancy
 953 according to general law until the end of the period of the
 954 suspension or the end of the director's term of office,
 955 whichever occurs first. However, if the charges are resolved
 956 without a finding of guilt or without acceptance of a plea of
 957 guilty or nolo contendere, the director or officer shall be
 958 reinstated for any remainder of his or her term of office. A
 959 member who has such criminal charges pending may not be
 960 appointed or elected to a position as a director or officer. A
 961 person who has been convicted of any felony in this state or in
 962 any United States District Court, or who has been convicted of

963 any offense in another jurisdiction which would be considered a
 964 felony if committed in this state, is not eligible for board
 965 membership unless such felon's civil rights have been restored
 966 for at least 5 years as of the date such person seeks election
 967 to the board. The validity of an action by the board is not
 968 affected if it is later determined that a board member is
 969 ineligible for board membership due to having been convicted of
 970 a felony.

971 3.2. When a unit owner files a written inquiry by
 972 certified mail with the board of administration, the board shall
 973 respond in writing to the unit owner within 30 days of receipt
 974 of the inquiry. The board's response shall either give a
 975 substantive response to the inquirer, notify the inquirer that a
 976 legal opinion has been requested, or notify the inquirer that
 977 advice has been requested from the division. If the board
 978 requests advice from the division, the board shall, within 10
 979 days of its receipt of the advice, provide in writing a
 980 substantive response to the inquirer. If a legal opinion is
 981 requested, the board shall, within 60 days after the receipt of
 982 the inquiry, provide in writing a substantive response to the
 983 inquirer. The failure to provide a substantive response to the
 984 inquirer as provided herein precludes the board from recovering
 985 attorney's fees and costs in any subsequent litigation,
 986 administrative proceeding, or arbitration arising out of the
 987 inquiry. The association may, through its board of
 988 administration, adopt reasonable rules and regulations regarding

989 | the frequency and manner of responding to the unit owners'
 990 | inquiries, one of which may be that the association is obligated
 991 | to respond to only one written inquiry per unit in any given 30-
 992 | day period. In such case, any additional inquiry or inquiries
 993 | must be responded to in the subsequent 30-day period, or
 994 | periods, as applicable.

995 | Section 14. Section 719.128, Florida Statutes, is created
 996 | to read:

997 | 719.128 Association emergency powers.-

998 | (1) To the extent allowed by law, unless specifically
 999 | prohibited by the cooperative documents, and consistent with s.
 1000 | 617.0830, the board of administration, in response to damage
 1001 | caused by an event for which a state of emergency is declared
 1002 | pursuant to s. 252.36 in the area encompassed by the
 1003 | cooperative, may exercise the following powers:

1004 | (a) Conduct board or membership meetings after notice of
 1005 | the meetings and board decisions is provided in as practicable a
 1006 | manner as possible, including via publication, radio, United
 1007 | States mail, the Internet, public service announcements,
 1008 | conspicuous posting on the cooperative property, or any other
 1009 | means the board deems appropriate under the circumstances.

1010 | (b) Cancel and reschedule an association meeting.

1011 | (c) Designate assistant officers who are not directors. If
 1012 | the executive officer is incapacitated or unavailable, the
 1013 | assistant officer has the same authority during the state of
 1014 | emergency as the executive officer he or she assists.

1015 (d) Relocate the association's principal office or
 1016 designate an alternative principal office.

1017 (e) Enter into agreements with counties and municipalities
 1018 to assist counties and municipalities with debris removal.

1019 (f) Implement a disaster plan before or immediately
 1020 following the event for which a state of emergency is declared,
 1021 which may include turning on or shutting off elevators;
 1022 electricity; water, sewer, or security systems; or air
 1023 conditioners for association buildings.

1024 (g) Based upon the advice of emergency management
 1025 officials or upon the advice of licensed professionals retained
 1026 by the board of administration, determine any portion of the
 1027 cooperative property unavailable for entry or occupancy by unit
 1028 owners or their family members, tenants, guests, agents, or
 1029 invitees to protect their health, safety, or welfare.

1030 (h) Based upon the advice of emergency management
 1031 officials or upon the advice of licensed professionals retained
 1032 by the board of administration, determine whether the
 1033 cooperative property can be safely inhabited or occupied.
 1034 However, such determination is not conclusive as to any
 1035 determination of habitability pursuant to the declaration.

1036 (i) Require the evacuation of the cooperative property in
 1037 the event of a mandatory evacuation order in the area where the
 1038 cooperative is located. If a unit owner or other occupant of a
 1039 cooperative fails to evacuate the cooperative property for which
 1040 the board has required evacuation, the association is immune

1041 from liability for injury to persons or property arising from
 1042 such failure.

1043 (j) Mitigate further damage, including taking action to
 1044 contract for the removal of debris and to prevent or mitigate
 1045 the spread of fungus, including mold or mildew, by removing and
 1046 disposing of wet drywall, insulation, carpet, cabinetry, or
 1047 other fixtures on or within the cooperative property, regardless
 1048 of whether the unit owner is obligated by the declaration or law
 1049 to insure or replace those fixtures and to remove personal
 1050 property from a unit.

1051 (k) Contract, on behalf of a unit owner, for items or
 1052 services for which the owner is otherwise individually
 1053 responsible, but which are necessary to prevent further damage
 1054 to the cooperative property. In such event, the unit owner on
 1055 whose behalf the board has contracted is responsible for
 1056 reimbursing the association for the actual costs of the items or
 1057 services, and the association may use its lien authority
 1058 provided by s. 719.108 to enforce collection of the charges.
 1059 Such items or services may include the drying of the unit, the
 1060 boarding of broken windows or doors, and the replacement of a
 1061 damaged air conditioner or air handler to provide climate
 1062 control in the unit or other portions of the property.

1063 (l) Notwithstanding a provision to the contrary, and
 1064 regardless of whether such authority does not specifically
 1065 appear in the cooperative documents, levy special assessments
 1066 without a vote of the owners.

1067 (m) Without unit owners' approval, borrow money and pledge
 1068 association assets as collateral to fund emergency repairs and
 1069 carry out the duties of the association if operating funds are
 1070 insufficient. This paragraph does not limit the general
 1071 authority of the association to borrow money, subject to such
 1072 restrictions contained in the cooperative documents.

1073 (2) The authority granted under subsection (1) is limited
 1074 to that time reasonably necessary to protect the health, safety,
 1075 and welfare of the association and the unit owners and their
 1076 family members, tenants, guests, agents, or invitees, and to
 1077 mitigate further damage and make emergency repairs.

