Civil Justice & Claims Subcommittee

Tuesday, March 28, 2017
3:30 PM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Heather Fitzenhagen
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice & Claims Subcommittee

Start Date and Time:	Tuesday, March 28, 2017 03:30 pm
End Date and Time:	Tuesday, March 28, 2017 06:30 pm
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 645 Involuntary Examinations Under the Baker Act by Lee
CS/HB 653 Community Associations by Careers & Competition Subcommittee, Moraitis
CS/HB 775 Motor Vehicle Warranty Repairs and Recall Repairs by Careers & Competition Subcommittee, Diaz, M.
HB 829 Timeshare Plans by La Rosa
HB 1159 Uniform Voidable Transactions Act by Moraitis
HB 1271 Construction Defect Claims by Trumbull
HB 1337 Child Support and Parenting Time Plans by Diaz, J.
HB 6517 Relief/Reginald Jackson/City of Lakeland by Alexander
HB 6543 Relief/Erin Joynt/Volusia County by Santiago
HB 6551 Relief/Ramiro Companioni/City of Tampa by Santiago

NOTICE FINALIZED on 03/24/2017 4:13PM by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 645 Involuntary Examinations Under the Baker Act
SPONSOR(S): Lee, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	15 Y, 0 N	Siples	McElroy
2) Civil Justice & Claims Subcommittee		Bond NB	Bond NB
3) Health & Human Services Committee			

SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness, and establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations.

Currently, the following health care practitioners may initiate the involuntary examination of a person under the Baker Act (some subject to certain training and experience requirements): a physician, a clinical psychologist, a psychiatric nurse, a mental health counselor, a marriage and family therapist, and a clinical social worker.

The bill adds advanced registered nurse practitioners and physician assistants to the list of health care practitioners who may initiate the involuntary examination of a person under the Baker Act.

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

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Involuntary Examination under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act"[1]), codified in part I of ch. 394, F.S., to address mental health needs in the state.[2] The Baker Act provides the authority and process for the voluntary and involuntary examination of persons who meet certain criteria, and the subsequent inpatient or outpatient placement of such individuals for treatment.

The Department of Children and Families (DCF) administers The Baker Act through receiving facilities which are designated by DCF and may be public or private facilities that provide the examination and short-term treatment of persons who meet the criteria under The Baker Act.[3] Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g. Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.[4]

Current law allows an involuntary examination if there is reason to believe a person has a mental illness and; because of the illness, the person:

- Has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for himself or herself that an examination is needed; and
- Is likely to suffer from self-neglect or substantial harm to her or his well-being, or be a danger to himself or herself or others.[5]

A person who is subject to an involuntary examination generally may not be held longer than 72 hours in a receiving facility.[6]

Courts, law enforcement officers, and certain health care practitioners are authorized to initiate such involuntary examinations.[7] A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer[8] may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for

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[1] "The Baker Act" is named for its sponsor, Representative Maxine E. Baker, one of the first two women from Dade County elected to office in the Florida Legislature. As chair of the House Committee on Mental Health, she championed the treatment of mental illness in a manner that would not sacrifice a patient's rights and dignity. Baker served five terms as a member of the Florida House of Representatives from 1963-1972 and was instrumental in the passage of the Florida Mental Health Act. *See* University of Florida Smathers Libraries, *A Guide to the Maxine E. Baker Papers*, *available at* http://www.library.ufl.edu/spec/pkyonge/baker.htm (last visited February 24, 2017), and Department of Children and Families and University of South Florida, Department of Mental Health Law and Policy, *2014 Baker Act User Reference Guide: The Florida Mental Health Act* (2014), *available at* http://www.dcf.state.fl.us/programs/samh/mentalhealth/laws/BakerActManual.pdf (last visited February 24, 2017).

[2] Chapter 71-131, s. 1, Laws of Fla.

[3] Section 394.455(39), F.S.

[4] Section 394.455(47), F.S.

[5] Section 394.463(1), F.S.

[6] Section 394.463(2)(g), F.S.

[7] Section 394.463(2)(a), F.S.

[8] "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(1), F.S.

examination. Health care practitioners may initiate an involuntary examination by executing the *Certificate of a Professional Initiating an Involuntary Examination*, an official form adopted in rule by the DCF.[9] The health care practitioner must have examined the person within the preceding 48 hours and state that the person meets the criteria for involuntary examination.[10] The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:

- A physician licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure.
- A physician or psychologist employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense that qualifies as a receiving or treatment facility.
- A psychiatric nurse who is certified as an advanced registered nurse practitioner under s. 464.012, who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.[11]

In 2015, there were 193,410 involuntary examinations initiated in the state. Law enforcement initiated half of the involuntary examinations (50.54 percent), followed closely by mental health professionals (47.58 percent), with the remaining initiated pursuant to *ex parte* orders by judges (1.88 percent).[12]

Physician Assistants

Physician assistant (PA) licensure in Florida is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH) licenses PAs and the Florida Council on Physician Assistants (Council) regulates them.[13] PAs are also regulated by either the Florida Board of Medicine for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S. The duty of a board and its members is to make disciplinary decisions concerning whether a doctor or PA has violated the provisions of his or her practice act.[14] There are 7,527 PAs who hold active licenses in Florida.[15]

PAs may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship.[16] A supervising physician may only

[9] The *Certificate of a Professional Initiating an Involuntary Examination* is a form created by the DCF which must be executed by health care practitioners initiating an involuntary examination under The Baker Act. The form contains information related to the person's diagnosis and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination of such person. *See* Florida Department of Children and Families, *CF-MH 3052b*, incorporated by reference in Rule 65E-5.280, F.A.C., and *available at* http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf. (last visited February 24, 2017).
[10] Section 394.463(2)(a)3., F.S.
[11] *Id.*
[12] Annette Christy & Christina Guenther, Baker Act Reporting Center, College of Behavioral & Community Sciences, University of South Florida, *Annual Report of Baker Act Data: Summary of 2015 Data*, *available at* https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/reports/BA_Annual_2015_Final.pdf (last visited February 24, 2017).
[13] The Council consists of three physicians who are members of the Board of Medicine; one member who is a member of the Board of Osteopathic Medicine, and a physician assistant appointed by the State Surgeon General. (Sections 458.347(9) and 459.022(8), F.S.)
[14] Sections 458.347(12) and 459.022(12), F.S.
[15] Email correspondence with the Department of Health, dated February 3, 2017 (on file with the Health Quality Subcommittee). The number of active licensed PAs include both in-state and out-of-state licensees.
[16] Sections 458.347(2)(f) and 459.022(2)(f), F.S., define supervision as responsible supervision and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.

delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.[17] The supervising physician is responsible and liable for any acts or omissions of the PA and may not supervise more than four PAs at any time.[18]

To be licensed as a PA in Florida, an applicant must demonstrate to the Council:

- Satisfactory passage of the National Commission on Certification of Physician Assistant exam;
- Completion of the application and remittance of the application fee;[19]
- Completion of an approved PA training program;
- Acknowledgement of any prior felony convictions;
- Acknowledgement of any previous revocation or denial of licensure in any state;
- Two letters of recommendation; and
- If the applicant wishes to apply for prescribing authority, a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.[20]

Licenses are renewed biennially.[21] At the time of renewal, a PA must demonstrate that he or she has met the continuing education requirements and must submit an acknowledgement that he or she has not been convicted of any felony in the previous two years.[22]

Current Florida law does not expressly allow PAs to refer for or initiate involuntary examinations under the Baker Act; however, in 2008, Attorney General Bill McCollum issued an opinion stating:

> A physician assistant pursuant to Chapter 458 or 459, Florida Statutes, may refer a patient for involuntary evaluation pursuant to section 394.463, Florida Statutes, provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice.[23]

PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders.

