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# **Business & Professional Regulation Subcommittee**

**Tuesday, March 4, 2014  
1:30 PM  
12 HOB**

**MEETING PACKET**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Business & Professional Regulation Subcommittee

**Start Date and Time:** Tuesday, March 04, 2014 01:30 pm  
**End Date and Time:** Tuesday, March 04, 2014 03:30 pm  
**Location:** 12 HOB  
**Duration:** 2.00 hrs

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

CS/HB 407 Notaries Public by Economic Development & Tourism Subcommittee, Peters

CS/HB 489 Residential Property Sales/Subsurface Rights by Civil Justice Subcommittee, Spano

HB 725 Public Accountancy by Boyd

HB 7037 Residential Communities by Civil Justice Subcommittee, Spano

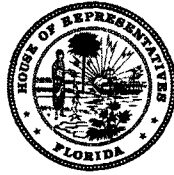
**Consideration of the following proposed committee substitute(s):**

PCS for HB 713 -- Engineers

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 3, 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 3, 2014.

**NOTICE FINALIZED on 02/28/2014 14:13 by Ellinor.Martha**



# The Florida House of Representatives

## Regulatory Affairs Committee

### Business & Professional Regulation Subcommittee

Will Weatherford  
Speaker

Debbie Mayfield  
Chair

## AGENDA

March 4, 2014  
12 House Office Building  
1:30 PM – 3:30 PM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. CS/HB 407 by *Economic Development & Tourism Subcommittee and Rep. Peters*  
Notaries Public
- IV. CS/HB 489 by *Civil Justice Subcommittee and Rep. Spano*  
Residential Property Sales/Subsurface Rights
- V. HB 725 by *Rep. Boyd*  
Public Accountancy
- VI. HB 7037 by *Civil Justice Subcommittee and Rep. Spano*  
Residential Communities
- VII. PCS for HB 713 by *Business & Professional Regulation Subcommittee*  
Engineers
- VIII. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 407 Notaries Public  
**SPONSOR(S):** Economic Development & Tourism Subcommittee; Peters  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N, As CS	Collins	West
2) Business & Professional Regulation Subcommittee		Brown-Blake <i>WB</i>	Luczynski <i>nl</i>
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill creates s. 117.055, F.S., which requires state-commissioned notaries public to maintain a notarial journal to record specific information at the time of a notarial act. The notarial journal must be kept for at least 5 years, and notaries public must notify the Department of State (DOS) immediately should the journal be lost, stolen, misplaced, destroyed, or rendered unusable during this time. Failure to do so constitutes grounds for suspension or nonrenewal of the notary public's commission and grounds for the denial of a subsequent commission by the Governor.

The fiscal impact of this bill is insignificant on state funds. The bill has no impact on local government revenues or expenditures.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Notaries Public in Florida

A notary public (notary or notaries) is a public officer appointed and commissioned by the Governor whose function is to administer oaths; to take acknowledgements of deeds and other instruments; to attest to or certify photocopies of certain documents; and to perform other duties specified by law.<sup>1</sup>

Chapter 117, F.S., provides requirements and guidelines for notaries and authorizes the Governor to appoint as many notaries as necessary. A notary must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English.<sup>2</sup> The application for appointment must include a \$25 fee, a \$10 commission fee required by s. 113.01, F.S., and a \$4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance.<sup>3</sup>

Once appointed, a notary serves a four-year term. During the term of office, a notary must post and maintain a \$7,500 bond payable to any individual harmed as a result of a notary's breach of duty. The bond must be approved and filed with DOS and executed by a surety company that is authorized to transact business within the state. If a surety company pays an individual harmed by the notary for breach of duty, the company must notify the Governor of the payment and the underlying circumstances.<sup>4</sup> No person may be automatically reappointed as a notary. The application process must be completed regardless of whether an applicant has previously served as a notary.<sup>5</sup>

A notary is authorized by law to perform six functions:<sup>6</sup>

- administer oaths or affirmations;<sup>7</sup>
- take acknowledgements of deeds and other instruments of writing for record;<sup>8</sup>
- attest to photocopies of certain documents;<sup>9</sup>
- solemnize marriage;<sup>10</sup>
- verify vehicle identification numbers;<sup>11</sup> and
- certify the contents of a safe-deposit box.<sup>12</sup>

With the exception of solemnizing a marriage, a notary cannot charge more than \$10 for each notarial act.<sup>13</sup> Any person who impersonates a notary,<sup>14</sup> acts as a notary after their commission has expired,<sup>15</sup>

<sup>1</sup> *Governor's Reference Manual for Notaries*; State of Florida, November 1, 2001 ed., p. 6, available at [http://www.flgov.com/notary\\_ref\\_manual/](http://www.flgov.com/notary_ref_manual/) (last viewed February 25, 2014).

<sup>2</sup> Section 117.01(1), F.S.

<sup>3</sup> Section 117.01(2), F.S.

<sup>4</sup> Section 117.01(7), F.S.

<sup>5</sup> Section 117.01(6), F.S.

<sup>6</sup> *Ibid.* 1, p. 12.

<sup>7</sup> Section 117.03, F.S.

<sup>8</sup> Section 117.04, F.S.

<sup>9</sup> Section 117.05(12)(a), F.S.

<sup>10</sup> Section 117.045, F.S.

<sup>11</sup> Section 319.23(3)(a)2., F.S.

<sup>12</sup> Section 655.94(1), F.S.

<sup>13</sup> Section 117.05(2)(a), F.S.

or unlawfully possesses a notary public official seal or any papers or copies relating to notarial acts is guilty of a misdemeanor of the second degree.<sup>16</sup> A notary must make reasonable accommodations to provide notarial services to persons with disabilities including signing documents for them under certain circumstances.<sup>17</sup>

The Governor may suspend a notary for any of the grounds provided in Article IV, section 7 of the Florida Constitution.<sup>18</sup> Acts of malfeasance, misfeasance, or neglect of duty that may result in suspension under these grounds include, but are not limited to:<sup>19</sup>

- A material false statement on the application.
- A complaint found to have merit by the Governor.
- Failure to cooperate or respond to an investigation by the Governor's office or DOS regarding a complaint.
- Official misconduct as defined in s. 838.022, F.S.
- False or misleading advertising related to notary services.
- Unauthorized practice of law.
- Failure to report a change in business address, home address, telephone number, or failure to submit documentation to request an amended commission after a lawful name change, within the specified period of time.
- Commission of fraud, misrepresentation, or any intentional violation of ch. 117, F.S.
- Charging fees in excess of fees authorized by state law.
- Failure to maintain the surety bond required by state law.

According to DOS staff, there were 400,432 notaries registered in the state as of January 31, 2014.<sup>20</sup> In 2013 the Governor removed 12 notaries from office and suspended 48 others.<sup>21</sup> As of February 25, 2014, 19 notaries had been suspended, two publicly censured, and none removed from office during the 2014 calendar year.<sup>22</sup>

### Notarial Journals

In 1998, the Governor's Task Force on Notaries Public recommended the mandatory use of notarial journals. The use of notarial journals remains strictly voluntary in the State of Florida. Fourteen states and the District of Columbia currently require notarial journals to be kept, with 26 others, including Florida, recommending that state-appointed notaries keep such a journal voluntarily.<sup>23</sup>

### **Effect of Proposed Changes**

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<sup>14</sup> Section 117.05(7), F.S.

<sup>15</sup> Section 117.05(8), F.S.

<sup>16</sup> Section 117.05(3)(e), F.S.

<sup>17</sup> Section 117.05(14), F.S.

<sup>18</sup> The grounds for suspension by the Governor found in s. 7, Art. IV of the State Constitution are, "malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony...."

<sup>19</sup> Section 117.01(4), F.S.

<sup>20</sup> Florida Department of State, Division of Corporations, *Yearly Statistics, Total Active Registrations & Notaries*, available at [http://sunbiz.org/corp\\_stat.html](http://sunbiz.org/corp_stat.html) (last viewed February 25, 2014).

<sup>21</sup> Executive Orders issued by Governor Rick Scott, *Executive orders issued in 2013*, available at <http://www.flgov.com/all-executive-orders/> (last viewed February 25, 2014).

<sup>22</sup> Executive Orders issued by Governor Rick Scott, *Executive orders issued in 2014*, available at <http://www.flgov.com/all-executive-orders/> (last viewed February 25, 2014).

<sup>23</sup> *Notary Recordbook Requirements*; American Society of Notaries (can be found at: <http://www.notaries.org/notaryrecordbookrequirements.html>) last accessed on February 6, 2014.

The bill requires notaries to maintain a notarial journal which must be used to record the following information at the time of a notarial act that requires notarizing a signature:

- Date and time of the notarial act.
- Type of notarial act.
- Type, title, name, or description of the document, proceeding, or transaction requiring the notarial act.
- The signer's printed name and signature, or in the case of an electronic journal, the signer's name and electronic signature pursuant to s. 668.50(2)(h), F.S.
- The signer's complete residence address.
- Whether the signer is personally known to the notary public or presented satisfactory evidence pursuant to s. 117.05(5)(b), F.S., the type, last four digits of the unique identification number, and expiration date of the identification presented.
- Names of witnesses to the notarial act, if applicable.

A notary is required to keep a notarial journal for at least five years after the date of the last recorded notarial act in the journal. If the journal is lost, stolen, misplaced, destroyed, or rendered unusable during the retention period, the notary must immediately notify DOS in writing of the circumstances of the incident.

The notarial journal is the exclusive property of the notary and shall be kept in a locked and secure area, under the direct and exclusive control of the notary. Failure of the notary to comply with this section of state law constitutes grounds for suspension or nonrenewal of the notary's commission and grounds for the denial of a subsequent commission by the Governor.

**B. SECTION DIRECTORY:**

Section 1: Creates s. 117.055, F.S., to direct notaries on the keeping of notarial journals.

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:**



Notaries will be required to maintain records regarding their notary duties. This would be an increase in record keeping and require minimal costs related to the maintenance of the records.

**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:**

Section 117.10, F.S., provides that law enforcement, correctional probation officers, and other listed officers are authorized to administer oaths when engaged in the performance of official duties. Additionally, the section provides that certain sections of ch. 117, F.S., pertaining to the requirements placed on notaries public do not apply to the listed law enforcement officers when administering oaths while engaged in the performance of official duties. It appears that s. 117.055, F.S., should be added to the list of sections that do not apply to the provisions of s. 117.10, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 19, 2014, the House Economic Development & Tourism Subcommittee adopted two amendments.

- Amendment 1 was adopted to remove Section One of the bill (lines 22-72) which required a Department of Law Enforcement criminal history records check for notary public applicants. The section also allowed the Department of Law Enforcement to charge a \$15 fee for each criminal history records check, payable from the existing notary public application fee.
- Amendment 2 was adopted to clarify that the requirements associated with the keeping of a notarial journal would only apply to notarial acts involving a signature.

The analysis has been updated to reflect the amendment.

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A bill to be entitled  
An act relating to notaries public; creating s.  
117.055, F.S.; requiring a notary public to record  
certain information in a specified journal when  
performing certain notarial acts; requiring that a  
notary public retain a notarial journal for a  
specified period; requiring a notary public to notify  
the Department of State if a notarial journal is lost,  
stolen, misplaced, destroyed, or rendered unusable  
during the retention period; requiring a notary public  
to keep a notarial journal in a specified area;  
providing that failure to comply with the notarial  
journal requirements constitutes grounds for  
suspension, nonrenewal, or denial of a notary public  
commission; providing an effective date.

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

Section 1. Section 117.055, Florida Statutes, is created  
to read:

117.055 Notarial journal.-

(1) When performing a notarial act that requires  
notarizing a signature, a notary public shall record the  
following information in a bound sequential paper or an  
electronic journal:

(a) The date and time of the notarial act.

27        (b) The type of notarial act.  
 28        (c) The type, title, name, or description of the document,  
 29 proceeding, or transaction requiring the notarial act.  
 30        (d) The signer's printed name and signature, or in the  
 31 case of an electronic journal, the signer's name and electronic  
 32 signature pursuant to s. 668.50(2)(h).  
 33        (e) The signer's complete residence address.  
 34        (f) Whether the signer is personally known to the notary  
 35 public or presented satisfactory evidence pursuant to s.  
 36 117.05(5)(b). The notary shall record the type, last 4 digits of  
 37 the unique identification number, and expiration date of the  
 38 identification presented.  
 39        (g) The names of witnesses to the notarial act.  
 40        (2) A notary public must retain a notarial journal for at  
 41 least 5 years after the date of the last recorded notarial act  
 42 in the notarial journal. If a notarial journal is lost, stolen,  
 43 misplaced, destroyed, or rendered unusable during the retention  
 44 period, the notary public must immediately notify the Department  
 45 of State in writing of the circumstances of the incident.  
 46        (3) The notarial journal is the exclusive property of the  
 47 notary public and shall be kept in a locked and secure area,  
 48 under the direct and exclusive control of the notary public.  
 49        (4) Failure of a notary public to comply with this section  
 50 constitutes grounds for suspension or nonrenewal of the notary  
 51 public's commission and grounds for the denial of a subsequent  
 52 commission by the Governor.

CS/HB 407

2014

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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 Peters offered the following:

4  
 5 **Amendment (with title amendment)**

6 Between lines 52 and 53, insert:

7 Section 2. Section 117.10, Florida Statutes, is amended to  
 8 read:

9 117.10 Law enforcement and correctional officers.—Law  
 10 enforcement officers, correctional officers, and correctional  
 11 probation officers, as defined in s. 943.10, and traffic  
 12 accident investigation officers and traffic infraction  
 13 enforcement officers, as described in s. 316.640, are authorized  
 14 to administer oaths when engaged in the performance of official  
 15 duties. Sections 117.01, 117.04, 117.045, 117.05, 117.055, and  
 16 117.103 do not apply to the provisions of this section. An  
 17 officer may not notarize his or her own signature.



