Business & Professions Subcommittee

Tuesday, March 24, 2015
3:30 PM
12 HOB

MEETING PACKET

Steve Crisafulli
Speaker

Halsey Beshears
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professions Subcommittee

Start Date and Time:	Tuesday, March 24, 2015 03:30 pm
End Date and Time:	Tuesday, March 24, 2015 05:30 pm
Location:	12 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 97 Mobile Home Parks by Lee, Harrell
HB 263 Craft Distilleries by Renuart
HB 463 Ticket Sales by Ingoglia
CS/HB 611 Residential Properties by Civil Justice Subcommittee, Wood
CS/HB 643 Termination of a Condominium Association by Civil Justice Subcommittee, Sprowls
HB 793 Consumer Protection by Stark
HB 959 City of Jacksonville, Duval County by Fant
CS/HB 1049 Practice of Pharmacy by Health Quality Subcommittee, Peters
HB 1151 Residential Master Building Permit Programs by Ingoglia
CS/HB 1211 Community Associations by Civil Justice Subcommittee, Fitzenhagen
HB 1219 Public Food Service Establishments by Raulerson
HB 1247 Alcoholic Beverages by Avila, Berman

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 23, 2015.

By request of the Chair, all Business & Professions Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 23, 2015.

NOTICE FINALIZED on 03/20/2015 16:18 by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Business & Professions Subcommittee

Steve Crisafulli
Speaker

Halsey Beshears
Chair

AGENDA

March 24, 2015
12 House Office Building
3:30 PM – 5:30 PM

I. **Call to Order & Roll Call**

II. HB 97 by *Reps. Lee; Harrell*
Mobile Home Parks

III. HB 263 by *Rep. Renuart*
Craft Distilleries

IV. HB 463 by *Rep. Ingoglia*
Ticket Sales

V. CS/HB 611 by *Civil Justice Subcommittee; Rep. Wood*
Residential Properties

VI. CS/HB 643 by *Civil Justice Subcommittee; Rep. Sprowls*
Termination of a Condominium Association

VII. HB 793 by *Rep. Stark*
Consumer Protection

VIII. HB 959 by *Rep. Fant*
City of Jacksonville, Duval County

IX. CS/HB 1049 by *Health Quality Subcommittee; Rep. Peters*
Practice of Pharmacy

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4871 Fax: (850) 413-0419

X. HB 1151 by *Rep. Ingoglia*
Residential Master Building Permit Programs

XI. CS/HB 1211 by *Civil Justice Subcommittee; Rep. Fitzenhagen*
Community Associations

XII. HB 1219 by *Rep. Raulerson*
Public Food Service Establishments

XIII. HB 1247 by *Reps. Avila; Berman*
Alcoholic Beverages

XIV. **Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Mobile Home Parks
SPONSOR(S): Lee, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brown-Blake	Luczynski
2) Civil Justice Subcommittee			
3) Finance & Tax Committee			
4) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Currently, s. 723.003(6), F.S., defines the term "mobile home park" or "park" to mean "a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential." The bill amends the definition of "mobile home park" or "park" found in s. 723.003(6), F.S., to mean "a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes, ***regardless of the length of the rental or lease term or the person liable for the payment of ad valorem taxes on the lot or space,*** and in which the primary use of the park is residential."

The bill reenacts and amends s. 73.072, F.S., which relates to compensation after the eminent domain taking of real property, for permanent improvements by mobile home owners. The bill incorporates the amendment made to the definition of "mobile home park" listed above.

Finally, the bill provides that the amendment to the definition of "mobile home park" is retroactive to the enactment of s. 723.003, F.S., on June 4, 1984. The bill provides that the amendment is intended to be remedial in nature in order to clarify existing law and to abrogate the interpretation of law set forth by the Department in a Litigation Memo regarding The Savanna Club, a subdivision located in St. Lucie County, Florida.

The bill appears to place Savanna Club under the definition of mobile home park and therefore retroactively places the rights, obligations, and restrictions associated with ch. 723, F.S., on the Savanna Club mobile home lot owners and the mobile home owners.

The bill is not expected to have a significant fiscal impact on the Department of Business and Professional Regulation or local governments. The bill may have a significant impact on the private sector.

The bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[2]

Section 723.003(3), F.S., defines the term "mobile home" to mean "a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein."

Section 723.003(6), F.S., defines the term "mobile home park" or "park" to mean "a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential."

Section 723.003(8), F.S., defines the term "mobile home subdivision" to mean "a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer."

The terms "mobile home park," "park," and "mobile home subdivision" have remained unchanged since the enactment of the Florida Mobile Home Act in 1984.[3]

Section 723.031(4), F.S., provides that "no rental agreement shall be offered by a park owner for a term of less than 1 year, and if there is no written rental agreement, no rental term shall be less than 1 year from the date of initial occupancy; however, the initial term may be less than 1 year in order to permit the park owner to have all rental agreements within the park commence at the same time. Thereafter, all terms shall be for a minimum of 1 year."

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[1] s. 723.004(1), F.S.
[2] s. 723.002(1), F.S.
[3] *See* ch. 84-80, L.O.F. The definitions in s. 723.003, F.S., were formerly in s. 720.103, F.S. (1984).

Mobile Home Park Owner's Obligations

For mobile home parks containing 26 or more lots, s. 723.011, F.S., requires the park owners to:

- File a prospectus with the Division for mobile home parks containing 26 or more lots. The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park;[4]
- Deliver to the homeowner a prospectus approved by the Division prior to entering into an enforceable rental agreement for a mobile home lot;
- Furnish a copy of the prospectus with all attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at a time of occupancy, whichever occurs first. Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days; and
- Not increase the lot rental amount until an approved prospectus has been delivered.[5]

In cases where mobile home parks contain at least 10 lots but no more than 25 lots, the mobile home park owners are not required to provide a prospectus. Rather, s. 723.013, F.S., provides that when a park owner does not provide a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner shall give written notification of the following information prior to the purchaser's occupancy:

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

Finally, s. 723.022, F.S., requires all park owners to maintain buildings and improvements in common areas in a good state of repair and maintenance, maintain the common areas in a good state of appearance, safety, and cleanliness, and provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.

Additional mobile home park owner obligations found in ch. 723, F.S., provide the following:

- The mobile home park owner shall pay to the Division an annual fee of $4 for each mobile home lot within the mobile home park, plus a $1 surcharge to be deposited in the Florida Mobile Home Relocation Trust Fund;[6]
- The mobile home park owner must provide a 90 day notice prior to any lot rental amount increase;[7] and
- If a prospectus is not provided to the prospective lessee prior to the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the receipt by the lessee of the prospectus;[8]

[4] s. 723.011(3), F.S.
[5] s. 723.031(7), F.S.
[6] s. 723.007, F.S.
[7] s. 723.037(1), F.S.

Savanna Club Litigation Memorandum

On September 18, 2013, the Department issued a Litigation Memo regarding The Savanna Club, a subdivision located in St. Lucie County, Florida, on the questions of whether the Savanna Club was a "mobile home park" as defined in s. 723.003(6), F.S., or a "mobile home subdivision" as defined in s. 723.003(8), F.S. The Division determined the Savanna Club did not fit either definition.

The Savanna Club is a residential mobile home subdivision established in 1982, consisting of approximately 2,560 mobile homes and a recreation complex. An unspecified number of the lots were sold in fee simple and the remainder of the lots were leased to mobile home owners under 99-year leases that have an automatic renewal clause. All of the lots held in fee simple or through a 99-year lease are subject to a declaration of covenants and restrictions that requires membership in the homeowners' association. All members of the association, including members whose lots are held through a 99-year lease, have one vote in the association with no distinction in membership rights or obligations. The developer transferred the deed for the common areas and recreational areas to the homeowners' association.[9]

Each individual 99-year lease provides terms for rent increases. The adjusted monthly rental of the previous lease year is used as a base for the current lease year, plus the greater of a percentage increase based on the U.S. Consumer Price Index or three percent. When an original tenant transfers his or her interest in a lot subject to a 99-year lease, the new rent is based on the fair market value as determined by the landlord who is the developer. Therefore, the rent amount is not transferrable.

The Division found that the subdivision did not meet the definition of "mobile home subdivision" in s. 723.003(8), F.S., because the developer had not retained an interest in any common areas in the subdivision and because the 99-year leaseholders were the equitable owners of the lots.

Leaseholders of 99-year leases are considered equitable owners and the leased property is not exempt from the payment of property taxes.[10] Leaseholders of leases of 98 or more years are also entitled to claim a homestead exemption from ad valorem property taxes.[11]

The Division also found that Savanna Club could not be considered a "mobile home park" under s. 723.003(6), F.S., because the lots or spaces are not offered for rent or lease in the way that this provision contemplates. It noted that 99-year leases with an automatic renewal clause are the equivalent of an equitable interest and not a leasehold interest.

Since the creation of Savanna Club, mobile home owners who have their mobile homes on rented lots have paid rent according to their leases. The rent amount on those lots has increased based on increases set forth in the rental agreements, in some cases since 1982.

Effect of the Bill

The bill amends the definition of "mobile home park" or "park" found in s. 723.003(6), F.S., to mean:

> a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes, ***regardless of the length of the rental or lease term or the person liable for the payment of ad valorem taxes on the lot or space***, and in which the primary use of the park is residential.

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[8] s. 723.014(1), F.S.
[9] Department of Business and Professional Regulation, *Litigation Memo re: Savanna Club*, Case No. 2007065818, Sept. 18, 2013.
[10] *Ward v. Brown*, 919 So.2d 462 (Fla. 1st DCA 2005).
[11] *See* s. 196.041(1), F.S.

The bill reenacts and amends s. 73.072, F.S., which relates to compensation after the eminent domain taking of real property, for permanent improvements by mobile home owners. The bill incorporates the amendment made to the definition of "mobile home park" listed above.

Finally, the bill provides that the amendment to the definition of "mobile home park" is retroactive to the enactment of s. 723.003, F.S., on June 4, 1984. The amendment of the definition is not intended to affect assessments or liability for, or exemptions from ad valorem taxation on a lot or space upon which a mobile home is placed. The bill provides that the amendment is intended to be remedial in nature in order to clarify existing law and to abrogate the interpretation of law set forth by the Department in the Litigation Memo.

The bill appears to place the homes on lots with a 99-year lease at Savanna Club under the definition of mobile home park and therefore retroactively places the rights, obligations, and restrictions associated with ch. 723, F.S., on the Savanna Club mobile home lot owners and the mobile home owners.

The bill would take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 723.003, F.S., revising the definition of the term "mobile home park" to clarify that it includes certain lots or spaces regardless of the rental or lease term's length or person liable for ad valorem taxes.

Section 2 reenacts and amends s. 73.072, F.S., to incorporate the amendment made to s. 723.003, F.S.

Section 3 provides that the bill takes effect upon becoming law.

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:

Unknown. The bill language expands the coverage of ch. 723, F.S., to entities previously not covered. Chapter 723, F.S., provides requirements on entities and individuals that carry costs. The retroactive nature of the bill leaves unclear how ch. 723, F.S., will be enforced on these entities with regards to costs that the entities would have incurred in the past.

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:

The retroactive application of ch. 723, F.S., to mobile home lots or spaces that are held under long-term lease, i.e., 99-year leases may violate the Contract Clause,[12] the prohibition against ex post facto laws,[13] and the Due Process clauses[14] of the U.S. Constitution. To the extent the retroactive or prospective application of the requirements of ch. 723, F.S., conflict with the terms and conditions of affected long-term leases, including rent increase requirements, these provisions appear to implicate constitutional concerns relating to the impairment of contract.

The common law also provides that the government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[15] Generally, courts will refuse to apply a statute retroactively if it "impairs vested rights, creates new obligations, or imposes new penalties."[16]

The Contract Clause prohibits states from passing laws which impair contract rights. It only prevents substantial impairments of contracts.[17] The courts use a balancing test to determine whether a particular regulation violates the contract clause. The courts measure the severity of contractual impairment against the importance of the interest advanced by the regulation. Also, courts look at whether the regulation is a reasonable and narrowly tailored means of promoting the state's interest.[18] Generally, courts accord considerable deference to legislative determinations relating to the need for laws which impair private obligations.[19] However, courts scrutinize the impairment of public contracts in a stricter fashion. They exhibit less deference to findings of the Legislature, because the Legislature may stand to gain from the outcome.[20]

Although the retroactive application of condominium laws to preexisting lease agreements between condominium associations and third parties may be constitutionally applied,[21] it is not clear whether mobile home park laws may be retroactively applied to pre-existing, long-term lease agreements between a homeowner lessee and the developer lessor.

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,[22] the court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated as an unconstitutional impairment of contract a statute that provided for

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[12] Article I, s. 10, U.S. Constitution.
[13] Article I, s. 9, U.S. Constitution.
[14] Fifth and Fourteenth Amendments, U.S. Constitution.
[15] *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998).
[16] *Essex Insurance, Co. v. Integrated Drainage Solutions, Inc.*, 124 So.3d 947 at 951 (Fla. 2nd DCA 2013), quoting *State Farm Mut. Auto. Ins., Co. v. Laforet*, 658 So.2d 55 at 61 (Fla. 1995).
[17] *Home Building & Loan Ass'n v. Blaisdell,* 290 U.S. 398 (1923).
[18] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).
[19] *East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945).
[20] *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). *See generally*, Leo Clark, *The Contract Clause: A Basis for Limited Judicial Review of State Economic Regulation*, 39 U. MIAMI L. REV. 183 (1985).
[21] *Century Village, Inc. v. Wellington*, 361 So.2d 128 (Fla. 1978).
[22] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

the deposit of rent into a court registry during litigation involving obligations under a contract lease. In *Pomponio*, the court set forth several factors in balancing whether the state law has in fact operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- Whether the effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.[23]

In *United States Fidelity & Guaranty Co.*,[24] the U.S. Supreme Court adopted the method used in Pomponio. The court stated that the method required a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power. The court outlined the main factors to be considered in applying this balancing test.

- The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship."[25] The severity of the impairment increases the level of scrutiny.
- In determining the extent of the impairment, the court considered whether the industry the complaining party entered has been regulated in the past. This is a consideration because if the party was already subject to regulation at the time the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.[26]
- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the regulation.
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation.[27]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 723.031(4), F.S., requires that rental agreements have a term of not less than 1 year from the date of initial occupancy. Section 723.031, F.S., is not amended in this bill. The bill provides that a "mobile home park" is "a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes, regardless of the length of the rental or lease term..." This language conflicts with the minimum 1-year term requirement of s. 723.031(4), F.S.

The effect of the bill is unclear as applied to the 99-year lease lots of the Savanna Club or similar situations as to whether:

- The new mobile home park owner will be found in violation of ch. 723, F.S., for failure to file a prospectus with the Division;

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[23] *Pomponio,* 378 So. 2d at 779.
[24] *United States Fidelity & Guaranty Co. v. Department of Insurance,* 453 So.2d 1355 (Fla. 1984).
[25] *United States Fidelity & Guaranty Co.,* 453 So.2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).
[26] *Id.* (citing *Allied Structural Steel Co.,* 438 U.S. at 242, n. 13).
[27] *Id.*

- The new mobile home park owner will be found in violation of ch. 723, F.S., for failing to deliver a prospectus or appropriate notice to the homeowner prior to entering into the rental agreement;
- The failure to provide a prospectus invalidates the previous rental agreements;
- Any rental amount increases or decreases imposed subsequent to 1984 are invalid;
- All parties would be required to enter new rental agreements following the enactment of the bill; however, how the rental amounts would be determined is unclear;
- Previous rental agreements are void;
- Mobile home park owners owe the Division past-due annual dues dating back to 1984 totaling $4 per lot, for each year since 1984;
- All rental agreements are voidable if a prospectus was not originally provided to the prospective lessee prior to the execution of a lot agreement or prior to occupancy;
- The mobile home park owner is now responsible for buildings and improvements in common areas, even if they do not own the common areas.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to mobile home parks; amending s. 723.003, F.S.; revising the definition of the term "mobile home park" to clarify that it includes certain lots or spaces regardless of the rental or lease term's length or person liable for ad valorem taxes; reenacting and amending s. 73.072, F.S., to incorporate the amendment made to s. 723.003, F.S., in a reference thereto; providing that the act is remedial and intended to clarify existing law and to abrogate an interpretation of such law by the Department of Business and Professional Regulation; providing for retroactive application; providing that the act does not affect specified ad valorem taxation issues; providing an effective date.

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

Section 1. Subsection (6) of section 723.003, Florida Statutes, is amended to read:

723.003 Definitions.—As used in this chapter, the following words and terms have the following meanings unless clearly indicated otherwise:

(6) The term "mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes, regardless of the length of the

rental or lease term or the person liable for the payment of ad valorem taxes on the lot or space, and in which the primary use of the park is residential.

Section 2. For the purpose of incorporating the amendment made by this act to section 723.003, Florida Statutes, in a reference thereto, subsection (1) of section 73.072, Florida Statutes, is reenacted and amended to read:

73.072 Mobile home parks; compensation for permanent improvements by mobile home owners.—

(1) If ~~When~~ all or a portion of a mobile home park as defined in s. 723.003~~(6)~~ is appropriated under this chapter, the condemning authority shall separately determine the compensation for any permanent improvements made to each site. This compensation shall be awarded to the mobile home owner leasing the site if:

(a) The effect of the taking includes a requirement that the mobile home owner remove or relocate his or her mobile home from the site;

(b) The mobile home owner currently leasing the site has paid for the permanent improvements to the site; and

(c) The value of the permanent improvements on the site exceeds $1,000 as of the date of taking.

Section 3. The amendment made by this act to s. 723.003, Florida Statutes, is remedial in nature and is intended to clarify existing law and to abrogate the interpretation of law set forth by the Department of Business and Professional

Regulation in a litigation memo dated September 18, 2013, which misclassified certain long-term leases of mobile home lots and spaces as equitable ownership interests for purposes of the statutory definition of "mobile home park." The amendment applies retroactively to the enactment of s. 723.003, Florida Statutes, on June 4, 1984, and is not intended to affect assessments or liability for, or exemptions from, ad valorem taxation on a lot or space upon which a mobile home is placed.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 263 Craft Distilleries
SPONSOR(S): Renuart and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brown-Blake	Luczynski
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Florida's Beverage Law provides for a structured three-tier distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the sale to the consumer.

In 2013, the legislature passed a limited exemption to the three tier system by creating a "craft distillery" designation and permitting a liquor manufacturer that meets the requirements of a craft distillery to sell two sealed containers per year of the distilled spirits it produces on its premises directly to a consumer for personal use. Such sales of the spirits must be made at the distillery souvenir gift shop.

The bill defines the term "branded product" to mean "the style of distilled spirit manufactured on site, including, but not limited to, vodka, rum, gin, whiskey, tequila, bourbon, and scotch."

Additionally, the bill expands the limit on direct sales by a craft distillery to consumers from two individual containers per person, per calendar year, to two individual containers of each branded product per person, per calendar year.

The bill is expected to have a minimal fiscal impact on the Department of Business and Professional Regulation which can be absorbed with existing resources and no fiscal impact on local government.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

In general, Florida's Beverage Law provides for a structured three-tier distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tier system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The three-tier system is deeply rooted in the concept of the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or where the manufacturer exercises undue influence over the retail vendor.[2] Because of the perceived evils, manufacturers and distributors are not permitted to have a financial interest in vendors. The following are some limited exceptions to the three-tier regulatory system:

- A manufacturer of malt beverages may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism;[3]
- A vendor may obtain a manufacturer's license to manufacture malt beverages if the vendor brews malt beverages at a single location in an amount of no more than 10,000 kegs per year and sells the beverages to consumers for consumption on the premises or consumption on contiguous licensed premises owned by the vendor;[4]
- A licensed winery may obtain up to three vendor's licenses for the sale of alcoholic beverages on a property;[5] and
- Individuals may bring small quantities of alcohol back from trips out-of-state without being held to distributor requirements.[6]

In 2013, s. 565.03, F.S., was amended to create another exception to the three-tier regulatory system regarding the manufacture and sale of distilled spirits. "Distillery" is defined as "a manufacturer of distilled spirits." "Craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises and notifies the Division of the desire to operate as a craft distillery. A craft distillery is permitted to sell the distilled spirits it produces to consumers for off-premise consumption. Sales of the spirits must be made on "private property" contiguous to the distillery premises at a souvenir gift shop operated by the distillery. Once a craft distillery's production limitations have been surpassed (75,000 gallons), the craft distillery is required to notify the Division within five days and immediately cease sales to consumers.

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[1] Section 561.02, F.S.

[2] Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board,* a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (Last visited January 20, 2015).

[3] s. 561.221(2), F.S.

[4] s. 561.221(3), F.S.

[5] s. 561.221(1), F.S.

[6] s. 562.16, F.S.

The 2013 amendment prohibits craft distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and caps the total sales to each consumer at two or less containers per customer per calendar year. In addition, the craft distilleries are prohibited from shipping their distilled spirits to consumers.

The United States Department of Treasury houses the Alcohol and Tobacco Tax and Trade Bureau (TTB), which sets forth labeling and brand registration requirements for alcoholic beverages sold in the United States.[7] Distillers are not permitted to sell, ship, or deliver for sale or shipment or otherwise introduce into interstate or foreign commerce any distilled spirits in bottles unless the bottles are marked, branded, labeled, or packaged in conformity with ss. 27 C.F.R. 5.31 through 27 C.F.R. 5.42.[8] Those sections set forth what distillers are required to place on the labels, including manufacturer name, brand name, alcohol content, net contents, class and type of alcohol, and other labeling requirements. Distilled spirits and their labels are required to be "approved" by the TTB prior to being bottled or removed from the manufacturing site.[9] When the TTB approves the distilled spirit, they provide a Certificate of Label Approval, which includes a copy of the brand name as provided on the application for approval.

Alcoholic beverages cannot be sold or offered for sale in Florida, or moved within or into Florida without the brand/label first being registered with the Division.[10] A brand or label, as referred to in ch. 565, F.S., is a liquor product that is uniquely identified by label registered according to state and federal law.

Effect of the Bill

The bill defines the term "branded product" to mean "the style of distilled spirit manufactured on site, including, but not limited to, vodka, rum, gin, whiskey, tequila, bourbon, and scotch." The bill provides that a craft distillery may sell spirits distilled on its premises to consumers at its souvenir gift shop, and expands the limit on direct sales to consumers from two individual containers per person, per calendar year, to two individual containers of each branded product per person, per calendar year.