1078 Section 15. Paragraph (c) of subsection (5) of section
 1079 720.303, Florida Statutes, is amended to read:

1080 720.303 Association powers and duties; meetings of board;
 1081 official records; budgets; financial reporting; association
 1082 funds; recalls.-

1083 (5) INSPECTION AND COPYING OF RECORDS.-The official
 1084 records shall be maintained within the state for at least 7
 1085 years and shall be made available to a parcel owner for
 1086 inspection or photocopying within 45 miles of the community or
 1087 within the county in which the association is located within 10
 1088 business days after receipt by the board or its designee of a
 1089 written request. This subsection may be complied with by having
 1090 a copy of the official records available for inspection or
 1091 copying in the community or, at the option of the association,
 1092 by making the records available to a parcel owner electronically

1093 | via the Internet or by allowing the records to be viewed in
 1094 | electronic format on a computer screen and printed upon request.
 1095 | If the association has a photocopy machine available where the
 1096 | records are maintained, it must provide parcel owners with
 1097 | copies on request during the inspection if the entire request is
 1098 | limited to no more than 25 pages. An association shall allow a
 1099 | member or his or her authorized representative to use a portable
 1100 | device, including a smartphone, tablet, portable scanner, or any
 1101 | other technology capable of scanning or taking photographs, to
 1102 | make an electronic copy of the official records in lieu of the
 1103 | association's providing the member or his or her authorized
 1104 | representative with a copy of such records. The association may
 1105 | not charge a fee to a member or his or her authorized
 1106 | representative for the use of a portable device.

1107 | (c) The association may adopt reasonable written rules
 1108 | governing the frequency, time, location, notice, records to be
 1109 | inspected, and manner of inspections, but may not require a
 1110 | parcel owner to demonstrate any proper purpose for the
 1111 | inspection, state any reason for the inspection, or limit a
 1112 | parcel owner's right to inspect records to less than one 8-hour
 1113 | business day per month. The association may impose fees to cover
 1114 | the costs of providing copies of the official records, including
 1115 | the costs of copying and the costs required for personnel to
 1116 | retrieve and copy the records if the time spent retrieving and
 1117 | copying the records exceeds one-half hour and if the personnel
 1118 | costs do not exceed \$20 per hour. Personnel costs may not be

1119 | charged for records requests that result in the copying of 25 or
1120 | fewer pages. The association may charge up to 25 cents per page
1121 | for copies made on the association's photocopier. If the
1122 | association does not have a photocopy machine available where
1123 | the records are kept, or if the records requested to be copied
1124 | exceed 25 pages in length, the association may have copies made
1125 | by an outside duplicating service and may charge the actual cost
1126 | of copying, as supported by the vendor invoice. The association
1127 | shall maintain an adequate number of copies of the recorded
1128 | governing documents, to ensure their availability to members and
1129 | prospective members. Notwithstanding this paragraph, the
1130 | following records are not accessible to members or parcel
1131 | owners:

1132 | 1. Any record protected by the lawyer-client privilege as
1133 | described in s. 90.502 and any record protected by the work-
1134 | product privilege, including, but not limited to, a record
1135 | prepared by an association attorney or prepared at the
1136 | attorney's express direction which reflects a mental impression,
1137 | conclusion, litigation strategy, or legal theory of the attorney
1138 | or the association and which was prepared exclusively for civil
1139 | or criminal litigation or for adversarial administrative
1140 | proceedings or which was prepared in anticipation of such
1141 | litigation or proceedings until the conclusion of the litigation
1142 | or proceedings.

1143 | 2. Information obtained by an association in connection
1144 | with the approval of the lease, sale, or other transfer of a

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

1145 parcel.

1146 3. Personnel records of association or management company
 1147 employees, including, but not limited to, disciplinary, payroll,
 1148 health, and insurance records. For purposes of this
 1149 subparagraph, the term "personnel records" does not include
 1150 written employment agreements with an association or management
 1151 company employee or budgetary or financial records that indicate
 1152 the compensation paid to an association or management company
 1153 employee.

1154 4. Medical records of parcel owners or community
 1155 residents.

1156 5. Social security numbers, driver license numbers, credit
 1157 card numbers, electronic mailing addresses, telephone numbers,
 1158 facsimile numbers, emergency contact information, any addresses
 1159 for a parcel owner other than as provided for association notice
 1160 requirements, and other personal identifying information of any
 1161 person, excluding the person's name, parcel designation, mailing
 1162 address, and property address. Notwithstanding the restrictions
 1163 in this subparagraph, an association may print and distribute to
 1164 parcel owners a directory containing the name, parcel address,
 1165 and all telephone numbers ~~number~~ of each parcel owner. However,
 1166 an owner may exclude his or her telephone numbers ~~number~~ from
 1167 the directory by so requesting in writing to the association. An
 1168 owner may consent in writing to the disclosure of other contact
 1169 information described in this subparagraph. The association is
 1170 not liable for the disclosure of information that is protected

1171 | under this subparagraph if the information is included in an
 1172 | official record of the association and is voluntarily provided
 1173 | by an owner and not requested by the association.

1174 | 6. Any electronic security measure that is used by the
 1175 | association to safeguard data, including passwords.

1176 | 7. The software and operating system used by the
 1177 | association which allows the manipulation of data, even if the
 1178 | owner owns a copy of the same software used by the association.
 1179 | The data is part of the official records of the association.

1180 | Section 16. Paragraph (b) of subsection (1) of section
 1181 | 720.306, Florida Statutes, is amended to read:

1182 | 720.306 Meetings of members; voting and election
 1183 | procedures; amendments.—

1184 | (1) QUORUM; AMENDMENTS.—

1185 | (b) Unless otherwise provided in the governing documents
 1186 | or required by law, and other than those matters set forth in
 1187 | paragraph (c), any governing document of an association may be
 1188 | amended by the affirmative vote of two-thirds of the voting
 1189 | interests of the association. Within 30 days after recording an
 1190 | amendment to the governing documents, the association shall
 1191 | provide copies of the amendment to the members. However, if a
 1192 | copy of the proposed amendment is provided to the members before
 1193 | they vote on the amendment and the proposed amendment is not
 1194 | changed before the vote, the association, in lieu of providing a
 1195 | copy of the amendment, may provide notice to the members that
 1196 | the amendment was adopted, identifying the official book and

1197 page number or instrument number of the recorded amendment and
 1198 that a copy of the amendment is available at no charge to the
 1199 member upon written request to the association. The copies and
 1200 notice described in this paragraph may be provided
 1201 electronically to those owners who previously consented to
 1202 receive notice electronically.