Amendment No. 1

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**T I T L E   A M E N D M E N T**

Remove line 15 and insert:  
commission; amending s. 117.10, F.S.; providing that s. 117.055  
does not apply to the provisions of s. 117.10; providing an  
effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 489 Residential Property Sales/Subsurface Rights  
**SPONSOR(S):** Civil Justice Subcommittee; Spano  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 1 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee		Butler BSB	Luczynski mz
3) Judiciary Committee			

### SUMMARY ANALYSIS

Most owners of real property simply think of the surface boundaries when defining the extent of the ownership. However, real property theory is that the owner owns a projection from the center of the Earth to the extent of the Earth's atmosphere. Thus, the owner of the surface rights generally owns the oil, gas and minerals underneath the owner's real property. However, a landowner may lease or sell subsurface rights (the right to oil, gas and minerals) separate from the right to own and occupy the surface of the land, thereby creating two separate estates. In general, separation of the estates is uncommon in much of Florida.

Recently, some developers have sold residential homes on property where the subsurface rights were previously severed. Buyers asserted that they had little or no notice that their property did not include subsurface rights.

As a part of a contract or deed for the sale of residential property, the bill requires a seller who intends to retain any subsurface rights, or who has previously transferred or has knowledge concerning the prior transfer of such rights, to provide a prospective purchaser and his or her real estate agent written notification of the subsurface property interest that will not be a part of the transaction. The bill provides that a purchaser has 3 business days after the contract or deed is fully executed to rescind the contract or deed if a seller fails to provide the required notice.

The bill provides that if proper notice was not provided to the prospective purchaser, the severance of the subsurface estate is voidable by the purchaser. However, if the subsurface rights were already conveyed by the seller, then the purchaser is entitled to actual damages or \$5000 in liquidated damages, whichever is greater.

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

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Most owners of real property simply think of the surface boundaries when defining the extent of the ownership. However, common law real property theory is that the owner owns a projection from the center of the Earth to the extent of the Earth's atmosphere.<sup>1</sup>

The owner of land is entitled to the surface of the land and all that is below it, provided that the deed does not contain a reservation of mineral, or subsurface, rights. However, upon transfer, the deed may convey only the surface rights while the transferor may retain the subsurface rights, creating two separate estates.<sup>2</sup> A deed that is silent on the issue is deemed to convey all property rights.

Generally, a reservation or grant of mineral rights reflects an intent to sever the surface estate from the underlying mineral estate, thus establishing two separate estates.<sup>3</sup> A property owner may sever the estates by either:

- Granting the mineral rights;<sup>4</sup> or
- Conveying the property but retaining the mineral rights.<sup>5</sup>

The owner of each estate has the right to exercise all the rights of ownership, subject to any laws and reservations that the deed may contain.<sup>6</sup> Therefore, the owner of the subsurface rights is entitled to the profits from any minerals that are extracted from beneath the surface of the land.

When the estate is severed into separate surface and subsurface estates, the mineral estate is the dominant estate, and therefore the owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals. However, in doing so, the owner of the mineral estate may not so abuse the surface estate so as to unreasonably injure or destroy its value.<sup>7</sup> A grant or reservation of oil and mineral rights implies an easement for ingress and egress to explore for and remove the oil and minerals found on or underneath the surface estate, even if not specifically granted at the conveyance.<sup>8</sup>

In practice, some developers retain mineral rights without a reference to the mineral rights on the face of the deed. A catch-all provision in the deed, such as, "Subject to Covenants, Conditions, Restrictions, Reservations, Limitations, Easements and Agreements of Records, if any," may be all that appears on the face of the deed to the prospective purchaser. In such cases, a separate grant may have been filed in the public records that list the lots within a development for which mineral rights are being retained by the developer. The developer may also waive its rights of ingress and egress, effectively retaining ownership of any valuable minerals that may reside in the subsurface, but waiving any claim to an easement that would interfere with or even be recognized by the surface owner. While this practice may satisfy constructive notice requirements to make the reservation of mineral rights legally effective,

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<sup>1</sup> 42 Fla. Jur 2d Property s. 7.

<sup>2</sup> 36 Fla. Jur 2d Mines and Minerals s. 54.

<sup>3</sup> *Noblin v. Harbor Hills Development, L.P.*, 896 So.2d 781, 783 (Fla. 5th DCA 2005).

<sup>4</sup> *Neel v. Rudman*, 33 So.2d 234, 237 (Fla. 1948).

<sup>5</sup> *P & N Inv. Corp. v. Florida Ranchettes, Inc.*, 220 So.2d 451 (Fla 1st DCA 1969).

<sup>6</sup> 58 C.J.S. Mines and Minerals s. 197.

<sup>7</sup> *P & N Inv. Corp.*, 220 So.2d at 453.

<sup>8</sup> *Noblin*, 896 So.2d at 784-85.

it arguably does not provide adequate notice to the purchaser of the surface property that the purchaser does not own the subsurface rights to the property.<sup>9</sup>

### **Effect of the Bill**

The bill creates s. 689.263, F.S., to require a seller who intends to retain any subsurface rights as part of a contract or deed for the sale of residential property to provide a prospective purchaser and his or her real estate agent with written notification of the property interest that the seller is seeking to retain.

The bill creates s. 689.263(1), F.S., to provide definitions. The bill defines a residential property to include "real estate which, at the time of the sale, is zoned for residential use." The bill also defines subsurface rights to include "rights to the phosphate, minerals, metals, natural gas, petroleum, or oil that is or may be in, on, or under any land being transferred to the prospective purchaser."

The bill creates s. 689.263(2), F.S., to require a seller who intends to retain subsurface rights, or a seller who has previously transferred or has knowledge of a prior transfer of such rights, to provide a written notification to the buyer at least 3 business days before entering into any sales contract for the purchase of residential property. The purchaser must provide a signed, written acknowledgment of receipt of the notification.

The bill creates s. 689.263(3), F.S., to provide requirements for the written notification. The bill provides language that must be used and requires the notification to be provided on an 8 ½ by 11 inch sheet of paper that addresses no other subject and is double-spaced in at least a 14-point font.

The bill creates s. 689.263(4), F.S., to provide that a purchaser has 3 business days after the contract or deed is fully executed to rescind the contract or deed if a seller fails to provide the required notice. The purchaser must provide the rescission notification to the seller in writing. If the purchaser chooses to rescind the contract, the rescission is the purchaser's sole remedy.

The bill creates s. 689.263(5), F.S., to provide that if proper notice was not provided to the prospective purchaser, the severance of the subsurface estate is voidable by the purchaser. However, that remedy would only be available in a situation where the seller had not already conveyed the subsurface estate. In the event that the seller subsequently conveyed the subsurface rights, the bill provides that the purchaser is entitled to damages as if the seller had failed to provide notice, which includes actual damages or \$5000 in liquidated damages, whichever is greater, plus attorney's fees. The bill has prospective application only, so any transaction that occurs before the effective date may not use the remedies or prohibitions listed here, even if the severance is discovered after the effective date.

The bill creates s. 689.263(6), F.S., to provide jurisdiction and venue in the circuit court of the county in which the real property is located.

The bill creates s. 689.263(7), F.S., to provide a title savings clause, which provides that a failure to provide the notice required by the bill does not affect the title to the residential property. However, the title savings clause does not apply to the title of the subsurface estate, since that estate's title may be affected by the provisions of this bill.

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

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<sup>9</sup> See, e.g., "Attorney General Pam Bondi Announces that Home Builder is Notifying Florida Homeowners of Option to Request Mineral Rights." Attorney General Pam Bondi News Release, February 7, 2014. [http://myfloridalegal.com/\\_852562220065EE67.nsf/0/06535F8FE26017C785257C780071C51D?Open&Highlight=0,hort](http://myfloridalegal.com/_852562220065EE67.nsf/0/06535F8FE26017C785257C780071C51D?Open&Highlight=0,hort) on (last viewed February 13, 2014).  
STORAGE NAME: h0489b.BPRS.DOCX  
DATE: 2/28/2014

**B. SECTION DIRECTORY:**

Section 1 creates s. 689.263, F.S., relating to the sale of residential property and disclosure of seller's intent to retain subsurface rights.

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

2. Expenditures:

The bill does not appear to have any fiscal 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 appears to have a minimal direct economic impact on the private sector related to the cost of providing notice to buyers. Given that sellers of real property in Florida rarely sever subsurface rights, the overall impact on the private sector should be negligible.

**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:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided technical changes, altered the remedy to include a liquidated damages provision, and removed a criminal penalty. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to residential property sales;  
 3           creating s. 689.263, F.S.; providing definitions;  
 4           requiring a seller of residential property to provide  
 5           written notification to a prospective purchaser of the  
 6           seller's intent to retain subsurface rights; providing  
 7           the form for such notification; providing for  
 8           rescission of a contract under certain circumstances;  
 9           providing a cause of action and a remedy for failure  
 10          to provide notification; specifying jurisdiction and  
 11          venue for enforcement; providing that failure to  
 12          provide notice does not affect the title or  
 13          insurability of the residential property; providing an  
 14          effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Section 689.263, Florida Statutes, is created  
 19 to read:

20           689.263 Sale of residential property; disclosure of  
 21 seller's intent to retain subsurface rights.-

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

23           (a) "Residential property" includes any real estate which,  
 24 at the time of the sale, is zoned for residential use.

25           (b) "Subsurface rights" includes rights to the phosphate,  
 26 minerals, metals, natural gas, petroleum, or oil that is or may

27 be in, on, or under any land being transferred to a prospective  
 28 purchaser.

29 (2) A seller who intends to retain any subsurface rights  
 30 as part of a contract or deed for the sale of residential  
 31 property, or a seller who has previously transferred or has  
 32 knowledge concerning the prior transfer of such rights, shall  
 33 provide to the prospective purchaser, and the prospective  
 34 purchaser's real estate agent if the prospective purchaser is  
 35 using a real estate agent, written notification of the property  
 36 interest that the seller is seeking to retain or that was  
 37 previously severed. The seller, or the seller's agent, if  
 38 applicable, shall notify the prospective purchaser by providing  
 39 notice under subsection (3) at least 3 business days before  
 40 entering into any sales contract for the purchase of the  
 41 residential property, and the prospective purchaser must  
 42 acknowledge receipt of the written notification by his or her  
 43 signature.

44 (3) The written notice required under subsection (2) shall  
 45 be provided on a sheet of paper that is 8 1/2 inches by 11  
 46 inches, shall address no other subject, shall be double-spaced,  
 47 and shall include substantially the following information in a  
 48 font size of at least 14 points:

49  
 50 RETENTION OF SUBSURFACE RIGHTS

51  
 52 AS REQUIRED BY SECTION 689.263, FLORIDA STATUTES, ... (SELLER'S

53 NAME)... HEREBY PROVIDES 3 BUSINESS DAYS' NOTICE TO  
 54 ...(PROSPECTIVE PURCHASER'S NAME)... THAT THE SELLER, AS PART OF  
 55 THE TRANSFER OF THE PROPERTY LOCATED AT ...(PROPERTY  
 56 ADDRESS)..., INTENDS TO SEVER, RETAIN, RESERVE, OR OTHERWISE  
 57 KEEP CERTAIN SUBSURFACE RIGHTS AS PART OF THE SALE OF THAT  
 58 PROPERTY, HAS PREVIOUSLY TRANSFERRED SUCH RIGHTS, OR HAS  
 59 KNOWLEDGE CONCERNING THE PRIOR TRANSFER OF SUCH RIGHTS. THESE  
 60 RIGHTS MAY INCLUDE THE RIGHT TO PHOSPHATE, MINERALS, METALS,  
 61 NATURAL GAS, PETROLEUM, OR OIL THAT MIGHT BE IN, ON, OR UNDER  
 62 THE PROPERTY.

63  
 64 I/WE ACKNOWLEDGE RECEIPT OF THIS NOTICE.

65  
 66 ...(Signature of prospective purchaser)...

67  
 68 (4) A purchaser has 3 business days after the contract is  
 69 fully executed to rescind the contract if a seller fails to  
 70 provide notice as required by this section. The rescission  
 71 notification must be provided in writing to the seller or the  
 72 seller's agent, if applicable. If the purchaser rescinds the  
 73 contract, the rescission is the purchaser's sole remedy.

74 (5) If proper notice is not provided to the purchaser and  
 75 agent, if applicable, and if the seller retains the subsurface  
 76 rights, the severance of the subsurface estate is voidable by  
 77 the purchaser. However, if the subsurface rights were  
 78 subsequently conveyed by the seller, the purchaser is entitled

79 to damages as if the seller had failed to provide notice as  
 80 required by this section. If proper notice was not provided to  
 81 the purchaser, and if the seller has sold or otherwise  
 82 transferred the subsurface rights to a wholly or partially owned  
 83 subsidiary, the purchaser has a cause of action against the  
 84 seller and is entitled to actual damages or \$5,000 in liquidated  
 85 damages, whichever is greater, plus all costs of the action and  
 86 reasonable attorney fees. Relief under this subsection is the  
 87 only remedy authorized by law.

88 (6) Jurisdiction and venue for enforcement of this section  
 89 is in the circuit court of the county where the residential  
 90 property is located.

91 (7) The failure to provide notice required by this section  
 92 does not affect title to the residential property or its  
 93 insurability. This subsection does not apply to the holder of  
 94 subsurface rights, whose title may be impacted by this section.