Advanced Registered Nurse Practitioners

Nurse licensure is governed by part I of ch. 464, F.S. Nurses are licensed by the DOH and regulated by the Board of Nursing. Licensure requirements to practice nursing include completion of an approved educational course of study, passage of an examination approved by the DOH, acceptable criminal background screening results, and payment of applicable fees.[24]

A nurse who holds a current license to practice professional nursing may apply to be certified as an Advanced Registered Nurse Practitioner (ARNP), under s. 464.012, F.S., if the nurse meets one or more of the following requirements:

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[17] Rules 64B8-30.012 and 64B15-6.010, F.A.C.
[18] Sections 458.347(15) and 459.022(15), F.S.
[19] The application fee is $100 and the initial license fee is $205. *See* http://flboardofmedicine.gov/licensing/physician-assistant-licensure/ (last visited February 24, 2017).
[20] Sections 458.347(7) and 459.022(7), F.S.
[21] For timely renewed licenses, the renewal fee is $280 and the prescribing registration is $150. An applicant may be charged an additional fee if the license is renewed after expiration or is more than 120 days delinquent. *See* http://flboardofmedicine.gov/renewals/physician-assistants/ (last visited February 24, 2017).
[22] Sections 458.347(7)(b)-(c) and 459.022(7)(b)-(c), F.S.
[23] Op. Att'y Gen. Fla. 08-31 (2008), *available at* http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf (last visited February 24, 2017).
[24] Sections 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

- Satisfactory completion of a formal postbasic educational program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.[25] All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or dentist.[26] ARNPs may carry out treatments as specified in statute, including:[27]

- Prescribing, dispensing, administering, or ordering any drug;[28]
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy;
- Ordering any medication for administration patients in certain facilities; and
- Performing additional functions as maybe determined by rule in accordance with s. 464.003(2), F.S.[29]

In addition to the above-allowed acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.[30] Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.[31]

Currently, only ARNPs who are "psychiatric nurses" may initiate involuntary examinations under the Baker Act.[32] To qualify as a psychiatric nurse, an ARNP must have a master's or doctoral degree in psychiatric nursing, hold a national advance practice certification as a psychiatric mental health advanced practice nurse, and two years post-master's clinical experience.

Effect of Proposed Changes

The bill authorizes PAs and ARNPs to initiate involuntary examinations under The Baker Act. The PA or ARNP must execute a certificate stating that a person he or she examined within the preceding 48 hours appears to meet the criteria for an involuntary examination for mental illness. Under current law, only a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist or clinical social worker may initiate an involuntary examination by executing such a certificate.

The bill defines a "physician assistant" and an "advanced registered nurse practitioner" in the same manner as their respective practice acts (ss. 458.347, 459.022, and 464.003, F.S.).

The bill makes necessary conforming changes due to the statutory changes made by the bill.

The bill provides an effective date of July 1, 2017.

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[25] Section 464.012(2), F.S.
[26] Section 464.012(3), F.S.
[27] *Id.*
[28] An ARNP may only prescribe controlled substances if he or she has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills. An ARNP is limited to prescribing a 7-day supply of Schedule II controlled substances. Only a psychiatric nurse may prescribe psychotropic controlled substances for the treatment of mental disorders and psychiatric mental health controlled substances for children younger than 18.
[29] Section 464.003(2), F.S., defines "advanced or specialized nursing practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.
[30] Section 464.012(4), F.S.
[31] Section 464.012(4)(c)1., F.S.
[32] Section 394.463(2)(a), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.455, F.S., relating to definitions.
Section 2: Amends s. 394.463, F.S., relating to involuntary examinations.
Section 3: Amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

Section 4: Amends s. 394.495, F.S., relating to child and adolescent mental health system care; programs and services.
Section 5: Amends s. 394.496, F.S., relating to service planning.
Section 6: Amends s. 394.9085, F.S., relating to behavioral provider liability.
Section 7: Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.
Section 8: Amends s. 744.2007, F.S., relating to powers and duties.
Section 9: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No additional rule-making is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.455, F.S.; defining terms; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that he or she has examined a person and finds the person appears to meet the criteria for involuntary examination; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.2007, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (5) through (48) of section 394.455, Florida Statutes, are redesignated as subsections (6) through (49), respectively, a new subsection (5) is added to that section, and present subsection (33) is amended, to read:

394.455 Definitions.—As used in this part, the term:

(5) "Advanced registered nurse practitioner" means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

(34) ~~(33)~~ "Physician assistant" has the same meaning as

defined in s. 458.347(2)(e) ~~means a person licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders~~.

Section 2. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department the next working

day. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department the next working day.

3. A physician, physician assistant, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, ~~or~~ clinical social worker, or an advanced registered nurse practitioner may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient

evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department the next working day. The document may be submitted electronically through existing data systems, if applicable.

Section 3. Paragraph (a) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(16) ~~s. 394.455(15)~~ and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's

consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

Section 4. Paragraphs (a) and (c) of subsection (3) of section 394.495, Florida Statutes, are amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~;

(c) A person who is under the direct supervision of a qualified professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a professional licensed under chapter 491.

Section 5. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 6. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(25)(a)4., 397.311(25)(a)1., and 394.455(40) ~~394.455(39)~~, respectively.

Section 7. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt

from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in s. 394.455(48) ~~s. 394.455(47)~~.

Section 8. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455(48) ~~s. 394.455(47)~~, without an involuntary placement proceeding as provided by law.