1203 Section 17. Section 720.316, Florida Statutes, is created
 1204 to read:

1205 720.316 Association emergency powers.-

1206 (1) To the extent allowed by law, unless specifically
 1207 prohibited by the declaration or other recorded governing
 1208 documents, and consistent with s. 617.0830, the board of
 1209 directors, in response to damage caused by an event for which a
 1210 state of emergency is declared pursuant to s. 252.36 in the area
 1211 encompassed by the association, may exercise the following
 1212 powers:

1213 (a) Conduct board or membership meetings after notice of
 1214 the meetings and board decisions is provided in as practicable a
 1215 manner as possible, including via publication, radio, United
 1216 States mail, the Internet, public service announcements,
 1217 conspicuous posting on the association property, or any other
 1218 means the board deems appropriate under the circumstances.

1219 (b) Cancel and reschedule an association meeting.

1220 (c) Designate assistant officers who are not directors. If
 1221 the executive officer is incapacitated or unavailable, the
 1222 assistant officer has the same authority during the state of

1223 emergency as the executive officer he or she assists.

1224 (d) Relocate the association's principal office or
 1225 designate an alternative principal office.

1226 (e) Enter into agreements with counties and municipalities
 1227 to assist counties and municipalities with debris removal.

1228 (f) Implement a disaster plan before or immediately
 1229 following the event for which a state of emergency is declared,
 1230 which may include, but is not limited to, turning on or shutting
 1231 off elevators; electricity; water, sewer, or security systems;
 1232 or air conditioners for association buildings.

1233 (g) Based upon the advice of emergency management
 1234 officials or upon the advice of licensed professionals retained
 1235 by the board, determine any portion of the association property
 1236 unavailable for entry or occupancy by owners or their family
 1237 members, tenants, guests, agents, or invitees to protect their
 1238 health, safety, or welfare.

1239 (h) Based upon the advice of emergency management
 1240 officials or upon the advice of licensed professionals retained
 1241 by the board, determine whether the association property can be
 1242 safely inhabited or occupied. However, such determination is not
 1243 conclusive as to any determination of habitability pursuant to
 1244 the declaration.

1245 (i) Mitigate further damage, including taking action to
 1246 contract for the removal of debris and to prevent or mitigate
 1247 the spread of fungus, including mold or mildew, by removing and
 1248 disposing of wet drywall, insulation, carpet, cabinetry, or

1249 other fixtures on or within the association property.

1250 (j) Notwithstanding a provision to the contrary, and
 1251 regardless of whether such authority does not specifically
 1252 appear in the declaration or other recorded governing documents,
 1253 levy special assessments without a vote of the owners.

1254 (k) Without owners' approval, borrow money and pledge
 1255 association assets as collateral to fund emergency repairs and
 1256 carry out the duties of the association if operating funds are
 1257 insufficient. This paragraph does not limit the general
 1258 authority of the association to borrow money, subject to such
 1259 restrictions contained in the declaration or other recorded
 1260 governing documents.

1261 (2) The authority granted under subsection (1) is limited
 1262 to that time reasonably necessary to protect the health, safety,
 1263 and welfare of the association and the parcel owners and their
 1264 family members, tenants, guests, agents, or invitees, and to
 1265 mitigate further damage and make emergency repairs.

1266 Section 18. This act shall take effect July 1, 2014.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 807 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional
 2 Regulation Subcommittee

3 Representative Moraitis offered the following:

4
 5 **Amendment**

6 Remove line 317 and insert:
 7 required to provide additional notice pursuant to s.
 8



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional
2 Regulation Subcommittee
3 Representative Moraitis offered the following:

Amendment (with title amendment)

Remove lines 320-333

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

Remove lines 24-27 and insert:

718.111, F.S.; authorizing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1191 Telephone Solicitation
SPONSOR(S): Cruz
TIED BILLS: IDEN./SIM. BILLS: CS/SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Butler BSB	Luczynski ML
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on Florida's "Do Not Call" list. Individuals or entities that wish to make unsolicited telephone calls must acquire the list from the Department of Agriculture and Consumer Services, and unless an exception applies, must not initiate an outbound sales call to a number on the list.

The bill expands the definition of the term, "telephonic sales call" to include text messaging in the type of unsolicited telephone calls that are prohibited by the "Do Not Call" program. In addition, the bill prohibits a telephone solicitor from sending text messages to a consumer who has previously communicated that he or she does not wish to be contacted.

Implementation of the bill will require creating three new positions and have a cost of \$168,278 from the General Inspection Trust Fund for the 2014-2015 fiscal year.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Agriculture and Consumer Services (Department) maintains the state's "Do Not Call" list, also known as the "no sales solicitation calls" list. Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on this list.¹ A "telephonic sales call" is defined as a call made by a telephone solicitor to a consumer to solicit the sale of consumer goods or services. Florida's "Do No Call" regulations are codified in s. 501.059, F.S.

Telephone solicitors² are prohibited from making telephonic sales calls to consumers who register for the "Do Not Call" program. There are several exceptions to this prohibition, including calls made in response to an express request of the person called; primarily in connection with an existing debt or contact, payment or performance of which has not been completed at the time of the call; to any individual with whom the telephone solicitor has a prior or existing business relationship; or by a newspaper publisher or his or her agent or employee in connection with his or her business.

In addition to those consumers registered for the "Do Not Call" program, a telephone solicitor may not call a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted.

A telephone solicitor that contacts a person whose number is on the "Do Not Call" list, contacts a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted, or makes a call that does not fall into one of the four exceptions is subject to penalties. The penalty may include a civil penalty³ with a maximum fine of \$10,000 per violation, or an administrative fine⁴ with a maximum of \$1000 per violation, in addition to payment of the consumer's attorney fees and costs.

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone. The state's language is consistent with the federal law.

Effect of the Bill

The bill expands the term "telephonic sales calls" to include text messages, and prohibits transmitting certain text messages to a consumer if the consumer is on the "no sales solicitation calls" or "Do Not Call" list maintained by the Department.

The bill also prohibits a telephone solicitor from contacting by text message consumers who have previously communicated that they do not wish to be contacted.