B. SECTION DIRECTORY:

Section 1 amends s. 565.03. F.S., revising the limitation on containers that may be sold by craft distilleries directly to consumers, to include two individual containers of each branded product.

Section 2 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There does not appear to be a decrease or increase in revenues to state governments.

2. Expenditures:

   There does not appear to be a decrease or increase in expenditures to state governments. Monitoring of compliance by the state government is complaint driven. The Division can likely handle any increase in complaints with existing staff and equipment.

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[7] *What You Should Know About Distilled Spirits Labels* brochure, Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, http://ttb.gov/pdf/brochures/p51902.pdf.
[8] 27 C.F.R. § 5.31 (2014).
[9] 27 C.F.R. § 5.55 (2014).
[10] Department of Business and Professional Regulation website, Alcohol Brand/Label Registration online application, available at https://myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=4011&XACT_DEFN_ID=7172.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There does not appear to be a decrease or increase in revenues to local governments.

2. Expenditures:

   There does not appear to be a decrease or increase in expenditures to local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may cause a minor increase in costs for craft distillers by requiring more complex record keeping, as they will be required to track purchases to consumers to ensure that no consumer purchases more than two containers of each branded product per calendar year. This cost will likely be offset by the increased revenue due to an increase in sales of distilled spirits directly to consumers.

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:

The definition of "Branded Product" should be clarified to avoid confusion with the use of the term "brand" as used in Florida and Federal law. Additionally, the word "style" in the definition is vague and may result in confusion or an unintended interpretation by the Division.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to craft distilleries; amending s. 565.03, F.S.; defining the term "branded product"; revising the limitation on containers that may be sold by craft distilleries to include a specified amount of individual containers for each branded product; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (1) of section 565.03, Florida Statutes, are redesignated as paragraphs (b) and (c), respectively, a new paragraph (a) is added to that subsection, and paragraph (c) of subsection (2) of that section is amended, to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

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

(a) "Branded product" means the style of distilled spirit manufactured on site, including, but not limited to, vodka, rum, gin, whiskey, tequila, bourbon, and scotch.

(2)

(c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, spirits and branded products distilled on its premises in this state in

factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized only on private property contiguous to the licensed distillery premises in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state. A craft distillery or licensed distillery may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions with consumers who are making a purchase of two or fewer individual containers of each branded product, that comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.

1. A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b) ~~(1)(a)~~. Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

2. A craft distillery may only ship, arrange to ship, or deliver any of its distilled spirits to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship,

arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

3. Except as provided in subparagraph 4., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

4. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises.

Section 2. This act shall take effect July 1, 2015.

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Renuart offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (b) of subsection (1) of section 565.03, Florida Statutes, are redesignated as paragraphs (b) and (c), respectively, a new paragraph (a) is added to that subsection, and paragraph (c) of subsection (2) of that section is amended, to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

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

(a) "Branded product" means any distilled spirits product manufactured on site, which requires a federal certificate and

label approval by the Federal Alcohol Administration Act or regulations.

(2)

(c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, branded products ~~spirits~~ distilled on its premises in this state in factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized only on private property contiguous to the licensed distillery premises in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state. A craft distillery ~~or licensed distillery~~ may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions with consumers who are making a purchase of two or fewer individual containers of each branded product that comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.

1. A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b) ~~(1)(a)~~. Any retail sales to consumers at the

craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

2. A craft distillery may not ~~only~~ ship or~~,~~ arrange to ship~~, or deliver~~ any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

3. Except as provided in subparagraph 4., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

4. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

Section 2. This act shall take effect July 1, 2015.

Amendment No. 1

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to craft distilleries; amending s. 565.03, F.S.; defining the term "branded product"; revising the current limitation on the number of containers that may be sold to consumers by craft distilleries; applying such limitation to individual containers for each branded product; prohibiting a craft distillery from shipping or arranging to ship any of its distilled spirits to consumers; providing an exception; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 463 Ticket Sales
SPONSOR(S): Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** SB 742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Butler BSB	Luczynski MJ
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Several sections of Chapter 817, F.S., prohibit certain fraudulent types of activities related to admission tickets and provide for civil or criminal penalties.

The bill amends s. 817.36, F.S., to:

- Provide definitions for "department" to mean the Department of Agriculture and Consumer Services (Department), "face value," "place of entertainment," "resale website," "online marketplace," "ticket," and "ticket broker";
- Clarify the required guarantees and disclosures for resale of tickets on a website, software application for a mobile device, or digital platform;
- Clarify when a person or entity may offer for resale or resell a ticket for more than one dollar over face value;
- Require ticket brokers to register with the Department;
- Require the Department to publish a list of registered ticket brokers and their respective registration numbers;
- Require a ticket broker or resale website make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction;
- Prohibit a website, software application for a mobile device, or a digital platform from using the name of a venue, artist, or team trademark or service mark without the consent of the intellectual property owner unless such use constitutes fair use under federal law;
- Provide for and increase penalties for violations and subsequent violations of certain provisions; a person who knowingly violates s. 817.36, F.S., commits a felony of the third degree unless another specific criminal penalty is provided;
- Allow a person to bring a declaratory action in certain circumstances; and
- Allow for actual damages, including attorney fees and court costs, in certain circumstances.

The bill has a significant fiscal impact on state government.

The bill provides an effective date of October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tickets – Definition and Use

Absent a statute to the contrary, an event or admission ticket is considered to be a license to witness the performance, which may be revoked by the owner or proprietor at will, before or after admission of the ticketholder.[1] Florida law does not currently address whether an event or admission ticket is deemed to be a license or a property interest.

Without a statutory definition, a ticket is generally considered a license, and the ticket seller is able to place restrictions upon the use of that ticket. For example, a common restriction placed on an event or admission ticket by the seller is the inability to reenter the venue facility upon leaving. In addition to manner of use restrictions, the ticket seller is also able to place conditions and restrictions upon the resale or transferability of the ticket.

Generally, a person or entity offering to resell a ticket may only charge $1 above the admission price charged by the initial ticket seller. A person or entity must abide by these restrictions for tickets for passage or accommodations on a common carrier unless the person or entity is a travel agency,[2] multiday or multievent tickets to a theme park or entertainment complex,[3] and tickets issued by a charitable organization that offers no more than 3,000 tickets per performance.[4]

Any other tickets may be resold for a price greater than $1 above the admission price if the person or website is:

- Authorized to do so by the original ticket seller; or,
- Makes and posts certain guarantees and disclosures.[5]

A person or website offering tickets for resale that is not authorized by the original ticket seller must guarantee a full refund, including all fees, when a ticketed event is canceled, the purchaser is denied admission except when such denial is the fault of the purchaser, or the ticket is not delivered in the manner requested by the purchaser.[6] Further, such person or website operator must disclose that it is not the issuer, original seller, or reseller of the ticket does not control the pricing, and the ticket may be resold for more than its original value.[7]

A person who knowingly resells a ticket in violation of the ticket resale provisions of s. 817.36, F.S., is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold.[8]

Currently, s. 817.36(5), F.S., provides that a person who intentionally uses or sells software to circumvent a security measure, access control system, or any other control or measure that is used to ensure an equitable ticket-buying process on a ticket seller's website is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold.

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[1] 27A Am. Jur. 2d Entertainment and Sports Law § 42.
[2] s. 817.36(1)(a), F.S.
[3] s. 817.36(1)(b), F.S.
[4] s. 817.36(1)(c), F.S.
[5] s. 817.36(1)(d), F.S.
[6] *Id.*
[7] *Id.*
[8] s. 817.36(4), F.S.

"Software" is defined in s. 817.36(6), F.S., as computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

Effect of the Bill

The bill amends s. 817.36, F.S., to retitle the section from "Resale of tickets" to "Ticket sales."

Definitions

A new subsection is created to define the following terms:

"Department" means the Department of Agriculture and Consumer Services (Department).

"Face value" means "the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket."

"Online marketplace" means:

> [A] website, software application for a mobile device, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, software application for a mobile device, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment.

"Place of entertainment" means:

> [A] privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

"Resale website" means:

> [A] website, software application for a mobile device, any other digital platform, or portion thereof, that facilitates the sale of tickets by resellers to consumers or on which resellers offer tickets for sale to consumers.

"Ticket" means:

> [A] printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right. A ticket is a revocable license, held by the person in possession of the ticket, to use a seat or standing area in a specific place of entertainment for a limited time. The license represented by the ticket may be revoked at any time, with or without cause, by the ticket issuer.

"Ticket broker" means "a person, or persons acting in concert, involved in the business of reselling tickets of admission to places of entertainment." Specifically, the definition of "ticket broker" does not include:

- A person who does not regularly engage in the business of reselling tickets, who resells less than 60 tickets or one-third of all tickets purchased from a professional sports entity during any 1-year period, and who obtained the tickets for the person's own use or the use of the person's family, friends, or acquaintances; or,
- A person operating a website, software application for a mobile device, or other digital platform whose primary business is to serve as an online marketplace for third parties to buy and sell tickets, and whose primary business is not engaging in the reselling of tickets.

Ticket as a License

As discussed above, a ticket generally is considered a license under common law absent a statute declaring otherwise, and the ticket seller is able to place restrictions upon the use of that ticket. The bill creates a definition for "ticket" that provides that a ticket is a revocable license to use a space in a specific venue and may include restrictions such as the ticket may be revoked at any time, with or without cause, by the ticket issuer. This definition resolves a dispute within the industry of whether a ticket is considered a revocable license or personal property in this state, and what rights and privileges that entails.

Resale of Tickets

The bill renumbers s. 817.36(1), F.S., to s. 817.36(2), F.S., and expands the persons who are required to make the required guarantees and disclosures in order to sell a ticket for more than $1 above the admission price charged by the original ticket seller to include a software application for a mobile device or any other digital platform.

The bill removes the current requirement that a ticket reseller must deliver a ticket to the purchaser in the manner requested by the purchaser.

The bill renumbers current s. 817.36(2) and (3), F.S., to s. 817.36(3) and (4), F.S., and includes the place of entertainment in the list of locations where an individual or entity may not sell or purchase a ticket without the prior written consent of the owner.

Prohibition on Use of Technology to Circumvent Ticket Buying Security Measures

The bill removes the current s. 817.36(5) and (6), F.S., and replaces them with a new s. 817.36(5), F.S., which more explicitly defines and prohibits the use of technology to circumvent the ticket buying process. Specifically, a person may not:

- Sell, use, or cause to be used by any means, method, technology, devices, or software that is designed, intended, or functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform; or,
- Use or cause to be used any means, method, or technology that is designed, intended, or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

A person who uses a means, method, technology, devices, or software to violate the above subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., and each ticket purchase, sale, or violation of this subsection constitutes a separate offense.

Ticket Broker Registration

The bill creates s. 817.36(7), F.S., to require a ticket broker to register with the Department by April 1, 2016, or within thirty days after commencing business as a ticket broker in the state, whichever is later. The ticket broker must maintain an active registration with the Department.

The bill further provides that in order to have and maintain an effective registration, a ticket broker must:

- Maintain a permanent office or place of business in the state for the purpose of engaging in the business of a ticket broker;
- Submit the ticket brokers' business name, street address, and other information, as requested by the Department;
- Certify that the ticket broker does not use, sell, give, transfer, or distribute software that is primarily designed for the purpose of interfering with the operations of a ticket seller, as prohibited in s. 817.36, F.S.;
- Pay an annual registration fee;
- Renew the registration annually; and
- Register for sales and use tax purposes under ch. 212, F.S.

Upon registration, the Department will issue the ticket broker a unique registration number. The Department must also publish a list of registered ticket brokers, including their respective registration numbers, on its website.

A person may not register as a ticket broker if he or she has been convicted of a felony, and has not been pardoned or had his or her civil rights, other than voting, restored under ch. 940, F.S. As such, prior to issuing the registration number, the Department is implicitly required to determine a ticket broker applicant's status related to this requirement.

Ticket Resale Disclosures

The bill also creates s. 817.36(8), F.S., to require that a ticket broker or resale website, software application for a mobile device, or other digital platform make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction. Such disclosures may be on the ticket broker's resale website or online marketplace, or in person. Such disclosures must include:

- The face value and exact location of the seat offered for sale, including any section, row and seat number, or area specifically designated as accessible seating that is printed on the ticket;
- Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery;
- If the ticket is not in the actual physical possession of the reseller, the period of time when the reseller reasonably expects to have the ticket in actual possession and available for delivery;
- Whether the reseller is actively making an offer to procure the ticket; and,
- The refund policy of the ticket broker or resale website, software application for a mobile device, or digital platform in connection with the cancellation or postponement of an entertainment event.

Prohibited Representations

Finally, the bill creates s. 817.36(9), F.S., to prohibit a ticket broker or resale website from using the name of a venue, artist, or team trademark or service mark in any way without the express written consent of the intellectual property owner, except when it constitutes fair use and consistent with applicable laws, including full disclosure or attribution of the true intellectual property owner.

Department Enforcement and Administrative, Civil, and Criminal Remedies

The bill renumbers s. 817.36(4), F.S., to s. 817.36(6), F.S., and raises the penalty for someone who knowingly resells a ticket or tickets in violation of this section from a civil penalty to a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

The bill creates s. 817.36(10), F.S., which provides that a person who is an aggrieved party may bring a declaratory action to enjoin persons who have violated, are violating, or are likely to violate this section. Persons who have suffered a loss as a result of a violation may recover actual damages, plus attorney fees and court costs.

The bill creates s. 817.36(11), F.S., to provide the Department authority to enforce the requirements of s. 817.36, F.S., and provides that the Department may enter an order imposing a penalty for a violation of the statute or rules adopted by the Department.

Section 817.36(11), F.S., also provides a criminal penalty ~~for~~ a person who violates the provisions of the section. Specifically, except as otherwise provided, a person who knowingly violates the section commits a third degree felony, punishable as provided in ss. 775.082[9] or 775.084, F.S.,[10] or by a fine of up to $10,000.[11] This criminal penalty is in addition to any non-criminal penalty provided in the section.

The bill creates s. 817.36(12), F.S., to provide that the Department shall adopt rules to implement the section.

B. SECTION DIRECTORY:

Section 1 amends s. 817.36, F.S., to define terms; to revise disclosure and guarantee requirements for ticket resellers; to revise provisions related to circumventing security measures; to provide criminal penalties; to require registration of ticket brokers; and to require rulemaking.

Section 2 provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	(FY 16-17)	(FY 17-18)
Revenues		
Recurring		
(80 ticket brokers registration fees @ $875)	$70,000	$70,000

2. Expenditures:

1. Recurring		
a. Salaries and Benefits		
Regulatory Consultant (1)	$36,706	$48,941
b. Expenses		
Professional – Expense Package (1)	$6,166	$6,166

[9] s. 775.082(3)(d), F.S., provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.
[10] s. 775.084, F.S., provides enhanced penalties for habitual felony offenders.
[11] *See generally* s. 775.083(1)(b), F.S., the $10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

c. Special Category		
Human Resources Allocation (1)	$344	$344
TOTAL RECURRING COST	$43,216	$55,451
2. Non-Recurring – General Inspection Trust Fund		
a. Expenses		
Professional – Expense Package (1)	$3,882	$0
b. Contracted Services		
Software – Develop, Test, Deploy 520 Hrs. @ $85	$44,200	$0
TOTAL NONRECURRING COST	$48,082	$0
TOTAL RECURRING/NONRECURRING COST	$91,298	$55,451
Non-Operating Cost		
Information Technology Support	$2,465	$2,465
Administrative /Indirect Cost	$5,284	$5,284
General Revenue Service Charge	$5,700	$5,700
TOTAL NON-OPERATING COST	$13,449	$13,449
EXPENDITURES GRAND TOTAL (GITF)	$104,747	$68,900
NET GAIN (LOSS)	($34,747)	$1,100

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires ticket brokers to register with the Department, at an expected annual cost of $875. Online marketplaces and resale websites may have costs associated with the development and implementation of this bill's guarantee and disclosure requirements.

D. FISCAL COMMENTS:

This bill has been requested to be considered at the next Criminal Justice Impact Conference to determine the impact of the bill's criminal penalties on prison beds.

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 Department is required to adopt rules to implement s. 817.36, F.S., to develop a registration scheme for ticket brokers, and to enforce the civil and criminal penalties provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to ticket sales; amending s. 817.36, F.S.; defining terms; revising provisions to include digital platforms; revising certain presale disclosure requirements; revising provisions relating to prohibitions on bypassing portions of the ticket buying process, disguising the identity of a buyer, or circumventing security measures; providing criminal penalties for violations; providing for recovery of damages up to treble the amount of actual damages for such violations; providing criminal penalties for knowingly reselling a ticket in violation of statute; requiring registration of ticket brokers; providing registration requirements; requiring ticket brokers to make specified disclosures before resale of a ticket; restricting the use of intellectual property by resellers without consent; providing exceptions; authorizing declaratory judgments; authorizing administrative penalties for certain violations; providing criminal penalties for certain violations; requiring rulemaking; deleting provisions imposing penalties for intentionally using or selling software to circumvent certain ticket seller security measures; providing an effective date.

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

Section 1. Section 817.36, Florida Statutes, is amended to read:

817.36 Ticket sales ~~Resale of tickets~~.—

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

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Face value" means the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.

(c) "Online marketplace" means a website, software application for a mobile device, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, software application for a mobile device, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment.

(d) "Place of entertainment" means a privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

(e) "Resale website" means a website, software application for a mobile device, any other digital platform, or portion thereof, that facilitates the sale of tickets by resellers to consumers or on which resellers offer tickets for sale to consumers.

(f) "Ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right. A ticket is a revocable license, held by the person in possession of the ticket, to use a seat or standing area in a specific place of entertainment for a limited time. The license represented by the ticket may be revoked at any time, with or without cause, by the ticket issuer.

(g)1. "Ticket broker" means a person, or persons acting in concert, involved in the business of reselling tickets of admission to places of entertainment.

2. The term does not include:

a. A person who does not regularly engage in the business of reselling tickets, who resells less than 60 tickets or one-third of all tickets purchased from a professional sports entity during any 1-year period, and who obtained the tickets for the person's own use or the use of the person's family, friends, or acquaintances.

b. A person operating a website, software application for a mobile device, or other digital platform whose primary

business is to serve as an online marketplace for third parties to buy and sell tickets, and whose primary business is not engaging in the reselling of tickets.

(2)~~(1)~~ A person or entity that offers for resale or resells any ticket may charge only $1 above the admission price charged therefor by the original ticket seller of the ticket for the following transactions:

(a) Passage or accommodations on any common carrier in this state. However, this paragraph does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.

(b) Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18).

(c) Event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code for which no more than 3,000 tickets are issued per performance. The charitable organization must issue event tickets with the following statement conspicuously printed or displayed on the face or back of the ticket: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than $1 over the original admission price." This paragraph does not apply to tickets issued or sold by a third party contractor

ticketing services provider on behalf of a charitable organization otherwise included in this paragraph unless the required disclosure is printed or displayed on the ticket.

(d) Any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), that are resold or offered through a ~~an Internet~~ website, software application for a mobile device, or any other digital platform, unless such website, software application for a mobile device, or other digital platform, is authorized by the original ticket seller or makes and posts the following guarantees and disclosures on ~~through Internet~~ web pages on which are visibly posted, or links to web pages on which are posted, text to which a prospective purchaser is directed before completion of the resale transaction:

1. The website, software application for a mobile device, or digital platform operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when:

a. The ticketed event is canceled; or

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser~~;~~

~~c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event~~.

2. The website, software application for a mobile device,

or digital platform operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their face ~~original~~ value.

(3)~~(2)~~ This section does not authorize any individual or entity to sell or purchase tickets at any price on property or place of entertainment where an event is being held without the prior express written consent of the owner of the property or place of entertainment.

(4)~~(3)~~ Any sales tax due for resales under this section shall be remitted to the Department of Revenue in accordance with s. 212.04.

(5)(a) A person may not sell, use, or cause to be used by any means, method, technology, devices, or software that is designed, intended, or functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform.

(b) A person may not use or cause to be used any means, method, or technology that is designed, intended, or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of

entertainment or of the entertainment event or an agent of any such person.

(c) A person who violates this subsection commits misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each ticket purchase, sale, or violation of this subsection constitutes a separate offense.

(d) A party that has been injured by wrongful conduct in violation of this subsection may bring an action to recover all actual damages suffered as a result of any of such wrongful conduct. The court in its discretion may award damages up to three times the amount of actual damages.

(6)~~(4)~~ A person who knowingly resells a ticket or tickets in violation of this section commits misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 ~~is liable to the state for a civil penalty equal to treble the amount of the price for which the ticket or tickets were resold~~.

(7)(a) A ticket broker shall register with the department by April 1, 2016, or within 30 days after commencing business as a ticket broker in this state, whichever is later, and maintain an active registration with the department. To have and maintain an effective registration, a ticket broker must:

1. Maintain a permanent office or place of business in this state for the purpose of engaging in the business of a ticket broker.

2. Submit the ticket broker's business name, a street address in this state, and other information as requested on a

form designated by the department.

3. Certify that the broker does not use, sell, give, transfer, or distribute software that is primarily designed for the purpose of interfering with the operations of any ticket seller in violation of this section.

4. Pay an annual registration fee as determined by the department sufficient to reimburse the department for the administration of this subsection.

5. Renew the registration annually.

6. Register for sales and use tax purposes under chapter 212.

(b) Upon registration, the department shall issue each ticket broker a unique registration number and publish a list of registered ticket brokers, including registration numbers on the department's website. A person who has been convicted of a felony and who has not been pardoned or had his or her civil rights other than voting restored under chapter 940 may not register as a ticket broker.

(8) A ticket broker or resale website, software application for a mobile device, or other digital platform must clearly and conspicuously disclose to a prospective ticket resale purchaser, whether on the ticket broker's resale website, software application for a mobile device, or digital online marketplace, or in person, before a resale:

(a) The face value and exact location of the seat offered for sale, including a section, row, and seat number, or area

specifically designated as accessible seating.

(b) Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery.

(c) If the ticket is not in the actual physical possession of the reseller, the period of time when the reseller reasonably expects to have the ticket in actual possession and available for delivery.

(d) Whether the reseller is actively making an offer to procure the ticket.

(e) The refund policy of the ticket broker or resale website, software application for a mobile device, or digital platform in connection with the cancellation or postponement of an entertainment event.

(f) That it is a resale website, software application for a mobile device, or digital platform and prices of tickets can often exceed face value.