Section 9. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 653 Community Associations
SPONSOR(S): Careers & Competition Subcommittee; Moraitis, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	8 Y, 5 N, As CS	Brackett	Anstead
2) Civil Justice & Claims Subcommittee		Stranburg CCS	Bond NB
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located within the Department of Business and Professional Regulation (Department), has regulatory authority over condominium associations and cooperative associations. The division has limited responsibilities regarding homeowner's associations (limited to arbitration of election and recall disputes). The bill:

- Removes the future repeal of condominium bulk buyer provisions.
- Removes the option that condominium, cooperative, and homeowners' associations operating fewer than 50 units may prepare cash receipt reports in lieu of financial statements; and repeals the limitation that cooperative and condominium associations may not waive financial reporting for more than three consecutive years, thereby allowing unlimited waiver.
- Extends from 5 to 10 business days the time in which a condominium or cooperative must respond to a unit owners' request to inspect records; shortens retention periods for certain documents; and allows notice of board meetings by website.
- Provides a complete exemption from retrofitting with a fire sprinkler system or engineered lifesafety system for a condominium or cooperative building under 75 feet tall without a vote. The current requirement to retrofit a building over 75 feet tall, unless the unit owners waive the requirement by a majority vote, is extended 2 years. The unit owners of a building over 75 feet tall may waive the requirement for an engineered life safety system. Electronic voting to forgo retrofitting is authorized. Certain notices regarding a waiver of retrofitting are repealed. The requirement to wait 3 years between votes to require retrofit is repealed.
- Requires cooperatives to retain electronic records related to voting as official records.
- Amends HOA reserve fund and annual budget requirements to mirror the requirements of condominiums.
- Requires that a vote authorizing an alteration or addition to a condominium must held prior to beginning of the work.
- Amends cooperative law to match condominium law regarding removal of board members who are 90 days or more delinquent on payments and restricting co-owners from serving on the board of directors.
- Allows HOAs to provide electronic notice to any member who has provided a fax number or email address for purposes of receiving notice.
- Amends authorized cooperative common expenses to include communication and information services in bulk contracts, as is currently authorized in condominiums.

The bill is not expected to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Condominiums, Timeshares and Mobile Homes (the division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

A condominium association is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. 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 quorum, voting rights, and election and removal of board members.

A cooperative association is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, 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.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. Florida law provides procedures and minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division only for certain election disputes.

[1] s. 718.103(11), F.S.
[2] s. 718.104(2), F.S.
[3] s. 719.103(2)(26), F.S.
[4] s. 720.301(9), F.S.

Official Records – Current Situation

Condominium and cooperative associations are required to maintain official records for at least 7 years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- Meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association;
- All contracts for work to be performed including bids;
- All other written records which are related to the operation of the association; and
- All ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.[5]

Cooperatives are required to maintain all contracts for work to be performed including bids for a period of one year whereas condominiums are required to maintain them for at least seven years.[6]

Unit owners are able to inspect the official records, and a condominium or cooperative must have the records available for inspection within 5 working days of receiving a request to inspect them.[7]

Official Records – Effect of the Bill

The bill:

- Extends the deadline condominiums and cooperatives have to make records available to unit owners from 5 working days to 10 working days.
- Decreases the amount of time a condominium must maintain bids for contracts for work to be performed from a period of seven years to a period of one year.
- Includes electronic records relating to voting to the list of official records that must be kept by the cooperative or condominium association.

Financial Reporting – Current Situation

A condominium, cooperative, and HOA (collectively associations) must complete an annual financial report, and provide each member a copy of the financial report or notice that a copy of the financial report is available upon request.[8] The type of financial report required by an association is determined by the total annual revenues of the association.

- An association with total annual revenue of less than $150,000 must prepare a report of cash receipts and expenditures.
- An association having total annual revenues between $150,000 and less than $300,000 must prepare compiled financial statements.
- An association having total annual revenues of at least $300,000 but less than $500,000 must prepare reviewed financial statements.
- An association having total revenues of $500,000 or more must prepare audited financial statements.[9]

[5] s. 718.111(12)(a), F.S. and s. 719.104(2), F.S.
[6] *Id.*
[7] *Id.*
[8] ss. 718.111(13), 719.104(4), & 720.303(7), F.S.
[9] *Id.*

An association that operates fewer than 50 units may prepare a report of cash receipts and expenditures in lieu of financial reports regardless of total annual revenues.[10]

A condominium or cooperative may annually vote to waive the financial report and prepare a report of cash receipts and expenditures, but it may not waive the financial report requirement for more than three consecutive years.[11] Industry experts have interpreted waiving a financial report to mean preparing a report of cash receipts and expenditures in lieu of the financial report.[12]

Financial Reporting – Effect of the Bill

The bill removes the option that an association operating fewer than 50 units may prepare cash receipt reports in lieu of financial statements regardless of total annual revenues.

The bill removes the limitation on cooperatives and condominiums that prohibited waiving financial reporting for more than three consecutive years, thus allowing condominiums and cooperatives to waive financial reporting indefinitely (if approved annually by a vote of the membership).

Notice of Board Meetings – Current Situation

Associations are required to notice all board meetings by posting notice in a conspicuous place on the association's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding unit use is considered.[13]

If a parcel owner in an HOA provides written consent the HOA may provide the parcel owner notice by electronic transmission for board meetings, committee meetings, annual meetings, and special meetings.[14]

Notice of Board Meetings – Effect of the Bill

The bill allows condominiums and cooperatives to adopt rules for noticing all board meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must also include a requirement that the cooperative or condominium send an electronic notice to unit owners providing a hyperlink to the website where the notice is posted. Notice by website must be in addition to the other notice requirements.

The bill allows an HOA to give notice by electronic transmission to any parcel owner who provided written consent and a fax number or email address to the HOA.

Communication by Board Members for Cooperatives and HOAs – Current Situation and Effect of the Bill

It is not clear if board members for cooperatives and HOAs may use email as a form of communication. Board members for condominiums may use email as a form of communication.[15]

The bill allows members of the board of directors for cooperatives and HOAs to use email as a form of communication. However, a board member may not cast a vote via email.

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[10] *Id.*
[11] ss. 718.111(13) & 719.104(4), F.S.
[12] *See* Peter M. Dunbar, The Complete Condominium, 169 (13th ed. 2012-13).
[13] ss. 718.112(2)(c), 720.303(2)(c), & 719.106(1)(c)(1), F.S.
[14] s. 720.303(2)(c), F.S.
[15] s. 718.112(2)(c), F.S.

Cooperative Board of Directors Members – Current Situation and Effect of the Bill

Current law provides a set of mandatory provisions for the bylaws of a condominium or cooperative.[16] In condominiums, co-owners of units cannot serve as members of the board of directors for an association unless they own more than one unit or there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancies.[17] The statutory standard bylaws for a condominium also provides that a director or officer more than 90 days delinquent in the payment of any monetary obligation due to the association is deemed to have abandoned the office, creating a vacancy on the board to be filled as appropriately.[18]

The bill amends cooperative law to mirror condominium law by inserting these two provisions into the statutory standard bylaws for cooperatives.