95 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 Spano offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Section 689.29, Florida Statutes, is created to  
8 read:

9 689.29 Disclosure of subsurface rights to prospective  
10 purchaser.—

11 (1) The seller must provide a prospective purchaser of  
12 residential property with a disclosure summary at or before the  
13 execution of the contract for sale. The disclosure summary must  
14 be conspicuous, in boldfaced type, and in a form substantially  
15 similar to the following:

SUBSURFACE RIGHTS

DISCLOSURE SUMMARY



Amendment No. 1

18  
19  
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43

SUBSURFACE RIGHTS CAN BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE OWNER OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE OWNER. IF SUBSURFACE RIGHTS ARE OR WILL BE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, AND REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. WITH REGARD TO THE SEVERANCE OF SUBSURFACE RIGHTS, THE SELLER MAKES THE FOLLOWING DISCLOSURES:

1. Subsurface rights were severed from the property by a previous owner: Yes  No  No Representation   
...(Buyer Initials)...

2. Seller has severed the subsurface rights from the property: Yes  No   
...(Buyer Initials)...

3. Seller intends to sever the subsurface rights from the property before transferring title to Buyer: Yes  No   
...(Buyer Initials)...

(2) The disclosure summary must be included in the contract for sale or attached to the contract for sale. If



Amendment No. 1

44 attached, the contract for sale must refer to and incorporate by  
45 reference the disclosure summary and must include, in prominent  
46 language, a statement that the potential purchaser should not  
47 execute the contract until he or she has read the disclosure  
48 summary required under this section.

49 (3) As used in this section, the term "subsurface rights"  
50 means the rights to all minerals, mineral fuels, and other  
51 resources, including but not limited to, oil, gas, coal, oil  
52 shale, uranium, metals, phosphate and water, whether or not it  
53 may be mixed with any other substance, found, or located beneath  
54 the surface of the earth.

55 (4) As used in this section, the term "seller" means any  
56 seller of real property which, at the time of sale, is zoned for  
57 residential use and, is property upon which a new dwelling is  
58 being constructed, is to be constructed, or has been constructed  
59 since the last transfer of the property.

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

61  
62 -----  
63 **T I T L E A M E N D M E N T**

64 Remove everything before the enacting clause and insert:

65 A bill to be entitled

66 An act relating to subsurface rights; creating s. 689.29, F.S.;  
67 requiring a seller to provide a prospective purchaser with a  
68 subsurface rights disclosure summary; providing the form for the  
69 disclosure summary; requiring the disclosure summary to be



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 489 (2014)

Amendment No. 1

70 included in the contract for sale or attached to the contract  
71 for sale; defining the term "subsurface rights"; defining the  
72 term "seller"; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 725 Public Accountancy  
**SPONSOR(S):** Boyd  
**TIED BILLS:** IDEN./SIM. BILLS: SB 796

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

### SUMMARY ANALYSIS

Before an applicant who has not passed the CPA examination in any state may be licensed in this state as a certified public accountant (CPA), the applicant must pass a licensure exam, complete one year of work experience related to accounting, complete at least 150 semester hours of college education with a concentration in accounting and business, and show that he or she has good moral character.

Currently, an applicant may take the licensure exam after completing 120 semester hours or 160 quarter hours of college education.

The bill makes two changes to the requirements for licensure. First, the quarter hours requirement to take the licensure exam is increased from 160 quarter hours to 180 quarter hours. This increase is in line with the generally accepted conversion rate between semester hours and quarter hours. Second, an applicant must show that he or she has good moral character before taking the licensure exam.

After passing the licensure examination, the applicant must also complete an education requirement and one year of work experience before he or she may apply for an initial CPA license. Existing law requires that the applicant also show that he or she has good moral character at the time of application for initial licensure.

The bill extends by two years the deadline for licensees with inactive or delinquent licenses to receive partial amnesty related to the continuing education requirements necessary to reactivate their license. Qualified licensees will have to complete 120 hours of continuing education, compared to a possible 280 hours without the amnesty.

The bill may have an indeterminate impact on state funds and does not appear to have a fiscal impact on local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Board of Accountancy (Board) within the Department of Business and Professional Regulation (Department) is the agency charged with regulating the practice of public accountancy. The Division of Certified Public Accounting (Division) performs for the board all services concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in ch. 455, F.S., necessary to perform the board's duties under the chapter. The offices of the division are located in Gainesville.

##### Licensure for Certified Public Accountants

An applicant to become a certified public accountant (CPA) must pass the licensure examination as outlined in s. 473.306, F.S., and the rules promulgated by the Board. To be eligible to take the exam, an applicant must complete 120 semester hours or 160 quarter hours of coursework from an accredited college or university with a concentration in accounting and business courses as specified by the Board in rule.<sup>1</sup>

In addition to completing the licensure exam successfully, s. 473.308, F.S., requires an applicant complete 150 semester hours<sup>2</sup> of college education, one year of work experience, and demonstrate "good moral character."

Section 473.308(6), F.S., defines "good moral character" and further allows the Board to deny an applicant licensure should an applicant fail to demonstrate good moral character. Specifically:

- (a) "Good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.
- (b) The board may refuse to certify an applicant for failure to satisfy this requirement if:
  - 1. The board finds a reasonable relationship between the lack of good moral character of the applicant and the professional responsibilities of a certified public accountant; and
  - 2. The finding by the board of lack of good moral character is supported by competent substantial evidence.
- (c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish to the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

Currently, the Board determines whether an applicant possesses good moral character only after the applicant has already successfully passed the licensure exam. However, good moral character is an ongoing requirement as s. 473.323, F.S., explicitly permits the Board to discipline for failure to maintain good moral character.

##### Continuing Education Requirements

Section 473.313(2), F.S., provides that a CPA who holds an inactive or delinquent license on June 30, 2012, may reactivate his or her license by completing 120 hours of continuing education courses, so long as the licensee notifies the Board of Accountancy of his or her intention by December 31, 2012,

<sup>1</sup> Rule 61H1-27.001, F.A.C., defines which accredited colleges and universities meet the criteria for this subsection.

<sup>2</sup> See Section III, C. Drafting Issues or Other Comments.

and completes the reactivation by June 30, 2014. If the licensee qualifies within the limited amnesty period, he or she will be required to complete 120 hours of continuing education, regardless of how long the license has been inactive or delinquent. After this period of amnesty expires, an inactive licensee may be required to complete up to 280 hours of continuing education before reactivating his or her license.<sup>3</sup>

## **Effect of the Bill**

### **Licensure for Certified Public Accountants**

The bill makes two alterations to the requirements an applicant must meet before he or she may take the licensure examination and become a certified public accountant.

First, the bill amends s. 473.306, F.S., to raise the requirement from 160 quarter hours to 180 quarter hours of college education required before an applicant may take the licensure exam. This increase is in line with the generally accepted conversion rate of 2 semester hours to 3 quarter hours used by many universities.<sup>4</sup>

The bill also amends s. 473.306, F.S., to require an applicant show that she or he has good moral character before the applicant may take the licensure exam. The bill uses the same definition of "good moral character" as s. 473.308, F.S., and applies the same requirements for denial as s. 473.308, F.S., currently requires for applicants who have passed the licensure exam.

The practical effect of this change would move the judgment of whether an applicant demonstrates "good moral character" before taking the licensure exam, rather than after the CPA Exam is successfully completed, but before the Board approves an applicant to be licensed.

However, the bill does not remove the requirement in s. 473.308, F.S., that an applicant demonstrate "good moral character" after successfully completing the licensure exam. It appears that an applicant will have to demonstrate good moral character both before they take the licensure exam and after successfully passing the exam but before being licensed. The earlier requirement to demonstrate good moral character may make the later requirement redundant, or may expedite the second demonstration if it is still necessary.

### **Continuing Education Requirements**

The bill amends s. 473.313(2), F.S., to extend the previous amnesty period by two years. This means that CPA's who hold an inactive or delinquent license on June 30, 2014, have an opportunity to reenter the profession by completing 120 hours of continuing education courses, so long as the licensee notifies the Board of Accountancy of their intention by December 31, 2014, and completes the reactivation by June 30, 2016. If the licensee qualifies within the limited amnesty period, he or she will be required to complete 120 hours of continuing education, regardless of how long the license has been inactive or delinquent.

## **B. SECTION DIRECTORY:**

**Section 1** amends s. 473.306, F.S., to increase the quarter hour requirement to take the licensure exam from 160 quarter hours to 180 quarter hours and to require an applicant show that they possess good moral character before they may take the licensure exam.

**Section 2** amends s. 473.313, F.S., extends the continuing education amnesty two additional years.

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

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<sup>3</sup> Rule 61H1-33.006, F.A.C.

<sup>4</sup> No Florida statute appears to set an official conversion rate of 2 semester hours to 3 quarter hours; however, at least one Florida statute implies this conversion rate, *see* s. 1005.02, F.S. (stating "at least 60 semester hours or 90 quarter hours of study or the equivalent").



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate.<sup>5</sup>

The Board must determine whether an applicant possesses "good moral character" before licensing the applicant, it is possible the current process can simply be revised to take place earlier in the application process. The new requirement, to determine an applicant's good moral character before the licensure exam does not replace the requirement to determine an applicant's good moral character after successfully completing the licensure exam and applying for a CPA license.

The number of applicants who have to show good moral character may increase because the number of applicants that reach this stage of the licensure process is no longer restricted by the number of applicants that actually pass the licensure exam. It is unknown how significant an increase this may be, or whether the Department or the Division will require additional resources to adequately service these individuals.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill may increase Department expenditures due to the Board being required to investigate more applicants and to investigate applicants twice.

## 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.

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<sup>55</sup> There is no estimate because the Department of Business and Professional Regulation Analysis of HB 725 is unavailable.  
STORAGE NAME: h0725.BPRS.DOCX  
DATE: 2/28/2014

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 473.308, F.S., requires 150 semester hours for licensure, but does not provide a quarter hours equivalent. Nevertheless, the Board of Accountancy rule sets the quarter hour equivalent for licensure at 200 hours. This licensure requirement is based on a conversion rate of 3 semester hours to 4 quarter hours or the same rate currently used for examination purposes in s. 473.306, F.S. This bill changes the conversion rate for examination to 2 semester hours to 3 quarter hours. To avoid potential confusion and to support rulemaking, the semester hour to quarter hour conversion rate for chapter 473, F.S., should be clarified or at least the quarter hour equivalent for licensure should be provided for in s. 473.308, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to public accountancy; amending s.  
 3           473.306, F.S.; revising course requirement for  
 4           certified public accountant license applicant to take  
 5           the licensure examination; requiring an applicant to  
 6           be of good moral character in order to take the  
 7           licensure examination; requiring the Board of  
 8           Accountancy, when refusing to allow an applicant to  
 9           take the examination because of a lack of good moral  
 10          character, to make certain findings and furnish  
 11          certain evidence and notices to the applicant;  
 12          amending s. 473.313, F.S.; revising certain deadlines  
 13          for license reactivation; providing an effective date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Subsection (2) of section 473.306, Florida  
 18   Statutes, is amended to read:

19           473.306 Examinations.—

20           (2) An applicant is entitled to take the licensure  
 21   examination to practice in this state as a certified public  
 22   accountant if:

23           (a) The applicant has completed 120 semester hours or 180  
 24   ~~160~~ quarter hours from an accredited college or university with  
 25   a concentration in accounting and business courses as specified  
 26   by the board by rule; and

27 (b) The applicant shows that she or he has good moral  
 28 character. For purposes of this paragraph, the term "good moral  
 29 character" has the same meaning as provided in s. 473.308(6)(a).  
 30 The board may refuse to allow an applicant to take the licensure  
 31 examination for failure to satisfy this requirement if:

32 1. The board finds a reasonable relationship between the  
 33 lack of good moral character of the applicant and the  
 34 professional responsibilities of a certified public accountant;  
 35 and

36 2. The finding by the board of lack of good moral  
 37 character is supported by competent substantial evidence.

38  
 39 When an applicant is found pursuant to this paragraph to be  
 40 unqualified to take the licensure examination because of a lack  
 41 of good moral character, the board shall furnish to the  
 42 applicant a statement containing the findings of the board, a  
 43 complete record of the evidence upon which the determination was  
 44 based, and a notice of the rights of the applicant to a  
 45 rehearing and appeal

46 Section 2. Subsection (2) of section 473.313, Florida  
 47 Statutes, is amended to read:

48 473.313 Inactive status.—

49 (2) A license that has become inactive under subsection  
 50 (1) or for failure to complete the requirements in s. 473.312  
 51 may be reactivated under s. 473.311 upon application to the  
 52 department. The board may prescribe by rule continuing education

53 requirements as a condition of reactivating a license. The  
 54 minimum continuing education requirements for reactivating a  
 55 license shall be those prescribed by board rule and those of the  
 56 most recent biennium plus one-half of the requirements in s.  
 57 473.312. Notwithstanding any other provision of this section,  
 58 the continuing education requirements are 120 hours, including  
 59 at least 30 hours in accounting-related and auditing-related  
 60 subjects, not more than 30 hours in behavioral subjects, and a  
 61 minimum of 8 hours in ethics subjects approved by the board, for  
 62 the reactivation of a license that is inactive or delinquent on  
 63 June 30, 2014 ~~2012~~, if the Florida certified public accountant  
 64 notifies the Board of Accountancy by December 31, 2014 ~~2012~~, of  
 65 an intention to reactivate such a license and completes such  
 66 reactivation by June 30, 2016 ~~2014~~.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7037 PCB CJS 14-02 Residential Communities  
**SPONSOR(S):** Civil Justice Subcommittee, Spano  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary	Bond
1) Business & Professional Regulation Subcommittee		Butler BSB	Luczynski mz
2) Judiciary Committee			

### SUMMARY ANALYSIS

Community Association Managers (CAMs) are licensed by the Department of Business and Professional Regulation to perform community association management functions on behalf of condominium, cooperative, and homeowners associations. Duties include controlling or disbursing funds, preparing budgets and other financial documents, assisting in noticing or conducting meetings, and coordinating maintenance and other services.