(9) A resale website, software application for a mobile device, or digital platform shall not use the name of a venue, artist, or team trademark or service mark in any way without the express written consent of the intellectual property owner, except when it constitutes fair use and consistent with applicable laws, including full disclosure or attribution of the true intellectual property owner.

(10)(a) A person aggrieved by a violation of this section may, without regard to any other remedy or relief to which the person is entitled, bring an action to obtain a declaratory

judgment that an act or practice violates this section and to enjoin a person who has violated, is violating, or is otherwise likely to violate this section.

(b) In any action brought by a person who has suffered a loss as a result of a violation of this section, such person may recover actual damages, plus attorney fees and court costs.

(11)(a) The department may enter an order imposing one or more of the following penalties against any person who violates the requirements of this section or rules adopted under this section or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department in the performance of its duties in connection with this section:

1. Imposition of an administrative fine of not more than $1,000 per occurrence.

2. Revocation or suspension of the registration.

(b) Except as otherwise provided in this section and in addition to any noncriminal penalties provided in this section, a person who knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or may be fined up to $10,000.

(12) The department shall adopt rules to implement this section.

~~(5) A person who intentionally uses or sells software to circumvent on a ticket seller's Internet website a security measure, an access control system, or any other control or measure that is used to ensure an equitable ticket-buying~~

~~process is liable to the state for a civil penalty equal to treble the amount for which the ticket or tickets were sold.~~

~~(6) As used in this section, the term "software" means computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.~~

Section 2. This act shall take effect October 1, 2015.

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Ingoglia offered the following:

Amendment (with title amendment)

Remove lines 53-254 and insert:

(e) "Resale website" means a website, software application for a mobile device, any other digital platform, or portion thereof, whose primary purpose is to facilitate the resale of tickets to consumers, but excludes an online marketplace.

(f) "Ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right.

(2) ~~(1)~~ A person or entity that offers for resale or resells any ticket may charge only $1 above the face value

~~admission price~~ charged therefor by the original ticket seller of the ticket for the following transactions:

(a) Passage or accommodations on any common carrier in this state. However, this paragraph does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.

(b) Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18).

(c) Event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code for which no more than 3,000 tickets are issued per performance. The charitable organization must issue event tickets with the following statement conspicuously printed or displayed on the face or back of the ticket: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than $1 over the ~~original admission price~~ face value." This paragraph does not apply to tickets issued or sold by a third party contractor ticketing services provider on behalf of a charitable organization otherwise included in this paragraph unless the required disclosure is printed or displayed on the ticket.

(d) Any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), that are resold or offered through a ~~an Internet~~ resale website~~,~~ or online marketplace unless such resale website or online marketplace is authorized by the original ticket seller to sell such tickets or makes and posts the following guarantees and disclosures on ~~through Internet~~ web pages on which are visibly posted, or links to web pages on which are posted, text to which a prospective purchaser is directed before completion of the resale transaction:

1. The resale website or online marketplace operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when:

a. The ticketed event is canceled; or

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser~~;~~.

c. The ticket is not delivered to the purchaser ~~in the manner requested and~~ pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.

2. The resale website or online marketplace operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their face ~~original~~ value.

(3) ~~(2)~~ This section does not authorize any individual or entity to sell or purchase tickets at any price on property or place of entertainment where an event is being held without the prior express written consent of the owner of the property or place of entertainment.

(4) ~~(3)~~ Any sales tax due for resales under this section shall be remitted to the Department of Revenue in accordance with s. 212.04.

(5)(a) A person may not sell, use, or cause to be used by any means, method, technology, devices, or software that is designed, intended, or functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform.

(b) A person may not use or cause to be used any means, method, or technology that is designed, intended, or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

(c) A person who knowingly violates this subsection commits a felony of the third degree, punishable as provided in

s. 775.082 or s. 775.084 or by a fine not to exceed $10,000, or both. Each ticket purchase, sale, or violation of this subsection constitutes a separate offense.

(d) A party that has been injured by wrongful conduct in violation of this subsection may bring an action to recover all actual damages suffered as a result of any of such wrongful conduct. The court in its discretion may award damages up to three times the amount of actual damages.

~~(4) A person who knowingly resells a ticket or tickets in violation of this section is liable to the state for a civil penalty equal to treble the amount of the price for which the ticket or tickets were resold.~~

(6) A person, resale website or online marketplace must clearly and conspicuously disclose to a prospective ticket resale purchaser, whether on the resale website or online marketplace, or in person, before a resale:

(a) The refund policy of the person or resale website, or online marketplace in connection with the cancellation or postponement of an entertainment event;

(b) That it is a resale website or online marketplace and prices of tickets can often exceed face value; and,

(c) If the ticket is in the actual physical possession of the reseller, the face value and exact location of the seat offered for sale, including a section, row, and seat number, or area specifically designated as accessible seating; or,

(d) If the ticket is not in the actual physical possession of the reseller:

1. That the ticket offered for sale is not in the actual physical possession of the reseller;

2. The period of time when the reseller reasonably expects to have the ticket in actual physical possession and available for delivery; and,

3. Whether the reseller is actively making an offer to procure the ticket.

(7) (a) A resale website or online marketplace shall not make any representation of affiliation or endorsement with a venue or artist without the express written consent of the venue or artist, except when it constitutes fair use and is consistent with applicable laws.

(b) A person who knowingly violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine not to exceed $10,000, or both.

(8)(a) A person aggrieved by a violation of this section may, without regard to any other remedy or relief to which the person is entitled, bring an action to obtain a declaratory judgment that an act or practice violates this section and to enjoin a person who has violated, is violating, or is otherwise likely to violate this section.

(b) In any action brought by a person who has suffered a loss as a result of a violation of this section, such person may recover actual damages, plus attorney fees and court costs.

(9) If the department, by its own inquiry or as a result of complaints, has reason to believe that a violation of this section has occurred or is occurring, the department may conduct an investigation, conduct hearings, subpoena witnesses and evidence, and administer oaths and affirmations. If, as a result of the investigation, the department has reason to believe a violation of this section has occurred, the department with the coordination of the Department of Legal Affairs and any state attorney, if the violation has occurred or is occurring within her or his judicial circuit, shall have the authority to bring a civil or criminal action and to seek other relief, including injunctive relief, as the court deems appropriate. This subsection does not prohibit the department from providing information to any law enforcement agency or to any other regulatory agency and the department may report to the appropriate law enforcement officers any information concerning a violation of this section.

(10) Except as otherwise provided in this section a person who knowingly resells a ticket or tickets in violation of this section commits misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this section constitutes a separate offense.

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

Remove lines 3-24 and insert:

F.S.; defining terms; revising provisions to include digital platforms; revising certain presale disclosure requirements; revising provisions relating to prohibitions on bypassing portions of the ticket buying process, disguising the identity of a buyer, or circumventing security measures; providing criminal penalties for violations; providing for recovery of damages up to treble the amount of actual damages for such violations; providing criminal penalties for knowingly reselling a ticket in violation of statute; requiring specified disclosures before resale of a ticket; prohibiting misrepresentations of affiliation or endorsement by resellers without consent; providing exceptions; authorizing declaratory judgments; providing criminal penalties for certain violations; requiring rulemaking; deleting provisions imposing penalties for intentionally using or selling software to circumvent certain ticket seller security measures; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 611 Residential Properties
SPONSOR(S): Civil Justice Subcommittee; Wood and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Robinson	Bond
2) Business & Professions Subcommittee		Anstead	Luczynski
3) Judiciary Committee			

SUMMARY ANALYSIS

When an ownership interest in a home, cooperative, or condominium is transferred, the new owner is jointly and severally liable with the previous owner for unpaid assessments owed to a homeowners', cooperative, or condominium association. Unpaid assessments may also become a lien on the parcel. To protect against undisclosed financial obligations and to transfer title that is free of any lien or encumbrance, buyers often request that the seller provide an estoppel certificate from any association of which the unit or parcel is a part. An estoppel certificate certifies the total debt owed to the association for unpaid financial obligations by a parcel owner, unit owner, or mortgagee as of a specified date.

The bill amends the law governing homeowners', cooperative and condominium associations (collectively referred to herein as "association"):

- Providing standards for the issuance of an estoppel certificate from an association.
- Reducing the time that an association has to respond to a request for an estoppel certificate from 15 days to 10 days.
- Providing that an estoppel certificate may be delivered by mail, hand, or electronic means.
- Providing that an estoppel certificate must be dated the date it is delivered, must be valid for at least 30 days and must state the amount of costs and attorney's fees incurred by the association for the collection of an assessment.
- Providing that an estoppel certificate include fees owed to the association through at least 30 days after the date of the estoppel certificate.
- Providing that an association waives the right to collect moneys owed in excess of those stated in the estoppel certificate and waives the right to collect or make a claim for any amounts owed if the association fails to issue the estoppel certificate.
- Providing that an estoppel certificate must state the fee charged for the estoppel certificate and shall be paid from closing settlement proceeds if requested in conjunction with the sale of the unit.
- Establishing a maximum fee that an association may charge for the issuance of an estoppel certificate of $100 and permitting other fees in limited circumstances.
- Revising the time for payment of the estoppel certificate fee charged by an association for the preparation an estoppel certificate.

The changes reflect recommendations made to the Legislature by the Community Association Living Study Council.

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

The bill takes effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominium[1] and cooperative[2] associations are governed internally by an association whose members are the owners of units within the association. Many, but not all, residential communities are similarly governed by a homeowners' association[3] made up of parcel owners. Associations are in effect a partnership between unit or parcel owners with a common interest in real property. To operate, an association must collect regular assessments from the unit owners and parcel owners in order to pay for common expenses, management, maintenance, insurance, and reserves for anticipated future major expenses. Sections 718.111(4), 719.104(5), and 720.308, F.S., provide for the assessment and collection of periodic and special assessments to fund an association. A unit or parcel owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Unpaid assessments may also become a lien on the parcel.

To protect against undisclosed financial obligations and to ensure that title is transferred free of any lien or encumbrance, buyers in an ordinary sale of a unit or parcel insist that all assessments be brought current through the date of sale, and an owner's title insurance company insures the buyer should the closing agent not properly see to payment of assessments through closing.

An estoppel certificate issued by an association certifies the total debt owed to the association for unpaid financial obligations by a parcel owner, unit owner, or mortgagee as of a specified date. Buyers, sellers, lenders, and other entities involved in the sale or refinance of a unit or parcel rely on estoppel certificates issued by an association to ascertain the amount to be collected and applied at closing. The association is legally bound by the amount in the estoppel certificate and is barred from asserting a claim of moneys due that contradicts the information provided in the estoppel certificate against any third party who relies on such certificate.

Present Situation - Fees for Preparation of Estoppel Certificate

A homeowners' or condominium association may charge a fee for the preparation of an estoppel certificate as long as the fee is established by a written resolution adopted by the board, or provided by a written management, bookkeeping, or maintenance contract. A cooperative association may also charge a fee, but there is currently no similar condition in ch. 719, F.S., for cooperative associations to establish such fee by written resolution. Current law also provides no limitation on the amount of the fee that may be charged by an association other than that such amount must be "reasonable."[4] Neither the Legislature nor the courts have provided guidance on what constitutes a reasonable fee for an estoppel

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[1] A condominium association means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership. Section 718.103(2), F.S.

[2] A cooperative association means the corporation for profit or not for profit that owns the record interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative. Section 719.103(2), F.S.

[3] A homeowners' association is a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. Section 720.301(9), F.S.

[4] Sections 718.116(8)(c) and 719.108(6), F.S.; There is no corresponding requirement in ch. 720, F.S., that the fee charged by a homeowners' association be reasonable.

certificate. This has caused variations in the amount of the fee charged by associations for the preparation of an estoppel certificate.

Additionally, any fee charged by a homeowners' or condominium association for an estoppel certificate is payable upon preparation of the certificate. As estoppel certificates are generally required to close the sale or refinancing of a home and must be requested earlier than the time of closing, the funds must be paid solely by one party to the transaction, usually the seller, rather than from the closing settlement proceeds. However, current law does provide that if the certificate was requested in conjunction with the sale or mortgage of a unit or parcel but the sale does not occur, a homeowners' or condominium association must refund the fee, but only to a non-owner payor. The refund becomes the obligation of the unit or parcel owner and the homeowners' or condominium association may collect it from the owner in the same manner as an assessment. Accordingly, owners may be required to pay an estoppel fee even where closing does not occur due to the early payment requirement or the obligation to reimburse a homeowners' or condominium association for a fee refund given to a non-owner payor.

After a series of public meetings in 2014, the Community Association Living Study Council,[5] by unanimous vote, recommended to the Legislature that a reasonable cap be established for estoppel certificate fees and that such fees be tiered.[6] The Council proposed several additional factors that should be considered when determining the amount of the fee including whether or not the owner is current in fees, delinquent in fees, or estoppel certificates were requested in conjunction with a bulk purchase.[7]

Effect of Proposed Changes - Fees for Preparation of Estoppel Certificate

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to authorize an association to charge a fee for the delivery as well as the preparation of an estoppel certificate. The bill establishes a maximum fee of $100 for the preparation and delivery of an estoppel certificate. An association may charge an additional supplemental fee of up to $50 under each of the following circumstances:

- The owner is delinquent with respect to moneys owed to the association and his or her account has been referred for collection;
- Expedited delivery of an estoppel certificate is requested and made; or
- An additional estoppel certificate is requested within 30 days after the most recently delivered estoppel certificate.

However, notwithstanding the authority to charge up to $100 for an estoppel certificate, if a unit or parcel owner meets certain requirements and makes a simultaneous request for the estoppel certificate of multiple units owned by the unit or parcel owner, the association may deliver the statement of moneys due in one or more estoppel certificates and the total fee that may be charged may not exceed:

- $750 for 25 or fewer units or parcels;
- $1,000 for 26 to 50 units or parcels;
- $1,500 for 51 to 100 units or parcels; or
- $2,500 for more than 100 units or parcels.

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[5] The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of seven members appointed by the President of the Senate, the Speaker of the House Representatives, and the Governor. An ex officio nonvoting member was appointed by the Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes. The Council was abolished by the Legislature in 2014. *See* s. 718.50151, F.S. (2013); Ch. 2014-133, L.O.F.

[6] Community Association Living Study Council, *Final Report*, March 31, 2014, *available at* http://www.myfloridalicense.com/Dbpr/lsc/documents/2014CALSCReport.pdf (last visited Feb. 26, 2015).

[7] *Id.*

The bill also repeals the requirement that the fee for an estoppel certificate be paid upon preparation by an association. Where an estoppel certificate is requested in conjunction with the sale or refinancing of a unit or parcel, the fee and any supplemental fees are due and payable to an association no earlier than the closing and must be paid from the closing settlement proceeds. Since the fees must be paid from the closing settlement proceeds, the bill repeals the provision authorizing a refund of fees by a homeowners' or condominium association to a non-owner payor as no fee will have previously been paid. However, if the sale does not occur within 60 days after the estoppel certificate is delivered, the fee is the obligation of the owner and may be collected by an association in the same manner as an assessment.

The preparation and delivery of an estoppel certificate may not be conditioned upon the payment of any other fees not authorized by the bill.

Present Situation - Form and Delivery of Estoppel Certificate

An association is required to provide an estoppel certificate within 15 days after receiving a request from a unit or parcel owner, unit or parcel mortgagee, or the designee of the owner or mortgagee.[8] Although the certificate acts as a bar and prevents the association from later asserting a claim or right that contradicts the information in the certificate, current law is largely silent on the specific contents and form the certificate. An estoppel certificate issued by a homeowners' or condominium association must only set forth all assessments and other moneys owed to the association with respect to the unit or parcel, disclose any fee charged by the association for the preparation of such certificate, and be signed by an officer or authorized agent of the association. An estoppel certificate issued by a cooperative association must only set forth the amount of assessments or other moneys owed. Some associations provide the amount of assessments and other moneys owed to the association in one lump sum while others provide an itemized breakdown of assessments, late fees, interest, etc. The amount in the certificate may reflect the amount presently owed or the amount owed through a given date a few weeks or months into the future. Accordingly, the information provided in estoppel certificates varies among associations.

Additionally, although current law does not restrict the method in which an association may provide an estoppel certificate to an owner or mortgagee, the Community Association Living Study Council, by unanimous vote, recommended to the Legislature that the law governing community associations authorize the use of digital communications.

Effect of Proposed Changes - Form and Delivery of Estoppel Certificate

The bill amends ss. 720.30851 and 718.116(8), F.S., relating to homeowners' and condominium associations, to provide additional specific requirements for the form and content of an estoppel certificate. An estoppel certificate must be dated as of the date it is delivered and set forth all assessments and other moneys owed to the association, including costs and reasonable attorney's fees incurred in collection of the unpaid assessments, as reflected in the official records of the association, through at least 30 days after the date of the estoppel certificate.

Section 719.108(6), F.S., is also amended to provide that an estoppel certificate issued by a cooperative association be in the same form provided in current law for an estoppel certificate issued by homeowners' and condominium associations with such additional information required for homeowners' and condominium estoppel certificates as provided by this bill.

The bill reduces the period of time in which an association must respond to a request for an estoppel certificate from 15 days to 10 days and specifies that the certificate may be delivered by mail, hand, or

[8] Sections 718.116(8), 719.108(6), and 720.30851, F.S. The cooperative act does not currently require that a cooperative association provide an estoppel certificate to the designee of the owner or mortgagee.

electronic means. All requests for an estoppel certificate from an association must be written and may also be made the designee of an owner or mortgagee.

Present Situation - Compliance by Association

Any person, other than the owner of a unit or parcel, who relies upon an estoppel certificate issued by an association, is protected by the estoppel effect of the certificate.[9] Accordingly, an association would be unable to assert a claim for an amount of unpaid assessments against a purchaser of a unit or parcel if that amount contradicted the amount of unpaid assessments provided by the association in an estoppel certificate during the closing of the sale. However, the protections of the estoppel effect extend only to such third parties and although an owner may pay a fee to obtain the certified amount of unpaid assessments and moneys owed to the association, the association is not estopped from asserting a contradictory claim in the future against the owner.

Under current law, a unit or parcel owner may compel compliance with the provisions governing the issuance of an estoppel certificate from a homeowners' or condominium association by bringing a summary procedure pursuant to s. 51.011, F.S.[10] The prevailing party is entitled to recover reasonable attorney's fees and costs.[11]

Effect of Proposed Changes - Compliance by Association

The bill repeals the authority to compel compliance from a homeowners' or condominium association by resort to the summary procedure specified in s. 51.011, F.S.

The bill provides that if an association fails to respond to a request for an estoppel certificate, the association waives any claim, including a claim of lien against the unit or parcel, for moneys owed to the association that should have been shown on the estoppel certificate against any person who in good faith would have relied on such certificate, as well as that person's successors and assigns.

The bill also amends current law to expressly provide that the association waives the right to collect any money owed in excess of the amount set forth in the estoppel certificate. Such waiver extends to any person, which would include any owner, who in good faith relied upon the certificate as well as the person's successors and assigns.

B. SECTION DIRECTORY:

Section 1 amends s. 718.116, F.S., to provide standards for the issuance of estoppel certificates by condominium associations; sets maximum fees, deadlines and methods of delivery for estoppel certificates.

Section 2 amends s. 719.108, F.S., to provide standards for the issuance of estoppel certificates by cooperative associations; sets maximum fees, deadlines and methods of delivery for estoppel certificates.

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[9] Sections 718.116(8)(a), 719.108(6), and 720.30851(1), F.S.

[10] Sections 718.116(8)(b) and 720.30851(2), F.S.; Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

[11] *Id.*

Section 3 amends s. 720.30851, F.S., to provide standards for the issuance of estoppel certificates by homeowners' associations; sets maximum fees, deadlines and methods of delivery for estoppel certificates.

Section 4 provides an effective date of July 1, 2015.

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:

To the extent that an association charges more than $100 for the issuance of an estoppel certificate, the bill may have a positive economic impact on unit and parcel owners of such association by reducing the amount of fees required to obtain an estoppel certificate. In such instance there would be a corresponding negative reduction in such fees collected by associations.

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:

   Article I, s. 10 of the United States Constitution, and art. I, s. 10 of the state constitution both prohibit the legislature from enacting any law impairing the obligation of contracts. Although written in terms of an absolute prohibition, the courts have long interpreted the provisions to prohibit enactment of any unreasonable impairment of contractual rights existing at the time that the law is enacted.

   The United States Supreme Court has set forth the following principles in examining a law under an impairment analysis, ruling:

   > [T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of

the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them.

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 245 (1978). Referring to the *Allied* opinion, the Florida Supreme Court added the following clarification to the analysis:

(a) Was the law enacted to deal with a broad, generalized economic or social problem?

(b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?

(c) Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?

Pomponio v. Claridge of Pompano Condominium, Inc., 378 So.2d 774, 779 (Fla. 1979).

The bill may raise constitutional issues related to the impairment of contract between condominiums, cooperatives, and homeowners' associations and unit or parcel owners.

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 March 4, 2015, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Permanently waiving an association's claim for amounts due if the association fails to provide an estoppel certificate, and extending such waiver to the successor and assigns of any person who in good faith relied or would have relied on such estoppel certificate.
- Specifying additional information that must be contained within an estoppel certificate.
- Reducing the time for payment of an estoppel certificate fee from 120 to 60 days after delivery.
- Removing a restriction on the imposition of supplemental fees for issuing an estoppel certificate to correct an error in a previously issued estoppel certificate.
- Repealing the authority to compel compliance from an association by use of a summary procedure.
- Requiring a written request to compel the issuance of an estoppel certificate.
- Removing a provision authorizing an association to collect reasonable attorney fees and costs in connection with the collection of past due moneys.
- Amending the Cooperative Act to require that cooperative associations adhere to the same standards as a homeowners or condominium association when issuing estoppel certificates.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to residential properties; amending ss. 718.116, 719.108, and 720.30851, F.S.; providing requirements relating to the request for an estoppel certificate by a unit or parcel owner or a unit or parcel mortgagee; providing that the association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate under certain conditions; providing that the association waives any claim against a person or entity who would have relied in good faith upon the estoppel certificate under certain conditions; providing and revising estoppel certificate fee and supplemental fee requirements; deleting provisions relating to expedited court action to compel issuance of an estoppel certificate; providing an effective date.