B. SECTION DIRECTORY:

Section 1 amends s. 501.059, F.S., redefining the term "telephonic sales call"; prohibiting a transmitting certain text messages to a consumer if the consumer is on the "no sales solicitation calls" list maintained by the Department of Agriculture and Consumer Services or if the consumer has previously communicated such a request to the telephone solicitor.

¹ Florida Department of Agriculture and Consumer Services, *Florida DO NOT CALL Program*, <https://www.fldnc.com/About.aspx>

² "Telephone solicitor" means a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

³ Section 501.059(9)(a), F.S.

⁴ Section 501.059(9)(b), F.S.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department estimates recurring revenue of \$30,725 from implementation of this bill.

2. Expenditures:

The Department estimates the implementation of this bill will require creating three positions and a total cost of \$168,278 from the General Inspection Trust fund for Fiscal Year 2014-2015.⁵ This cost is split into \$16,103 nonrecurring costs, and \$152,175 in recurring costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and entities will be prohibited from sending unsolicited text messages to persons who register for the "Do Not Call" program, and to those who have otherwise previously communicated to the telephone solicitor that they do not wish to be contacted by a telephone solicitor. Individuals and entities that previously sent unsolicited text messages and did not acquire Florida's Do No Call list may need to acquire the list from the Department, at a maximum cost of \$400 per year for the statewide listing.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of HB 1191, (Mar. 7, 2014) (on file with the Business & Professional Regulation Subcommittee).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to telephone solicitation; reordering
 3 and amending s. 501.059, F.S.; redefining the term
 4 "telephonic sales call"; prohibiting a telephone
 5 solicitor from transmitting certain text messages to a
 6 consumer if the consumer is on the "no sales
 7 solicitation calls" list maintained by the Department
 8 of Agriculture and Consumer Services or if the
 9 consumer has previously communicated such a request to
 10 the telephone solicitor; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsection (1) of section 501.059, Florida
 15 Statutes, is reordered and amended, and subsection (5) of that
 16 section is amended, to read:

17 501.059 Telephone solicitation.-

18 (1) As used in this section, the term:

19 (g) ~~(a)~~ "Telephonic sales call" means a telephone call or
 20 text message ~~call made by a telephone solicitor~~ to a consumer,
 21 for the purpose of soliciting a sale of any consumer goods or
 22 services, ~~or for the purpose of soliciting an extension of~~
 23 credit for consumer goods or services, ~~or for the purpose of~~
 24 obtaining information that will or may be used for the direct
 25 solicitation of a sale of consumer goods or services or an
 26 extension of credit for such purposes.

27 (b) "Consumer goods or services" means ~~any~~ real property
 28 or ~~any~~ tangible or intangible personal property that ~~which~~ is
 29 normally used for personal, family, or household purposes,
 30 including, but not limited to ~~without limitation~~, any such
 31 property intended to be attached to or installed in any real
 32 property without regard to whether it is so attached or
 33 installed, as well as cemetery lots and timeshare estates, and
 34 any services related to such property.

35 (h) ~~(e)~~ "Unsolicited telephonic sales call" means a
 36 telephonic sales call other than a call made:

- 37 1. In response to an express request of the person called;
- 38 2. Primarily in connection with an existing debt or
 39 contract, if payment or performance of such debt or contract
 40 ~~which~~ has not been completed at the time of such call;
- 41 3. To a ~~any~~ person with whom the telephone solicitor has a
 42 prior or existing business relationship; or
- 43 4. By a newspaper publisher or his or her agent or
 44 employee in connection with his or her business.

45 (f) ~~(d)~~ "Telephone solicitor" means a ~~any~~ natural person,
 46 firm, organization, partnership, association, or corporation, or
 47 a subsidiary or affiliate thereof, doing business in this state,
 48 who makes or causes to be made a telephonic sales call,
 49 including, but not limited to, calls made by use of automated
 50 dialing or recorded message devices.

51 (a) ~~(e)~~ "Consumer" means an actual or prospective
 52 purchaser, lessee, or recipient of consumer goods or services.

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53 (e) ~~(f)~~ "Merchant" means a person who, directly or
 54 indirectly, offers or makes available to consumers any consumer
 55 goods or services.

56 (d) ~~(g)~~ "Doing business in this state" means ~~refers to~~
 57 businesses that ~~who~~ conduct telephonic sales calls from a
 58 location in Florida or from other states or nations to consumers
 59 located in Florida.

60 (c) ~~(h)~~ "Department" means the Department of Agriculture
 61 and Consumer Services.

62 (5) A telephone solicitor may not initiate an outbound
 63 telephone call or text message to a consumer who has previously
 64 communicated to the telephone solicitor that he or she does not
 65 wish to receive an outbound telephone call or text message:

66 (a) Made by or on behalf of the seller whose goods or
 67 services are being offered; or

68 (b) Made on behalf of a charitable organization for which
 69 a charitable contribution is being solicited.

70 Section 2. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Business & Professional
 2 Regulation Subcommittee

3 Representative Cruz offered the following:

Amendment (with title amendment)

Between lines 69 and 70, insert:

7 Section 2. For the 2014-2015 fiscal year, the sums of
 8 \$152,175 in recurring funds and \$16,103 in nonrecurring funds
 9 are appropriated from the General Inspection Trust Fund to the
 10 Department of Agriculture and Consumer Services, and three full-
 11 time equivalent positions with the associated salary rate of
 12 87,262 are authorized, for the purpose of implementing this act.

14 -----
 15 **T I T L E A M E N D M E N T**

16 Remove line 10 and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1191 (2014)

Amendment No. 1

17 | the telephone solicitor; providing appropriations and
18 | authorizing positions; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 29 Mobile Home Park Lot Tenancies
SPONSOR(S): Business & Professional Regulation Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:** SB 114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professional Regulation Subcommittee		Brown-Blake <i>WB</i>	Luczynski <i>ML</i>

SUMMARY ANALYSIS

Chapter 723, F.S., addresses the unique relationship between a mobile home owner and a mobile home park owner. The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner, and is intended to afford protection to the homeowners and prospective homeowners in the mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.

The bill repeals alternative provisions for when a lessee has not been provided a prospectus. The park owner will be held to the requirement of providing the lessee or prospective lessee with a copy of the prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, whichever occurs first.

The bill clarifies that the park owner is permitted to increase the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the park owner, so long as the amount is disclosed to the purchaser prior to the execution of the rental agreement or his or her occupancy, whichever occurs first, and is imposed in a manner consistent with the annual rent increase as provided in the seller's prospectus.