The bill amends the CAM statute to list additional duties that CAMs may perform.

The bill also provides lien and release of lien forms for condominiums, cooperatives, and homeowners' associations for unpaid assessments.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Community Association Managers (CAMs) are licensed by the Department of Business and Professional Regulation (DBPR) to perform community association management functions.<sup>1</sup> The statutes define community association management as “practices requiring substantial specialized knowledge, judgment, and managerial skill. . . .”<sup>2</sup> Duties include controlling or disbursing funds, preparing budgets and other financial documents, assisting in noticing or conducting meetings, and coordinating maintenance and other services.<sup>3</sup>

CAMs are regulated by the seven-member Regulatory Council of Community Association Managers. Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to 4-year terms by the Governor and confirmed by the Senate.<sup>4</sup>

Prospective CAMs must apply to DBPR to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend Department-approved in-person training prior to taking the exam.<sup>5</sup> CAMs are then required to complete continuing education hours as approved by the Council.<sup>6</sup>

The Florida Bar has a Standing Committee that focuses on the unlicensed practice of law. The Unlicensed Practice of Law Standing Committee (Standing Committee) held hearings in 1995 to determine if CAMs were crossing the line into the unlicensed practice of law in performing their statutory responsibilities. On certain matters, the Standing Committee determined that the CAMs were not performing legal work. Those activities included drafting meeting notices, writing board- and annual-meeting agendas, and filling out certain forms. However, the standing committee determined that several other duties commonly performed by CAMs did constitute the unlicensed practice of law, such as drafting lien forms and other certain forms, determining the timing and method of meeting notices, determining the votes necessary for certain actions, and advising a community association about laws or rules. The Standing Committee determined some other actions may or may not involve the unlicensed practice of law, depending on the circumstances.<sup>7</sup> The Standing Committee provided an advisory opinion to the Supreme Court for consideration. The Supreme Court adopted the Standing Committee’s recommendations the following year.<sup>8</sup>

On May 13, 2013, the Standing Committee proposed a subsequent advisory opinion to clarify the Court’s earlier opinion regarding CAMs. The proposed advisory opinion requested that the 1996 Court opinion remain in effect, but also requested that the Court consider other common practices by CAMs that were not fully addressed in the 1996 opinion. Specifically, the Standing Committee proposed advisory opinion suggests that the following should constitute the unlicensed practice of law:

- Drafting amendments to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;

---

<sup>1</sup> Section 468.431(4), F.S.

<sup>2</sup> Section 468.431(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 468.4315(1), F.S.

<sup>5</sup> Section 468.433, F.S.

<sup>6</sup> Sections 468.4336 and 468.4337, F.S.

<sup>7</sup> *The Florida Bar re Advisory Opinion – Activities of Community Association Managers*, 681 So.2d 1119, 1122 (Fla. 1996).

<sup>8</sup> *Id.* at 1124.



- Determining the number of days to be provided for statutory notice;
- Modifying limited proxy forms promulgated by the state if there is any discretion involved;
- Preparing documents concerning the right of the association to approve new prospective owners;
- Determining the votes needed to pass a proposition or amendment to recorded documents;
- Determining the number of owners' votes needed to establish a quorum;
- Preparing construction lien documents;
- Preparing, reviewing, drafting, and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;
- Determining who is the owner of a property that is to receive a statutory pre-lien letter; and
- Any activity that requires statutory or case law analysis to reach a legal conclusion.<sup>9</sup>

The Florida Supreme Court has not issued an opinion regarding the Standing Committee's proposed advisory opinion.

Since 1950, through case law and advisory opinions, the Court has continued to define the boundaries of the unlicensed practice of law. There is no rule or test to determine whether an activity is considered to be the practice of law.<sup>10</sup> However, if an activity is within a profession's "sphere of activity," it is more likely that the Court will allow a non-lawyer to perform the activity, even if the activity involves drafting a legal instrument.<sup>11</sup> Furthermore, the less discretion that is involved, the more likely that a non-lawyer will be allowed to perform the activity, such as if there is a form so that the professional is merely filling in factual information such as names, addresses, figures, etc.<sup>12</sup>

### Effect of the Bill

The bill amends s. 468.431(2), F.S., to add responsibilities to the definition of a CAM:

- Determining the number of days required for statutory notices;
- Determining the amounts due the association;
- Collecting amounts due to the association before filing a civil action;
- Calculating the votes required for a quorum or to approve a proposition or amendment;
- Completing forms related to the management of a community association that have been created by statute or by a state agency;
- Drafting letters of intended action;
- Drafting meeting notices and agendas;
- Calculating and preparing certificates of assessments;
- Responding to requests for an estoppel letter;
- Negotiating monetary or performance terms of a contract subject to approval by an association;
- Drafting prearbitration demands;
- Preparing statutory construction lien documents for association projects;
- Coordinating or performing maintenance for real or personal property and other routine services involved in the operation of a community association; and

<sup>9</sup> The Florida Bar Standing Committee on the Unlicensed Practice of Law, FAO #2012-2, *Activities of Community Association Managers*, Proposed Advisory Opinion, May 15, 2013. (On file with the Civil Justice Subcommittee.)

<sup>10</sup> See *The Florida Bar re Advisory Opinion Activities of Cmty. Ass'n Managers*, 681 So. 2d 1119, 1123 (Fla. 1996) (stating that it is generally understood that "performance of services in representing another before the courts is the practice of law," and that "the giving of legal advice and counsel to others" is likely the unlicensed practice of law, even though "such matters may not then or ever be the subject of proceedings in a court").

<sup>11</sup> See *Keyes Co. v. Dade County Bar Ass'n*, 46 So.2d 605 (Fla. 1950) (delineating the "line of demarkation" between the sphere in which a real estate broker or agent operates and the sphere in which an attorney operates).

<sup>12</sup> See, e.g., *The Florida Bar re: Advisory Opinion – Nonlawyer Preparation of Residential Leases up to One Year in Duration*, 602 So.2d 914 (Fla. 1992); *The Florida Bar re Advisory Opinion – Nonlawyer Preparation of and Representation of Landlord in Uncontested Residential Evictions*, 627 So.2d 485 (Fla. 1993).

- Complying with the association's governing documents and the requirements of law as necessary to perform such practices.

The bill amends ss. 718.116(5)(b), 719.108(4)(b), and 720.3085(1)(a), F.S., to provide a claim of lien form for a condominium, cooperative, and homeowners' association, respectively.

The bill amends ss. 718.116(5)(d), and 720.3085(1)(d), F.S., and adds s. 719.108(4)(d), F.S., to provide a release of lien form for a condominium, homeowners' association, and cooperative, respectively.

The bill amends s. 719.108(4) and (4)(b), F.S., to match the law of cooperatives with existing condominium and homeowners' association law with respect to a claim and execution of a lien.

#### B. SECTION DIRECTORY:

Section 1 amends s. 468.431, F.S., relating to definitions.

Section 2 amends s. 718.116, F.S., relating to assessments, liability, lien and priority; interest, and collection.

Section 3 amends s. 719.108, F.S., relating to rents and assessments, liability, lien and priority; interest, collection, and cooperative ownership.

Section 4 amends s. 720.3085, F.S., relating to payment for assessments and lien claims.

Section 5 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:

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:**

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

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled

2 An act relating to residential communities; amending  
 3 s. 468.431, F.S.; revising the term "community  
 4 association management"; amending s. 718.116, F.S.;  
 5 authorizing a claim of lien on a condominium parcel to  
 6 be in a specific form; authorizing a release of lien  
 7 to be in a specific form; amending s. 719.108, F.S.;  
 8 deleting a provision providing for the expiration of  
 9 certain liens; revising notice requirements;  
 10 authorizing a claim of lien on a cooperative parcel to  
 11 be in a specific form; providing for the content of a  
 12 recording notice; authorizing a release of lien to be  
 13 in a specific form; amending s. 720.3085, F.S.;  
 14 authorizing a claim of lien on a parcel within a  
 15 homeowners' association to be in a specific form;  
 16 authorizing a release of lien to be in a specific form  
 17 providing an effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:  
 20

21 Section 1. Subsection (2) of section 468.431, Florida  
 22 Statutes, is amended to read:

23 468.431 Definitions.—As used in this part:

24 (2) "Community association management" means any of the  
 25 following practices requiring substantial specialized knowledge,  
 26 judgment, and managerial skill when done for remuneration and

27 | when the association or associations served contain more than 10  
 28 | units or have an annual budget or budgets in excess of \$100,000:  
 29 | controlling or disbursing funds of a community association,  
 30 | preparing budgets or other financial documents for a community  
 31 | association, assisting in the noticing or conduct of community  
 32 | association meetings, determining the number of days required  
 33 | for statutory notices, determining amounts due to the  
 34 | association, collecting amounts due to the association before  
 35 | filing of a civil action, calculating the votes required for a  
 36 | quorum or to approve a proposition or amendment, completing  
 37 | forms related to the management of a community association that  
 38 | have been created by statute or by a state agency, drafting  
 39 | letters of intended action, drafting meeting notices and  
 40 | agendas, calculating and preparing certificates of assessments,  
 41 | responding to requests for an estoppel letter, negotiating  
 42 | monetary or performance terms of a contract subject to approval  
 43 | by an association, drafting prearbitration demands, preparing  
 44 | statutory construction lien documents for association projects,  
 45 | coordinating or performing maintenance for real or personal  
 46 | property and other routine services involved in the operation of  
 47 | a community association, and complying with the association's  
 48 | governing documents and the requirements of law as necessary to  
 49 | perform such practices ~~and coordinating maintenance for the~~  
 50 | ~~residential development and other day-to-day services involved~~  
 51 | ~~with the operation of a community association.~~ A person who  
 52 | performs clerical or ministerial functions under the direct

53 supervision and control of a licensed manager or who is charged  
 54 only with performing the maintenance of a community association  
 55 and who does not assist in any of the management services  
 56 described in this subsection is not required to be licensed  
 57 under this part.

58 Section 2. Subsection (5) of section 718.116, Florida  
 59 Statutes, is amended to read:

60 718.116 Assessments; liability; lien and priority;  
 61 interest; collection.—

62 (5)(a) The association has a lien on each condominium  
 63 parcel to secure the payment of assessments. Except as otherwise  
 64 provided in subsection (1) and as set forth below, the lien is  
 65 effective from and shall relate back to the recording of the  
 66 original declaration of condominium, or, in the case of lien on  
 67 a parcel located in a phase condominium, the last to occur of  
 68 the recording of the original declaration or amendment thereto  
 69 creating the parcel. However, as to first mortgages of record,  
 70 the lien is effective from and after recording of a claim of  
 71 lien in the public records of the county in which the  
 72 condominium parcel is located. Nothing in this subsection shall  
 73 be construed to bestow upon any lien, mortgage, or certified  
 74 judgment of record on April 1, 1992, including the lien for  
 75 unpaid assessments created herein, a priority which, by law, the  
 76 lien, mortgage, or judgment did not have before that date.

77 (b) ~~To be valid,~~ A claim of lien may be in substantially  
 78 the following form:

79  
80  
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99  
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103  
104

CLAIM OF LIEN

Before me, the undersigned notary public, personally appeared  
...(name)..., who was duly sworn and says that he/she is the  
authorized agent of the lienor, ...(name of association)...,  
whose address is ...(address)..., and that in accordance with  
the Condominium Act and the declaration of ...(name of  
association)..., a condominium, and the articles of  
incorporation and bylaws of the association, the association  
makes this claim of lien for ...(basis for claim of lien)...,  
for the following described real property:

UNIT NO. .... OF ...(NAME OF CONDOMINIUM)..., A  
CONDOMINIUM AS SET FORTH IN THE DECLARATION OF  
CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND  
FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS  
BOOK ....., PAGE ....., OF THE PUBLIC RECORDS OF ....  
COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT  
IS NOT LIMITED TO, ALL APPURTENANCES TO THE  
CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE  
UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID  
CONDOMINIUM.

upon which the association asserts this lien. The property is  
owned by ...(name of debtor)..., Debtor. There remains unpaid to

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105 the association, the sum of \$..... This lien secures these  
 106 amounts, as well as any amounts and assessments and interest  
 107 that may accrue in the future.

109 (signature of witness) (signature of authorized agent)

111 (signature of witness)

113 Sworn to (or affirmed) and subscribed before me this .... day of  
 114 ...., ...(year)..., by ...(name of person making statement)....

115 ...(Signature of Notary Public)...

116 ...(Print, type, or stamp commissioned name of Notary Public)...

117 Personally Known.... OR Produced.... as identification.

119 ~~must state the description of the condominium parcel, the name~~  
 120 ~~of the record owner, the name and address of the association,~~  
 121 ~~the amount due, and the due dates. It must be executed and~~  
 122 ~~acknowledged by an officer or authorized agent of the~~  
 123 ~~association. The lien is not effective 1 year after the claim of~~  
 124 ~~lien was recorded unless, within that time, an action to enforce~~  
 125 ~~the lien is commenced. The 1-year period is automatically~~  
 126 ~~extended for any length of time during which the association is~~  
 127 ~~prevented from filing a foreclosure action by an automatic stay~~  
 128 ~~resulting from a bankruptcy petition filed by the parcel owner~~  
 129 ~~or any other person claiming an interest in the parcel. The~~  
 130 ~~claim of lien secures all unpaid assessments that are due and~~



131 that may accrue after the claim of lien is recorded and through  
 132 the entry of a final judgment, as well as interest and all  
 133 reasonable costs and attorney's fees incurred by the association  
 134 incident to the collection process. Upon payment in full, the  
 135 person making the payment is entitled to a satisfaction of the  
 136 lien.