Cooperative Common Expenses and Bulk Contracts – Current Situation and Effect of the Bill

Common expenses are normal costs incurred by a cooperative and include:

- Costs for the operation, maintenance, repair, or replacement of cooperative property;
- Costs of carrying out the powers and duties of the cooperative; or
- Costs designated by the cooperative as a common expense.[19]

Common expenses are paid by the unit owners of a cooperative and are included in a cooperative's annual budget to its members.[20]

Cooperatives may provide in their bylaws that bulk contracts for the cost of a master antenna television system or franchised cable television service are common expenses. Unlike condominiums, cooperatives may not provide bulk contracts for the cost of communication services defined in ch. 202, F.S., information services, or internet services as common expenses.[21]

Ch. 202, F.S., defines communication services to mean the transmission, conveyance, or routing of:

- voice, data, audio, video; or
- any other information or signals, including:
    - video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave; or
    - other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.
- The term also includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

Examples of communication services include:

- Cable and satellite television
- Video and music streaming
- Telephones
- Mobile communications, and similar services[22]

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[16] ss. 718.112 & 719.106, F.S.
[17] s. 718.112(2)(d)2, F.S.
[18] s. 718.112(2)(n)
[19] ss. 719.103(9), & 719.107, F.S.
[20] s. 719.103(1), & 719.106(1)(j), F.S.
[21] ss. 719.107, & 718.115(1)(d), F.S.
[22] Florida Department of Revenue, *Florida Communications Services Tax*, http://floridarevenue.com/taxes/taxesfees/Pages/cst.aspx (last visited on March 24, 2017).

Information service is defined as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using or making available information via communications services.[23] The term also includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

The bill amends cooperative law to mirror condominium law by providing that bulk contracts for communication services defined in ch. 202, F.S., internet services, and information services may be considered a common expense.

Cooperatives' Board of Directors and Board Members – Current Situation and Effect of the Bill

Cooperatives are administered by a board of directors whose members are elected. The board consists of unit owners who have been elected to serve on the board. Directors of the board nominate officers, including president, secretary, and treasurer. The officers are responsible for the duties that are customarily performed by their counterparts in corporations.[24]

Unlike condominiums, cooperatives do not have a provision that a director or officer is deemed to have abandoned their post if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association.[25]

Additionally, cooperatives do not have a provision that prevents co-owners of a unit in residential condominiums that are more than 10 units from serving on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.[26]

The bill amends cooperative law to mirror condominium law by providing that:

- A director or officer is deemed to have abandoned their office if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association; and
- In residential cooperatives that are more than 10 units, co-owners of a unit may not serve as members on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.

Engineered Life Safety System and Fire Sprinkler Retrofitting – Current Situation

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.[27]

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the

[23] s. 202.11(5), F.S.
[24] s. 719.106(1), F.S.
[25] s. 718.112(2), F.S.
[26] *Id.*
[27] s. 633.104, F.S.

enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years. The FFPC includes national fire safety and life safety standards set forth by the National Fire Protection Association (NFPA), including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).[28]

The state fire prevention codes and standards required existing multi-family buildings 75 feet or taller, including condominiums and cooperatives, to be retrofitted with fire sprinkler systems. Alternatively, a condominium or cooperative may utilize an engineered life safety system in lieu of sprinklers. All condominiums and cooperatives built since 1994 that are 3 stories or more have sprinkler systems and thus are in compliance. The deadline for retrofitting of condominiums and cooperatives has been extended by previous acts.

The Florida Fire Prevention Code allows an engineered lifesafety system (ELSS) as an alternative to a sprinkler system, and defines an ELSS as a system that consists of a combination of:

- partial automatic sprinkler protection;
- smoke detection alarms;
- smoke control; and
- compartmentation or other approved systems.[29]

DBPR has estimated that retrofitting a condominium with sprinklers would cost from $595 to $8,633 per unit. The costs vary depending on a number of factors such as the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.[30]

In 2003, the Legislature amended the requirement to retrofit a residential condominium or cooperative building by providing that:

- Unit owners in residential condominiums and cooperatives may vote to forego retrofitting a building with a fire sprinkler system or engineered life safety system (ELSS). A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected condominium or cooperative.
- Local governments may not require retrofitting with a fire sprinkler system before the end of 2014.
- However, residential condominiums and cooperatives could not vote to forego retrofitting a sprinkler system in any "common area" of a "high rise" building.
    - The common area of a high rise building includes any enclosed hallway, corridor, lobby, stairwell, or entryway
    - A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.[31]

Residential condominiums consist of two or more units, any of which are intended for use as a private temporary or permanent residence. A condominium that contains commercial and residential units is a mixed-use condominium.[32] Residential cooperatives consist of units which are intended for use as a private residence. If a cooperative has commercial and residential units then the cooperative is a residential cooperative with respect to those units intended for use as a private residence.[33]

In 2010, the Legislature again amended the vote to forego retrofitting by:

- Providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high rise building.

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[28] s. 633.202(2), F.S.
[29] 101:A.31.3.5.11.3 and 101: 31.3.5.11.3 Florida Fire Prevention Code 5th edition 2012
[30] Condominium Sprinkler Retrofit Report, October 2009.
[31] ss. 718.112(2)(l) & 719.1055(5) (2003), F.S.
[32] s. 718.103(23), F.S.
[33] s. 719.103(22), F.S.

- Reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote.
- Prohibiting local government from requiring retrofitting before the end of 2019.[34]

However, the Legislature also removed the ability of a residential condominium or cooperative to vote to forego retrofitting a building with an ELSS.[35]

Currently the law provides that:

- An association, condominium, or unit owner is not required to retrofit common elements, association property, or units of a residential condominium to meet current codes in a building that has been certified for occupancy by the applicable government entity if the unit owners vote to forego retrofitting by majority vote.
- Local governments may not require retrofitting with a fire sprinkler system before the end of 2019.
- Current law only applies to fire sprinkler systems. There is currently no statutory authority for condominiums or cooperatives to forego retrofitting a building with an ELSS.
- Current law only applies to residential condominiums. Nonresidential condominiums may not forego a requirement to install sprinklers.
- The ability to forego retrofitting is notwithstanding the provisions of ch. 633, F.S., or any other code, statute, ordinance, administrative rule, or regulation.

The vote to forego retrofitting does not apply to any public lodging establishment buildings, including transient public lodging establishments, that are more than three stories or over 75 feet and that advertise more than 50% of units as being available to rent by guests.[36]

Engineered Life Safety System and Fire Sprinkler Retrofitting – Effect of the Bill

The bill:

- Provides that a condominium or cooperative may also vote to forego retrofitting of an ELSS as well as a fire sprinkler system.
- Clarifies that a condominiums or cooperatives that are 75 feet or less, even if also qualifying as a public lodging establishment in accordance with ss. 509.215 and 553.895(1), F.S., do not have to retrofit a building with a fire sprinkler system or an ELSS or vote to forego retrofitting.
- Allows all condominiums or cooperatives that are 75 feet or more to vote to waive retrofitting requirements.
- Prohibits a local authority from requiring retrofitting of a fire sprinkler system or ELSS until on or after January 1, 2022.
- Extends the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting, from December 31, 2019, to December 31, 2021.

Vote to Forego Retrofitting – Current Situation

A vote to forego retrofitting may be obtained by limited proxy, a personally cast ballot at a membership meeting, or by execution of a written consent by the member. The association's vote to forego retrofitting is effective upon recording a certificate attesting to such vote in the public records for the county of the condominium or cooperative.[37]

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[34] ss. 718.112(2)(l), 719.1055(5), F.S.
[35] *Id.*
[36] ss. 509.215 & 553.895(1), F.S. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
[37] ss. 718.112(2)(l), & 719.1055(5), F.S.