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

Section 1. Subsection (8) of section 718.116, Florida Statutes, is amended to read:

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

(8) Within 10 ~~15~~ days after receiving a written request for an estoppel certificate ~~therefor~~ from a unit owner or his or

her designee, or a unit mortgagee or his or her designee, the association shall deliver by mail, hand, or electronic means an estoppel ~~provide a~~ certificate signed by an officer or agent of the association. The estoppel certificate must be dated as of the date it is delivered, must be valid for at least 30 days, and must state ~~stating~~ all assessments and other moneys, including costs and reasonable attorney fees incurred by the association incident to the collection process as authorized by subsection (3) and paragraph (5)(b), that are owed to the association by the unit owner with respect to the unit, as reflected in records maintained pursuant to s. 718.111(12), through a date that is at least 30 days after the date of the estoppel certificate ~~condominium parcel~~.

(a) An association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from that person's successors and assigns ~~Any person other than the owner who relies upon such certificate shall be protected thereby~~.

(b) If an association receives a written request for an estoppel certificate from a unit owner or his or her designee, or a unit mortgagee or his or her designee, and fails to deliver an estoppel certificate as required by this section, the association waives, as to any person who would have in good faith relied on the estoppel certificate and as to that person's successors and assigns, any claim, including a claim for a lien

against the unit, for any amounts owed to the association that should have been shown on the estoppel certificate ~~A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney's fees~~.

(c) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an ~~the~~ association or its ~~authorized~~ agent may charge an estoppel certificate ~~a reasonable~~ fee as provided in this paragraph for the preparation and delivery of the estoppel certificate. The amount of the estoppel certificate fee must be included on the estoppel certificate. If the estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the estoppel certificate fee and any supplemental estoppel certificate fees pursuant to this paragraph shall be due and payable no earlier than the closing of the sale or refinancing, and shall be paid from closing settlement proceeds. If the closing does not occur within 60 days after the date the estoppel certificate is delivered, the estoppel certificate fee is the obligation of the unit owner and the association may collect the estoppel certificate fee only in the same manner as an assessment against the unit owner as set forth in this section. The preparation and delivery of an estoppel certificate may not be conditioned upon the payment of any other fees. The estoppel certificate fee may not exceed $100. However, one or more of the following supplemental

estoppel certificate fees may be added:

1. If the unit owner is delinquent with respect to moneys owed to the association, and the association has referred the account to an attorney or other agent for collection, an additional estoppel certificate fee not to exceed $50 may be charged.

2. If a request to expedite delivery of the estoppel certificate is made and the estoppel certificate is delivered no later than the date requested, an additional estoppel certificate fee not to exceed $50 may be charged.

3. If an additional estoppel certificate is requested within 30 days after the most recently delivered estoppel certificate, an additional estoppel certificate fee not to exceed $50 for each such estoppel certificate may be charged.

(d) If estoppel certificates for multiple units owned by the same unit owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, though the estoppel certificate fee for each unit shall be computed as set forth in paragraph (c), the total estoppel certificate fee that the association may charge for the preparation and delivery of the estoppel certificate or estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, $750.

2. For 26 to 50 units, $1,000.

3. For 51 to 100 units, $1,500.

4. For more than 100 units, $2,500.

(e)~~(d)~~ The authority to charge a fee for the estoppel certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract ~~and is payable upon the preparation of the certificate~~. ~~If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.~~

Section 2. Subsection (6) of section 719.108, Florida Statutes, is amended to read:

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

(6) Within 10 ~~15~~ days after receiving a written request for an estoppel certificate from ~~by~~ a unit owner or his or her designee, or a unit mortgagee or his or her designee, the association shall deliver by mail, hand, or electronic means an estoppel ~~provide a~~ certificate signed by an officer or agent of the association. The estoppel certificate must be dated as of

the date it is delivered, must be valid for at least 30 days, and must state ~~stating~~ all assessments and other moneys, including costs and reasonable attorney fees incurred by the association incident to the collection process as authorized by subsection (3) and paragraph (4)(b), that are owed to the association by the unit owner with respect to the cooperative parcel, as reflected in records maintained pursuant to s. 719.104(2), through a date that is at least 30 days after the date of the estoppel certificate.

(a) An association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person who in good faith relies upon the estoppel certificate, and from that person's successors and assigns ~~Any person other than the unit owner who relies upon such certificate shall be protected thereby~~.

(b) If an association receives a written request for an estoppel certificate from a unit owner or his or her designee, or a unit mortgagee or his or her designee, and fails to deliver an estoppel certificate as required by this section, the association waives, as to any person who would have in good faith relied on the estoppel certificate and as to that person's successors and assigns, any claim, including a claim for a lien against the unit, for any amounts owed to the association that should have been shown on the estoppel certificate.

(c) Notwithstanding any limitation on transfer fees contained in s. 719.106(1)(i), an ~~the~~ association or its

~~authorized~~ agent may charge an estoppel certificate ~~a reasonable~~ fee as provided in this paragraph for the preparation and delivery of the estoppel certificate. The amount of the estoppel certificate fee must be included on the estoppel certificate. If the estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the estoppel certificate fee and any supplemental estoppel certificate fees pursuant to this paragraph shall be due and payable no earlier than the closing of the sale or refinancing, and shall be paid from closing settlement proceeds. If the closing does not occur within 60 days after the date the estoppel certificate is delivered, the estoppel certificate fee is the obligation of the unit owner and the association may collect the estoppel certificate fee only in the same manner as an assessment against the unit owner as set forth in this section. The preparation and delivery of an estoppel certificate may not be conditioned upon the payment of any other fees. The estoppel certificate fee may not exceed $100. However, one or more of the following supplemental estoppel certificate fees may be added:

1. If the unit owner is delinquent with respect to moneys owed to the association, and the association has referred the account to an attorney or other agent for collection, an additional estoppel certificate fee not to exceed $50 may be charged.

2. If a request to expedite delivery of the estoppel certificate is made and the estoppel certificate is delivered no

later than the date requested, an additional estoppel certificate fee not to exceed $50 may be charged.

3. If an additional estoppel certificate is requested within 30 days after the most recently delivered estoppel certificate, an additional estoppel certificate fee not to exceed $50 for each such estoppel certificate may be charged.

(d) If estoppel certificates for multiple units owned by the same unit owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, though the estoppel certificate fee for each unit shall be computed as set forth in paragraph (c), the total estoppel certificate fee that the association may charge for the preparation and delivery of the estoppel certificate or estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, $750.

2. For 26 to 50 units, $1,000.

3. For 51 to 100 units, $1,500.

4. For more than 100 units, $2,500.

(e) The authority to charge a fee for the estoppel certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.

Section 3. Section 720.30851, Florida Statutes, is amended to read:

720.30851 Estoppel certificates.—Within 10 ~~15~~ days after receiving ~~the date on which~~ a written request for an estoppel certificate ~~is received~~ from a parcel owner or his or her designee, or a parcel mortgagee~~,~~ or his or her designee, the association shall deliver by mail, hand, or electronic means an estoppel ~~provide a~~ certificate signed by an officer or ~~authorized~~ agent of the association. The estoppel certificate must be dated as of the date it is delivered, must be valid for at least 30 days, and must state ~~stating~~ all assessments and other moneys, including costs and reasonable attorney fees incurred by the association incident to the collection process as authorized by s. 720.3085, that are owed to the association by the parcel owner or parcel mortgagee with respect to the parcel, as reflected in records maintained pursuant to s. 720.303(4), through a date that is at least 30 days after the date of the estoppel certificate. ~~An association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate.~~

(1) An association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person who in good faith relies upon the estoppel certificate, and from that person's successors and assigns ~~Any person other than a parcel owner who relies upon a certificate receives the benefits and protection thereof~~.

(2) If an association receives a written request for an estoppel certificate from a parcel owner or his or her designee,

or a parcel mortgagee or his or her designee, and fails to deliver an estoppel certificate as required by this section, the association waives, as to any person who would have in good faith relied on the estoppel certificate and as to that person's successors and assigns, any claim, including a claim for a lien against the parcel, for any amounts owed to the association that should have been shown on the estoppel certificate ~~A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this section, and the prevailing party is entitled to recover reasonable attorney's fees~~.

(3) An association or its agent may charge an estoppel certificate fee as provided in this subsection for the preparation and delivery of the estoppel certificate. The amount of the estoppel certificate fee must be included on the estoppel certificate. If the estoppel certificate is requested in conjunction with the sale or refinancing of a parcel, the estoppel certificate fee and any supplemental estoppel certificate fees pursuant to this subsection shall be due and payable no earlier than the closing of the sale or refinancing, and shall be paid from the closing settlement proceeds. If the closing does not occur within 60 days after the date the estoppel certificate is delivered, the estoppel certificate fee is the obligation of the parcel owner and the association may collect the estoppel certificate fee only in the same manner as an assessment against the parcel owner as set forth in s. 720.3085. The preparation and delivery of an estoppel

certificate may not be conditioned upon the payment of any other fees. The estoppel certificate fee may not exceed $100. However, one or more of the following supplemental estoppel certificate fees may be added:

(a) If the parcel owner is delinquent with respect to moneys owed to the association, and the association has referred the account to an attorney or other agent for collection, an additional estoppel certificate fee not to exceed $50 may be charged.

(b) If a request to expedite delivery of the estoppel certificate is made and the estoppel certificate is delivered no later than the date requested, an additional estoppel certificate fee not to exceed $50 may be charged.

(c) If an additional estoppel certificate is requested within 30 days after the most recently delivered estoppel certificate, an additional estoppel certificate fee not to exceed $50 for each such estoppel certificate may be charged.

(4) If estoppel certificates for multiple parcels owned by the same parcel owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those parcels may be delivered in one or more estoppel certificates, and, though the estoppel certificate fee for each parcel shall be computed as set forth in subsection (3), the total estoppel certificate fee that the association may charge for the preparation and delivery of the estoppel certificate or estoppel

certificates may not exceed, in the aggregate:

(a) For 25 or fewer parcels, $750.

(b) For 26 to 50 parcels, $1,000.

(c) For 51 to 100 parcels, $1,500.

(d) For more than 100 parcels, $2,500.

(5) The authority to charge a fee for the estoppel certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract ~~and is payable upon the preparation of the certificate~~. ~~If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.~~

Section 4. This act shall take effect July 1, 2015.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 611 (2015)

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		

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Wood offered the following:

Amendment

Remove lines 77-78 and insert:

any other fees. The estoppel certificate fee shall be a reasonable amount, not to exceed $300, to be determined by the cost of providing the information. However, one or more of the following supplemental

Remove lines 173-174 and insert:

any other fees. The estoppel certificate fee shall be a reasonable amount, not to exceed $300, to be determined by the cost of providing the information. However, one or more of the following supplemental

Remove line 262 and insert:

fees. The estoppel certificate fee shall be a reasonable amount, not to exceed $300, to be determined by the cost of providing the information. However,

Amendment No. 2

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

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Wood offered the following:

Amendment (with title amendment)

Between lines 120 and 121, insert:

Section 2. Subsection (5) of section 718.303, Florida Statutes, is amended and subsection (7) of section 718.303, Florida Statutes, is created to read:

718.303 Obligations and rights of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit or member due to nonpayment of any monetary obligation over $500 due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association may not be counted towards the total number of voting interests necessary to

constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(7) A receiver shall not exercise voting rights of any unit placed in receivership for the benefit of the association pursuant to this chapter.

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

Remove line 16 and insert:

of an estoppel certificate; amending s. 718.303, F.S.; providing restrictions to suspension of condominium association voting rights; prohibiting a receiver to exercise voting rights of any unit placed in receivership; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 643 Termination of a Condominium Association
SPONSOR(S): Civil Justice Subcommittee; Sprowls and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1172

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

SUMMARY ANALYSIS

A condominium may be terminated at any time if the termination is approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests reject the termination.

The bill provides that if at least 80 percent of the voting interests are owned by a bulk owner, and the terminated condominium is **NOT** sold as a whole to an unrelated third party, the termination must include the following:

- Unit owners must be allowed to lease their units if the units will be offered for lease after termination;
- Any unit owner whose unit was granted homestead exemption must be paid a relocation payment;
- Unit owners must be paid at least 100 percent of the fair market value of their units;
- Dissenting or objecting owners must be paid 110 percent of the purchase price or 110 percent of fair market value, whichever is greater;
- The outstanding first mortgages of all unit owners must be satisfied in full;
- A notice identifying any person or entity that owns 50 percent or more of the units and the purchase and sale history of any bulk owners; and
- Approval by a board with at least one-third of the members elected by unit owners other than a bulk owner.

The bill also makes changes to condominium termination proceedings that are not specific to those owned by bulk owners, including:

- If more than 10 percent of the voting interests of a condominium reject a plan of termination, another termination may not be considered for 18 months;
- A condominium formed by a conversion cannot be terminated for seven years;
- A plan of termination may be withdrawn under certain circumstances;
- A termination trustee may reduce termination proceeds to a unit for certain unpaid fines, costs, and expenses;
- Unit owners may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of unit owners will not be fully satisfied, or that the required vote was not obtained; and
- A court may only void a plan of termination if it determines that the plan was not properly approved.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominiums in Florida are governed by ch. 718, F.S., the Condominium Act. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation has the power and duty to enforce and ensure compliance with the provisions of the Condominium Act, and to provide consumer protection for Florida residents living in condominiums.

A condominium is a form of ownership of real property created pursuant to the Condominium Act, which is comprised of units which are individually owned, but have an undivided share of access to common facilities. A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.

Termination of a Condominium

Section 718.117, F.S., governs the process for terminating a condominium in cases of economic waste or impossibility[1] and in cases where the association uses its discretion to terminate.[2] In cases of optional termination, current law provides that unless the condominium declaration provides for a lower percentage, the condominium may be terminated if the termination is approved by at least 80 percent of the total voting interests of the condominium and no more than 10 percent of the total voting interests of the condominium reject the termination.[3]

Condominium Conversions

A condominium conversion generally involves converting existing improvements, such as an apartment complex, to condominiums. Condominium conversions are regulated pursuant to Part VI of ch. 718, F.S. Current condominium termination regulations in s. 718.117, F.S., do not make specific provision for recent condominium conversions pursuant to Part VI of ch. 718, F.S.

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[1] s. 718.117(2), F.S., provides that a condominium may be terminated for "economic waste" if the total cost of construction or repairs necessary to construct the improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium. A condominium may be terminated for "impossibility" if "it becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations." *Id.* at (2)(a)2.

[2] *Id.* at (3).

[3] *Id.* Optional terminations do not apply to condominiums in which 75 percent or more of the condominium units are timeshare units. *Id.*

Effect of the Bill

The bill makes a number of changes to condominium terminations pursuant to s. 718.117, F.S.

The bill provides that if more than 10 percent of the total voting interests of the condominium reject a plan of termination, another optional plan of termination may not be considered for 18 months. The bill specifies that the total voting interests of the condominium include all voting interests for the purpose of considering a plan of termination, and a voting interest of the condominium may not be suspended during the consideration of a plan of termination.

Terminations Following a Condominium Conversion

The bill prohibits a condominium that has been created pursuant to conversion procedures in Part VI of ch. 718, F.S., from undertaking an optional plan of termination until seven years after the conversion.

Terminations Involving Bulk Owners

The bill provides that for condominiums in which at least 80 percent of the total voting interests are owned by a bulk owner,[4] any unit owner desiring to reject a plan of termination must vote to reject the plan or deliver a written rejection to the association if the plan is voted on at a unit owners' meeting. If the plan of termination is approved without a meeting, any unit owner desiring to object to the plan must deliver a written objection to the association.

The following provisions **ONLY** apply to a condominium that is **NOT** sold as a whole to an unrelated third party:

Right to Lease Former Unit
If the units are offered for lease after termination, a unit owner may lease his or her former unit and remain in possession of the unit for 12 months after the termination. The unit owner must make a written request to the termination trustee to rent the former unit. Any unit owner who fails to make a written request and sign a lease within the required timeframe waives his or her right to retain possession of the unit, unless otherwise provided in the plan of termination.

Relocation Payments for Homestead Property
Any former unit owner whose unit was granted homestead exemption must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. The relocation payment must be paid by the entity owning at least 80 percent of the voting interests. The relocation payment is in addition to any termination proceeds and must be paid within 10 days after the former unit owner vacates the unit.

Unit Owner Compensation and Satisfaction of First Mortgages
All unit owners must be compensated at least 100 percent of the fair market value of their units. The allocation of the proceeds of the sale of condominium property to dissenting or objecting owners must be 110 percent of the original purchase price or 110 percent of fair market value, whichever is greater. A plan of termination is not effective unless the outstanding first mortgages of all third-party unit owners are satisfied in full before, or simultaneously with, the termination.

[4] A "bulk owner" is defined in the bill as "the single holder of such voting interests or an owner together with a related entity that would be considered an insider . . . holding such voting interests."

Written Disclosure
Before presenting a plan of termination to the unit owners, the plan must include the following written disclosures:

- The identity of any person that owns or controls 50 percent or more of the units in the condominium and, if the units are owned by an artificial entity, a disclosure of the people who manage or control the entity and the people who own or control 20 percent or more of the entity or entities that constitute the bulk owner.
- The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner.
- The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this provision.

Board Composition
If the members of the board are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination by the board.

Exemption from Amendment Requirements

Currently, a plan of termination pursuant to s. 718.117, F.S., is not considered an amendment to the condominium declaration and thus is not subject to the procedural and voting requirements of s. 718.110(4), F.S. The bill provides that an amendment to a declaration to conform the declaration to s. 718.117, F.S., is likewise not an amendment subject to s. 718.110(4), F.S., and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

Right to Possess Units After Termination

Section 718.117(11), F.S., currently provides that a plan of termination may provide that a unit owner retain the exclusive right of possession to the former unit. The bill amends s. 718.117(11), F.S., to provide that unless otherwise provided in the plan of termination all agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination. If the plan expressly authorizes a unit owner to retain exclusive right of possession for the former unit or to use the common elements after termination, the plan must specify the terms and conditions of possession.

Withdrawal of a Plan of Termination and Correction of Errors

The bill amends s. 718.117(11), F.S., to provide that unless the plan of termination provides otherwise, at any time before the sale of the condominium property, a plan of termination may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.

The bill also provides upon the discovery of a scrivener's error in a plan of termination, the termination trustee may record an amended plan or an amendment to the plan to correct the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.

Allocation of Proceeds from the Sale of Condominium Property

Section 718.117(12), F.S., directs the apportionment of proceeds from the sale of condominium property. The bill provides that unless the declaration expressly provides for the allocation of the proceeds, the plan of termination may require separate valuations for the common elements. In the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units. Additionally, a plan of termination

may govern how liens that encumber units are handled following termination. The holder of a lien that encumbers a unit at the time of recording a plan must deliver a statement to the termination trustee confirming the outstanding amount of any obligations of the unit owner secured by the lien.

The bill also provides that the termination trustee may reduce the termination proceeds allocated to a unit by the following amounts:

- All unpaid assessments, taxes, fees, interest, fines, and other amounts due to the association associated with the unit and its owner;
- All costs of clearing title to the owner's unit;
- All costs of removing the owner or the owner's family members, guests, tenants, or other people from the unit and for removal and storage of personal property;
- All costs from any breach of the plan by the owner or the owner's family members, guests, tenants, or other people;
- All costs arising out of the appointment and activities of a receiver or attorney ad litem acting for the owner in the event that the owner is unable to be located.

Right to Contest a Plan of Termination

Currently, a unit owner or lienor may contest a plan of termination by initiating a summary procedure[5] within 90 days after the date the plan is recorded. The person contesting the plan has the burden of proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, it may void or modify the plan to apportion the proceeds in a fair and reasonable manner.[6]

The bill amends the right to contest provisions in s. 718.117(16), F.S., to provide that a unit owner or lienor's right to contest a plan of termination is limited to contesting only the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of all unit owners have not or will not be fully satisfied at the time of termination, or that the required vote to approve the plan was not obtained. The court may only void a plan of termination if it determines that the plan was not properly approved. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the property.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 718.117, F.S., related to the termination of condominiums.

Section 2 provides an effective date of July 1, 2015.

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.

[5] s. 51.011, F.S.
[6] s. 718.117(16), F.S.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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 March 11, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Reduces from 36 months to 18 months the timeframe that an association may consider another plan of termination if more than 10 percent of the voting interests reject the initial termination;
- Creates and defines the term "bulk owner" and removes reference to bulk buyers and assignees;
- Provides that only termination plans involving bulk owners require dissenting unit owners to either vote or provide a written rejection or dissent;
- Requires certain disclosures regarding a bulk owner prior to submitting a plan of termination;
- Requires a minimum percentage of board members not elected by a bulk buyer to be on the board before a plan of termination may be adopted;
- Provides that a plan of termination may provide that a unit owner retain the exclusive right of possession in certain circumstances;
- Allows for the withdrawal of a plan of termination and correction of any changes;
- Allows a termination trustee to reduce the termination proceeds allocated to a unit for certain unpaid fines, costs, and expenses; and
- Makes technical and drafting corrections.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to termination of a condominium association; amending s. 718.117, F.S.; providing and revising procedures and requirements for termination of a condominium property; providing requirements for the rejection of a plan of termination; providing definitions; providing applicability; providing and revising requirements relating to partial termination of a condominium property; authorizing a plan of termination to be withdrawn, modified, or amended under certain conditions; revising and providing requirements relating to the allocation of proceeds of the sale of condominium property; revising requirements relating to the right to contest a plan of termination; providing an effective date.

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

Section 1. Subsections (3), (4), (11), (12), and (16) of section 718.117, Florida Statutes, are amended to read:

718.117 Termination of condominium.—

(3) OPTIONAL TERMINATION.—Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting

interests of the condominium if no more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, subject to the following conditions:

(a) The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

(b) If more than 10 percent of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 18 months after the date of the rejection.

(c) This subsection does not apply to condominiums in which 75 percent or more of the units are timeshare units. This subsection also does not apply to any condominium created pursuant to part VI of this chapter until 7 years after the recording of the declaration of condominium for the condominium.

(d) For purposes of this paragraph, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk

owner:

1. If the plan of termination is voted on at a meeting of the unit owners called in accordance with subsection (9), any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

2. If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that the association notifies the nonconsenting owners, in the manner provided in paragraph (15)(a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

3. Unless the terminated condominium property is sold as a whole to an unrelated third party, the plan of termination is subject to the following conditions and limitations:

a. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written

request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

b. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

c. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the

termination trustee. Notwithstanding subsection (12), the allocation of the proceeds of the sale of condominium property to owners of units dissenting or objecting to the plan of termination shall be 110 percent of the original purchase price, or 110 percent of fair market value, whichever is greater. For purposes of this sub-subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

d. A plan of termination is not effective unless the outstanding first mortgages of all unit owners other than the bulk owner are satisfied in full before, or simultaneously with, the termination.