137 (c) By recording a notice in substantially the following  
 138 form, a unit owner or the unit owner's agent or attorney may  
 139 require the association to enforce a recorded claim of lien  
 140 against his or her condominium parcel:

141 NOTICE OF CONTEST OF LIEN

142 TO: ...(Name and address of association)... You are  
 143 notified that the undersigned contests the claim of lien filed  
 144 by you on ....., ...(year)..., and recorded in Official Records  
 145 Book .... at Page ....., of the public records of .... County,  
 146 Florida, and that the time within which you may file suit to  
 147 enforce your lien is limited to 90 days from the date of service  
 148 of this notice. Executed this .... day of ....., ...(year)....

149 Signed: ...(Owner or Attorney)...

150  
 151 After notice of contest of lien has been recorded, the clerk of  
 152 the circuit court shall mail a copy of the recorded notice to  
 153 the association by certified mail, return receipt requested, at  
 154 the address shown in the claim of lien or most recent amendment  
 155 to it and shall certify to the service on the face of the  
 156 notice. Service is complete upon mailing. After service, the

157 association has 90 days in which to file an action to enforce  
 158 the lien; and, if the action is not filed within the 90-day  
 159 period, the lien is void. However, the 90-day period shall be  
 160 extended for any length of time during which the association is  
 161 prevented from filing its action because of an automatic stay  
 162 resulting from the filing of a bankruptcy petition by the unit  
 163 owner or by any other person claiming an interest in the parcel.

164 (d) A release of lien may be in substantially the  
 165 following form:

166  
 167 RELEASE OF LIEN  
 168

169 The undersigned lienor, in consideration of the final payment in  
 170 the amount of \$...., hereby waives and releases its lien and  
 171 right to claim a lien for unpaid assessments through ....,  
 172 ...(year)..., for the following described real property:

173  
 174 UNIT NO. .... OF (NAME OF CONDOMINIUM), A CONDOMINIUM  
 175 AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE  
 176 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,  
 177 RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF  
 178 THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE  
 179 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL  
 180 APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED,  
 181 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON  
 182 ELEMENTS OF SAID CONDOMINIUM.

183  
 184 (signature of witness) (signature of authorized agent)

185  
 186 (signature of witness)

187  
 188 Sworn to (or affirmed) and subscribed before me this .... day of  
 189 ....., ...(year)...., by ...(name of person making statement)....  
 190 ...(Signature of Notary Public)...  
 191 ...(Print, type, or stamp commissioned name of Notary Public)...  
 192 Personally Known.... OR Produced.... as identification.

193 Section 3. Subsection (4) of section 719.108, Florida  
 194 Statutes, is amended to read:

195 719.108 Rents and assessments; liability; lien and  
 196 priority; interest; collection; cooperative ownership.—

197 (4) The association has a lien on each cooperative parcel  
 198 for any unpaid rents and assessments, plus interest, and any  
 199 authorized administrative late fees. If authorized by the  
 200 cooperative documents, the lien also secures reasonable  
 201 attorney's fees incurred by the association incident to the  
 202 collection of the rents and assessments or enforcement of such  
 203 lien. The lien is effective from and after recording a claim of  
 204 lien in the public records in the county in which the  
 205 cooperative parcel is located which states the description of  
 206 the cooperative parcel, the name of the unit owner, the amount  
 207 due, and the due dates. ~~The lien expires if a claim of lien is~~  
 208 ~~not filed within 1 year after the date the assessment was due,~~

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209 ~~and the lien does not continue for longer than 1 year after the~~  
 210 ~~claim of lien has been recorded unless, within that time, an~~  
 211 ~~action to enforce the lien is commenced.~~ Except as otherwise  
 212 provided in this chapter, a lien may not be filed by the  
 213 association against a cooperative parcel until 30 days after the  
 214 date on which a notice of intent to file a lien has been  
 215 delivered to the owner.

216 (a) The notice must be sent to the unit owner at the  
 217 address of the unit by first-class United States mail and:

218 1. If the most recent address of the unit owner on the  
 219 records of the association is the address of the unit, the  
 220 notice must be sent by ~~registered or~~ certified mail, return  
 221 receipt requested, to the unit owner at the address of the unit.

222 2. If the most recent address of the unit owner on the  
 223 records of the association is in the United States, but is not  
 224 the address of the unit, the notice must be sent by ~~registered~~  
 225 ~~or~~ certified mail, return receipt requested, to the unit owner  
 226 at his or her most recent address.

227 3. If the most recent address of the unit owner on the  
 228 records of the association is not in the United States, the  
 229 notice must be sent by first-class United States mail to the  
 230 unit owner at his or her most recent address.

231 ~~(b)~~

232 A notice that is sent pursuant to this paragraph ~~subsection~~ is  
 233 deemed delivered upon mailing.

234 (b) A claim of lien may be in substantially the following

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235 form:

236

237

CLAIM OF LIEN

238

239 Before me, the undersigned notary public, personally appeared

240 ...(name)... who was duly sworn and says that he/she is the

241 authorized agent of the lienor, ...(name of association)...,

242 whose address is ...(address)..., and that in accordance with

243 the Cooperative Act and the cooperative documents of ...(name of

244 association...), a cooperative, and the articles of

245 incorporation and bylaws of the association, the association

246 makes this claim of lien for (basis for claim of lien), for the

247 following described real property:

248

249 UNIT NO. .... OF ...(NAME OF COOPERATIVE)... , A

250 COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS

251 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART

252 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE

253 ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

254 THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO,

255 ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE

256 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE

257 COMMON ELEMENTS OF SAID COOPERATIVE.

258

259 Upon which the association asserts this lien. The property is

260 owned by ...(name of debtor)..., Debtor. There remains unpaid to

261 the association, the sum of \$..... This lien secures these  
 262 amounts, as well as any amounts and assessments and interest  
 263 that may accrue in the future.

265 (signature of witness) (signature of authorized agent)

267 (signature of witness)

269 Sworn to (or affirmed) and subscribed before me this .... day of  
 270 ....., ...(year)..., by ...(name of person making statement)....

271 ...(Signature of Notary Public)...

272 ...(Print, type, or stamp Commissioned name of Notary Public)...

273 Personally Known.... OR Produced.... as identification.

275 The claim must be executed and acknowledged by an officer or  
 276 authorized agent of the association. The lien is not effective 1  
 277 year after the claim of lien was recorded unless, within that  
 278 time, an action to enforce the lien is commenced. The 1-year  
 279 period is automatically extended for any length of time during  
 280 which the association is prevented from filing a foreclosure  
 281 action by an automatic stay resulting from a bankruptcy petition  
 282 filed by the parcel owner or any other person claiming an  
 283 interest in the parcel. The claim of lien secures all unpaid  
 284 rents and assessments that are due and that may accrue after the  
 285 claim of lien is recorded and through the entry of a final  
 286 judgment, as well as interest and all reasonable costs and

287 attorney's fees incurred by the association incident to the  
 288 collection process. Upon payment in full, the person making the  
 289 payment is entitled to a satisfaction of the lien.

290 (c) By recording a notice in substantially the following  
 291 form, a unit owner or the unit owner's agent or attorney may  
 292 require the association to enforce a recorded claim of lien  
 293 against his or her cooperative parcel:

294  
 295 NOTICE OF CONTEST OF LIEN  
 296

297 TO: ...(Name and address of association)... You are  
 298 notified that the undersigned contests the claim of lien filed  
 299 by you on ....., ...(year)..., and recorded in Official Records  
 300 Book .... at Page ....., of the public records of .... County,  
 301 Florida, and that the time within which you may file suit to  
 302 enforce your lien is limited to 90 days from the date of service  
 303 of this notice. Executed this .... day of ....., ...(year)....  
 304 Signed: ...(Owner or Attorney)...  
 305

306 After notice of contest of lien has been recorded, the clerk of  
 307 the circuit court shall mail a copy of the recorded notice to  
 308 the association by certified mail, return receipt requested, at  
 309 the address shown in the claim of lien or most recent amendment  
 310 to it and shall certify to the service on the face of the  
 311 notice. Service is complete upon mailing. After service, the  
 312 association has 90 days in which to file an action to enforce

313 the lien; and, if the action is not filed within the 90-day  
 314 period, the lien is void. However, the 90-day period shall be  
 315 extended for any length of time during which the association is  
 316 prevented from filing its action because of an automatic stay  
 317 resulting from the filing of a bankruptcy petition by the unit  
 318 owner or by any other person claiming an interest in the parcel.

319 (d) A release of lien may be in substantially the  
 320 following form:

321  
 322 RELEASE OF LIEN

323  
 324 The undersigned lienor, in consideration of the final payment in  
 325 the amount of \$...., hereby waives and releases its lien and  
 326 right to claim a lien for unpaid assessments through ....,  
 327 ...(year)...., for the following described real property:

328  
 329 UNIT NO. .... OF (NAME OF COOPERATIVE), A COOPERATIVE  
 330 AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE  
 331 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,  
 332 RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF  
 333 THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE  
 334 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL  
 335 APPURTENANCES TO THE COOPERATIVE UNIT ABOVE DESCRIBED,  
 336 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON  
 337 ELEMENTS OF SAID COOPERATIVE.

338



339 (signature of witness) (signature of authorized agent)

340

341 (signature of witness)

342

343 Sworn to (or affirmed) and subscribed before me this .... day of

344 ...., ...(year)..., by ...(name of person making statement)....

345 ...(Signature of Notary Public)...

346 ...(Print, type, or stamp commissioned name of Notary Public)...

347 Personally Known.... OR Produced.... as identification.

348 Section 4. Subsection (1) of section 720.3085, Florida  
349 Statutes, is amended to read:

350 720.3085 Payment for assessments; lien claims.-

351 (1) When authorized by the governing documents, the  
352 association has a lien on each parcel to secure the payment of  
353 assessments and other amounts provided for by this section.  
354 Except as otherwise set forth in this section, the lien is  
355 effective from and shall relate back to the date on which the  
356 original declaration of the community was recorded. However, as  
357 to first mortgages of record, the lien is effective from and  
358 after recording of a claim of lien in the public records of the  
359 county in which the parcel is located. This subsection does not  
360 bestow upon any lien, mortgage, or certified judgment of record  
361 on July 1, 2008, including the lien for unpaid assessments  
362 created in this section, a priority that, by law, the lien,  
363 mortgage, or judgment did not have before July 1, 2008.

364 (a) ~~To be valid,~~ A claim of lien may be in substantially

365 the following form:

366

367

CLAIM OF LIEN

368

369 Before me, the undersigned notary public, personally appeared

370 ...(name)... who was duly sworn and says that he/she is the

371 authorized agent of the lienor, ...(name of association)...,

372 whose address is ...(address)..., and that in accordance with

373 the Florida Statutes and the homeowners' association documents

374 of ...(name of association)..., a homeowners' association, and

375 the articles of incorporation and bylaws of the association, the

376 association makes this claim of lien for ...(basis for claim of

377 lien)..., for the following described real property:

378

379 (PARCEL NO. .... OR LOT AND BLOCK) OF (NAME OF

380 HOMEOWNERS' ASSOCIATION), A HOMEOWNERS' ASSOCIATION AS

381 SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS AND

382 THE EXHIBITS ANNEXED THERETO AND FORMING A PART

383 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ....., PAGE

384 ....., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

385

386 (or insert appropriate metes and bounds description

387 here)

388

389 upon which the association asserts this lien. The property is

390 owned by ...(name of debtor)..., Debtor. There remains unpaid to

391 the association, the sum of \$..... This lien secures these  
 392 amounts, as well as any amounts and assessments and interest  
 393 that may accrue in the future.

394  
 395 (signature of witness) (signature of authorized agent)

396  
 397 (signature of witness)

398  
 399 Sworn to (or affirmed) and subscribed before me this .... day of  
 400 ....., ...(year)..., by ...(name of person making statement)....  
 401 ...(Signature of Notary Public)...  
 402 ...(Print, type, or stamp commissioned name of Notary Public)...  
 403 Personally Known.... OR Produced.... as identification.

404  
 405 ~~must state the description of the parcel, the name of the record~~  
 406 ~~owner, the name and address of the association, the assessment~~  
 407 ~~amount due, and the due date.~~ The claim of lien secures all  
 408 unpaid assessments that are due and that may accrue subsequent  
 409 to the recording of the claim of lien and before entry of a  
 410 certificate of title, as well as interest, late charges, and  
 411 reasonable costs and attorney's fees incurred by the association  
 412 incident to the collection process. The person making payment is  
 413 entitled to a satisfaction of the lien upon payment in full.

414 (b) By recording a notice in substantially the following  
 415 form, a parcel owner or the parcel owner's agent or attorney may  
 416 require the association to enforce a recorded claim of lien

417 against his or her parcel:

418 NOTICE OF CONTEST OF LIEN

419 TO: ...(Name and address of association)...

420 You are notified that the undersigned contests the claim of lien  
 421 filed by you on ....., ...(year)..., and recorded in Official  
 422 Records Book .... at page ....., of the public records of ....  
 423 County, Florida, and that the time within which you may file  
 424 suit to enforce your lien is limited to 90 days following the  
 425 date of service of this notice. Executed this .... day of .....,  
 426 ...(year)....

427 Signed: ...(Owner or Attorney)...

428 After the notice of a contest of lien has been recorded, the  
 429 clerk of the circuit court shall mail a copy of the recorded  
 430 notice to the association by certified mail, return receipt  
 431 requested, at the address shown in the claim of lien or the most  
 432 recent amendment to it and shall certify to the service on the  
 433 face of the notice. Service is complete upon mailing. After  
 434 service, the association has 90 days in which to file an action  
 435 to enforce the lien and, if the action is not filed within the  
 436 90-day period, the lien is void. However, the 90-day period  
 437 shall be extended for any length of time that the association is  
 438 prevented from filing its action because of an automatic stay  
 439 resulting from the filing of a bankruptcy petition by the parcel  
 440 owner or by any other person claiming an interest in the parcel.