The cooperative or condominium must mail or hand deliver each unit owner written notice of the vote. After the vote to forego, notice of the results must be mailed or hand delivered to all unit owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing, and by a unit owner to a renter before signing a lease.[38]

If there has been a previous vote to forego retrofitting then a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may be called once every 3 years. Electronic transmission may not be used to provide notice of the special meeting.[39]

DBPR must require condominiums and cooperatives to report the membership vote and recording of a certificate and, if retrofitting has been undertaken, the per-unit cost of such work. DBPR must annually report to the Division of State Fire Marshal of the Department of Financial Services the number of associations that have elected to forego retrofitting.

Vote to Forego Retrofitting – Effect of the Bill

The bill:

- Adds electronic voting as a means to vote to forego retrofitting.
- Removes the requirement that notice of a vote to forego and such results be hand delivered or mailed and instead requires that a notice of a vote to forego shall be delivered or mailed to each unit owner.
- Clarifies that failure to timely notice unit owners of the results of a vote to forego does not invalidate the results of the vote as long as notice of the results is provided to the unit owners.
- Repeals the requirement that current owners provide a copy of the notice of the results of an opt-out vote to a new unit owner before closing or to a renter before signing a lease.
- Provides that a majority of the board of directors may hold a special owners meeting to vote to retrofit if there has already been a vote to forego retrofitting.
- Removes the provision that electronic transmission notice may not be used to notice the special meeting.
- Repeals the requirement that a vote to require retrofitting may only be called once every three years if there has already been a previous vote to forego retrofitting.
- Provides that failure to notify DBPR of a vote to forego and record the certificate will not affect the validity of the vote to forego.

Bulk Assignees and Bulk Buyer – Current Situation

In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities so as to enable economic opportunities for successor purchasers of distressed condominiums.

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents. Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to: conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal. [40]

[38] *Id.*
[39] *Id.*
[40] s. 718.703, F.S.

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for a specific and defined period:[41]

> "The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period."

Originally, the time limitation for classification as a bulk assignee or bulk buyer was until July 1, 2012.[42] In 2012, the Legislature extended the time limitation to July 1, 2015.[43] In 2014, the legislature again amended s. 718.707, F.S., to extend to July 1, 2016.

Finally, in 2015, the legislature again amended s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the parcels were acquired between July 1, 2010, and July 1, 2018.

Bulk Assignees and Bulk Buyer – Effect of the Bill

The bill removes the time limit on acquisition for classification as a bulk buyer, extending the applicability of the bulk buyer provisions indefinitely.

Alterations or Additions to Condominium Property-Current Situation and Effect of the Bill

Condominiums are required to maintain the property of the condominium. In order to maintain condominium property, condominiums may provide a specific procedure to approve material alterations or additions to condominium property in the condominium's declaration, which is the document creating the condominium. If a condominium's declaration does not provide a procedure to approve material alterations or additions then approval by 75 percent of the voting interests is required to approve any material alterations or additions. It is not clear in current statute if the approval must occur before work begins on the additions or alterations.

The bill provides that approval by 75% of voting interests must be obtained prior to work beginning on the material alterations or additions of condominium property.

HOA Budgets and Reserve Accounts – Current Situation

HOAs are required to prepare an annual budget for the coming year. The budget must include:

- Estimated revenues and expenses;
- Estimated surplus or deficits; and
- Fees for the association.[44]

Once the annual budget is adopted, it becomes the basis for allocating assessments among the parcel owners.[45] Assessments are sums of money owed by parcel owners to an HOA to fund the HOA.[46]

A condominium association may call a special meeting if it adopts an annual budget in which its proposed assessments exceed 115% of its assessments for the previous year.[47] A special meeting to

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[41] s. 718.702, F.S.
[42] Chapter 2010-174, L.O.F.
[43] Chapter 2012-61, L.O.F.
[44] s. 720.303(6)(a), F.S.
[45] Charles F. Dudley & Peter Dunbar, The Law of Florida Homeowners Associations, 47 (9th ed. 2012-13).
[46] *Id.* at 5.
[47] s. 718.112(2)(e)2, F.S.

consider a substitute budget must be called if 10 percent of the voting interests petition for the meeting within 21 days of the adoption of the budget. The meeting must take place within 60 days of the adoption of the annual budget, and notice must be delivered by mail or hand at least 14 days before the meeting. HOAs have no similar provision.

A reserve account is in effect a savings account whereby a HOA collects periodic advance payments to cover future anticipated capital expenditures and deferred maintenance items. Monies in a reserve account, including interest, must be spent for maintenance, repair, and replacement of the reserve item. Examples include but are not limited to roof replacement, building painting, pavement resurfacing, and for any other items for which the deferred maintenance expense or replacement costs exceed $10,000.[48]

An HOA may include reserve accounts in an annual budget by a majority vote of all voting interests whereas condominiums must provide for reserve accounts unless specifically waived. If an HOA or developer establishes a reserve account the HOA must maintain and budget the reserve account.[49]

There are two types of reserve accounts:

1. Separate reserve accounts which are accounts that may only be used for one item or expense such as a roof or building painting; and
2. Pooled reserve accounts which are accounts for a group of capital expenditures that are pooled together. For example, an HOA may have a pooled reserve account for roof replacement, building painting, and pavement resurfacing, instead of three separate reserved accounts.[50]

If an HOA decides to include separate reserve accounts in the annual budget then the HOA must:

- Determine the amount for the reserve account using a specific formula based upon the estimated remaining life of the item and estimated cost to replace or maintain the item.
- For example, the estimated cost to replace a roof is $86,000. The account balance for the roof is $50,000. The estimated remaining useful life of the roof is four years. ($86,000 minus $50,000=$36,000. $36,000 divided by 4 = $9,000.) The current years funding requirement for reserve for the roof would be $9,000.[51]

If an HOA has a pooled reserve account in the annual budget then the HOA will use a separate method to calculate the amount to fund the pooled reserve account. The formula to calculate the amount to fund a pooled account must reflect the remaining useful life and estimated replacement cost for each item and expenditure in the pooled reserve account.[52]

An HOA may vote to waive funding, reduce funding, or terminate a reserve account by a majority vote of the voting interests. If an association is controlled by the developer than the developer may not use reserve funds for anything other than their intended purposes without the majority approval of the non-developer voting interests[53]

If an HOA decides not establish reserve accounts, the HOA must notify its members in conspicuous type on the HOA's annual financial report.[54]

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[48] *Id.*
[49] s. 720.303(6), F.S.
[50] Rule 61B-22.005 of the Florida Administrative Code.
[51] DBPR, Budgets & Reserves Schedules: A Self-Study Training Manual, 41-42, 2010.
[52] Charles F. Dudley & Peter Dunbar, The Law of Florida Homeowners Associations, 47 (9th ed. 2012-13).
[53] s. 720.303(6), F.S.
[54] s. 720.303(6), F.S.