4. Before presenting a plan of termination to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person that owns or controls 50 percent or more of the units in the condominium and, if the units are owned by an artificial entity, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity and the natural person or persons who,

directly or indirectly, own or control 20 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

5. If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination by the board.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination. An amendment to a declaration to conform the declaration to this section is not an amendment subject to s. 718.110(4) and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION; WITHDRAWAL; ERRORS.—

(a) Unless the plan of termination expressly authorizes a ~~may provide that each~~ unit owner or other person to retain ~~retains~~ the exclusive right to possess that ~~of possession to the~~ portion of the real estate which formerly constituted the unit after termination or to use the common elements of the condominium after termination, all such rights in the unit or common elements automatically terminate on the effective date of termination. Unless the plan expressly provides otherwise, all leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination. If the plan expressly authorizes a unit owner or other person to retain exclusive right of possession for that portion of the real estate that formerly constituted the unit or to use the common elements of the condominium after termination, the plan must specify the terms and ~~if the plan specifies the~~ conditions of possession. ~~In a partial termination, the plan of termination as specified in subsection (10) must also identify the units that survive the partial termination and provide that such units remain in the condominium form of ownership pursuant to an amendment to the declaration of condominium or an amended and restated declaration.~~ In a partial termination, title to the surviving units and common elements that remain part of the condominium property specified in the plan of termination remain vested in the ownership shown in the public records and do not vest in the

termination trustee.

(b) In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded. ~~In a partial termination, the plan does not vest title to the surviving units or common elements that remain part of the condominium property in the termination trustee.~~

(c) Unless otherwise provided in the plan of termination, at any time before the sale of the condominium property, a plan may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.

(d) Upon the discovery of a scrivener's error in the plan of termination, the termination trustee may record an amended plan or an amendment to the plan for the purpose of correcting the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.

(12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—

(a) Unless the declaration expressly provides for the

allocation of the proceeds of sale of condominium property, the plan of termination may require separate valuations for the ~~must first apportion the proceeds between the aggregate value of all units and the value of~~ the common elements. However, in the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units ~~based on their respective fair market values immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee~~. In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements being terminated.

(b) The portion of proceeds allocated to the units shall be ~~further~~ apportioned among the individual units. The apportionment is deemed fair and reasonable if it is ~~so~~ determined ~~by the unit owners, who may approve the plan of termination~~ by any of the following methods:

1. The respective values of the units based on the fair market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee;

2. The respective values of the units based on the most recent market value of the units before the termination, as

provided in the county property appraiser's records; or

3. The respective interests of the units in the common elements specified in the declaration immediately before the termination.

(c) The methods of apportionment in paragraph (b) do not prohibit any other method of apportioning the proceeds of sale allocated to the units or any other method of valuing the units agreed upon in the plan of termination. Any ~~The~~ portion of the proceeds separately allocated to the common elements shall be apportioned among the units based upon their respective interests in the common elements as provided in the declaration.

(d) Liens that encumber a unit shall, unless otherwise provided in the plan of termination, be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. In a partial termination, liens that encumber a unit being terminated must be transferred to the proceeds of sale of that portion of the condominium property being terminated which are attributable to such unit. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property. The holder of a lien that encumbers a unit at the time of recording a plan must, within 30 days after the written request from the termination trustee, deliver a statement to the termination trustee confirming the outstanding

amount of any obligations of the unit owner secured by the lien.

(e) The termination trustee may setoff against, and reduce the share of, the termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

1. All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the association associated with the unit, its owner, or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

2. All costs of clearing title to the owner's unit, including, but not limited to, locating lienors, obtaining statements from such lienors confirming the outstanding amount of any obligations of the unit owner, and paying all mortgages and other liens, judgments, and encumbrances and filing suit to quiet title or remove title defects.

3. All costs of removing the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons from the unit in the event such persons fail to vacate a unit as required by the plan.

4. All costs arising from, or related to, any breach of the plan by the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

5. All costs arising out of, or related to, the removal and storage of all personal property remaining in a unit, other than personal property owned by the association, so that the

unit may be delivered vacant and clear of the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons as required by the plan.

6. All costs arising out of, or related to, the appointment and activities of a receiver or attorney ad litem acting for the owner in the event that the owner is unable to be located.

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to s. 51.011 within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the first mortgages of all unit owners have not or will not be fully satisfied at the time of termination as required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in

subsection (12). The court shall determine the rights and interests of the parties in the apportionment of the sale proceeds ~~and order the plan of termination to be implemented if it is fair and reasonable~~. If the court determines that the apportionment of sales proceeds ~~plan of termination~~ is not fair and reasonable, the court may ~~void the plan or may~~ modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the court determines that the plan was not properly approved, it may void the plan or grant other relief it deems just and proper. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney ~~attorney's~~ fees and costs.

Section 2. This act shall take effect July 1, 2015.

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Sprowls offered the following:

Amendment

Remove lines 47-144 and insert:

together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan

of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. Notwithstanding subsection (12), the allocation of the proceeds of the sale of condominium property to owners of units dissenting or objecting to the plan of termination shall be 110 percent of the original purchase price, or 110 percent of fair market value, whichever is greater. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. A plan of termination is not effective unless the plan provides for outstanding first mortgages of all unit owners other than the bulk owner are satisfied in full before, or simultaneously with, the termination.

5. Before presenting a plan of termination to the unit owners for consideration pursuant to this paragraph, the plan

must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 50 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 20 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

(e) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination by the board.

Amendment No. 2

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

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Sprowls offered the following:

Amendment (with directory amendment)

Between lines 154 and 155, insert:

(9) PLAN OF TERMINATION.—The plan of termination must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the proposed plan of termination shall be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan

or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners and, if required, consents or joinders of mortgagees must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan. If the plan of termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection.

(a) If the plan of termination is voted on at a meeting of the unit owners called in accordance with this subsection, any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

(b) If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that the association notifies the nonconsenting owners, in the manner provided in (15) (a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

D I R E C T O R Y A M E N D M E N T

Remove lines 19-20 and insert:

Section 1. Subsections (3), (4), (9), (11), (12), and (16) of section 718.117, Florida Statutes, are amended to read:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 643 (2015)

Amendment No. 3

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Sprowls offered the following:

Amendment

Remove lines 190-193 and insert:

voting interests, have been recorded. In a partial termination, the plan does not vest title to the surviving units or common elements that remain part of the condominium property in the termination trustee.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 643 (2015)

Amendment No. 4

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Sprowls offered the following:

Amendment

Remove lines 295-329 and insert:

a plan of termination by initiating a ~~summary procedure~~ petition for mandatory nonbinding arbitration pursuant to ~~s. 51.011~~ s. 718.1255 within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the first mortgages of all unit owners other than the bulk owner have not or will not be fully satisfied at the time of termination as required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting

a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). The ~~court~~ arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds ~~and order the plan of termination to be implemented if it is fair and reasonable~~. If the ~~court~~ arbitrator determines that the apportionment of sales proceeds ~~plan of termination~~ is not fair and reasonable, the ~~court~~ arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, it may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(d)4. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained,

does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney ~~attorney's~~ fees and costs.

Amendment No.5

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Sprowls offered the following:

Amendment (with title amendment)

Between lines 329 and 330, insert:

Section 2. Subsection (1) of section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

(c) A plan of termination pursuant to s. 718.117.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

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

Remove line 15 and insert:

of termination; amending s. 718.1255, F.S.; revising alternate dispute resolution definitions; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 793 Consumer Protection
SPONSOR(S): Stark and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 726

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Gonzalez	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The mission of the Florida Department of Agriculture and Consumer Services (FDACS) is to safeguard the public and support agriculture. The Division of Consumer Services within FDACS serves as a clearinghouse for matters relating to consumer protection and services. It receives complaints from consumers and seeks a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution in accordance with its jurisdiction.

The regulation of refunds from retail sales establishments is preempted to FDACS. Currently, no retail sales establishment offering goods for sale to the general public is required to provide cash or credit refunds or exchanges for any reason. Establishments that do not accept returns or exchanges must post a "no refund" sign, at the point of sale. Retail sales establishments that violate the current law related to refund policies must grant the consumer, upon request and proof of purchase, a refund on the merchandise, within seven days of the date of purchase, if the merchandise is unused and in the original carton.

The bill requires retail sales establishments to grant a refund within three days after the date of purchase for goods costing more than $1,000 if returned by a consumer who has been adjudicated incapacitated or who has documentation from a physician of a medical condition that causes the consumer to lack sufficient understanding or capacity to make reasonable decisions concerning his or her person or property.

If a person refuses to make a refund to a consumer who meets these conditions, the bill requires FDACS to enter an order for restitution to be paid to the consumer and imposes an administrative fine in the amount of twice the value of the goods, excluding tax. The bill makes technical changes and conforms a cross-reference.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The mission of the Florida Department of Agriculture and Consumer Services (FDACS) is to safeguard the public and support agriculture. The Division of Consumer Services (division) within FDACS serves as a clearinghouse for matters relating to consumer protection, information, and services. It receives complaints from consumers and transmits them to the agency most directly concerned in order that the complaint may be expeditiously handled in the best interests of the complaining consumer. If no agency exists, the division seeks a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution in accordance with its jurisdiction.[1]

The regulation of refunds from retail sales establishments is preempted to FDACS notwithstanding any other law or local ordinance to the contrary.[2] Currently, no retail sales establishment offering goods for sale to the general public is required to provide cash or credit refunds or exchanges in their refund or exchange policies for any reason. Establishments that do not accept returns or exchanges must post a "no refund" sign, at the point of sale. Failure to post such a sign means that a refund or exchange policy exists and the policy must be presented to the consumer upon request.[3]

Retail sales establishments that violate these requirements must grant the consumer, upon request and proof of purchase, a refund on the merchandise, within seven days of the date of purchase, if the merchandise is unused and in the original carton.[4] This section does not apply to certain goods such as food, perishable goods, goods that are custom made, or goods that cannot be resold by the merchant because any law, rule, or regulation.

According to FDACS, it has only issued one administrative fine for an establishment found to be noncompliant with the provisions of this statute. Historically, retail establishments are mostly compliant or come into compliance in response to communications from FDACS, therefore, issuance of fines has been unnecessary. FDACS has also indicated that in the past year, they have only had approximately 11 complaints relating purchases made by incapacitated persons. FDACS current system for consumer complaint resolution has generally been effective in resolving complaints.

Effect of the Bill

The bill requires retail sales establishments to grant a refund within three days after the date of purchase for goods returned if:

- The purchase exceeds $1,000, excluding tax.
- The goods are unused and in their original carton.
- The consumer or a representative provides the retailer with proof of purchase.
- The consumer has documentation establishing that the consumer has been adjudicated incapacitated or has a signed written statement from a licensed physician which indicates that the consumer has been diagnosed with a medical condition that causes the consumer to lack sufficient understanding or capacity to make reasonable decisions concerning his or her person or property.

The bill will primarily affect consumers, or their representatives, that have documentation that the consumer has been adjudicated incapacitated, since returning the goods within the specified time is

[1] s. 570.544(4), F.S.
[2] s. 501.142(1), F.S.
[3] Id.
[4] Id.

more feasible if the consumer possesses the necessary documentation at the time of purchase. For consumers without documentation of adjudication or a physician's written statement indicating the consumer has been diagnosed with a medical condition, returning the goods may be impractical within three days after the date of purchase as the legal process, or the process of obtaining an appointment and the requisite signed written statement may require more than three days.

The bill requires retail sales establishment employees to evaluate legal documents and written statements of doctors licensed in and out of the state. The employee must determine, at the time of the refund, whether the doctor who signed the written statement is licensed. The bill does not provide that identification must be presented at the time of the refund to validate that the legal document or written statement belongs to the consumer making the return. It is unclear how the retail sales establishment will determine whether the consumer making the return is the same consumer that made the purchase if the purchase was paid for with cash.

The bill also requires FDACS to enter an order for restitution to be paid to the consumer and imposes an administrative fine in the amount of twice the value of the goods, excluding tax, which the person refused to refund. The bill makes technical changes and conforms a cross-reference.

B. SECTION DIRECTORY:

Section 1: Amends s. 501.142, F.S., relating to refund policy requirements or retail sales establishments.

Section 2: Amends s. 501.95, F.S., relating to mechanical changes and conforming cross-references.

Section 3: Providing an effective date of July 1, 2015.

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:

Uncertain. Minimal positive impact for consumers. Private businesses will be subject to fines as penalties for violations of this bill.

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:

The bill provides three days to return merchandise with legal documents or a doctor's statement. For consumers that do not have the requisite documents necessary to return the merchandise, three days may be an impractical amount of time to obtain these documents from either a court or physician. Additionally, if the consumer has not been diagnosed with a medical condition prior to the sale, diagnosis by a doctor may take longer than the allotted three days.

There are also concerns with requiring a signed written statement from a licensed physician. Physicians may be reluctant to sign such statements, because their statements and diagnoses could be disputed in court and cause them to testify on such matters. Additionally, it is unclear whether allowing a refund based on this type of statement would effectuate the intent of the bill as some disorders or conditions may intermittently affect a person's capacity and it may be plausible that, although the person has such a condition as indicated in the physician's statement, the person had full mental capacity at the specific time the person made the purchase.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to consumer protection; amending s. 501.142, F.S.; requiring retail sales establishments that sell goods to the public to grant a refund within a specified period of time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated or has documentation from a physician of a certain medical condition, or by a representative of the consumer, if specified requirements are satisfied; requiring restitution and providing penalties for a violation of the requirements; making technical changes; amending s. 501.95, F.S.; conforming a cross-reference; providing an effective date.

WHEREAS, the Legislature finds that persons who are incapacitated or unable to make reasonable decisions due to a medical condition need additional protections in consumer transactions involving costly purchases, and

WHEREAS, it is in the public interest to protect the welfare of this state's most vulnerable residents and their family members, and

WHEREAS, it is the intent of the Legislature to safeguard such residents' financial interests by providing them with the ability to return certain goods within a reasonable period of time, NOW, THEREFORE,

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

Section 1. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.—

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary.

(2) Notwithstanding the Uniform Commercial Code, each ~~every~~ retail sales establishment offering goods for sale to the general public must grant a cash refund or credit refund to a consumer for goods returned within 3 days after the date of purchase if:

(a) The purchase exceeds $1,000, excluding tax.

(b) The goods are unused and in the original carton, if a carton was furnished.

(c) The consumer, or a representative of the consumer, provides the retailer with proof of purchase and:

1. Documentation establishing that the consumer has been adjudicated incapacitated pursuant to chapter 744 or under similar law in another state; or

2. A written statement signed by a physician licensed pursuant to chapter 458 or chapter 459 or licensed to practice medicine under the laws of another state which indicates that

the consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property.

(3)(a) Except as provided in subsection (2), a retail sales establishment offering goods for sale to the general public may refuse to offer a ~~that offers no~~ cash refund, credit refund, or exchange for the purchase if the retailer posts ~~of merchandise must post~~ a sign at the point of sale ~~so~~ stating that refunds or exchanges are not allowed ~~at the point of sale~~. Failure of a retail sales establishment to exhibit a "no refund or exchange" sign at the point of sale under such circumstances ~~at the point of sale~~ shall mean that a refund or exchange policy exists, and the policy must ~~shall~~ be presented in writing to the consumer upon request.

(b) A ~~Any~~ retail sales establishment that violates this subsection must ~~failing to comply with the provisions of this section shall~~ grant to the consumer, upon request and proof of purchase, a refund for the purchase ~~on the merchandise~~, within 7 days after ~~of~~ the date of purchase, if ~~provided~~ the goods are ~~merchandise is~~ unused and in the original carton, if one was furnished. This section does not ~~Nothing herein shall~~ prohibit a retail sales establishment from having a refund policy that ~~which~~ exceeds 7 ~~the number of~~ days and ~~specified herein. However, this subsection~~ does not prohibit a local government from enforcing ~~the provisions established by~~ this section.

(4) ~~(2)~~ ~~The provisions of~~ This section does ~~shall~~ not apply to the sale of food, perishable goods, goods that ~~which~~ are custom made, goods that ~~which~~ are custom altered at the request of the customer, or goods that ~~which~~ cannot be resold by the merchant because of any law, rule, or regulation adopted by a governmental body.

(5) ~~(3)~~ If the department finds that a person has violated or is operating in violation of:

(a) Subsection (2), the department shall enter an order that requires restitution to be paid to the consumer and that imposes an administrative fine in the amount of twice the value of the goods, excluding tax, which the person refused to refund.

(b) Subsection (3) or an order issued under this section, the department may enter an order that imposes ~~doing~~ one or more of the following ~~if the department finds that a person has violated or is operating in violation of any of the provisions of this section or the orders issued under this section~~:

1. ~~(a)~~ ~~Impose~~ An administrative fine not to exceed $100 for each violation.

2. ~~(b)~~ A directive to ~~Direct~~ the person to cease and desist specified activities.

(6) ~~(4)~~ An ~~The~~ administrative proceeding ~~proceedings~~ that may ~~could~~ result in the entry of an order imposing any of the penalties specified in subsection (5) is ~~(3) are~~ governed by chapter 120.

(7) ~~(5)~~ ~~Any~~ Moneys recovered by the department ~~of~~

~~Agriculture and Consumer Services~~ as a penalty under this section shall be deposited in the General Inspection Trust Fund.

(8)~~(6)~~ Upon the first violation of this section, a local government may issue a written warning. Upon a second or ~~and any~~ subsequent violation, a local government may impose a fine of up to $50 per violation. ~~Any~~ Moneys recovered by the local government as a penalty under this section shall be deposited in the appropriate local account.

Section 2. Paragraph (c) of subsection (2) of section 501.95, Florida Statutes, is amended to read:

501.95 Gift certificates and credit memos.—

(2)

(c) Enforcement of this section shall be as provided in s. 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for violations of this section.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 959 City of Jacksonville, Duval County
SPONSOR(S): Fant
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N	Darden	Miller
2) Business & Professions Subcommittee		Butler BSB	Luczynski MJ
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Florida's Beverage Law places a limit on "quota licenses," a license that allows a vendor to sell malt beverages, wine, and distilled spirts for both on and off premises consumption, of one license for every 7,500 residents of a county. The Department of Business and Professional Regulation is authorized to issue a Special Restaurant Beverage (SRX) license in excess of the quota limitation.

An SRX license allows a restaurant to sell alcoholic beverages if the restaurant has at least 2,500 square feet of service area, is equipped to serve 150 full service customers, and derives at least 51 percent of the its gross revenue from the sale of food and nonalcoholic beverages.

Restaurants in a designated area of Jacksonville may be issued an SRX license if they are larger than 1,800 square feet and can serve at least 100 full-service customers, as long a majority of the restaurant's sales come from food and non-alcoholic beverages.

This bill expands the designated area within Jacksonville where the reduced square foot and occupancy requirements for an SRX license apply.

The Economic Impact statement filed for the bill states the bill will bolster local businesses by increasing sales, therefore also generating additional employment opportunities and tax revenue.

This bill takes effect upon becoming law.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Alcoholic Beverage Licensing

Current law places a cap on one quota license for every 7,500 residents of a county.[1] The Department of Business and Professional Regulation (DBPR), however, may issue Special Restaurant Beverage (SRX) licenses in excess of the quota limitation set forth in s. 561.20(1), F.S.[2] SRX licenses may only be issued to restaurants with 2,500 or more square feet of floor space and accommodations for the service and seating of at least 150 full-service customers.[3] Most restaurants must receive at least fifty-one percent of their total gross revenue from the sale of food and non-alcoholic beverages to qualify for a SRX license, but some older restaurants may qualify at a lower total gross revenue threshold.[4] A restaurant must offer full course meal service at any time alcohol beverages are being served to qualify for a license.[5] A full course meal must contain a salad or vegetable, entrée, beverage, and bread.[6]

Jacksonville Special Zone

In 1987, the Legislature created more lenient requirements for the issuance of SRX licenses in a special zone in Jacksonville.[7] At the time, the zone included three areas: Northside West, Northside East, and Southbank.[8] The zone was expanded in 2011 to include the Urban Transition area.[9]

A restaurant in the zone must still derive at least fifty-one percent of its total gross revenue from the sale of food and non-alcoholic beverages to qualify for a SRX license, but is only required to have 1,800 or more square feet of floor space and accommodations for the service and seating of at least 100 full-service customers.[10] The issuance of the license is also subject to any zoning requirement establishing a minimum distance between liquor-serving establishments and schools or churches, as well as any state alcoholic beverage law not otherwise inconsistent with the special act.[11]

Effect of Proposed Changes

The bill expands the special zone created by Chapter 87-471, Laws of Florida, to include the areas known as East Avondale Transition and West Avondale Transition. The Economic Impact Statement projects the bill would increase revenue for local restaurants, providing for increased employment opportunities.[12] Increased economic activity could also result in additional sales tax revenue for local governments.[13]

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[1] s. 561.20(1), F.S.
[2] s. 561.20(2)(a)4., F.S.
[3] *Id.*
[4] Rule 61A-3.0141, F.A.C. This provision applies to all licenses issued after April 18, 1972. For licenses issued between September 1, 1969 and April 18, 1972, at least thirty percent of the restaurant's total gross revenue must be derived from the sale of food and non-alcoholic beverages; for licenses issued prior to September 1, 1969, there is no minimum gross revenue threshold, but the restaurant must be "bona fide" and meet the other requirements of the rule.
[5] *Id.*
[6] *Id.*
[7] Ch. 87-471, Laws of Fla.
[8] *Id.*
[9] Ch. 2011-255, Laws of Fla.
[10] Ch. 87-471, Laws of Fla.
[11] *Id.*
[12] Economic Impact Statement for HB 959 (2015).
[13] *Id.*

Biscotti's Espresso Café Inc. and the Casbah Café do not meet the general law requirements for an SRX license, but are located within the expanded special zone of the bill and meet the reduced square foot and occupancy requirements.[14] If each restaurant chooses to get an alcoholic beverage license, the license will cost $1,820 each year.[15] The City of Jacksonville could receive $1,272.54 in additional annual revenue from the two restaurants, representing 38% of the annual license fee. The remaining revenue of $2367 will be deposited in Alcoholic Beverage and Tobacco Trust Fund,[16] less a general revenue service fee of $291.[17]

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

B. SECTION DIRECTORY:

Section 1: Amends Chapter 87-471, Laws of Florida, to add additional areas to a special zone in downtown Jacksonville in which DPBR can grant an SRX license to restaurant notwithstanding the provisions of s. 561.20(1), F.S.