441 (c) The association may bring an action in its name to  
 442 foreclose a lien for assessments in the same manner in which a

443 mortgage of real property is foreclosed and may also bring an  
 444 action to recover a money judgment for the unpaid assessments  
 445 without waiving any claim of lien. The association is entitled  
 446 to recover its reasonable attorney's fees incurred in an action  
 447 to foreclose a lien or an action to recover a money judgment for  
 448 unpaid assessments.

449 (d) A release of lien may be in substantially the  
 450 following form:

451  
 452 RELEASE OF LIEN

453  
 454 The undersigned lienor, in consideration of the final payment in  
 455 the amount of \$...., hereby waives and releases its lien and  
 456 right to claim a lien for unpaid assessments through ....,  
 457 ...(year)...., for the following described real property:

458  
 459 (PARCEL NO. .... OR LOT AND BLOCK) OF ... (NAME OF  
 460 HOMEOWNERS' ASSOCIATION)...., A HOMEOWNERS' ASSOCIATION  
 461 AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS  
 462 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART  
 463 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE  
 464 ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

465  
 466 (or insert appropriate metes and bounds description  
 467 here)

469 (signature of witness) (signature of authorized agent)

470

471 (signature of witness)

472

473 Sworn to (or affirmed) and subscribed before me this .... day of

474 ...., ...(year)..., by ...(name of person making statement)....

475 ...(Signature of Notary Public)...

476 ...(Print, type, or stamp commissioned name of Notary Public)...

477 Personally Known.... OR Produced.... as identification.

478

479 (e)~~(d)~~ If the parcel owner remains in possession of the  
 480 parcel after a foreclosure judgment has been entered, the court  
 481 may require the parcel owner to pay a reasonable rent for the  
 482 parcel. If the parcel is rented or leased during the pendency of  
 483 the foreclosure action, the association is entitled to the  
 484 appointment of a receiver to collect the rent. The expenses of  
 485 the receiver must be paid by the party who does not prevail in  
 486 the foreclosure action.

487 (f)~~(e)~~ The association may purchase the parcel at the  
 488 foreclosure sale and hold, lease, mortgage, or convey the  
 489 parcel.

490 Section 5. 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 Spano offered the following:

**Amendment**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Subsection (2) of section 468.431, Florida  
8 Statutes, is amended to read:

9 468.431 Definitions.—As used in this part:

10 (2) "Community association management" means any of the  
11 following practices requiring substantial specialized knowledge,  
12 judgment, and managerial skill when done for remuneration and  
13 when the association or associations served contain more than 10  
14 units or have an annual budget or budgets in excess of \$100,000:  
15 controlling or disbursing funds of a community association,  
16 preparing budgets or other financial documents for a community  
17 association, assisting in the noticing or conduct of community



Amendment No. 1

18 association meetings, determining the number of days required  
19 for statutory notices, determining amounts due to the  
20 association, collecting amounts due to the association before  
21 filing of a civil action, calculating the votes required for a  
22 quorum or to approve a proposition or amendment, completing  
23 forms related to the management of a community association that  
24 have been created by statute or by a state agency, drafting  
25 letters of intended action, drafting meeting notices and  
26 agendas, calculating and preparing certificates of assessments,  
27 responding to requests for a certificates of assessment,  
28 negotiating monetary or performance terms of a contract subject  
29 to approval by an association, drafting prearbitration demands,  
30 preparing statutory construction lien documents for association  
31 projects, coordinating or performing maintenance for real or  
32 personal property and other routine services involved in the  
33 operation of a community association, and complying with the  
34 association's governing documents and the requirements of law as  
35 necessary to perform such practices and ~~coordinating maintenance~~  
36 for the residential development and other day to day services  
37 involved with the operation of a community association. A person  
38 who performs clerical or ministerial functions under the direct  
39 supervision and control of a licensed manager or who is charged  
40 only with performing the maintenance of a community association  
41 and who does not assist in any of the management services  
42 described in this subsection is not required to be licensed  
43 under this part.

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44 Section 2. Subsection (5) of section 718.116, Florida  
45 Statutes, is amended to read:

46 718.116 Assessments; liability; lien and priority;  
47 interest; collection.-

48 (5)(a) The association has a lien on each condominium  
49 parcel to secure the payment of assessments. Except as otherwise  
50 provided in subsection (1) and as set forth below, the lien is  
51 effective from and shall relate back to the recording of the  
52 original declaration of condominium, or, in the case of lien on  
53 a parcel located in a phase condominium, the last to occur of  
54 the recording of the original declaration or amendment thereto  
55 creating the parcel. However, as to first mortgages of record,  
56 the lien is effective from and after recording of a claim of  
57 lien in the public records of the county in which the  
58 condominium parcel is located. Nothing in this subsection shall  
59 be construed to bestow upon any lien, mortgage, or certified  
60 judgment of record on April 1, 1992, including the lien for  
61 unpaid assessments created herein, a priority which, by law, the  
62 lien, mortgage, or judgment did not have before that date.

63 (b) To be valid, a claim of lien shall be in substantially  
64 the following form:

65  
66 CLAIM OF LIEN

67  
68 Before me, the undersigned notary public, personally appeared  
69 ...(name)..., who was duly sworn and says that he/she is the



Amendment No. 1

70 authorized agent of the lienor, ...(name of association)...,  
 71 whose address is ...(address)..., and that in accordance with  
 72 the Condominium Act and the declaration of ...(name of  
 73 condominium)..., a condominium, and the articles of  
 74 incorporation and bylaws of the association, the association  
 75 makes this claim of lien for ...(basis for claim of lien)...,  
 76 for the following described real property:

77  
 78 UNIT NO. .... OF ...(NAME OF CONDOMINIUM)..., A  
 79 CONDOMINIUM AS SET FORTH IN THE DECLARATION OF  
 80 CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND  
 81 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS  
 82 BOOK ....., PAGE ....., OF THE PUBLIC RECORDS OF ....  
 83 COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT  
 84 IS NOT LIMITED TO, ALL APPURTENANCES TO THE  
 85 CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE  
 86 UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID  
 87 CONDOMINIUM.

88  
 89 upon which the association asserts this lien. The property is  
 90 owned by ...(name of debtor)..., Debtor. There remains unpaid to  
 91 the association, the sum of \$..... This lien secures these  
 92 amounts, as well as any amounts and assessments and interest  
 93 that may accrue in the future.

94  
 95 (signature of witness) (signature of authorized agent)



Amendment No. 1

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(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of  
....., ... (year)...., by ... (name of person making statement)....  
... (Signature of Notary Public)...  
... (Print, type, or stamp commissioned name of Notary Public)...  
Personally Known.... OR Produced.... as identification.

~~must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the~~



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122 lien.

123 (c) By recording a notice in substantially the following  
124 form, a unit owner or the unit owner's agent or attorney may  
125 require the association to enforce a recorded claim of lien  
126 against his or her condominium parcel:

## 127 NOTICE OF CONTEST OF LIEN

128 TO: ... (Name and address of association)... You are  
129 notified that the undersigned contests the claim of lien filed  
130 by you on ....., ... (year)..., and recorded in Official Records  
131 Book .... at Page ....., of the public records of .... County,  
132 Florida, and that the time within which you may file suit to  
133 enforce your lien is limited to 90 days from the date of service  
134 of this notice. Executed this .... day of ....., ... (year)....

135 Signed: ... (Owner or Attorney)...

136

137 After notice of contest of lien has been recorded, the clerk of  
138 the circuit court shall mail a copy of the recorded notice to  
139 the association by certified mail, return receipt requested, at  
140 the address shown in the claim of lien or most recent amendment  
141 to it and shall certify to the service on the face of the  
142 notice. Service is complete upon mailing. After service, the  
143 association has 90 days in which to file an action to enforce  
144 the lien; and, if the action is not filed within the 90-day  
145 period, the lien is void. However, the 90-day period shall be  
146 extended for any length of time during which the association is  
147 prevented from filing its action because of an automatic stay

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148 resulting from the filing of a bankruptcy petition by the unit  
149 owner or by any other person claiming an interest in the parcel.

150 (d) A release of lien shall be in substantially the  
151 following form:

152  
153 RELEASE OF LIEN

154  
155 The undersigned lienor, in consideration of the final payment in  
156 the amount of \$...., hereby waives and releases its lien and  
157 right to claim a lien for unpaid assessments through ....,  
158 ...(year)...., recorded in the Official Records Book . . .(Book).  
159 . . at page . . .(Page). . ., of the public records of . .  
160 .(County). . ., Florida, for the following described real  
161 property:

162  
163 UNIT NO. .... OF (NAME OF CONDOMINIUM), A CONDOMINIUM  
164 AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE  
165 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,  
166 RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF  
167 THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE  
168 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL  
169 APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED,  
170 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON  
171 ELEMENTS OF SAID CONDOMINIUM.

172  
173 (signature of witness)

(signature of authorized agent)



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(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of  
....., ...(year)...., by ...(name of person making statement)....  
...(Signature of Notary Public)...  
...(Print, type, or stamp commissioned name of Notary Public)...  
Personally Known.... OR Produced.... as identification.

Section 3. Subsection (4) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney's fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. ~~The lien expires if a claim of lien is not filed within 1 year after the date the assessment was due, and the lien does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an~~



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200 ~~action to enforce the lien is commenced.~~ Except as otherwise  
201 provided in this chapter, a lien may not be filed by the  
202 association against a cooperative parcel until 30 days after the  
203 date on which a notice of intent to file a lien has been  
204 delivered to the owner.

205 (a) The notice must be sent to the unit owner at the  
206 address of the unit by first-class United States mail and:

207 1. If the most recent address of the unit owner on the  
208 records of the association is the address of the unit, the  
209 notice must be sent by ~~registered~~ or certified mail, return  
210 receipt requested, to the unit owner at the address of the unit.

211 2. If the most recent address of the unit owner on the  
212 records of the association is in the United States, but is not  
213 the address of the unit, the notice must be sent by ~~registered~~  
214 or certified mail, return receipt requested, to the unit owner  
215 at his or her most recent address.

216 3. If the most recent address of the unit owner on the  
217 records of the association is not in the United States, the  
218 notice must be sent by first-class United States mail to the  
219 unit owner at his or her most recent address.

220 ~~(b)~~

221 A notice that is sent pursuant to this paragraph ~~subsection~~ is  
222 deemed delivered upon mailing.

223 (b) A claim of lien shall be in substantially the  
224 following form:

225



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CLAIM OF LIEN

226  
227  
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251

Before me, the undersigned notary public, personally appeared  
...(name)... who was duly sworn and says that he/she is the  
authorized agent of the lienor, ...(name of association)...,  
whose address is ...(address)..., and that in accordance with  
the Cooperative Act and the cooperative documents of ...(name of  
cooperative...), a cooperative, and the articles of  
incorporation and bylaws of the association, the association  
makes this claim of lien for (basis for claim of lien), for the  
following described real property:

UNIT NO. .... OF ...(NAME OF COOPERATIVE)... , A  
COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS  
AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART  
THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE  
...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.  
THE ABOVE DESCRIPTION INCLUDES , BUT IS NOT LIMITED  
TO, ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE  
DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE  
COMMON ELEMENTS OF SAID COOPERATIVE.

Upon which the association asserts this lien. The property is  
owned by ...(name of debtor)..., Debtor. There remains unpaid to  
the association, the sum of \$..... This lien secures these  
amounts, as well as any amounts and assessments and interest





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252 that may accrue in the future.

253

254 (signature of witness) (signature of authorized agent)

255

256 (signature of witness)

257

258 Sworn to (or affirmed) and subscribed before me this .... day of

259 ...., ... (year)...., by ... (name of person making statement)....

260 ... (Signature of Notary Public)...

261 ... (Print, type, or stamp Commissioned name of Notary Public)...

262 Personally Known.... OR Produced.... as identification.

263

264 The claim must be executed and acknowledged by an officer or  
265 authorized agent of the association. The lien is not effective 1

266 year after the claim of lien was recorded unless, within that

267 time, an action to enforce the lien is commenced. The 1-year

268 period is automatically extended for any length of time during

269 which the association is prevented from filing a foreclosure

270 action by an automatic stay resulting from a bankruptcy petition

271 filed by the parcel owner or any other person claiming an

272 interest in the parcel. The claim of lien secures all unpaid

273 rents and assessments that are due and that may accrue after the

274 claim of lien is recorded and through the entry of a final

275 judgment, as well as interest and all reasonable costs and

276 attorney's fees incurred by the association incident to the

277 collection process. Upon payment in full, the person making the



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278 payment is entitled to a satisfaction of the lien.

279 (c) By recording a notice in substantially the following  
280 form, a unit owner or the unit owner's agent or attorney may  
281 require the association to enforce a recorded claim of lien  
282 against his or her cooperative parcel:

283

284 NOTICE OF CONTEST OF LIEN

285

286 TO: ... (Name and address of association)... You are  
287 notified that the undersigned contests the claim of lien filed  
288 by you on ...., ... (year) ..., and recorded in Official Records  
289 Book .... at Page ...., of the public records of .... County,  
290 Florida, and that the time within which you may file suit to  
291 enforce your lien is limited to 90 days from the date of service  
292 of this notice. Executed this .... day of ...., ... (year) ....  
293 Signed: ... (Owner or Attorney) ...