HOA Budgets and Reserve Accounts – Effect of the Bill

The bill amends the laws on HOA annual budgets and reserves to follow condominium law. The bill provides that:

- If HOA assessments for an annual budget exceed 115 percent of assessments for the preceding year and 10 percent of the voting interests request a special meeting within 21 days of the adoption of the budget, the board must:
  - Conduct a special meeting of the unit owners to consider a substitute budget within 60 days of adopting the annual budget.
  - Hand deliver or mail notice of the meeting to each parcel owner at least 14 days prior to such special meeting.
  - An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and file the affidavit among the official records of the association.
- Parcel owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget will take effect.
- Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair, replacement of property, anticipated expenses which the board does not expect to be incurred on a regular basis, or assessments to improve the property.
- If the developer controls the board, assessments must not exceed 115 percent of assessments for the prior fiscal year unless approved by a majority of all voting interests.

The bill amends HOA reserve accounts to mirror condominiums. The bill provides that:

- HOAs must include reserve accounts in the annual budget, instead of having the option to include reserve accounts in the annual budget.
- HOAs must use the pool reserve account funding formula to determine the funding for reserve accounts. However, HOAs may vote to use the funding formula for separate accounts.
- Voting interests mean parcel owners who are subject to fund the reserves in question.
- Proxy questions relating to waiving, reducing, or terminating funding of reserve accounts must contain a statement in conspicuous type that waiving funding for reserve accounts may result in unanticipated special assessments.
- Before turning control over to an association a developer may vote to waive or reduce reserve funds by using the voting interests allocated to the parcels owned by the developer. The developer's vote for waiver is good until the end of the second fiscal year after the governing documents are recorded or title is transferred to a parcel, which is not accompanied by a recorded assignment of developer rights, whichever comes first. However, a developer may not use his or hers' voting interests to use reserve funds for anything other than the reserve expenditures.

Reserve funds and assessment percentages of an annual budget do not apply to mandatory reserve accounts required by any local authority, water or drainage district, community development district, or political subdivision that has authority to approve and control subdivision infrastructure.

HOA Elections – Current Situation and Effect of the Bill

HOA are administered by a board of directors whose members are elected.[55] A HOA association is required to hold board of director elections at its annual meeting or as provided in its governing documents.[56] Elections are conducted in accordance with the procedures set forth in the governing

[55] ss. 720.303 & 720.307, F.S.
[56] s. 720.306(2), F.S.

documents of the association. An election is not required unless more candidates are nominated than vacancies exist.[57]

The bill provides that if an election is not required because there are fewer or equal candidates than vacancies, and nominations from the floor are not required, then write-in nominations are not permitted. The candidates will commence service on the board of directors regardless of whether a quorum was attained at the annual meeting.

Payment of HOA Assessments – Current Situation and Effect of the Bill

HOA are authorized to impose assessments on owners. If assessments or installments of assessments are not paid timely then they will accrue interest. Any payment received by a HOA for payment of an assessment or installment that accrued interest will first be applied to the interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees, and then to the delinquent assessment.[58] The order of payments is the same as condominium law.

The Florida Uniform Commercial Code (UCC) allows a debtor to make a restrictive notation on a payment instrument. Accepting the payment instrument with the notation may then be considered an accord and satisfaction of the outstanding debt.[59]

The bill provides that this application of the payment in HOA law applies notwithstanding the UCC. The bill further provides that this is intended to clarify existing law.

B. SECTION DIRECTORY:

Section 1 amends s. 718.111, F.S., regarding official records and financial reporting for condominiums.

Section 2 amends s. 718.112, F.S., regarding retrofitting fire sprinkler systems and ELSS for condominiums.

Section 3 amends s. 718.113, F.S., regarding alterations or additions to condominium property.

Section 4 amends s. 718.707, F.S., regarding classifications of bulk buyer and assignee for condominiums.

Section 5 amends s. 719.104, F.S., regarding official records for cooperatives.

Section 6 amends s. 719.1055, F.S., regarding retrofitting fire sprinkler systems and ELSS for cooperatives.

Section 7 amends s. 719.106, F.S., regarding board members and meetings for cooperatives.

Section 8 amends s. 719.107, F.S., regarding common expenses for cooperatives.

Section 9 amends s. 720.303, F.S., regarding budget meetings and board members for HOA associations.

Section 10 amends s. 720.306, F.S., regarding board elections for HOA associations.

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[57] *Id.*

[58] s. 720.3085(3), F.S.

[59] s. 673.3111, F.S. The UCC is a set of regulations adopted by all 50 states with the goal of harmonizing the laws of commercial transactions throughout the United States. Duke Law, *Uniform Commercial Code*, https://law.duke.edu/lib/researchguides/ucc/ (last visited on Mar. 18, 2017).

Section 11 amends s. 720.3085, F.S., regarding assessments for HOA associations.

Section 12 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of this bill regarding sprinklers and engineered life safety systems appear to have a positive economic impact on condominium and cooperative owners and a corresponding negal economic impact on contractors. Property insurance costs and rates may factor into the economic cost. The impact is unknown because it is dependent upon how many associations opt out.

The remainder of the bill does not appear to create any significant private sector economic impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a subcommittee substitute. The amendments add the following elements to the bill:

- Requires votes related to alteration or additions to condominiums to be held prior to beginning work.
- Removes the provision that prohibited a cooperative from waiving financial reporting requirements for more than 3 consecutive years.
- Removes the provision that allowed cooperatives and homeowners' associations operating fewer than 50 units to prepare a report of cash receipts and expenditures in lieu of a financial report.
- Amends cooperative director and officer requirements by providing that a director or officer is deemed to have abandoned the office if the director or officer is more than 90 days delinquent in the payment of any monetary obligation due the association.
- Amends cooperative board member eligibility by providing that in residential cooperatives that are more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless there are not enough candidates to fill the positions at the time of the vacancy or the co-owners own more than one unit.
- Amends cooperative bulk contracts to include communication services defined in ch. 202, F.S.
- Allow homeowners' association's to provide electronic notice to any member who has provided a fax number or email address to the association for purposes of receiving notice.

A bill to be entitled

An act relating to community associations; amending s. 718.111, F.S.; revising reporting requirements; amending s. 718.112, F.S.; authorizing an association to adopt rules for posting certain notices on a website; revising provisions relating to required condominium and cooperative association bylaws; revising provisions relating to evidence of condominium and cooperative association compliance with the fire and life safety code; revising unit and common elements required to be retrofitted; revising provisions relating to an association vote to forego retrofitting; providing applicability; amending s. 718.113, F.S.; revising voting requirements relating to alterations and additions to certain common elements or association property; amending s. 718.707, F.S.; revising the time period for classification as bulk assignee or bulk buyer; amending s. 719.104, F.S.; revising recordkeeping and reporting requirements; amending s. 719.1055, F.S.; revising provisions relating to required condominium and cooperative association bylaws; revising provisions relating to evidence of condominium and cooperative association compliance with the fire and life safety code; revising unit and common elements required to be

retrofitted; revising provisions relating to an association vote to forego retrofitting; providing applicability; amending s. 719.106, F.S.; revising requirements to serve as a board member; prohibiting a board member from voting via e-mail; requiring that directors who are delinquent in certain payments owed in excess of certain periods of time be deemed to have abandoned their offices; authorizing an association to adopt rules for posting certain notices on a website; amending s. 719.107, F.S.; specifying certain services which are obtained pursuant to a bulk contract to be deemed a common expense; amending s. 720.303, F.S.; prohibiting a board member from voting via e-mail; revising certain notice requirements relating to board meetings; revising and providing budget requirements; providing an exemption to certain requirements; revising financial reporting requirements; authorizing an association to adopt rules for posting certain notices on a website; amending s. 720.306, F.S.; revising elections requirements; amending s. 720.3085, F.S.; providing applicability; providing an effective date.