Section 2: Provides that the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? November 18, 2014

WHERE? *Financial News & Daily Record*, a daily (except Saturday and Sunday) newspaper published in Duval County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

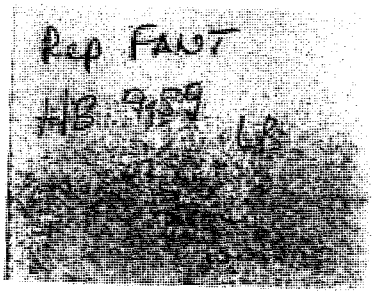
The bill does not provide rulemaking authority or require executive branch rulemaking.

[14] Department of Business and Professional Regulation, Agency Analysis for 2015 House Bill 959, pg. 4 (Mar. 16, 2015).
[15] *Id.*
[16] s. 561.025, F.S.
[17] Department of Business and Professional Regulation, Agency Analysis for 2015 House Bill 959, pg. 4 (Mar. 16, 2015).

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is currently a scriveners error on page 8, line 195 of the bill. Section 2 should read Section 3.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES



FINANCIAL NEWS &

Daily Record

PROOF OF PUBLICATION

(Published Daily Except Saturday and Sunday)
Jacksonville, Duval County, Florida

STATE OF FLORIDA,
COUNTY OF DUVAL, } SS:

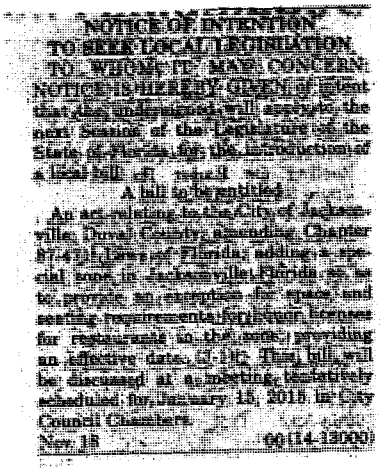
Before the undersigned authority personally appeared James F. Bailey, Jr., who on oath says that he is the Publisher of FINANCIAL NEWS and DAILY RECORD, a daily (except Saturday and Sunday) newspaper published at Jacksonville, in Duval County, Florida; that the attached copy of advertisement, being a

Notice of Intention to Seek Local Legislation

in the matter of A bill to be entitled (J1)

in the _____ Court, of Duval County, Florida, was published

in said newspaper in the issues of November 18, 2014


NOTICE OF INTENTION
TO SEEK LOCAL LEGISLATION
TO WHOM IT MAY CONCERN:
NOTICE IS HEREBY GIVEN of intent that the undersigned will apply to the next Session of the Legislature of the State of Florida for the introduction of a local bill, of which
A bill to be entitled
An act relating to the City of Jacksonville, Duval County, amending Chapter 67-432, Laws of Florida, adding a special zone in Jacksonville, Florida, so as to provide an exception for space and setting requirements for wine licenses for restaurants in the zone; providing an effective date. (J-1) This bill will be discussed at a meeting tentatively scheduled for January 13, 2015 in City Council Chambers.
Nov. 18 00114-13000

Affiant further says that the said FINANCIAL NEWS and DAILY RECORD is a newspaper at Jacksonville, in said Duval County, Florida, and that the said newspaper has heretofore been continuously published in said Duval County, Florida, each day (except Saturday and Sunday) and has been entered as periodicals matter at the post office in Jacksonville, in said Duval County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Publisher

Sworn to and subscribed before me this day of November 18, 2014

ANGELA CAMPBELL
Notary Public, State of Florida
My Comm. Expires April 10, 2017
Commission No. EE 871981

Angela Campbell
Notary Signature

Angela Campbell
Notary Public
EE871981

seal

James F. Bailey, Jr. personally known to me

HOUSE OF REPRESENTATIVES
2015 LOCAL BILL CERTIFICATION FORM

BILL #: J-1

SPONSOR(S): Representative Jay Fant

RELATING TO: amending Chapter 87-471; adding a special zone in Jacksonville, FL so as to provide an exception for space & seating requirements f liquor licenses for restaurants in the zone

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Duval County Legislative Delegation

CONTACT PERSON: Paula Shoup

PHONE NO.: (904) 630-1680 **E-Mail:** paulas@coj.net

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [x] NO [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [x] NO [ ]

Date hearing held: _____

Location: _____

(3) Was this bill formally approved by a majority of the delegation members?

YES [x] NO [ ]

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [x] NO [ ] DATE November 18, 2014

Where? Daily Record **County** Duval

Referendum in lieu of publication: YES [ ] NO [x]

Date of Referendum _____

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [ ] NO [x] NOT APPLICABLE [ ]

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [ ] NO [x] NOT APPLICABLE [ ]

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [ ] NO [ ]

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local Government Affairs Subcommittee.

Delegation Chair (Original Signature) — Date: 1/15/15

Janet H. Adkins
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2015 ECONOMIC IMPACT STATEMENT FORM

Read all instructions carefully.
House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts, and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local & Federal Affairs Committee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: J-1

SPONSOR(S): Representative Jay Fant

RELATING TO: amending Chapter 87-471, Laws of Florida; so as to provide additional areas in Jacksonville, FL that will have reduced criteria (space and seating requirements) for obtaining a special restaurant license for areas located in Jacksonville, Duval County Florida, City Council District 14, House District 15. The proposed reduction in space and seating requirements is identical to reductions previously approved by the legislature.

[Indicate Area Affected (City, County or Special District) and Subject]

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	FY 14-15	FY 15-16
Revenue decrease due to bill:	$ 0	$ 0
Revenue increase due to bill:	$ 0	$ 0

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

FY14-15	FY 15-16
$ 0	$ 0

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

III. FUNDING SOURCE(S):

State the specific source from which funding will be received, for example, license plate fees, state funds, borrowed funds or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

	FY 14-15	FY 15-16
Local:	$ 0	$ 0
State:	$ 0	$ 0
Federal:	$ 0	$ 0

III. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: The passage of this bill will allow for increased services in the area affected by the bill. It will further provide for increased employment opportunities.
2. Advantages to Businesses: The Bill will allow for businesses to compete on an equal footing with surrounding business and provide for additional employment opportunities.
3. Advantages to Government: The Bill will result in an increase in consumer

increased tax revenues and employment.

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

1. Disadvantages to Individuals: None, this bill is similar to previous reductions in space and seating requirements for a special restaurant license and business located in these previously approved areas have thrived and provided additional consumer spending options for consumers.

2. Disadvantages to Businesses: None, this bill is similar to previous reductions in space and seating requirements for a special restaurant license and business located in these previously approved areas have thrived.

3. Disadvantages to Government: None, the passage of this bill will allow for greater economic activity and an increase in tax revenues for the Government.

IV. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Include all changes for market participants, such as suppliers, employers, retailers and laborers. If the answer is "None," explain the reasons why. Also, state whether the bill may require a governmental entity to reduce the services it provides.

1. Impact on Competition:

The Bill will allow for local businesses within the area affected by the Bill to compete with surrounding businesses, increase revenues to the applicant and surrounding area and provide for increase in sales tax, employment and sales.

2. Impact on the Open Market for Employment:

The Bill will allow for additional services to be provided to customers resulting in an increase in revenues and employment opportunities.

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

The data used was generated from business in the area that will be affected by the Bill. Further assumptions were made from the success of areas previously granted the same status as proposed in HB 1293.

PREPARED BY: _____
[Must be signed by Preparer]

Print preparer's name: Matthew T. Jackson

05/15/2014
Date

TITLE (such as Executive Director, Actuary, Chief Accountant, or Budget Director):

Legal Counsel

REPRESENTING: Applicants

PHONE: 904-366-1500

E-MAIL ADDRESS: mtjackson@bmdpl.com

A bill to be entitled

An act relating to the City of Jacksonville, Duval County; amending chapter 87-471, Laws of Florida, as amended; adding areas to a special zone in downtown Jacksonville; providing an exception for space and seating requirements for liquor licenses for restaurants in areas added by the act to the zone; providing an effective date.

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

Section 1. Chapter 87-471, Laws of Florida, as amended by chapter 2011-255, Laws of Florida, is amended to read:

Section 1. There is created a special zone in downtown Jacksonville covering the following described areas, known as Northside West, Northside East, ~~and~~ Southbank, Urban Transition, East Avondale Transition, and West Avondale Transition for the purposes of this act. The areas are described as:

The Northside West area is that part of the City of Jacksonville, Duval County, Florida described as:

Begin at the point of intersection of the West right-of-way line of Main Street, State Road No. 5, with the South right-of-way line of West Bay Street; thence, Westerly along said South right-of-way line of West

Bay Street to a line being a Southerly prolongation of the West right-of-way line of Julia Street; thence Northerly along said line and said West right-of-way line of Julia Street to the South right-of-way line of Forsyth Street; thence Westerly along said South right-of-way line of Forsyth Street to the West right-of-way line of Pearl Street; thence Northerly along said West right-of-way line of Pearl Street to the North right-of-way line of State Street; thence Westerly and Northwesterly along said North right-of-way line of State Street to the Northwesterly right-of-way of Interstate 95 and State Road No. 9; thence Southwesterly along said Northwesterly and Westerly right-of-way line to an intersection with a line being a Westerly prolongation of the Northeasterly right-of-way line of that portion of Interstate 95 leading to and from the Fuller Warren Bridge over the St. Johns River; thence Southeasterly along said line and Northeasterly right-of-way line to the center line of the St. Johns River; thence Northeasterly and Easterly along said center line to the West right-of-way line of the John T. Alsop (Main Street) Bridge; thence Northerly along said West right-of-way line of the John T. Alsop (Main Street) Bridge to the Point of Beginning.

The Northside East area is that part of the City of Jacksonville, Duval County, Florida described as:

Begin on the west, Pearl Street extending from State on the north to Forsyth Street on the south and Julia Street from Forsyth on the north to Bay Street on the south, and Main Street beginning at Bay Street on the north and extending south to the St. Johns River. The northern boundary is State Street, beginning at Pearl Street, and extends eastward to Liberty Street at which point the boundary extends eastward along the Jacksonville Expressway to a point where the Jacksonville Expressway intersects with the Haines Street Expressway. Then north along the Haines Street Expressway to Marshall Street, and then eastward along Marshall Street to Talleyrand Avenue. North along Talleyrand Avenue to Fairway Street, and then eastward along Fairway Street to the St. Johns River. The eastern and southern boundaries are the St. Johns River, beginning at Fairway Street and extending southward to a point beyond the Hart Bridge, then westward to Main Street at a point running north to Bay Street and then west along Bay Street to Julia Street, then north along Julia Street to Forsyth Street, then extending west to Pearl Street.

The Southbank area is that part of the City of Jacksonville, Duval County, Florida described as:

Begin at the point of intersection of the North right-of-way line of Gulf Life Drive with the West right-of-way line of South Main Street, State Road No. 5; thence westerly along said North right-of-way line of Gulf Life Drive to the Northeasterly right-of-way line of that portion of the Jacksonville Expressway leading to and from the Acosta Bridge over the St. Johns River; thence Southeasterly along said Northeasterly right-of-way line to an intersection with a Northeasterly prolongation of a line lying 60 feet Southeasterly from, when measured at right angles to, the Southeasterly face of the Prudential Building; thence Southwesterly along said line and a Southwesterly prolongation thereof to an intersection with the South right-of-way line of Prudential Drive; then Easterly along said South right-of-way line of Prudential Drive to an intersection with a Northeasterly prolongation of the Westerly edge of the Easternmost Baptist Medical Center driveway; thence Southwesterly along said line and Westerly edge of driveway and Southwesterly prolongation thereof to an intersection with the Northerly right-of-way line of Interstate 95, State Road No. 9; thence Easterly along

said Northerly right-of-way line to a point of intersection with the Southwesterly edge of the Southbound roadway of South Main Street; thence Northeasterly along a line drawn straight from the last described point to the Northwesterly corner of Lot 18, Block 1, Bostwick's Subdivision of Block 46 in South Jacksonville, as shown on plat recorded in Plat Book 3, Page 68 of the Current Public Records of said County, said Northwest corner being located in the Northeasterly right-of-way line of the Northbound approach to said South Main Street from said Interstate 95; thence Southeasterly and Easterly along said Northeasterly right-of-way line and Northerly right-of-way line of Interstate 95 to an intersection with the Southeasterly right-of-way line of Vine Street; thence Northeasterly along said Southeasterly right-of-way line of Vine Street to the Northeasterly line of that certain alley running Southeasterly through Block 17, Reeds Fourth Subdivision of South Jacksonville, as shown on plat recorded in Plat Book 1, Page 46 of the former public records of said County; thence Southeasterly along said Northeasterly alley line to an intersection with the Northwesterly right-of-way line of Alamo Street; thence Northeasterly along said Northwesterly right-of-way line of Alamo Street and a Northeasterly prolongation

thereof to an intersection with the mean high water line of the St. Johns River; thence Northwesterly along said mean high water line to an intersection with a line being a Northerly prolongation of the West face of the Gulf Life Insurance Company's parking garage; thence Southerly along said line, said West garage face, and a Southerly prolongation thereof to an intersection with the North right-of-way line of Gulf Life Drive; thence Westerly along said North right-of-way line to the Northerly prolongation of the Easterly right-of-way line of Flagler Avenue; thence Northerly along said prolongation of the Easterly right-of-way line of Flagler Avenue to an intersection with a line being the Easterly prolongation of the South face of the multistory Hilton Hotel building; thence Westerly along said line, the said South face of the Hilton Hotel to the Westerly right-of-way line of South Main Street; thence Southerly along said Westerly right-of-way line of South Main Street to the Point of Beginning.

The Urban Transition area is that part of the City of Jacksonville, Duval County, Florida described as:

The area bound by Margaret Street to the west, Dellwood Avenue and Interstate 95 to the north and

northeast, and the St. Johns River to the east and south.

The East Avondale Transition area is that part of the City of Jacksonville, Duval County, Florida, described as:
The West 52.84 feet of Lot 3 of Diterichs Replat of Lot 1, Block 8 Edgewood in Section 57, Township 2 South, Range 26 East as recorded in Plat Book 2 at Page 86, Public Records of Duval County, Florida, together with all improvements thereon.

The West Avondale Transition area is that part of the City of Jacksonville, Duval County, Florida, described as:
Lots One (1), Two (2), three (3), and Four (4) of B.J. Skinner's Subdivision, of Block Three (3) of Diterich's Subdivision of part of the Hutchinson Grant, according to Plat recorded in Plat Book 8, Page 14, of the current public records of Duval County, Florida.

Section 2. Notwithstanding the provisions of s. 561.20(1), Florida Statutes, in the areas herein described as Northside West, Northside East, Southbank, ~~and~~ Urban Transition, East Avondale Transition, and West Avondale Transition, the Division of Alcoholic Beverages and Tobacco of the Department of Business

Regulation may issue a special alcoholic beverage license to any bona fide restaurant containing all necessary equipment and supplies for and serving full course meals regularly and having accommodations at all times for service of 100 or more patrons at tables and occupying not less than 1,800 square feet of floor space which derive no less than 51 percent of gross income per annum from the sale of food consumed on the premises; provided that such licenses shall be subject to local zoning requirements setting distance requirements between liquor-serving establishments and churches and schools and to any provision of the alcoholic beverage laws of the state and rules of the division not inconsistent herewith.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1049 Practice of Pharmacy
SPONSOR(S): Health Quality Subcommittee; Peters and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Langston	O'Callaghan
2) Business & Professions Subcommittee		Anstead	Luczynski
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Compounding is the practice in which a licensed pharmacist, or other legally permitted individual, combines, mixes, or alters ingredients of a drug to create a medication tailored to the needs of an individual patient when the health needs of that patient cannot be met by a medication approved by the U.S. Food and Drug Administration.

The practice of veterinary medicine, defined in the Veterinary Medical Practice Act, ch. 474, F.S., includes prescribing, dispensing, and administering drugs to treat animals.

The bill specifies that the Florida Pharmacy Act, ch. 465, F.S., and the rules adopted under it, do not prevent a veterinarian from administering a compounded drug to an animal that is a patient or dispensing a compounded drug to that animal's owner or caretaker.

There is no fiscal impact on state or local governments.

The bill provides for an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Compounding

Compounding is a traditional component of the practice of pharmacy, and is taught as part of the standard curriculum at most pharmacy schools.[1] It is a practice in which a licensed pharmacist or other legally permitted individual combines, mixes, or alters ingredients of a drug to create a medication tailored to the needs of an individual patient when the health needs of that patient cannot be met by a medication approved by the U.S. Food and Drug Administration (FDA).[2] For example, compounding could be necessary when a patient with an allergy needs a medication to be made without a certain dye or an elderly patient or a child is unable to swallow a pill and needs a medicine in a liquid form that is not otherwise available.[3]

Compounded drugs are not FDA-approved; this means that the FDA does not verify the safety, or effectiveness of compounded drugs and these drugs lack an FDA finding of manufacturing quality before such drugs are marketed.[4] However, federal rules currently require that compounded medications only be modified versions of FDA-approved medications. In other words, compounded medications should only be prepared using FDA-approved drugs that have been crushed, had a flavor added, or otherwise changed from the original form.[5]

Safety Concerns of Compounded Drugs

Compounded drugs can pose both direct and indirect health risks.[6] Compounded drugs may be unsafe and pose direct health risks because of the use of poor quality compounding practices; they may be sub- or super-potent, contaminated, or otherwise adulterated.[7] Some pharmacists are well trained and well equipped to compound certain medications safely, but not all pharmacists have the same level of skills and equipment, and some drugs may be inappropriate for compounding.[8] However, in other cases, compounders may lack sufficient controls (e.g., equipment, training, testing, or facilities) to ensure product quality or to compound complex drugs like sterile or extended-release drugs.[9]

The most widely covered incidents relating to compounding in veterinary medicine in Florida involved horses. In 2009, 21 polo horses died at the United States Open Polo Championship in Florida as the result of a mathematical error by the compounding pharmacy that altered the strength of an ingredient in a medication given to the horses.[10] Another incident occurred in 2014, when eight Florida horses and

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[1] *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 361 (2002).
[2] U.S. Food and Drug Administration, *Compounding and the FDA: Questions and Answers*, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm (last visited March 13, 2015).
[3] *Id.*
[4] *Id.*
[5] American Veterinary Medical Association, *Compounding: FAQ for Pet Owners,* https://www.avma.org/KB/Resources/FAQs/Pages/Compounding-FAQ-for-Pet-Owners.aspx (last visited March 13, 2015).
[6] The Law of Compounding Medications and Drugs, *FDA Question and Answers Regarding Compounded Menopausal Hormone Therapy*, http://www.lawofcompoundingmedications.com/2012/08/fda-question-and-answers-regarding.html (last visited March 14, 2015).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] Katie Thomas, *Polo Ponies Were Given Incorrect Medication*, New York Times (April 23, 2009), *available at* http://www.nytimes.com/2009/04/24/sports/othersports/24polo.html.

two from Kentucky were sickened from a compounded drug.[11] Both of the horses from Kentucky and two of the eight horses from Florida died or had to be euthanized; the six remaining horses in Florida suffered neurological problems.[12]

Federal and State Oversight of Compounded Medications

Until recently, the regulation of compounded medications was murky, without clear guidelines and oversight responsibility by the FDA or state agencies.[13]

The FDA has traditionally regulated the manufacture of prescription drugs, which typically includes making drugs (preparation, deriving, compounding, propagation, processing, producing, or fabrication) on a large scale for marketing and distribution of the product for unidentified patients.[14] The FDA states that, generally, state boards of pharmacy will continue to have primary responsibility for oversight and regulation of the practice of pharmacy, including traditional pharmacy compounding.[15] However, the FDA retains some authority over the entities compounding the drugs through the "Compounding Quality Act," in Title I of the Drug Quality and Security Act (DQSA)[16] and the Food, Drug, and Cosmetic Act (FDCA).[17] The FDA has indicated its intention to continue to cooperate with state authorities to address pharmacy compounding activities that may violate the FDCA.[18]

Florida Regulation of Compounded Medicine

Compounding Definition

Compounding is defined in s. 465.003(18), F.S., as the combining, mixing, or altering the ingredients of one or more drugs or products to create another drug or product.

The Florida Administrative Code defines compounding as the professional act by a pharmacist or other practitioner authorized by law, employing the science or art of any branch of the profession of pharmacy, incorporating ingredients to create a finished product for dispensing to a patient, or for administration by a practitioner or the practitioner's agent.[19] This definition also specifically includes the professional act of preparing a unique finished product containing any ingredient or device and the preparation of:

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[11] Carlos E. Medina, *Report: 2 thoroughbreds in Ocala, 2 in Kentucky die after being given compounded drug*, The Gainesville Sun (May 18, 2014), *available at* http://www.gainesville.com/article/20140518/ARTICLES/140519684.

[12] *Id.*

[13] *See Thompson v. W. States Med. Ctr.*, 535 U.S. 357 (2002). In 2002, the U.S. Supreme Court found certain provisions relating to compounded drugs in section 503A of the FDCA to be unconstitutional and struck the entire section of law dealing with the remaining provisions related to compliance with current good manufacturing practices, labeling, and FDA approval prior to marketing. The Court found that the provisions were unconstitutional restrictions of commercial speech. In subsequent opinions, lower courts split on whether the remaining provisions remained intact and enforceable. Later, in 2010, the Middle District of Florida ruled the FDA overstepped its authority when it tried to stop a Florida pharmacy from making compound prescription drugs for animals, stating that compounding is a "long-standing, widespread, state-regulated practice" that the FDA does not have the authority to regulate. *See United States v. Franck's Lab, Inc.*, 816 F. Supp. 2d 1209 (M.D. Fla. 2011).

[14] U.S. Food and Drug Administration, *Compounding and the FDA: Questions and Answers*, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm (last visited March 13, 2015).

[15] *Id.*

[16] The DQSA describes the conditions under which certain compounded human drug products are entitled to exemptions from three sections of the FDCA. See FDCA, s. 503(A), 21 U.S.C. § 353a (2014).

[17] U.S. Food and Drug Administration, *Compounding – Compounding Quality Act,* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm (last visited March 13, 2015).