The bill requires the seller to notify the park owner when the purchase agreement is signed that the mobile home is being sold. Furthermore, in order to ensure full disclosure, the bill requires the park owner to provide additional documents pertaining to the terms of the rental of the lot to the purchaser prior to the execution of the rental agreement or the purchaser's occupancy, whichever occurs first.

Prior to the execution of the rental agreement or the purchaser's occupancy, whichever occurs first, the purchaser and park owner must execute an election form indicating whether the purchaser elects to assume the seller's prospectus or accepts a new prospectus from the park owner. Finally, the election form notifies the park owner of his or her obligation to maintain a copy of the form and provide a copy to the purchaser, and that it is subject to verification by the Department of Business and Professional Regulation.

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

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 723, F.S., is known as the "Florida Mobile Home Act" and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) within the Department of Business and Professional Regulation (Department). The act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The act provides in part that:

[O]nce occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.¹

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.² The Florida Supreme Court, in addressing mobile home park issues, has stated that "a hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved."³

Mobile Home Park Owner's Obligations

Section 723.022, F.S., sets forth the park owners obligations. Park owners shall:

- Comply with the requirements of applicable building, housing, and health codes.
- Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness.
- Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.
- Maintain utility connections and systems for which the park owner is responsible in proper operating condition.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

Mobile Home Owner's Obligations

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner shall:

¹ Section 723.004(1), F.S.

² Section 723.002(1), F.S.

³ Stewart v. Green, 300 so.2d 889, 892 (Fla. 1974).

- Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes.
- Keep the mobile home lot which he or she occupies clean and sanitary.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and to conduct themselves in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Prospectus or Offering Circular

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park.⁴ The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.⁵

Pursuant to s. 723.011(1), F.S., in a mobile home park containing 26 or more lots, the park owner shall file a prospectus with the Division for approval. Also prior to entering into an enforceable rental agreement for a mobile home lot, the park owner shall deliver to the homeowner a prospectus approved by the Division. The Division maintains copies of each prospectus and all amendments to each prospectus which are approved by the Division, and shall provide copies of documents requested in writing.

The park owner shall furnish a copy of the prospectus with all the attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first.⁶ Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days.⁷

If a prospectus is not provided to the prospective lessee prior to the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the receipt by the lessee of the prospectus.⁸

According to Rule 61B-31.001, F.A.C., the prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the following circumstances:

- Amendments consented to by each affected home owner and the park owner.
- Amendments to reflect new rules or rules that have been changed in accordance with procedures described in s. 723.037, F.S., and the prospectus.
- Amendments to reflect changes in the name or address of the owner of the park, name or address of the mobile home park or the name or address of the park manager or management company.
- Amendments to reflect changes in zoning.
- Amendments to reflect a change in the person authorized to receive notices and demands on the park owner's behalf.
- Amendments to reflect changes in the entity furnishing utility or other services.
- Amendments required by the Division.
- Amendments required as a result of revisions of ch. 723, F.S.

⁴ Section 723.011(3), F.S.

⁵ *Id.*

⁶ Section 723.011(2), F.S.

⁷ *Id.*

⁸ Section 723.014(1), F.S.

- Amendments to add, delete or modify user fees for homeowners, so long as the park owner does not violate s. 723.031, F.S., by charging a user fee for a service previously included in lot rental amount unless a corresponding reduction in lot rental amount is provided.
- Amendments to correct scrivener's errors.
- Amendments to reflect changes to the mobile home park property description due to a change in land use, condemnation or other legal action which changes the mobile home park property or a portion thereof.
- Amendments made to conform the prospectus to requirements of federal, state and local government ordinances, statutes, and regulations, including, but not limited to, the Fair Housing Act, the Americans with Disabilities Act, or the Telecommunications Act of 1996, where there is no charge to the home owner, except as provided in s. 723.031, F.S.
- Amendments to reflect changes in facilities or structural amenities after a natural disaster, as long as the requirements of s. 723.037, F.S., are met.
- Amendments to revise, renew, or extend an underlying ground lease.
- Amendments to reflect reduction in services or utilities in accordance with the procedures described in s. 723.037, F.S.
- Amendments to describe new facilities, services or utilities in the park.

Written Notification in the Absence of a Prospectus

Section 723.013, F.S., provides that when a park owner does not give a provide a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner shall give written notification of the following information prior to the purchaser's occupancy:

- The nature and type of zoning under which the mobile home park operates; the name of the zoning authority which has jurisdiction over the land comprising the mobile home park; and a detailed description containing all information available to the mobile home park owner, including the time, manner, and nature, of any definite future plans which he or she has for future changes in the use of the land comprising the mobile home park or a portion thereof.
- The name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf.
- All fees and charges, assessments, or other financial obligations not included in the rental agreement and a copy of the rules and regulations in effect.

The Sale of a Mobile Home

The purchaser of a mobile home within a mobile home park may become a tenant of the park if the purchaser would qualify with the requirements of entry into the park under the park's rules and regulations, subject to the park owner's approval.⁹ Section 723.059(3), F.S., provides that "the purchaser of a mobile home who becomes a resident of the mobile home park in accordance with this section has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and shall be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient."

Section 723.059(4), F.S., provides in part that a park owner is not prohibited "from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial prospectus and this act." Therefore the park owner is permitted to apply an increase in the rent to be paid by the purchaser at the end of the assumed rental agreement, so long as it's disclosed prior to occupancy *and* is imposed in a manner consistent with the seller's prospectus.

⁹ Section 723.059(1), F.S.

A number of mobile home owners have attempted to sell their mobile homes, entered into purchase agreements with potential buyers, and then been informed that the park owners intended to raise the rent of the purchaser to an amount above that permitted by the seller's prospectus.¹⁰ The purchaser of mobile home may assume the remaining time on the seller's lot rental agreement at the rent being paid by the seller under that agreement, but must enter into a new lot rental agreement and accept the increased rent rate at the end of the term if the park owner imposes the increase in a manner set out in the prospectus.¹¹

Effect of the Bill

Written Notification in the Absence of a Prospectus

Section 723.011, F.S., requires the park owner to provide a copy of the prospectus or offering circular to each prospective lessee. The bill repeals s. 723.013, F.S., deleting the alternative provisions for when a lessee has not been provided a prospectus. The park owner will be held to the requirement of providing the lessee or prospective lessee with a copy of the prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, whichever occurs first.

Assumption of the Seller's Rent Agreement and Prospectus

The bill clarifies that the purchaser of a mobile home may assume both the seller's rental agreement and the seller's prospectus. The bill, however, provides that the purchaser must be provided the opportunity to accept and must affirmatively elect the seller's prospectus.