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

Section 1. Subsections (12) and (13) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, and voting certifications, and, if known, telephone numbers. The association shall also maintain

the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with subparagraph (c)5. However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s.

718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association <u>for 1 year</u>.

12. Ballots, sign-in sheets, voting proxies, and all other papers <u>and electronic records</u> relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 ~~5~~ working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right

to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association shall maintain an adequate number of copies of the declaration,

articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in

anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

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

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner.

However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

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

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by

law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

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

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last

furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

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

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled

financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

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

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).~~

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

(c) An association may prepare, without a meeting of or approval by the unit owners:

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

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

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

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

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

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

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

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be

effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

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

718.112 Bylaws.—

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

(c) Board of administration meetings.—Meetings of the

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

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Notice of any meeting in which a regular or special assessment against unit owners is to be considered must specifically state that

assessments will be considered and provide the estimated amount and a description of the purposes for such assessments. ~~However,~~ Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is

otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice providing a hypertext link to the website where the notice is posted. ~~Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.~~

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are

exempted from this section by the bylaws of the association.

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

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

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

(l) Certificate of compliance.—A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance ~~of the condominium units~~ with the applicable fire and life safety code must be included. Notwithstanding chapter 633, s. 509.215, s. 553.895(1), or ~~of~~ any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association~~, residential condominium,~~ or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that is 75 feet or less in height. There is no obligation to retrofit for a building greater than 75 feet in height, calculated from the lowest level of fire department vehicle access to the floor

of the highest occupiable story ~~has been certified for occupancy by the applicable governmental entity~~ if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium. There is no requirement that owners in condominiums of 75 feet or less conduct an opt-out vote and such condominiums are exempt from fire sprinkler or other engineered lifesafety retrofitting. The preceding sentence is intended to clarify existing law. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or other engineered lifesafety system before January 1, 2022 ~~2020~~. By December 31, 2018 ~~2016~~, an ~~a residential condominium~~ association that operates a residential condominium that is not in compliance with the requirements for a fire sprinkler system or other engineered lifesafety system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2021 ~~2019~~.

1. A vote to forego required retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association attesting to such vote in the public records of the county where

the condominium is located. When an opt-out vote is to be conducted at a meeting, the association shall mail or ~~hand~~ deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or other engineered lifesafety system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners. ~~After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.~~

2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests or by a majority of the board of directors. ~~Such a vote may only be called once every 3 years.~~ Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. ~~Electronic transmission may not be used to provide~~

~~notice of a meeting called in whole or in part for this purpose.~~

3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting. Compliance with this administrative reporting requirement does not affect the validity of an opt-out vote.

4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

Section 3. Subsection (2) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(2)(a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as

originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act ~~October 1, 2008~~.

(b) There shall not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein. If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required before the material alterations or substantial additions are commenced. This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium

operated by the same association or requiring board approval before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) There shall not be any material alteration or substantial addition made to association real property operated by a multicondominium association, except as provided in the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein. If the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein do not specify the procedure for approving an alteration or addition to association real property, the approval of 75 percent of the total voting interests of the association is required before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

Section 4. Section 718.707, Florida Statutes, is amended to read:

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010~~,~~

~~but before July 1, 2018~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 5. Paragraphs (a) and (b) of subsection (2) and paragraphs (b) and (c) of subsection (4) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than 7 years.

5. A current roster of all unit owners and their mailing

addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all

receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within

45 miles of the cooperative property or within the county in which the cooperative property is located within 10 ~~5~~ working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(4) FINANCIAL REPORT.—

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

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

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

3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement.

4. The requirement to have the financial statement compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

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

~~2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the~~

~~financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.~~

2.~~3.~~ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

Section 6. Subsection (5) of section 719.1055, Florida Statutes, is amended to read:

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

(5) The bylaws must include a provision whereby a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance ~~of the cooperative units~~ with the applicable fire and life safety code.

(a)1. Notwithstanding chapter 633, s. 509.215, s. 553.895(1), or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the

foregoing, an association ~~a cooperative~~ or unit owner is not obligated to retrofit the common elements or units of a residential cooperative with a fire sprinkler system or other engineered lifesafety system in a building that is 75 feet or less in height. There is no obligation to retrofit for a building greater than 75 feet in height, calculated from the lowest level of fire department vehicle access to the floor of the highest occupiable story ~~has been certified for occupancy by the applicable governmental entity~~ if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected cooperative. There is no requirement that owners in cooperatives of 75 feet or less conduct an opt-out vote and such cooperatives are exempt from fire sprinkler or other engineered life safety retrofitting. The preceding sentence is intended to clarify existing law. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or other engineered life safety system before January 1, 2022 ~~the end of 2019~~. By December 31, 2018 ~~2016~~, a cooperative that is not in compliance with the requirements for a fire sprinkler system or other engineered lifesafety system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the cooperative will become compliant by December 31, 2021 ~~2019~~.

2. A vote to forego required retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association attesting to such vote in the public records of the county where the cooperative is located. When the opt-out vote is to be conducted at a meeting, the cooperative shall mail or ~~hand~~ deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or other engineered lifesafety system is to take place. Within 30 days after the cooperative's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the cooperative. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners. ~~After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.~~

(b) If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at

a special meeting of the unit owners called by a petition of least 10 percent of the voting interests or by a majority of the board of directors. ~~Such vote may only be called once every 3 years.~~ Notice must be provided as required for any regularly called meeting of the unit owners, and the notice must state the purpose of the meeting. ~~Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

(c) As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting. Compliance with this administrative reporting requirement does not affect the validity of an opt-out vote.