294

295 After notice of contest of lien has been recorded, the clerk of  
296 the circuit court shall mail a copy of the recorded notice to  
297 the association by certified mail, return receipt requested, at  
298 the address shown in the claim of lien or most recent amendment  
299 to it and shall certify to the service on the face of the  
300 notice. Service is complete upon mailing. After service, the  
301 association has 90 days in which to file an action to enforce  
302 the lien; and, if the action is not filed within the 90-day  
303 period, the lien is void. However, the 90-day period shall be

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304 extended for any length of time during which the association is  
305 prevented from filing its action because of an automatic stay  
306 resulting from the filing of a bankruptcy petition by the unit  
307 owner or by any other person claiming an interest in the parcel.

308 (d) To be valid, a release of lien shall be in  
309 substantially the following form:

310  
311 RELEASE OF LIEN  
312

313 The undersigned lienor, in consideration of the final payment in  
314 the amount of \$...., hereby waives and releases its lien and  
315 right to claim a lien for unpaid assessments through ....,  
316 ...(year)...., recorded in the Official Records Book . . . (Book).  
317 . . at page . . . (Page). . ., of the public records of . .  
318 .(County). . ., Florida, for the following described real  
319 property:

320  
321 UNIT NO. .... OF (NAME OF COOPERATIVE), A COOPERATIVE  
322 AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE  
323 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,  
324 RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF  
325 THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE  
326 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL  
327 APPURTENANCES TO THE COOPERATIVE UNIT ABOVE DESCRIBED,  
328 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON  
329 ELEMENTS OF SAID COOPERATIVE.





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356 (a) To be valid, a claim of lien shall be in substantially  
357 the following form:

358

359

CLAIM OF LIEN

360

361 Before me, the undersigned notary public, personally appeared  
362 ...(name)... who was duly sworn and says that he/she is the  
363 authorized agent of the lienor, ...(name of association)...,  
364 whose address is ...(address)..., and that in accordance with  
365 the Florida Statutes and the homeowners' association documents  
366 of ...(name of association)..., a homeowners' association, and  
367 the articles of incorporation and bylaws of the association, the  
368 association makes this claim of lien for ...(basis for claim of  
369 lien)..., for the following described real property:

370

371 (PARCEL NO. .... OR LOT AND BLOCK) OF (NAME OF  
372 HOMEOWNERS' ASSOCIATION), A HOMEOWNERS' ASSOCIATION AS  
373 SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS AND  
374 THE EXHIBITS ANNEXED THERETO AND FORMING A PART  
375 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ....., PAGE  
376 ....., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

377

378 (or insert appropriate metes and bounds description  
379 here)

380

381 upon which the association asserts this lien. The property is



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382 owned by ... (name of debtor) ..., Debtor. There remains unpaid to  
383 the association, the sum of \$..... This lien secures these  
384 amounts, as well as any amounts and assessments and interest  
385 that may accrue in the future.

386  
387 (signature of witness) (signature of authorized agent)

388  
389 (signature of witness)

390  
391 Sworn to (or affirmed) and subscribed before me this .... day of  
392 ...., ...(year) ..., by ... (name of person making statement) ....  
393 ...(Signature of Notary Public)...  
394 ...(Print, type, or stamp commissioned name of Notary Public)...  
395 Personally Known.... OR Produced.... as identification.

396  
397 ~~must state the description of the parcel, the name of the record~~  
398 ~~owner, the name and address of the association, the assessment~~  
399 ~~amount due, and the due date.~~ The claim of lien secures all  
400 unpaid assessments that are due and that may accrue subsequent  
401 to the recording of the claim of lien and before entry of a  
402 certificate of title, as well as interest, late charges, and  
403 reasonable costs and attorney's fees incurred by the association  
404 incident to the collection process. The person making payment is  
405 entitled to a satisfaction of the lien upon payment in full.

406 (b) By recording a notice in substantially the following  
407 form, a parcel owner or the parcel owner's agent or attorney may



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408 require the association to enforce a recorded claim of lien  
409 against his or her parcel:

410 NOTICE OF CONTEST OF LIEN

411 TO: ...(Name and address of association)...

412 You are notified that the undersigned contests the claim of lien  
413 filed by you on ....., ...(year)...., and recorded in Official  
414 Records Book .... at page ....., of the public records of ....  
415 County, Florida, and that the time within which you may file  
416 suit to enforce your lien is limited to 90 days following the  
417 date of service of this notice. Executed this .... day of .....,  
418 ...(year)....

419 Signed: ...(Owner or Attorney)...

420 After the notice of a contest of lien has been recorded, the  
421 clerk of the circuit court shall mail a copy of the recorded  
422 notice to the association by certified mail, return receipt  
423 requested, at the address shown in the claim of lien or the most  
424 recent amendment to it and shall certify to the service on the  
425 face of the notice. Service is complete upon mailing. After  
426 service, the association has 90 days in which to file an action  
427 to enforce the lien and, if the action is not filed within the  
428 90-day period, the lien is void. However, the 90-day period  
429 shall be extended for any length of time that the association is  
430 prevented from filing its action because of an automatic stay  
431 resulting from the filing of a bankruptcy petition by the parcel  
432 owner or by any other person claiming an interest in the parcel.

433 (c) The association may bring an action in its name to



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434 foreclose a lien for assessments in the same manner in which a  
435 mortgage of real property is foreclosed and may also bring an  
436 action to recover a money judgment for the unpaid assessments  
437 without waiving any claim of lien. The association is entitled  
438 to recover its reasonable attorney's fees incurred in an action  
439 to foreclose a lien or an action to recover a money judgment for  
440 unpaid assessments.

441 (d) A release of lien shall be in substantially the  
442 following form:

443

444 RELEASE OF LIEN

445

446 The undersigned lienor, in consideration of the final payment in  
447 the amount of \$...., hereby waives and releases its lien and  
448 right to claim a lien for unpaid assessments through ....,  
449 ...(year)...., recorded in the Official Records Book . . . (Book).  
450 . . at page . . . (Page) . . ., of the public records of . .  
451 .(County) . . ., Florida, for the following described real  
452 property:

453

454 (PARCEL NO. .... OR LOT AND BLOCK) OF ... (NAME OF  
455 HOMEOWNERS' ASSOCIATION)...., A HOMEOWNERS' ASSOCIATION  
456 AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS  
457 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART  
458 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE  
459 ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 713 Engineers  
**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		Brown-Blake <i>BB</i>	Luczynski <i>ML</i>

### SUMMARY ANALYSIS

Currently, the Governor appoints members of the Board of Professional Engineering (Board) to four year terms without the input of professional or technical societies. The bill provides that professional and technical engineering societies may submit a list of recommended qualified nominees for appointment. The Governor is not required to select from the list. The bill alters the appointment of Board members by staggering Board member terms.

Current law provides that applicants for licensure as a professional engineer who have failed one of the licensure examinations three times are required to obtain 12 college course hours prior to retaking the examination. The bill permits these applicants to take a board approved examination review course prior to retaking the examination.

Additionally, the bill provides that those applicants who are delayed in taking an examination due to reserve or active duty service in the United States Armed Forces or National Guard are allowed two additional attempts to take the examination before being required to obtain additional college course hours or examination review course credit.

Current law provides an exemption for applicants to forego taking the fundamentals examination for individuals who have held a valid professional engineer's license in another state for 15 years and has had 20 years of continuous engineering experience; holds an accredited doctorate in engineering; or holds a doctorate in engineering and has at least 3 years of qualified teaching experience. The bill deletes the two provisions related to applicants who hold doctorates in engineering.

Licensed professional engineers are currently required to obtain eight continuing education course hours every two years in order to renew their licenses. Of the eight hours, four hours are required to be on the laws and rules of professional engineers. The bill requires 20 continuing education course hours in order for licensed professional engineers to renew their licenses. Of the 20 hours, two must relate to the laws and rules of professional engineers, two must relate to professional ethics, and four must relate to the licensee's area of practice. The remaining hours may relate to any topic pertinent to the practice of engineering. Four hours of the continuing education course hours may be obtained by being an officer for a professional or technical engineering society, or serving as a member of the Legislature or as elected state or local official.

The bill also amends rulemaking to expand the guidelines that the Board can use when adopting their rules regarding continuing education guidelines.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### **Appointment of Board Members**

Section 471.007, F.S., provides that the Board of Professional Engineers (Board) shall consist of 11 members, nine of whom shall be licensed engineers and two shall be laypersons who have not been engineers or practiced in a related profession. The nine board members shall be as follows:

- Three civil engineers
- One structural engineer
- One electrical or electronic engineer
- One mechanical engineer
- One industrial engineer
- One engineering educator
- One from any discipline of engineering other than civil engineering.

Board members are appointed for a term of 4 years each and are not staggered,<sup>1</sup> so it is possible the terms of multiple Board members will expire at the same time. Board members are appointed by the Governor.<sup>2</sup> These members serve at the pleasure of the governor. There is no exception in the Florida Constitution providing for any individual or entity other than the Governor to appoint board members, regardless of the reason for or length of the vacancy.

Currently, the Governor selects board members from individuals who apply without any input from technical or professional societies. The application for gubernatorial appointments requires the applicant to provide references and professional or organizational affiliations.<sup>3</sup> The application process does not currently include a step for organizations to submit recommendations for board positions.

It is unconstitutional to limit the appointing power of the Governor to a specific list or group of individuals,<sup>4</sup> but it is permissible for a list or group of individuals to be provided to the Governor for his consideration when making appointments to a regulatory board, so long as the Governor is not required to choose from those individuals on the list.<sup>5</sup>

##### **Retaking of the Examination**

Currently, an applicant for licensure as a professional engineer by examination is required to successfully pass two examinations, the fundamentals examination and the principles and practice examination, prior to obtaining licensure.<sup>6</sup>

Prior to being permitted to sit for the fundamentals examination, an applicant must have graduated from an approved engineering curriculum of 4 years or more in a board approved school, college, or

---

<sup>1</sup> Section 471.007, F.S.

<sup>2</sup> FLA. CONST. art. IV, s. 6.

<sup>3</sup> Executive Office of Governor Rick Scott, Appointment's Office, *Gubernatorial Appointments Questionnaire*, available at <http://www.flgov.com/appointments/> (last viewed February 25, 2014).

<sup>4</sup> *Westlake v. Merritt*, 85 Fla. 28, 95 So. 662 (1923).

<sup>5</sup> *Schneider v. Sweetland*, 214 So.2d 338 (1968).

<sup>6</sup> Section 471.013, F.S.

university, and have a record of four years of active engineering experience indicating competence to be in responsible charge of engineering.<sup>7</sup>

The applicant is required to first take and successfully pass the fundamentals examination prior to being permitted to sit for the principles and practice examination.<sup>8</sup>

Individuals who have been deemed qualified to take either the fundamentals examination or the principles and practice examination are permitted to take either examination three times. If the applicant fails either examination three times, the Board may require that the applicant complete additional college-level courses prior to being permitted to retake the examination again.<sup>9</sup>

The applicant who is required to take additional courses is required to submit to the Board transcripts for the enrollment and completion of 12 college credit hours, with grades no lower than a "C" in the applicant's area of deficiency. For applicants to retake the fundamentals examination, the additional courses must be undergraduate college courses in higher mathematics, basic sciences or engineering. For applicants to retake the principles and practice examination, the additional courses shall be upper level or higher courses in engineering.<sup>10</sup> In order to meet these requirements, the applicants must return to a college or university, often applying for reentry in order to take the necessary courses. Many colleges or universities do not permit upper level coursework to be taken by non-degree seeking students, making meeting the requirements for retaking the examination a fourth time difficult.

### **Exemptions to Taking the Fundamentals Examination**

As stated above, applicants for licensure as a professional engineer are required to take the fundamentals examination prior to taking the principles and practice examination, both of which are required prior to being issued a license as a professional engineer. Section 471.015(5), F.S., provides three exemptions where an applicant is not required to take the fundamentals examination prior to taking the principles and practice examination. An applicant for licensure as a professional engineer is deemed to have passed the fundamentals examination in the following cases:

- Individuals who have held a valid professional engineer's license in another state for 15 years and have had 20 years of continuous professional level engineering experience.
- Individuals who have received a doctorate degree in engineering from an institute that has an undergraduate engineering degree program which is accredited by the Accreditation Board for Engineering Technology.
- Individuals who have received a doctorate degree in engineering and have taught engineering full time for at least three years at the baccalaureate level or higher after receiving their PhD.<sup>11</sup>

These individuals are still required to pass the principles and practice examination and obtain the required experience prior to being issued a license to practice professional engineering.

### **Continuing Education Requirements**

#### *General Continuing Education Requirements*

Section 471.017(3), F.S., requires licensed professional engineers to complete eight continuing education course hours for every two year renewal period. Of those eight hours, four shall relate to the laws and rules of professional engineering and four shall relate to the licensee's specific area of

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<sup>7</sup> Section 471.013(1)(a), F.S.

<sup>8</sup> Section 471.013(1)(c), F.S.

<sup>9</sup> Section 471.013(1)(e), F.S.

<sup>10</sup> Rule 61G15-21.007, F.A.C.

<sup>11</sup> Section 471.015(5)(a), F.S.

practice,<sup>12</sup> such as civil, electrical, mechanical, and chemical engineering. Florida does not require any continuing education course hours related to ethics for licensed professional engineers to renew their license.

Engineering is defined as:

[A]ny service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.<sup>13</sup>

Due to the technical nature of the profession and the importance that adequate practice of engineering is to the general public safety, it is imperative to ensure that engineers are adequately educated and trained. Licensed professional engineers and land surveyors work in a world of evolving technology, increased consumer expectations and other emerging issues. Practice in this changing environment requires ongoing development of knowledge and skills.<sup>14</sup>

Section 471.0195, F.S., requires licensed professional engineers who actively participate in the design of engineering works or systems in connection with buildings, structures or facilities and systems covered by the Florida Building code to take specialized or advanced continuing education courses regarding any portion of the Florida Building Code applicable to the licensee's area of practice.