Initial Increase in Rent Following Purchase

The bill clarifies that the park owner is permitted to increase the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the park owner, so long as the amount is disclosed to the purchaser prior to the execution of the rental agreement or his or her occupancy, whichever occurs first, and is imposed in a manner consistent with the annual rent increase as provided in the seller's prospectus. This language clarifies that the term "initial recipient" as used in the current statutory language, is intended to mean the seller, and that the increase is required to be imposed consistent with the terms regarding rent increases in the seller's prospectus.

Required Disclosures

The bill requires the seller to notify the park owner when the purchase agreement is signed that the mobile home is being sold. This is to provide the park owner with time to ensure he or she has the documents needed to comply and to provide timely notice of the seller's intent to sell.

Furthermore, in order to ensure full disclosure, the bill requires the park owner to provide the following documents to the purchaser prior to the execution of the rental agreement or the purchaser's occupancy, whichever occurs first:

- A copy of the seller's prospectus, with the information that the purchaser may assume the seller's prospectus.

¹⁰ More than 15 letters received by Representative Pilon from Constituents, re: increases in rent on their mobile homes upon sale, on file with the Business & Professional Regulation Subcommittee.

¹¹ Section 723.059(3), F.S., *See* Magnolia Vill. Homeowners Ass'n v. Magnolia Vill., Inc., 759 So.2d 1201 (Fla 5th DCA, 2000) (clarifying decision by finding that the purchasers of mobile homes assumed the seller's rights under the lease under s. 723.059(3), F.S., and were not assignees under the lease, so that previous owners were not members of the class action), *See also*, In Re: Petition for Declaratory Statement, Emerald Lake, SPE, LLC, Emerald Lake Mobile Home Community, Docket No. 2010050399. Declaratory Statements are based on the facts provided specific to the petitioner.

- A document explaining that, following the assumed rental agreement and the initial increase, if any, set pursuant to the seller's prospectus, any subsequent increases to rent or fees to be paid by the purchaser shall be subject to the prospectus that the purchaser elects to take, either the seller's assumed prospectus or a new prospectus from the park owner.
- A copy of s. 723.059, F.S.
- If the purchaser elects to accept a new prospectus from the park owner rather than assuming the seller's prospectus, a copy of the new prospectus with an explanation of the provisions.
- A one page summary of the prospectus requiring the address of the rented lot, contact information for the park owner, a description of the expected rent and fees, a description of the manner in which annual rent increases will be determined, and the term of the rental agreement.

Election Form

Prior to the execution of the rental agreement or the purchaser's occupancy, whichever comes first, the purchaser and park owner must execute an election form. The bill provides that the election form requires both the purchaser's and seller's initials and signatures and the date of execution. The form requires the purchaser to affirmatively elect to assume the seller's prospectus or agree to a prospectus provided by the park owner. Additionally, the election form requires the purchaser and park owner to verify that the park owner has notified the purchaser of his or her right to assume the seller's prospectus and that the park owner has provided a copy of the prospectus to the purchaser. Finally, the election form notifies the park owner of his or her obligation to maintain a copy of the form and provide a copy to the purchaser, and that it is subject to verification by the Department.

B. SECTION DIRECTORY:

Section 1 repeals s. 723.013, F.S. relating to written notification in the absence of a prospectus.

Section 2 amends s. 723.059, F.S., to clarify that a purchaser of a mobile home may assume the seller's prospectus, to provide the purchaser must elect to assume the seller's prospectus, to authorize a mobile home park owner to increase the lot rental of the purchaser of a mobile home on a leased lot in the mobile home park subject to conditions, to require certain documents to be provided to a purchaser as disclosure prior to the purchaser's occupancy, to provide an election form to be completed by the mobile home park owner and the purchaser prior to the purchaser's occupancy, and to require the mobile home park owner to maintain a copy of the election form and provide a copy to the purchaser.

Section 3 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require mobile home park owners to provide additional documentation to a purchaser of a mobile home upon the sale of the mobile home. Additionally, it requires a mobile home park owner to maintain a signed copy of the election form. These impacts should require minimal expenditures by park owners.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule 61B-29.001, F.A.C., references s. 723.013, F.S. Therefore, the Department would have to amend the rule to remove the reference.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to mobile home park lot tenancies;
 3 repealing s. 723.013, F.S., relating to written
 4 notification in the absence of a prospectus.; amending
 5 s. 723.059, F.S.; clarifying that a purchaser of a
 6 mobile home may assume the seller's prospectus;
 7 providing the purchaser must elect to assume the
 8 seller's prospectus; authorizing a mobile home park
 9 owner to increase the lot rental of the purchaser of a
 10 mobile home on a leased lot in the mobile home park
 11 subject to conditions; requiring certain documents to
 12 be provided to a purchaser as disclosure prior to the
 13 execution of the rental agreement or prior to the
 14 purchaser's occupancy; providing an election form to
 15 be completed by the mobile home park owner and the
 16 purchaser prior to the execution of the rental
 17 agreement or prior to the purchaser's occupancy;
 18 requiring the mobile home park owner to maintain a
 19 copy of the election form and provide a copy to the
 20 purchaser; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 723.013, Florida Statutes, is repealed.
 25 Section 2. Section 723.059, Florida Statutes, is amended
 26 to read:

27 | 723.059 Rights of purchaser.—

28 | (1) The purchaser of a mobile home within a mobile home
 29 | park may become a tenant of the park if such purchaser would
 30 | otherwise qualify with the requirements of entry into the park
 31 | under the park rules and regulations, subject to the approval of
 32 | the park owner, but such approval may not be unreasonably
 33 | withheld.

34 | (2) Properly adopted ~~promulgated~~ rules may provide for the
 35 | screening of a any prospective purchaser to determine whether
 36 | the or not such purchaser is qualified to become a tenant of the
 37 | park.

38 | (3) The purchaser of a mobile home who becomes a resident
 39 | of the mobile home park in accordance with this section has the
 40 | right to assume the remainder of the term of a any rental
 41 | agreement then in effect between the mobile home park owner and
 42 | the seller and may assume ~~shall be entitled to rely on the terms~~
 43 | ~~and conditions of the prospectus of the seller and the terms~~
 44 | therein, if not prohibited by the terms of the prospectus or
 45 | offering circular as delivered to the initial recipient. The
 46 | purchaser must elect to assume the seller's prospectus or must
 47 | agree to accept a new prospectus from the mobile home park
 48 | owner.