[18] U.S. Department of Health and Human Services Food and Drug Administration Center for Drug Evaluation and Research, *Guidance – Pharmacy Compounding of Human Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act* (July 2014), *available at* http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM377052.pdf.

[19] Rule 64B16-27.700, F.A.C.

- Drugs or devices in anticipation of prescriptions based on routine, regularly observed prescribing patterns.
- Drugs or devices which are not commercially available, pursuant to a prescription.
- Commercially available products from bulk when the prescribing practitioner has prescribed the compounded product on a per prescription basis and the patient is aware that the pharmacist will prepare the compounded product. The reconstitution of commercially available products pursuant to the manufacturer's guidelines is permissible without notice to the practitioner.[20]

Dispensing of Compounded Drugs

Section 465.0276, F.S., provides that only a licensed pharmacist, or other person authorized under ch. 465, F.S., or a practitioner authorized by law, may dispense medicinal drugs. Dispensing is defined as the transfer of possession of one or more doses of a medicinal drug by a pharmacist to the ultimate consumer or her or his agent.[21] Dispensing is broader than administration. Administration is defined as obtaining and giving a single dose of medicinal drug by a legally authorized person to a patient for his or her consumption.[22]

Compounding in Veterinary Medicine

The American Veterinary Medical Association (AVMA) states that the use of compounded medications offers myriad benefits to veterinarians, particularly when dealing with animals that require very small or very large doses of a particular medication or for which the traditional route of administration might not be optimal or even feasible.[23] Compounding is usually necessary when an animal is suffering from a medical condition and there is no FDA-approved human or veterinary product available and medically appropriate to treat the patient.[24] In some situations, veterinarians may find it necessary to compound from a source that has not been approved by the FDA to relieve the animal's suffering, in these cases, veterinarians and pharmacists must carefully assess whether the use is consistent with state and federal law and FDA policy.[25]

The AVMA notes that while the benefits of compounded medications for animals are not readily apparent because compounding may affect the absorption and depletion of a drug resulting in drug concentrations that are above or below the therapeutic range, it is an essential tool that provides therapeutic flexibility for difficult or irregular cases.[26] However, the AVMA cautions that compounded medications should be used judiciously.[27]

The FDA has issued a Compliance Policy Guide (CPG) section 608.400 entitled "Compounding of Drugs for Use in Animals" (61 FR 34849), to provide guidance to FDA's field and headquarters staff with regard to the compounding of animal drugs by veterinarians and pharmacists for use in animals. The FDCA does not distinguish compounding from manufacturing or other processing of drugs for use in animals; however, the DQSA does not apply to animals.

[20] Rule 64B16-27.700(1), F.A.C.
[21] Section 465.033(6), F.S.
[22] Section 465.003(1), F.S.
[23] Michael J. White, *Unraveling the confounding world of Compounding*, JAVMANews (Feb. 13, 2013), https://www.avma.org/News/JAVMANews/Pages/130301o.aspx.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*

Florida Regulation of Veterinarians

Veterinarians are licensed and regulated under the Board of Veterinary Medicine[28] under the Department of Business and Professional Regulation (DBPR).[29]

As part of the practice of veterinary medicine, veterinarians are authorized to prescribe, dispense, and administer drugs or medicine to their animal patients.[30] Veterinarians who dispense medications from an office are subject to regulation and inspection by DBPR.[31]

Compounded drugs for animals are not addressed in the Veterinary Medical Practice Act, ch. 474, F.S., nor are they addressed in DBPR's rules regulating veterinarians. However, in addition to authorization to prescribe, dispense, and administers drugs and medicine, veterinarians may engage in "treatment of *whatever* nature" to prevent, treat, or cure any wound, injury, or disease of one of their patients. This authority allows them to compound drugs.[32]

Effect of Proposed Changes

The bill amends s. 465.0276, F.S., to clarify the impact of the Florida Pharmacy Act and the Board of Pharmacy's rules on a veterinarian's authority to administer or dispense compounded drugs. Specifically, the bill states that nothing in ch. 465, F.S., or the rules adopted under it prevent a veterinarian from administering a compounded drug to an animal patient or dispensing compounded drugs to the animal's owner or caretaker.

The act will take effect July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Amends s. 465.0276, F.S., relating to dispensing practitioners.

Section 2: Provides an effective date.

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.

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[28] Section 474.204, F.S.
[29] Chapter 61G18, F.A.C.
[30] Section 474.202(9), F.S.
[31] Florida Department of Health, *2015 Agency Analysis Senate Bill 1180* (Feb. 27, 2015) (SB 1180 is identical to HB 1049, as filed.).
[32] *Id.* at note 30 (emphasis added).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Health notes that pharmacists may be unwilling to continue dispensing compounded drugs to veterinarians if those compounded drugs are going to be dispensed or sold by the veterinarians.[33]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2015, the Health Quality Subcommittee adopted a strike-all amendment to HB 1049 and reported the bill favorably as a committee substitute. The amendment:

- Removes the definition of "office use compounding" from the bill; and
- Provides the Florida Pharmacy Act or rules adopted by the Board of Pharmacy do not prevent veterinarians licensed under ch. 474, F.S., from administering a compounded drug to his or her animal patient, or dispensing a compounded drug to the animal patient's owner or caretaker.

The analysis is drafted to the committee substitute.

[33] *Id.* at note 31.

A bill to be entitled

An act relating to the practice of pharmacy; amending s. 465.0276, F.S.; specifying that the Florida Pharmacy Act and rules adopted thereunder do not prohibit a veterinarian from administering a compounded drug to a patient or dispensing a compounded drug to the patient's owner or caretaker; providing an effective date.

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

Section 1. Subsection (6) is added to section 465.0276, Florida Statutes, to read:

465.0276 Dispensing practitioner.—

(6) This chapter and the rules adopted thereunder do not prohibit a veterinarian licensed under chapter 474 from administering a compounded drug to a patient, as defined in s. 474.202, or dispensing a compounded drug to the patient's owner or caretaker.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1151 Residential Master Building Permit Programs
SPONSOR(S): Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** SB 1486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brown-Blake	Luczynski
2) Local Government Affairs Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill creates s. 553.794, F.S., which requires each local government to create a residential master building permit program no later than December 1, 2015 for use by builders who expect to construct identical single-family or two-family dwellings or townhomes on a repetitive basis. The program is designed to achieve standardization and reduce the time spent by local building departments during the site-specific building permit application process.

In order to obtain a master building permit, builders must submit certain documents, including a general construction plan, to the local building department for review and approval. The local building department must review the general construction plan to determine compliance with the building code and approve or deny the master building permit application within120 days after receiving a complete application.

If the master building permit application is approved, the builder shall receive a master building permit and permit number. To build one of the buildings approved under the master building permit, the builder must apply for a site-specific building permit and include the master building permit number with the application. The builder may submit the master building permit number an unlimited number of times with the site-specific building permit applications so long as the builder uses the model design contained in the master building permit and the permit is valid. Approved master building permits are valid until the Florida Building Code is updated as provided in s. 553.73, F.S.

The bill permits the local building department to charge fees limited to the administrative and inspection portions of the applicable local government's fee schedule for the master building permit application or a site-specific building permit application.

A builder or design professional who willfully violates this provision shall be fined $10,000 for each dwelling or townhome built under the master building permit that does not conform to the master building permit on file with the local building department.

The bill permits local government to adopt procedures to provide master building permit program guidelines and requirements.

The bill is expected to have a minimal fiscal impact on counties depending upon what the county chooses to charge for fees, which should be absorbed with existing resources and no fiscal impact on state government.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act (Act)." The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code. The Florida Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.

Section 553.79(1), F.S., provides that it is unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building without first obtaining a permit from the appropriate enforcing agency or from such persons delegated the authority to issue permits, upon the payment of fees adopted by the enforcing agency. Typically the appropriate enforcing agency is the local building department in the county or municipality in which the property is located. The builder is required to obtain a site-specific building permit for each individual site-specific building intended to be constructed, even if the builder expects to build multiple identical structures on a repetitive basis.

A builder is required to provide building plans and specifications at the time of application[1] for site-specific building permit, along with a structural inspection plan[2] and additional supporting documents sufficient for the building code administrator or inspector to determine whether the building will be built according to the Florida Building Code. The specific documents required to be submitted with the site-specific building permit application can vary depending upon the county or municipality reviewing the documents. The City of Tallahassee requests the following documents with the application for site-specific building permit:

- Completed permit application, signed by the contractor;
- Affidavit of the owner, designating contractor as the agent;
- Disclosure statement if the owner is acting as his or her own contractor;
- Affidavit of occupancy;
- Florida Lien law form if the owner is acting as his or her own contractor;
- Certified copy of recorded Notice of Commencement;
- Two sets of construction plans, including floor plan, elevations, foundation plan or floor framing plan, wall sections, roof plan, two gas diagrams, manufacturer's truss layout, and fire resistance framing plan;
- Two engineered wind analyses, if the structure is over 400 square feet, has openings within three feet of a corner, or is two stories; The engineer must have the subdivision name, lot, and block or complete address;
- Environmental information, including a site plan, information regarding whether the property is located in a FIRM flood zone "A", street name, lot dimensions, setback dimensions, north arrow, easements and restrictions, location and size of all protected trees, limits of clearing and location for placement of sediment and erosion control measures, clearly labeled existing and proposed structures, existing and proposed two-foot contour lines labeled accordingly; all grading or other methods of storm-water conveyance; and finished floor elevation;
- 2010 Florida Building Code, Energy Conservation Form 402 or 405;
- EPL Display card signed by the builder with the date and address of the home;

[1] *See* s. 553.79(1), F.S.
[2] s. 553.79(2), F.S.

- Manual J form with the HVAC load sizing summary for residential buildings signed by the preparer;
- Soil test, signed by an engineer with subdivision name, lot and block or complete address; and
- Completed driveway connection application.[3]

Along with the application and listed documents, the builder submits a fee to cover both the review of the submitted documents and any inspection costs.

Effect of the Bill

The bill creates s. 553.794, F.S., which requires each local government to create a residential master building permit program no later than December 1, 2015. The program is designed to achieve standardization and reduce the time spent by local building departments during the site-specific building permit application process.

In order to obtain a master building permit, builders must submit the following to the local building department:

- A completed master building permit application;
- A general construction plan that complies with the requirements of subsection (4) of the bill;
- All general construction plan pages, documents, and drawings, including structural calculations if required by the local building department, signed and sealed by the licensed architect or engineer;
- Written acknowledgement from the licensed architect or engineer that the plan pages, documents, and drawings contained within the application will be used for future site-specific building permit applications;
- Truss specifications signed and sealed by the engineer; and
- An energy performance calculation for all building orientations that considers the worst-case scenarios for the relevant climate zone and includes component and cladding product approvals for windows, pedestrian and garage doors, glazed opening impact protection devices, truss anchors, roof underlayments, and roof coverings.

The bill provides that the general construction plan:

- May be submitted in electronic or paper format, as required by the local building department; paper plans must be 36 inches by 48 inches or must comply with local building department requirements;
- Shall include left-hand and right-hand building orientations including floor plans;
- Shall include a model design with up to four exterior elevations; the model design:
    - May not contain more than three alternate garage layouts, with each garage limited to accommodating no more than three cars;
    - Must include a foundation plan;
    - Must contain a truss layout sheet for each exterior elevation compatible with the roof plan;
- Must show typical wall sections from the foundation to the roof;
- Must contain a complete set of applicable electrical, plumbing, fuel gas, and mechanical plans;
- Must contain window, door, and glaze opening impact protection device schedules, if applicable; and
- Must meet any other local building department requirements.

[3] City of Tallahassee Applications and Forms, *Combination Residential Building, Environmental & Driveway Permit Application* (October 17, 2012) http://www.talgov.com/Uploads/Public/Documents/growth/pdf/forms/combo_residential_bldg_env_permit_appl.pdf .

The local building department must review the general construction plan to determine compliance with the building code. The local building department must approve or deny the master building permit application within 120 days after receiving a completed application, unless waived by the applicant.

If the local building department approves the general building plan and all documents provided with the master building permit application are verified, the builder shall receive a master building permit and permit number.

In order to build one of the buildings approved under the master building permit, the builder must apply for a site-specific building permit and include the master building permit number with the application. The bill provides that the local building department may only require the builder to submit the following documents for a site-specific building permit for a single-family or two-family dwelling or townhome after approving a master building permit application:

- A complete site-specific building permit application with the master building permit number, identifying the model design to be built, including elevation and garage style;
- Three signed and sealed copies of the lot or parcel survey or site plan, indicating the Federal Emergency Management Agency flood zone, based flood elevation, and minimum finish floor elevation. The survey or site plan must conform to local zoning regulations and lot or parcel drainage indicators must be shown with site elevations;
- An affidavit by the licensed engineer of record affirming the master building permit is a true and correct copy of the master building permit on file with the local building department, referencing the master building permit number and affirming that the master building permit will conform to soil conditions on the specific site;
- Complete mechanical drawings of the model design, including HVAC heating and cooling load calculations and equipment specifications; and
- Specific information not included in the master building permit application addressing the HVAC system design, including duct design and heating and cooling load calculations.

The builder may submit the master building permit number an unlimited number of times with the site-specific building permit applications so long as the builder uses the model design contained in the master building permit and the permit is valid. Approved master building permits are valid until the Florida Building Code is updated as provided in s. 553.73, F.S.

Once a local building department has approved a master building permit, the local building department may:

- Not allow structural revisions to the building;
- Allow limited nonstructural revisions to the building so long as any revised floor plan is submitted to and approved by the local building department;
- Accept limited field revisions, as determined by the local building department.

The local building department may charge fees limited to the administrative and inspection portions of the applicable local government's fee schedule for the master building permit application or a site-specific building permit.

A builder or design professional who willfully violates this provision shall be fined $10,000 for each dwelling or townhome built under the master building permit that does not conform to the master building permit on file with the local building department.

The bill permits local government to adopt procedures to provide master building permit program guidelines and requirements.

B. SECTION DIRECTORY:

Section 1 creates s. 553.794, F.S., directing each local government to create a residential master building permit program by a specific date to assist builders who construct certain dwellings and townhomes on a repetitive basis.

Section 2 provides an effective date of July 1, 2015.

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:

   The bill limits fees for master building permit applications and site-specific building permit applications to administrative and inspection fees. Local governments determine what these fees will be; therefore, whether revenues increase or decrease will be determined by the local government.

2. Expenditures:

   Any cost in developing the program and reviewing master building permit applications should be offset by the reduced requirements for reviewing site-specific building permit applications.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The building permit program should reduce the time spent by local building departments during the site-specific building permit application process, which should result in faster permit review times for all builders. This should make Florida more attractive for development and could result in increased private economic activity.

D. FISCAL COMMENTS

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No rulemaking. Local governments are directed to adopt procedures to provide master building permit program guidelines and requirements for the submission and approval of materials and applications.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires every local government to create a residential master building permit program, whether or not there is property or market demand to support the construction of identical single-family or two-family dwellings or townhomes on a repetitive basis.

The fee section of the bill uses terms that are not defined and may cause some confusion as each local government creates their own fee schedule.

The bill sponsor plans to address both of these issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to residential master building permit programs; creating s. 553.794, F.S.; requiring local governments to create master building permit programs by a specified date to assist builders who construct certain dwellings and townhomes on a repetitive basis; defining terms; providing requirements for submitting master building permit applications, general construction plans, and site-specific building permit applications; specifying documents that must be provided with the applications and plans; requiring master building permits to be approved or denied within a time certain; authorizing builders to submit master building permit numbers an unlimited number of times for individual dwellings and townhomes under certain conditions; providing duration of validity of approved master building permits; limiting revisions to approved master building permits; limiting the amount a local government may charge for master building permit and site-specific building permit applications; providing for penalties under certain circumstances; authorizing local governments to adopt procedures to effectuate master building permit programs; providing an effective date.

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

Section 1. Section 553.794, Florida Statutes, is created to read:

553.794 Local government residential master building permit program.—

(1) MASTER BUILDING PERMIT PROGRAM CREATION.—Each local government shall create a residential master building permit program by December 1, 2015, for use by builders who expect to construct identical single-family or two-family dwellings or townhomes on a repetitive basis. The master building permit program must be designed to achieve standardization and consistency during the permitting process and to reduce the time spent by local building departments during the site-specific building permit application process.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Building orientation" means the placement of a building on a parcel of land with respect to weathering elements such as sun, wind, and rain and environmental factors like topography.

(b) "Elevation" means a construction drawing that is drawn to scale and depicts the external face of the dwelling or townhome to be constructed.

(3) MASTER BUILDING PERMIT APPLICATION.—To obtain a master building permit, a builder must submit the following information to the local building department:

(a) A completed master building permit application.

(b) A general construction plan that complies with subsection (4).

(c) All general construction plan pages, documents, and drawings, including structural calculations if required by the local building department, signed and sealed by the design professional of record, along with a written acknowledgement from the design professional that the plan pages, documents, and drawings, contained within the master building permit application will be used for future site-specific building permit applications. The design professional of record must be a licensed engineer or architect.

(d) Truss specifications, signed and sealed by the truss design engineer. The design professional of record must stamp and sign the truss layout sheet as reviewed and approved for each model design.

(e) Energy performance calculations for all building orientations. The calculations must consider worst-case scenarios for the relevant climate zone and must include component and cladding product approvals for all windows, pedestrian doors, garage doors, glazed opening impact protection devices, truss anchors, roof underlayments, and roof coverings. The design professional of record must stamp and sign all product approvals as reviewed and approved for use with each model design.

(4) GENERAL CONSTRUCTION PLAN.—The general construction plan submitted as part of a master building permit application:

(a) May be submitted in electronic or paper format, as required by the local building department. A plan submitted in paper format must be a minimum of 36 inches by 48 inches or must comply with requirements of the local building department.

(b) Shall include left-hand and right-hand building orientations, including floor plans.

(c) Shall include a model design which may include up to four alternate exterior elevations, each containing the same living space footprint. The model design:

1. May not contain more than three alternate garage layouts, with each garage layout limited to accommodating no more than three cars.

2. Must include a foundation plan.

3. Must contain a truss layout sheet for each exterior elevation that is compatible with the roof plan.

(d) Must show typical wall sections from the foundation to the roof.

(e) Must contain a complete set of applicable electrical, plumbing, fuel gas, and mechanical plans.

(f) Must contain window, door, and glazed opening impact protection device schedules, if applicable.

(g) Must meet any other requirements of the local building department.

(5) MASTER BUILDING PERMIT APPROVAL PROCESS.—

(a) A builder may submit to the local building department a master building permit application that contains the

information identified in subsection (3). Once a master building permit application is approved as provided in this subsection, the local building department may only require the builder to submit the documents identified in subsection (7) for each site-specific building permit application for a single-family or two-family dwelling or townhome.

(b) The local building department shall review the general construction plan submitted as part of the master building permit application to determine compliance with existing building code requirements. If the general construction plan is approved and all documents provided pursuant to subsections (3) and (4) are verified, the builder shall receive a master building permit and permit number.

(c) The local building department must approve or deny a master building permit application within 120 days after the local building department receives a completed application, unless the applicant agrees to a longer period.

(d) A builder may submit the master building permit number an unlimited number of times, and such number applies to each subsequent dwelling or townhome to be built as long as the builder uses the model design contained in the master building permit and meets the requirement of paragraph (e).

(e) An approved master building permit remains valid until the Florida Building Code is updated as provided in s. 553.73.

(6) REVISIONS TO MASTER BUILDING PERMIT.—Once a master building permit has been approved, a local building department:

(a) May not allow structural revisions to the master building.

(b) May allow limited nonstructural revisions to the master building so long as any revised floor plan is submitted to and approved by the local building department.

(c) May accept limited field revisions, as determined by the local building department.

(7) SITE-SPECIFIC BUILDING PERMIT APPLICATIONS.—Once a master building permit is approved, the builder is only required to submit the following information for each site-specific building permit application for a single-family or two-family dwelling or townhome:

(a) A completed site-specific building permit application that includes the master building permit number and identifies the model design to be built, including elevation and garage style.

(b) Three signed and sealed copies of the lot or parcel survey or site plan, as applicable. The survey or site plan must indicate the Federal Emergency Management Agency flood zone, base flood elevation, and minimum finish floor elevation and must conform to local zoning regulations. Lot or parcel drainage indicators must be shown along with site elevations.

(c) An affidavit by the licensed engineer of record affirming that the master building permit is a true and correct copy of the master building permit on file with the local building department. The affidavit must reference the master

building permit number. The licensed engineer of record must affirm that the master building permit will conform to soil conditions on the specific site.

(d) Complete mechanical drawings of the model design, including HVAC heating and cooling load calculations and equipment specifications.

(e) Specific information that was not included in the master building permit application addressing the HVAC system design, including duct design and heating and cooling load calculations.

(8) FEES.—Fees charged by the local government for a master building permit application or a site-specific building permit application are limited to the administrative and inspection portions of the applicable local government's fee schedule.

(9) PENALTIES.—In addition to any other penalty provided by law, a builder or design professional who willfully violates this section shall be fined $10,000 for each dwelling or townhome that is built under the master building permit that does not conform to the master building permit on file with the local building department.

(10) PROGRAM GUIDELINES.—Each local government may adopt procedures to provide master building permit program guidelines and requirements for the submission and approval of materials and applications.

Section 2. This act shall take effect July 1, 2015.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1151 (2015)

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Ingoglia offered the following:

Amendment (with title amendment)

Remove lines 32-34 and insert:

(1) MASTER BUILDING PERMIT PROGRAM CREATION.— If a local building official licensed pursuant to ch. 468, Part XII, receives a written request from a general, building, or residential contractor licensed pursuant to ch. 489, requesting the creation of a master building permit program, the local government that employs the recipient building official shall create a residential master building permit program within 6 months of receipt of the written request. A master building permit program is intended for use by builders who expect to

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Amendment No. 1

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

Remove line 5 and insert:

if requested by a licensed general, building, or residential contractor, to assist builders who construct

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1151 (2015)

Amendment No. 2

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

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Ingoglia offered the following:

Amendment (with title amendment)

Remove lines 167-171 and insert:

(8) Fees. - The governing bodies of local governments shall set fees pursuant to s. 553.80(7).

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

Remove lines 18-21 and insert:

to approved master building permits; permitting the governing body of local governments to set fees pursuant to s. 553.80(7), F.S.; providing for penalties under certain

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1211 Community Associations
SPONSOR(S): Civil Justice Subcommittee; Fitzenhagen
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Bond	Bond
2) Business & Professions Subcommittee		Anstead	Luczynski
3) Judiciary Committee			

SUMMARY ANALYSIS

The laws governing condominium, cooperative, and homeowners' associations all require an annual meeting of the members at which some or all of the directors of the association may be elected. Current law does not recognize electronic voting.