Thirty-nine other states require continuing education courses for renewal of licensure as a professional engineer. Of those 39 states, Florida requires the lowest number of hours at 8 hours in a biennial renewal period. The majority of the states require between 15 and 30 continuing education hours. In addition, a number of those 39 states require ethics to be included in the continuing education coursework.<sup>15</sup>

#### *Continuing Professional Competency Guidelines*

Currently, the Board has rules that are consistent with the National Council of Examiners for Engineering and Surveying (NCEES) guidelines, which are continuing education guidelines that the Board uses when approving continuing education courses. These rules are for multijurisdictional licensees to use to avoid proprietary continuing professional competency requirements.<sup>16</sup>

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<sup>12</sup> Section 471.017(3), F.S.

<sup>13</sup> Section 471.005(7), F.S.

<sup>14</sup> New York State Education Department, *Office of the Professions, Continuing Education*, available at <http://www.op.nysed.gov/prof/pels/peceques.htm> (last viewed on February 24, 2014).

<sup>15</sup> National Society of Professional Engineers, *State Continuing Education Requirements*, available at [http://www.nspe.org/sites/default/files/resources/pdfs/education/state\\_ce\\_requirements.pdf](http://www.nspe.org/sites/default/files/resources/pdfs/education/state_ce_requirements.pdf) (last viewed February 24, 2014).

<sup>16</sup> Section 471.017, F.S.

## **Effect of the Bill**

### **Appointment of Board Members**

The bill amends s. 471.007, F.S., providing that the nine board members who are required to be licensed engineers can be selected and appointed based on qualifications to provide expertise and experience in one of the following disciplines:

- Civil engineering
- Structural engineering
- Electrical or electronic engineering
- Mechanical engineering
- Engineering education

The bill provides that when the Governor is required to appoint a member to a vacancy to the Board, professional and technical engineering societies may submit to the Governor a list of qualified nominees for appointment in recommendation. The Governor is not required to select from the list when determining who to appoint to the Board.

The bill further alters the appointment of Board members by staggering Board member terms. When the terms of current members expire after July 1, 2014, the terms of the immediate successors are staggered as follows:

- The first three members shall be appointed for two years;
- The next four members shall be appointed for three years; and
- The final four members shall be appointed for four years.

After the appointments used to stagger the terms above are complete, each Board member holds a term of four years.

### **Retaking of the Examination**

#### *Board Approved Review Course*

The bill permits applicants who have failed either of the two examinations three times to take a board approved examination review course before being permitted to take the examination again, in lieu of taking 12 credit hours of college courses. The review courses will cut the time required to comply with the reeducation requirement as the applicant will not have to take 12 credit hours over an entire semester to comply with the requirements. Instead, the applicant will be able to take a review course which can take several weeks to complete. In addition, review courses cost approximately \$1000, which can be significantly less than the cost of 12 credit hours of college course work.

#### *United States Armed Forces or National Guard Exception*

Members of the United States Armed Forces or National Guard who are delayed in taking an examination due to reserve or active duty service are allowed two additional attempts to take the examination before being required to obtain additional college course credit or examination review course credit.

### **Exemptions to Taking the Fundamentals Examination**

The bill deletes two provisions from s. 471.015(5), F.S., that provide exemptions from the requirement for applicants to take the fundamentals examination in the following circumstances:

- Individuals who have received a doctorate degree in engineering from an institute that has an undergraduate engineering degree program which is accredited by the Accreditation Board for Engineering Technology.
- Individuals who have received a doctorate degree in engineering and have taught engineering full time for at least three years at the baccalaureate level or higher after receiving their PhD.<sup>17</sup>

As a result of the deletion from s. 471.015(5), F.S., the individuals listed above must pass the fundamentals examination prior to being permitted to take the principles and practice examination and prior to becoming licensed as a professional engineer.

## **Continuing Education Requirements**

### *General Continuing Education Requirements*

The bill amends s. 471.017(3), F.S., to require licensed professional engineers to obtain 20 continuing education course hours in order to renew their licenses. Of the 20 hours, two must related to the laws and rules of professional engineering, two must relate to professional ethics, and four must relate to the licensee's area of practice. The remaining hours may relate to any topic pertinent to the practice of engineering.

The continuing education course hours may be earned as follows:

- Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, webinars, conventions or conferences.
- Up to four hours of general continuing education course hours may be earned by serving as an officer or actively participating on a committee of a board recognized professional or technical engineering society.
- Up to four hours of laws and rules and ethics continuing education course hours may be earned by serving as a member of the Florida State Legislature or as an elected state or local official.

The bill clarifies that the continuing education course hours received pursuant to s. 471.0195, F.S., by those licensed professional engineers required to take specialized or advanced courses, may be counted towards the 20 hours required except for the two continuing education course hours related to the laws and rules of professional engineering and ethics.

### *Continuing Professional Competency Guidelines*

The bill requires the Board to adopt rules substantially consistent with the most recent published version of the Continuing Professional Competency Guidelines of the NCEES. In addition, the bill removes that the rules are for multijurisdictional licensees for the purpose of avoiding proprietary continuing professional competency requirements. This is a modification to the present rulemaking authority which is limited to requiring rules that are consistent with narrower set of NCEES continuing education guidelines. Therefore, this expands the guidelines that the Board can reference when adopting their rules regarding continuing education guidelines.

## **B. SECTION DIRECTORY:**

**Section 1** amends s. 471.007, F.S., to clarify board member qualifications, permit professional and technical societies to provide a list of qualified nominees to be considered for board member appointment, and provide staggered terms.



**Section 2** amends s. 471.013, F.S., to revise the requirements for an engineer license applicant who fails the examinations, and authorize applicants who are delayed in taking the examination by military service to have additional attempts to take the examination.

**Section 3** amends s. 471.015, F.S., to revise requirements for obtaining licensure by endorsement.

**Section 4** amends s. 471.017, F.S., to revise requirements for continuing education hours and license renewal for engineers.

**Section 5** provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None. The bill is expected to have no impact on the Department of Business and Professional Regulation.

#### 2. Expenditures:

None. The bill is expected to have no impact on the Department of Business and Professional Regulation.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None. The bill is expected to have no impact on local government.

#### 2. Expenditures:

None. The bill is expected to have no impact on local government.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill permits applicants to attend an examination review course rather than returning to a college to obtain the additional education required prior to retaking an examination after failing it three times. This will increase the business of the private entities providing the examination review courses as well as save the applicants costs and time as the review courses are cheaper than most college 12 hour course programs and take less time.

### 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:**

Yes.

Rule 61G15-21.007, F.A.C. would need to be amended to update the coursework requirements for applicants who fail an examination three times.

Rule 61G15-22.001, F.A.C. would need to be updated to reflect changes to the continuing education requirements.

The Board would need to adopt a rule regarding the approval of examination review courses.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to engineers; amending s. 471.007,  
 3           F.S.; permitting the professional and technical  
 4           engineering societies, to provide a list of qualified  
 5           nominees for consideration as board member  
 6           appointment; providing for staggered terms; amending  
 7           s. 471.013, F.S.; revising requirements for an  
 8           engineer license applicant who fails the fundamentals  
 9           examination; authorizing such applicant who is delayed  
 10          in taking the examination by military service to have  
 11          additional attempts to take the examination; amending  
 12          s. 471.015, F.S.; revising requirements for obtaining  
 13          a licensure by endorsement; amending s. 471.017, F.S.;  
 14          revising requirements for professional development  
 15          hours and license renewal for engineers; providing an  
 16          effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1.   Section 471.007, Florida Statutes, is amended  
 21   to read:

22           471.007   Board of Professional Engineers.—

23           (1)   There is created in the department the Board of  
 24   Professional Engineers. The board shall consist of 11 members,  
 25   nine of whom shall be licensed engineers and two of whom shall  
 26   be laypersons who are not and have never been engineers or

27 | members of any closely related profession or occupation. The  
 28 | members of the board who are licensed engineers must be selected  
 29 | and appointed based on his or her qualifications to provide  
 30 | expertise and experience to the board at all times in civil  
 31 | engineering; structural engineering; electrical or electronic  
 32 | engineering; mechanical engineering; or engineering education.  
 33 | ~~Of the members who are licensed engineers, three shall be civil~~  
 34 | ~~engineers, one shall be a structural engineer, one shall be~~  
 35 | ~~either an electrical or electronic engineer, one shall be a~~  
 36 | ~~mechanical engineer, one shall be an industrial engineer, one~~  
 37 | ~~shall be an engineering educator, and one shall be from any~~  
 38 | ~~discipline of engineering other than civil engineering.~~

39 |       (2) Following the expiration of the terms of members  
 40 | appointed to initiate staggered terms set forth in subsection  
 41 | (3) below, members of the board ~~Members~~ shall be appointed by  
 42 | the Governor for terms of 4 years each. Professional and  
 43 | technical engineering societies may submit a list of qualified  
 44 | nominees to be considered by the Governor for appointment.

45 |       (3) When the terms of members serving as of July 1, 2014,  
 46 | expire, the terms of their immediate successors shall be  
 47 | staggered so that three members are appointed for 2 years, four  
 48 | members are appointed for 3 years, and four members are  
 49 | appointed for 4 years, as determined by the Governor. Each  
 50 | member holds office until the expiration of his or her appointed  
 51 | term or until a successor has been appointed.

52 |       Section 2. Paragraph (e) of subsection (1) of section

53 | 471.013, Florida Statutes, is amended to read:

54 |       471.013 Examinations; prerequisites.—

55 |       (1)

56 |       (e) Every applicant who is qualified to take the  
 57 | fundamentals examination or the principles and practice  
 58 | examination shall be allowed to take either examination three  
 59 | times, notwithstanding the number of times either examination  
 60 | has been previously failed. If an applicant fails either  
 61 | examination three times, the board shall require the applicant  
 62 | to complete additional college-level education courses or a  
 63 | board approved relevant examination review course, as a  
 64 | condition of future eligibility to take that examination. If the  
 65 | applicant is delayed in taking the examination due to reserve or  
 66 | active duty service in the United States Armed Forces or  
 67 | National Guard, the applicant is allowed an additional two  
 68 | attempts to take the examination before the board may require  
 69 | additional college-level education or review courses.

70 |       Section 3. Paragraph (a) of subsection (5) of section  
 71 | 471.015, Florida Statutes, is amended to read:

72 |       471.015 Licensure.—

73 |       (5) (a) The board shall deem that an applicant who seeks  
 74 | licensure by endorsement has passed an examination substantially  
 75 | equivalent to the fundamentals examination when such applicant  
 76 | has+

77 |       ~~1.~~ ~~Has~~ held a valid professional engineer's license in  
 78 | another state for 15 years and has had 20 years of continuous

79 professional-level engineering experience;

80 ~~2. Has received a doctorate degree in engineering from an~~  
 81 ~~institution that has an undergraduate engineering degree program~~  
 82 ~~which is accredited by the Accreditation Board for Engineering~~  
 83 ~~Technology; or~~

84 ~~3. Has received a doctorate degree in engineering and has~~  
 85 ~~taught engineering full time for at least 3 years, at the~~  
 86 ~~baccalaureate level or higher, after receiving that degree.~~

87 Section 4. Subsection (3) of section 471.017, Florida  
 88 Statutes, is amended to read:

89 471.017 Renewal of license.—

90 (3) (a) The board shall require a demonstration of  
 91 continuing professional competency of engineers as a condition  
 92 of license renewal or relicensure. Every licensee must complete  
 93 10 continuing education ~~4 professional development~~ hours, for  
 94 each year of the license renewal period, totaling 20 continuing  
 95 education hours for the license renewal period. For each renewal  
 96 period for such continuing education: ~~—4~~

97 1. Two hours must ~~shall~~ relate to this chapter and the  
 98 rules adopted under this chapter;

99 2. Two hours must relate to professional ethics; and the  
 100 remaining ~~4~~

101 3. Four hours must ~~shall~~ relate to the licensee's area of  
 102 practice; and

103 4. The remaining hours may relate to any topic pertinent  
 104 to the practice of engineering.

105  
 106 Continuing education hours may be earned by presenting or  
 107 attending seminars, in-house courses, workshops, or professional  
 108 or technical presentations made at meetings, webinars,  
 109 conventions, or conferences, including those presented by  
 110 vendors with specific knowledge related to the licensee's area  
 111 of practice. Up to 4 hours may be earned by serving as an  
 112 officer or actively participating on a committee of a board  
 113 recognized professional or technical engineering society. The 4  
 114 hours of continuing education hours relating to this chapter,  
 115 the rules adopted pursuant to this chapter, and ethics may be  
 116 earned by serving as a member of the Florida State Legislature  
 117 or as an elected state or local official. The hours required  
 118 pursuant to s. 471.0195 may apply to any requirements of this  
 119 section except for those required under subparagraph 1.

120       (b) The board shall adopt rules that are substantially  
 121 consistent with the most recent published version of the  
 122 Continuing Professional Competency Guidelines of the National  
 123 Council of Examiners for Engineering and Surveying, ~~for~~  
 124 ~~multijurisdictional licensees for the purpose of avoiding~~  
 125 ~~proprietary continuing professional competency requirements and~~  
 126 shall allow nonclassroom hours to be credited. The board may, by  
 127 rule, exempt from continuing professional competency  
 128 requirements retired professional engineers who no longer sign  
 129 and seal engineering documents and licensees in unique  
 130 circumstances that severely limit opportunities to obtain the

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131 | required continuing education ~~professional-development~~ hours.

132 |       Section 5. This act shall take effect July 1, 2014.