49 | (4) This section does not ~~However, nothing herein shall be~~
 50 | ~~construed to~~ prohibit a mobile home park owner from increasing
 51 | the rental amount to be paid by the purchaser upon the
 52 | expiration of the assumed rental agreement in an amount deemed

53 appropriate by the mobile home park owner, so long as such
 54 increase is disclosed to the purchaser prior to the execution of
 55 the rental agreement or prior to his or her occupancy, whichever
 56 occurs first, and is imposed in a manner consistent with the
 57 annual rent increase as provided in the seller's initial
 58 offering circular or prospectus and this act. Following the
 59 assumed rental agreement and the initial increase, if any, set
 60 pursuant to the seller's prospectus, any subsequent increases in
 61 the new lease and any additional fees to be paid shall be
 62 subject to the terms of the purchaser's prospectus after the
 63 purchaser elects to either assume the seller's prospectus or
 64 agrees to accept a new prospectus from the mobile home park
 65 owner.

66 (5) At the time the purchaser signs the purchase
 67 agreement, the seller shall notify the mobile home park owner of
 68 his or her intent to sell the mobile home.

69 (6) Prior to the execution of the rental agreement or
 70 prior to the purchaser's occupancy, whichever occurs first, the
 71 mobile home park owner or its agent shall:

72 a. Inform the purchaser of his or her right to assume the
 73 prospectus prior to the execution of the rental agreement or
 74 prior to the purchaser's occupancy, whichever occurs first.

75 b. Provide a copy of the seller's prospectus.

76 c. Provide a written document explaining that, following
 77 the assumed rental agreement and the initial increase, if any,
 78 set pursuant to the seller's prospectus, any subsequent

79 increases in the rent and any additional fees to be paid shall
 80 be subject to the terms of the purchaser's prospectus after the
 81 purchaser elects to either assume the seller's prospectus or
 82 agrees to accept a new prospectus from the mobile home park
 83 owner.

84 d. Provide a copy of the provisions of this section.

85 e. If the purchaser elects to not assume the seller's
 86 prospectus, provide a copy of a new, division approved
 87 prospectus with an explanation of the provisions of the new
 88 prospectus.

89 f. Provide a one page summary of the prospectus the
 90 purchaser elects to accept, including, at a minimum, the
 91 following:

92 1. Address of the lot being rented.

93 2. Name of mobile home park owner and manager with contact
 94 information.

95 3. A brief description of the rent and additional fees and
 96 charges.

97 4. A description of the manner in which all future annual
 98 rent increases will be determined.

99 5. The term of the rental agreements to be signed for the
 100 lot rental.

101 (7) Prior to the execution of the rental agreement or
 102 prior to the purchaser's occupancy, whichever occurs first, the
 103 purchaser and the mobile home park owner or its agent must sign
 104 an election form indicating whether the purchaser elects to

105 assume the seller's prospectus or agrees to accept a new
106 prospectus. The election form shall be on a sheet of paper that
107 is 8 ½ inches by 11 inches, shall address no other subject,
108 shall be double spaced, and shall include substantially the
109 following information in a font size of at least 14 points:

110
111 PROSPECTUS ELECTION FORM

112 THE PURCHASER ... (PURCHASER'S NAME) ... OF A MOBILE HOME WHO
113 BECOMES A RESIDENT OF THE MOBILE HOME PARK IN ACCORDANCE WITH S.
114 723.059, FLORIDA STATUTES, HAS THE RIGHT TO ASSUME THE REMAINDER
115 OF THE TERM OF ANY RENTAL AGREEMENT IN EFFECT AT THE TIME OF SALE
116 AND MAY ASSUME THE PROSPECTUS OF THE SELLER ... (SELLER'S
117 NAME) ... AND THE TERMS THEREIN. THE MOBILE HOME PARK OWNER,
118 ... (MOBILE HOME PARK OWNER'S NAME) ... HAS NOTIFIED THE PURCHASER
119 OF HIS OR HER RIGHT TO ASSUME THE SELLER'S... PROSPECTUS PRIOR TO
120 THE SIGNING OF THE PURCHASE AGREEMENT BY THE PURCHSER. WITH
121 REGARD TO THE PROSPECTUS, THE PURCHASER MAKES THE FOLLOWING
122 DISCLOSURES:

123 1. The Mobile Home Park Owner has notified the purchaser
124 of his or her right to assume the seller's prospectus:

125 Yes No

126 ... (Purchaser's Initials) ...

127 ... (Mobile Home Park Owner's Initials) ...

128 2. Purchaser has elected to assume the seller's prospectus:

129 Yes No

130 ... (Purchaser's Initials) ...

131 ... (Mobile Home Park Owner's Initials)...

132 2a. Mobile Home Park Owner has provided purchaser a copy of
133 prospectus prior to the execution of the rental agreement or
134 prior to the Purchaser's occupancy, whichever occurs first, as
135 required by s. 723.059(6), F.S.: Yes No

136 ... (Purchaser's Initials)...

137 ... (Mobile Home Park Owner's Initials)...

138 3. Purchaser has elected to accept a new prospectus from
139 the Mobile Home Park Owner: Yes No

140 ... (Purchaser's Initials)...

141 ... (Mobile Home Park Owner's Initials)...

142 3a. If the Purchaser has elected to accept a new
143 prospectus from the Mobile Home Park Owner, the Mobile Home Park
144 Owner has provided the copy of the new prospectus to the
145 Purchaser prior to the execution of the rental agreement or
146 prior to the Purchaser's occupancy, whichever occurs first. Yes
147 No

148 ... (Purchaser's Initials)...

149 ... (Mobile Home Park Owner's Initials)...

150 THE MOBILE HOME PARK OWNER SHALL MAINTAIN A SIGNED COPY OF THIS
151 FORM AND SHALL PROVIDE A COPY TO THE PURCHASER UPON EXECUTION.
152 THIS FORM IS SUBJECT TO INSPECTION BY THE DEPARTMENT OF BUSINESS
153 AND PROFESSIONAL REGULATION.

154 ... (Purchaser's Printed Name)...

155 ... (Purchaser's Signature)...

156 ... (Mobile Home Park Owner's Printed Name)...

157 ... (Mobile Home Park Owner's Signature)...

158 ... (Date)...

159 (8) The mobile home park owner or its agent is required to
 160 maintain a signed copy of the election form on file for the life
 161 of the prospectus, which is subject to verification by the
 162 Department of Business and Professional Regulation. The mobile
 163 home park owner shall also provide a copy of the election form
 164 to the purchaser.