The bill creates a mechanism for electronic voting in condominium, cooperative, and homeowners' association elections, provided that the bylaws of an association allow for electronic voting.

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

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The laws governing condominium, cooperative, and homeowners' associations all require an annual meeting of the members at which some or all of the directors of the association may be elected.

A condominium association is required to have an annual meeting at which directors are elected.[1] Votes must be cast by "written ballot or voting machine."[2] Proxies may not be used in the election.[3] Florida Administrative Code governing condominium associations also provides detailed regulations for voting and election procedures, such as requiring that paper ballots be mailed in double envelopes.[4] Similar statutory and administrative requirements apply to cooperative associations.[5]

A homeowners' association is likewise required to hold board of director elections at its annual meeting or as provided in its governing documents.[6] Elections are conducted in accordance with the procedures set forth in the governing documents of the association.[7] Additionally, proxies may be used in the election unless otherwise provided in the governing documents.[8]

This bill provides that an association may elect to conduct such elections by electronic voting according to the following terms:

Each member voting electronically must consent, in writing, to electronic voting.

The association must provide each member with a method to:

- Authenticate the member's identity to the electronic voting system.
- Secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform.
- Communicate with the electronic voting system.
- Review an electronic ballot before its transmission to the electronic voting system.
- Transmit an electronic ballot to the electronic voting system that ensures the secrecy and integrity of each ballot.
- Verify the authenticity of receipts sent from the electronic voting system.
- Confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.
- Vote by mail or to deliver a ballot in person in the event of a disruption of the electronic voting system.

In addition, an electronic voting system must be:

- Accessible to members with disabilities.
- Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.
- Able to authenticate the member's identity.

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[1] Section 718.112(2)(d)1., F.S.; *see generally* Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, p. 40-57 (14th. ed. 2014-2015).
[2] Section 718.112(2)(d)4., F.S.
[3] *Id.*
[4] Rule 61B-23.0021, F.A.C.
[5] Section 719.106(1)(d), F.S.; Rule 61B-75.005, F.A.C.
[6] Section 720.306(2), F.S.
[7] Section 720.306(9)(a), F.S.
[8] Section 720.306(8), F.S.

- Able to communicate with each member's electronic voting platform.
- Able to authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit.
- Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot.
- Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member.
- Able to allow the member to confirm that his or her ballot has been received and counted.
- Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

The bill also provides that an association member voting electronically is counted as being in attendance at the meeting for purposes of determining a quorum.

The bylaws of an association must provide for electronic voting in order for this bill to apply. The bylaws may provide for electronic voting of some or all votes of the membership.

B. SECTION DIRECTORY:

Section 1 creates s. 718.128, F.S., regarding electronic voting for condominium associations.

Section 2 creates s. 719.129, F.S., regarding electronic voting for cooperative associations.

Section 3 creates s. 720.317, F.S., regarding electronic voting for homeowners' associations.

Section 4 provides an effective date of July 1, 2015.

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 appears to require rulemaking by the Department of Business and Professional Regulation, which may require a minimal nonrecurring expenditure in FY 2015-16 payable from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

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. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill appears to create a need for rulemaking by the Department of Business and Professional Regulation to modify election rules for condominiums and cooperatives. The department appears to have adequate rulemaking authority at ss. 718.501(1)(f) and 719.501(1)(f), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute.

The amendment removed the definition of "electronic transmission," provides that a member voting electronically counts towards a meeting quorum, and provided that it applies to any vote of the membership where allowed by the bylaws of the association.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to community associations; creating ss. 718.128, 719.129, and 720.317, F.S.; authorizing condominium, cooperative, and homeowners' associations to conduct elections by electronic voting under certain conditions; providing that a member voting electronically is counted toward the determination of a quorum; providing applicability; providing an effective date.

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

Section 1. Section 718.128, Florida Statutes, is created to read:

718.128 Electronic voting.—The association may conduct elections by electronic voting if a member consents, in writing, to voting electronically and the following requirements are met:

(1) The association provides each member with:

(a) A method to authenticate the member's identity to the electronic voting system.

(b) A method to secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform.

(c) A method to communicate with the electronic voting system.

(d) A method to review an electronic ballot before its

transmission to the electronic voting system.

(e) A method to transmit an electronic ballot to the electronic voting system that ensures the secrecy and integrity of each ballot.

(f) A method to allow members to verify the authenticity of receipts sent from the electronic voting system.

(g) A method to confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.

(h) In the event of a disruption of the electronic voting system, the ability to vote by mail or to deliver a ballot in person.

(2) The association uses an electronic voting system that is:

(a) Accessible to members with disabilities.

(b) Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.

(c) Able to authenticate the member's identity.

(d) Able to communicate with each member's electronic voting platform.

(e) Able to authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit.

(f) Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot.

(g) Able to permanently separate any authentication or

identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member.

(h) Able to allow the member to confirm that his or her ballot has been received and counted.

(i) Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(4) This section applies to an association that provides for and authorizes electronic voting pursuant to this section in the association's bylaws and may apply to any matter that requires a vote of the membership.

Section 2. Section 719.129, Florida Statutes, is created to read:

719.129 Electronic voting.—The association may conduct elections by electronic voting if a member consents, in writing, to voting electronically and the following requirements are met:

(1) The association provides each member with:

(a) A method to authenticate the member's identity to the electronic voting system.

(b) A method to secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform.

(c) A method to communicate with the electronic voting

system.

(d) A method to review an electronic ballot before its transmission to the electronic voting system.

(e) A method to transmit an electronic ballot to the electronic voting system that ensures the secrecy and integrity of each ballot.

(f) A method to allow members to verify the authenticity of receipts sent from the electronic voting system.

(g) A method to confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.

(h) In the event of a disruption of the electronic voting system, the ability to vote by mail or to deliver a ballot in person.

(2) The association uses an electronic voting system that is:

(a) Accessible to members with disabilities.

(b) Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.

(c) Able to authenticate the member's identity.

(d) Able to communicate with each member's electronic voting platform.

(e) Able to authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit.

(f) Able to transmit a receipt from the electronic voting

system to each member who casts an electronic ballot.

(g) Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member.

(h) Able to allow the member to confirm that his or her ballot has been received and counted.

(i) Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(4) This section applies to an association that provides for and authorizes electronic voting pursuant to this section in the association's bylaws and may apply to any matter that requires a vote of the membership.

Section 3. Section 720.317, Florida Statutes, is created to read:

720.317 Electronic voting.—The association may conduct elections by electronic voting if a member consents, in writing, to voting electronically and the following requirements are met:

(1) The association provides each member with:

(a) A method to authenticate the member's identity to the electronic voting system.

(b) A method to secure the member's vote from, among other things, malicious software and the ability of others to remotely

monitor or control the electronic voting platform.

(c) A method to communicate with the electronic voting system.

(d) A method to review an electronic ballot before its transmission to the electronic voting system.

(e) A method to transmit an electronic ballot to the electronic voting system that ensures the secrecy and integrity of each ballot.

(f) A method to allow members to verify the authenticity of receipts sent from the electronic voting system.

(g) A method to confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.

(h) In the event of a disruption of the electronic voting system, the ability to vote by mail or to deliver a ballot in person.

(2) The association uses an electronic voting system that is:

(a) Accessible to members with disabilities.

(b) Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.

(c) Able to authenticate the member's identity.

(d) Able to communicate with each member's electronic voting platform.

(e) Able to authenticate the validity of each electronic

ballot to ensure that the ballot is not altered in transit.

(f) Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot.

(g) Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member.

(h) Able to allow the member to confirm that his or her ballot has been received and counted.

(i) Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(4) This section applies to an association that provides for and authorizes electronic voting pursuant to this section in the association's bylaws and may apply to any matter that requires a vote of the membership.

Section 4. This act shall take effect July 1, 2015.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1211 (2015)

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Fitzenhagen offered the following:

Amendment (with title amendment)

Remove line 16 and insert:

votes of the membership by electronic voting if a member consents, in writing,

Remove line 70 and insert:

votes of the membership by electronic voting if a member consents, in writing,

Remove line 124 and insert:

votes of the membership by electronic voting if a member consents, in writing,

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

Amendment No. 1

Remove line 5 and insert:

to conduct votes of the membership by electronic voting under

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1219 Public Food Service Establishments
SPONSOR(S): Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1390

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

SUMMARY ANALYSIS

The Division of Hotels and Restaurants of the Department of Business and Professional Regulation licenses and inspects public food service establishments, which is defined as a place where food is prepared, served, or sold for consumption by the general public.

Current law excludes from the definition of "public food service establishment" any place maintained and operated by a public or private school, college, or university temporarily for the use of members and associates, or temporarily to serve such events as fairs, carnivals, or athletic contests. The bill places "food contests" on the list of temporary events that are excluded from the definition of "public food service establishment."

Current law also excludes from the definition of "public food service establishment" any place maintained and operated by a church or a religious, nonprofit fraternal or nonprofit civic organization for the use of members and associates, or temporarily to serve such events as fairs, carnivals, or athletic contests. The bill expands this exclusion to include any eating place maintained and operated for the benefit of a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates, or temporarily to serve such events as fairs, carnivals, food contests, or athletic contests.

The bill is expected to have a significant impact on state funds by reducing revenues to the Division of Hotels and Restaurants by up to $626,546 annually.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Food Service Establishments

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (Department) is the state agency charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

The Division licenses and inspects public food service establishments, defined by s. 509.013(5)(a), F.S., to mean:

> any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

A "temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.[1]

At the end of fiscal year 2013-2014, there were 87,083 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.[2] During fiscal year 2013-2014, the Division issued 7,718 temporary food service event licenses.[3]

Exclusions from the Definition of Public Food Service Establishments

The definition of "public food service establishment" in s. 509.013(5)(b), F.S., excludes certain places, including:

- Any place maintained and operated by a public or private school, college, or university:
  - For the use of students and faculty; or
  - Temporarily to serve such events as fairs, carnivals, and athletic contests.

- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
  - For the use of members and associates; or
  - Temporarily to serve such events as fairs, carnivals, or athletic contests.

The Division broadly applies "members and associates" when determining licensure requirements.

The Division does not license or inspect temporary food service events when the food is prepared and served by an excluded entity. In Fiscal Year 2013-14, the Division licensed and inspected 7,718 public food service establishments and food vendors at temporary food service events. The Division collected an estimated $626,546 in temporary event license fees in Fiscal Year 2013-14.

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[1] s. 509.13(8), F.S.

[2] Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report, Fiscal Year 2013-2014*, *available at* http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html.

[3] *Id.*

Effect of the Bill

The bill excludes temporary food contests from the definition of "public food service establishment" if conducted at any place maintained and operated by a public or private school, college, university, church, or a religious, nonprofit fraternal, or nonprofit civic organization.

The bill excludes from the definition of "public food service establishment" any eating place maintained and operated by, *or for the benefit of,* a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates. The inclusion of the language "for the benefit of" may result in the exclusion of a large number of food service vendors.

The bill does not define a minimum benefit level required to meet the exclusion; therefore, this exclusion could be applied to any food vendor at a temporary event or a public food service establishment that donates any amount of proceeds to a church, religious organization, or nonprofit fraternal or civic organization. The Division estimates a loss of up to 100 percent of temporary event license fee revenue and an indeterminate reduction in licensed public food service establishments.[4]

Further, eating places that are excluded from the definition of "public food service establishment," are removed from the regulatory oversight of the Division. The Division will not be able to charge a license fee, conduct inspections, require compliance with health, safety, welfare and sanitary requirements, or pursue administrative remedies or fines against an excluded eating place.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 509.013, F.S., revising the definition of the term "public food service establishment" to exclude certain events and locations.

Section 2 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The loss of license fees could decrease division revenues by up to $626,546 annually.[5] This reduction estimate considers a possible 100% reduction in licensing revenue from temporary food service establishment licenses. The reduction in revenue could be greater if a permanent public food serve establishment qualifies for the exclusion from licensing and regulation.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[4] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 1390, p. 2 (Mar. 16, 2015).
[5] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 1390, p. 4 (Mar. 16, 2015).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill decreases license fees and regulatory oversight for any public food service establishment, including food contests, who operates for the benefit of a church, religious organization, or nonprofit fraternal or civic organization.

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:

The sponsor has expressed concern with the interpretation of the language "for the benefit of" in the bill. The sponsor has indicated an interest in amending the bill to narrow the subset of individuals that could be eligible for this exclusion.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public food service establishments; amending s. 509.013, F.S.; revising the definition of the term "public food service establishment" to exclude certain events; providing an effective date.

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

Section 1. Subsection (5) of section 509.013, Florida Statutes, is amended to read:

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

(5)(a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, and athletic contests.

2. Any eating place maintained and operated by, or for the

benefit of, a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, or athletic contests.

3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

4. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

5. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

6. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

7. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

8. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

9. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated

under s. 381.0072.

10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 2. This act shall take effect July 1, 2015.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1219 (2015)

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Raulerson offered the following:

Amendment (with title amendment)

Remove lines 26-56 and insert:

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; ~~or~~

b. Temporarily to serve such events as fairs, carnivals, food contests, or athletic contests~~.~~; or,

c. Maintained and operated by an individual or entity, at a temporary event lasting 3 days or less, that is hosted by a church or a religious, nonprofit fraternal, or nonprofit civil organization, whom the individual or entity guarantees a percentage of the profit generated at the event will be provided

to the nonprofit host, and whom the individual or entity did not generate annual revenue greater than $4,000 during the previous calendar year from eating places or temporary food service events. Upon request of the division, an individual or entity who claims an exemption under this paragraph must provide the division documentation of revenue generated, if any, at eating places or temporary food service events during the previous calendar year.

3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

4. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

5. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

6. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

7. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

8. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

9. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 2. Paragraph (c) of subsection (3) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division, on a form adopted by rule of the division, not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, a complete list of the names, addresses, phone numbers, and type of exemption claimed for any individuals or entities maintaining or operating an eating place and claiming an exemption under s. 509.013(5)(b), the number of individual food service facilities

each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors, including the food-recovery brochure developed under s. 595.420.

3.a. A public food service establishment or other food service vendor, unless exempted by s. 509.013(5)(b), must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events of 3 days or less in duration.

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

97 Remove line 5 and insert:

98 exclude certain events; amending s. 509.032, F.S.; providing

99 additional requirements for temporary food service event hosts;

100 providing rulemaking authority; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1247 Alcoholic Beverages
SPONSOR(S): Avila and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 998

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

SUMMARY ANALYSIS

Powdered alcohol is a product containing alcohol in a powdered form intended for human consumption, usually after being mixed with water to create an alcoholic drink.

The bill prohibits the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume.

The bill provides that a person who violates this prohibition by selling powdered alcohol commits a misdemeanor of the first degree. The bill provides that a second violation within five years is a felony of the third degree. A person who violates the prohibition within five years of a first offense may also be treated as a habitual offender, which may result in a term of imprisonment not to exceed 10 years.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

The term "alcoholic beverages" is defined by s. 561.01(4)(a), F.S., to mean "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume" and that the percentage of alcohol by volume is determined by comparing the volume of ethyl alcohol with all other ingredients in the beverage.

The terms "intoxicating beverage" and "intoxicating liquor" are defined by s. 561.01(5), F.S., to "mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume."

Liquor and distilled spirits are regulated specifically by ch. 565, F.S. The terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" by s. 565.01, F.S., to mean:

> that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Powdered Alcohol

Powdered alcohol is a product which, when combined with a liquid, produces an alcoholic beverage. The Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury have approved labels for the sale of the powdered alcohol product Palcohol on March 10, 2015.[2] The manufacturer of Palcohol has indicated that the alcohol produced from a single product is equivalent to the amount of alcohol in a mixed drink.[3] The manufacturer of this product does not indicate the actual percentage by volume of alcohol in the six ounces of liquid that are mixed with the powdered alcohol.

It is not clear whether powdered alcohol may be considered an alcoholic beverage under the Beverage Law. According to the Department, while there is no regulation of "distilled spirits in powdered form"[4] the definition of liquor in s. 565.01, F.S., would include powdered distilled spirits.[5]

The states of Alaska, Louisiana, South Carolina, Vermont, and Virginia have banned the sale of powdered alcohol.[6] The states of Delaware and Michigan define powdered alcohol as an alcoholic beverage.[7]

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[1] s. 561.02, F.S.

[2] Candice Choi, *Powdered Alcohol Gets Federal Agency's Approval*, ABC NEWS (Mar. 11, 2015), http://abcnews.go.com/Health/wireStory/powdered-alcohol-federal-agencys-approval-29552087; PALCOHOL, http://www.palcohol.com/home.html (last visited Mar. 19, 2015).

[3] *Id.*

[4] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 House Bill 823/Senate Bill 998, p. 2 (Mar. 12, 2015).

[5] *Id.*

[6] *See* Heather Morton, *Powdered Alcohol 2015 Legislation*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Mar. 11, 2015), http://www.ncsl.org/research/financial-services-and-commerce/powdered-alcohol-2015-legislation.aspx.

[7] *Id.*

Effect of Proposed Changes

The bill creates s. 562.62(1), F.S., to prohibit a person from selling an alcoholic beverage that is intended for human consumption and sold in a powdered form, or that contains more than 76 percent alcohol by volume.

The bill creates s. 562.62(2), F.S., to provide that a person who violates the prohibition in subsection (1) by selling powdered alcohol commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.[8] The bill provides that a second violation within five years is a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s.775.084, F.S.[9]

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 creates s. 562.62, F.S., prohibiting the sale of alcoholic beverages in powdered form and providing penalties.

Section 2 provides an effective date of July 1, 2015.

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:

Owners of powdered alcohol products may not sell them in Florida. These products have only recently been approved for sale, and the market for such products is unknown. This should not effect the current sales of any private business, but will prevent the sales of a business that may have otherwise been planning to sell powdered alcohol.

[8] s. 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and s. 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

[9] s. 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years, s. 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000, s. 775.084, F.S., provides increased penalties for habitual offenders, and s. 775.084(4)(a), F.S., provides that a habitual felony offender may be sentenced, in the case of a felony of the third degree, for a term of years not exceeding 10.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to alcoholic beverages; creating s. 562.62, F.S.; prohibiting the sale of alcoholic beverages in powdered form or containing more than a specified percentage of alcohol by volume; providing penalties; providing an effective date.

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

Section 1. Section 562.62, Florida Statutes, is created to read:

562.62 Sale of powdered alcohol prohibited; maximum percentage of alcohol by volume; penalties.—

(1) A person may not sell an alcoholic beverage that:

(a) Is intended for human consumption and is in powdered form; or

(b) Contains more than 76 percent alcohol by volume.

(2) A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates subsection (1) after having been previously convicted of such an offense within the past 5 years commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect July 1, 2015.

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	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Avila offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 565.01, Florida Statutes, is amended to read:

565.01 Definition; liquor.—The words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. This definition includes the term "powdered alcohol" or alcohol otherwise prepared in a solid or powdered form for either direct use or consumption after the powder is combined with a liquid.

Section 2. Section 565.08, Florida Statutes, is amended to read:

565.08 Labeling regulations; liquor.—The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all liquors containing 0.5 percent or more of alcohol by volume and all powdered alcohol products, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

Section 3. Section 565.10, Florida Statutes, is amended to read:

565.10 Distilled spirits container limit.—It is unlawful for any distributor or vendor to sell or distribute distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces, or in any package of powered alcohol that when appropriately mixed would produce more than 1.75 liters or 59.18 ounces of alcoholic beverage with a maximum proof as prescribed in s. 565.07. The division is authorized to make reasonable rules in accordance with chapter 120 governing the standards of fill of distilled spirits containers, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such standards of fill of distilled spirits containers.

Section 4. Section 565.12, Florida Statutes, is amended to read:

565.12 Excise tax on liquors and beverages.—

(1) As to beverages containing 17.259 percent or more of

alcohol by volume and not more than 55.780 percent of alcohol by volume, except wines, there shall be paid by every manufacturer and distributor a tax at the rate of $6.50 per gallon. As to beverages containing less than 17.259 percent of alcohol by volume, there shall be paid by every manufacturer and distributor a tax at the rate provided in chapter 564.

(2) As to beverages containing more than 55.780 percent of alcohol by volume, there shall be paid by every manufacturer and distributor a tax at the rate of $9.53 per gallon.

(3) As to powdered alcohol, there shall be paid by every manufacturer or distributor a tax at a rate of $9.53 per gallon. The tax rate of $9.53 per gallon shall be determined by applying the rate to the amount of powdered product necessary to produce a gallon of alcoholic beverage whose alcohol content would be equal to 55.780 percent alcohol by volume.

(3) The excise taxes required to be paid by this section are not required to be paid upon any alcoholic beverage sold to a post exchange, ship service store, or base exchange located in a military, naval, or air force reservation within this state.

(4) The department is authorized to adopt rules to effectuate the provisions of this section.

Section 5. Section 565.18, Florida Statutes, is created to read:

565.18 Powdered Alcohol Restrictions.—

(1) Powdered alcohol products may only be offered for sale packaged in powdered form for consumption off the premises or

use.

(2) Powdered alcohol may not be offered for sale for consumption on-premises in powdered form; however, a business that may otherwise offer distilled spirits for sale for consumption on-premises may offer an alcoholic beverage that was prepared with powdered alcohol, so long as the preparation is entirely completed before the resulting beverage is served.

(3) SELF-SERVICE MERCHANDISING PROHIBITED.-

(a) "Self-service merchandising" means the open display of powdered alcohol products, for direct retail consumer access and handling before purchase without the intervention or assistance of the retailer or the retailer's owner, employee, or agent. An open display of such products includes the use of an open display unit.

(b) A retailer that sells powdered alcohol products may not sell, permit to be sold, offer for sale, or display for sale such products by means of self-service merchandising.

(c) A retailer that sells powdered alcohol products may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.

Section 6. This act shall take effect July 1, 2015.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to alcoholic beverages; amending s. 565.01, F.S.; defining powdered alcohol; amending s. 565.08, F.S.; providing labeling requirements for powdered alcohol; amending s. 565.10, F.S.; providing maximum size powdered alcohol container; amending s. 565.12, F.S.; providing excise tax for powdered alcohol; creating s. 565.18, F.S.; providing restrictions on the sale of powdered alcohol products; providing an effective date.