165 (9)~~(5)~~ Lifetime leases, both those existing and those
 166 entered into after July 1, 1986, are ~~shall be~~ nonassumable
 167 unless otherwise provided in the lot rental agreement or unless
 168 the transferee is the homeowner's ~~home owner's~~ spouse. The
 169 renewal provisions in automatically renewable leases, both those
 170 existing and those entered into after July 1, 1986, are not
 171 assumable unless otherwise provided in the lease agreement.

172 Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 411 Labor Pools
SPONSOR(S): Business & Professional Regulation Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professional Regulation Subcommittee		Butler BSB	Luczynski nj

SUMMARY ANALYSIS

The Labor Pool Act (the Act) protects the health, safety and well-being of day laborers throughout Florida by outlining uniform standards of conduct and practices by labor pools. The Act provides that the wages of day laborers may only be paid in either cash or through a negotiable instrument, which is generally a check or money order.

The bill amends the Act to authorize labor pools to pay the wages of day laborers by payroll debit card or electronic fund transfer to a financial institution designated by the day laborer, in addition to cash or negotiable instrument. The employee must be given the option to be paid in cash or negotiable instrument. The labor pool is subject to certain limitations and notice requirements.

The bill has no impact on state or local funds.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Part II of ch. 448, F.S., also known as the Labor Pool Act¹ (the Act), was enacted in 1995 to protect the health, safety and well-being of day laborers throughout Florida. The Act outlines uniform standards of conduct and practices for labor pools. Section 448.22(1), F.S., defines a labor pool as a business entity that operates a labor hall by one or more of the following methods:

- Contracting with third-party users to supply day laborers to them on a temporary basis;
- Hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor; or
- Fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business.

Labor pools are limited in the methods that they may use to pay the wages of a day laborer by s. 448.24, F.S. Under the Act, a labor pool shall:

Compensate day laborers for work performed in the form of cash, or commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount.

Although not defined within the Act, a "negotiable instrument" is defined by ch. 673, F.S., the Florida Uniform Commercial Code. Section 673.1041(1), F.S., defines the term "negotiable instrument" to mean:

[A]n unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (a) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (b) Is payable on demand or at a definite time; and
- (c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain

There are several types of negotiable instruments; the most common is a "check," which is defined by s. 673.1041(6), F.S., as:

[A] draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

Effect of the Bill

The bill amends s. 448.24, F.S., to allow labor pools to pay wages by payroll debit card or electronic fund transfer to a financial institution designated by the day laborer, in addition to by cash or negotiable instrument, subject to certain limitations and requirements.

The bill amends s. 448.24(2)(a), F.S., to authorize labor pools to pay wages in:

1. Cash;
2. Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount;
3. Payroll debit card; or,
4. Electronic fund transfer to a financial institution designated by the day laborer.

The bill creates s. 448.24(2)(b), F.S., to provide several limitations and requirements for labor pools in regards to the selection of payroll method.

The bill requires a labor pool, prior to the first pay period, to provide notice of the method the labor pool intends to use for payroll and the employee's options with regards to electing their payment method.

The bill also requires a labor pool to allow an employee to elect to not receive their wages by either payroll debit card or electronic fund transfer.

If the labor pool is electing to pay wages through payroll debit card, the bill requires the labor pool to provide an employee with:

- The option to receive their wage through electronic fund transfer to a financial institution designated by the day laborer.
- A list of each location and address of each business within close proximity to the labor pool that provides the ability to withdraw the contents of the payroll debit card without fee.

B. SECTION DIRECTORY:

Section 1 amends s. 448.24, F.S., revising methods by which a labor pool may compensate day laborers; requiring labor pools to offer payment by electronic fund transfer in certain circumstances; providing employee protections should a labor pool elect payroll debit or electronic fund transfer cards to pay wages; allowing a labor pool to deliver an electronic wage statement upon employee request.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to labor pools; amending s. 448.24,
3 F.S.; revising methods by which a labor pool may
4 compensate day laborers; requiring labor pools to
5 offer payment by electronic fund transfer in certain
6 circumstances; providing employee protections should a
7 labor pool elect payroll debit or electronic fund
8 transfer cards to pay wages; allowing a labor pool to
9 deliver an electronic wage statement upon employee
10 request; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (2) of section 448.24, Florida
15 Statutes, is amended to read:

16 448.24 Duties and rights.—

17 (2) A labor pool shall:

18 (a) Compensate day laborers for work performed using any
19 of the following methods, subject to the limitations of

20 paragraph (b), selected by the labor pool: ~~in the form of~~

21 1. Cash; ~~or~~

22 2. Commonly accepted negotiable instruments that are
23 payable in cash, on demand at a financial institution, and
24 without discount;

25 3. Payroll debit card; or,

26 4. Electronic fund transfer to a financial institution
 27 designated by the day laborer.

28 (b) When compensating day laborers:

29 1. Prior to the first pay period, provide notice to an
 30 employee of the method the labor pool intends to use for
 31 payroll, and the employee's options with regards to electing
 32 their payment method.

33 2. Allow an employee to elect not to be paid by payroll
 34 debit card or electronic fund transfer.

35 3. If payroll debit card is selected, offer the option of
 36 payment by electronic fund transfer to a financial institution
 37 designated by the day laborer.

38 4. If payroll debit card is selected, provide the employee
 39 with a list of each location and the address of each business
 40 within close proximity to the labor pool that provides the
 41 ability to withdraw the contents of the payroll debit card
 42 without a fee.

43 (c)-(b) Compensate day laborers at or above the minimum
 44 wage, in conformance with the provision of s. 448.01. In no
 45 event shall any deductions, other than those permitted by
 46 federal or state law, bring the worker's pay below minimum wage
 47 for the hours worked.

48 (d)-(e) Comply with all requirements of chapter 440.

49 (e)-(d) Insure any motor vehicle owned or operated by the
 50 labor hall and used for the transportation of workers pursuant
 51 to Florida Statutes.

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52 (f) ~~(e)~~ At the time of each payment of wages, furnish each
 53 worker a written itemized statement showing in detail each
 54 deduction made from such wages. A labor pool may deliver this
 55 statement electronically upon written request of the employee.

56 (g) ~~(f)~~ Provide each worker with an annual earnings summary
 57 within a reasonable period of time after the end of the
 58 preceding calendar year, but no later than February 1.

59 Section 2. This act shall take effect July 1, 2014.