Section 7. Paragraphs (a) and (c) of subsection (1) of section 719.106, Florida Statutes, are amended, and paragraph (m) is added to that subsection, to read:

719.106 Bylaws; cooperative ownership.—

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

(a) Administration.—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In a residential cooperative association of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless the co-owners own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. A person who has been suspended or removed by the

division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3. When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(c) Board of administration meetings.—Members of the board of administration may use e-mail as a means of communication but

may not cast a vote on an association matter via e-mail. Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated amount and description of the purposes for such assessments. ~~However,~~ Written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property

not less than 14 days before the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a notice posted physically on the cooperative property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the cooperative association for at least the

minimum period of time for which a notice of a meeting is also required to be physically posted on the cooperative property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice providing a hypertext link to the website where the notice is posted. ~~Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.~~ Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

(m) Director or officer delinquencies.—A director or

officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Section 8. Paragraph (b) of subsection (1) of section 719.107, Florida Statutes, is amended to read:

719.107 Common expenses; assessment.—

(1)

(b) If so provided in the bylaws, the cost of a master antenna television system or duly franchised cable television service, communications services as defined in chapter 202, information services, or Internet services obtained pursuant to a bulk contract shall be deemed a common expense, and if not obtained pursuant to a bulk contract, such cost shall be considered common expense if it is designated as such in a written contract between the board of administration and the company providing the master television antenna system or the cable television service, communications services as defined in chapter 202, information services, or Internet services. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after April 2, 1992, for a community antenna system or duly franchised cable television service, communications services as defined in chapter 202, information services, or Internet services may be canceled by a majority of the voting interests present at the next regular or

special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 719.108 to enforce payment of the shares of such costs by the unit owners receiving cable television.

Section 9. Paragraphs (a) and (c) of subsection (2) and subsections (6) and (7) of section 720.303, Florida Statutes, are amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; <u>budget meetings;</u> financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

(a) Members of the board of administration may use e-mail as a means of communication, but may not cast a vote on an association matter via e-mail. A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. Meetings of the board must be open to all members, except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. A meeting of the board must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include ~~provide~~ the following:

1. Notices of all board meetings must be posted in a

conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association

to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(6) BUDGETS; BUDGET MEETINGS.—

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the

estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(b) In addition to annual operating expenses, the budget must ~~may~~ include reserve accounts for capital expenditures and deferred maintenance ~~for~~ which are obligations of the association under ~~is responsible. If reserve accounts are not established pursuant to paragraph (d), funding of such reserves is limited to the extent that~~ the governing documents for any item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve ~~limit increases in~~ assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to a budget adopted by the members of an association by a majority vote at a duly called meeting~~,~~

~~including reserves. If the budget~~ of the association to provide no reserves or less reserves than required by this subsection ~~includes reserve accounts established pursuant to paragraph (d), such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts pursuant to paragraph (d), the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection~~. This section does not preclude the termination of a reserve account established pursuant to this paragraph upon approval of a majority of the total voting interests of the association. Upon such approval, the terminating reserve account shall be removed from the budget.

(c)~~1.~~ Before turnover of control of an ~~If the budget of the~~ association pursuant to s. 720.307, the developer may vote the voting interests allocated to its parcels to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the governing documents are initially recorded or an instrument that transfers title to a parcel subject to the governing documents which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such parcel is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

~~does not provide for reserve accounts pursuant to paragraph (d) and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) must contain the following statement in conspicuous type:~~

~~THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.~~

~~2. If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:~~

~~THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),~~

~~FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.~~

~~(d) An association is deemed to have provided for reserve accounts if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves. If reserve accounts are established by the developer, the budget must designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided by the developer, the membership of the association may elect to do so upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).~~

~~(c) The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item.~~

~~(f) After one or more reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section.~~ If a meeting of the parcel ~~unit~~ owners has been called to determine whether to waive or reduce the funding of reserves and such result is not achieved or a quorum is not present, the reserves as included in the budget go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. ~~Any vote taken pursuant to this subsection to waive or reduce reserves is applicable only to one budget year.~~

(d) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to parcel owners other than the

developer pursuant to s. 720.307, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

(e) The only voting interests eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the parcels subject to assessment to fund the reserves in question. Any vote taken pursuant to this subsection to waive or reduce reserves is applicable only to one budget year. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN PARCEL OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(f) Funding formulas for reserves required by this section must be based on a pooled analysis of two or more of the items for which reserves are required to be accrued pursuant to this subsection. The amount of the contribution to the pooled reserve

account as disclosed on the proposed budget may not be less than that required to ensure that the balance on hand at the beginning of the period the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all the assets that make up the reserve pool based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the allowance for doubtful accounts. The reserve funding formula may not include any type of balloon payments.

(g) As alternative to the pooled analysis method described in paragraph (f) and, if approved by a majority vote at a meeting of the members of the association at which a quorum is present, the funding formulas for reserves required ~~authorized~~ by this section may ~~must~~ be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

~~1.~~ If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account is the sum of the following two calculations:

1.~~a.~~ The total amount necessary, if any, to bring a negative component balance to zero.

2.~~b.~~ The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds. An association may convert its funding formulas from a component method to a pooled method, as described in paragraph (f), at any time if approved by a majority vote at a meeting at which a quorum is present.

~~2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget may not be less than that required to ensure that the balance on hand at the beginning of the period the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all the assets that make up the reserve pool, based on the current reserve analysis. The~~

~~projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the allowance for doubtful accounts. The reserve funding formula may not include any type of balloon payments.~~

(h)1. ~~Reserve funds and~~ Any ~~interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a~~ meeting at which a proposed annual budget of an association will be considered by the board or ~~a quorum is present. Prior to turnover of control of an association by a developer to~~ parcel owners shall be open to all parcel owners~~, the developer-controlled association shall not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association~~.

2.a. If a board adopts in any fiscal year an annual budget which requires assessments against parcel owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the parcel owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days

after adoption of the annual budget. At least 14 days prior to such special meeting, the board shall hand deliver to each parcel owner, or mail to each parcel owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Parcel owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled.

b. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the association property, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the condominium property.

c. If the developer controls the board, assessments shall not exceed 115 percent of assessments for the prior fiscal year unless approved by a majority of all voting interests.

(i) The provisions of paragraphs (b)-(h) do not apply to mandatory reserve accounts required to be established and maintained by an association at the direction of a county or municipal government, water or drainage management district, community development district, or other political subdivision that has the authority to approve and control subdivision infrastructure which is entrusted to the care of an association on the condition that the association establish and maintain one or more mandatory reserve accounts for the deferred maintenance or replacement of the infrastructure in accordance with the requirements of that entrusting authority.

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

(a) An association that meets the criteria of this

paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

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

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

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

2.~~3.~~ A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the

following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

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

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

3. Audited financial statements if the association is

otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

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

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

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

Section 10. Paragraph (a) of subsection (9) of section 720.306, Florida Statutes, is amended to read:

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

(9) ELECTIONS AND BOARD VACANCIES.—

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. Except as provided in paragraph (b), all members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the

association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist. If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted and such candidates shall commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

Section 11. Paragraph (b) of subsection (3) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable

attorney fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law.

Section 12. This act shall take effect July 1, 2017.

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: Civil Justice & Claims Subcommittee

Representative Moraitis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 633.2225, Florida Statutes is created to read:

633.2225 Condominium and cooperative buildings without sprinkler systems; notice requirements; enforcement.-

(1) The board of a condominium or cooperative association that operates a building of three stories or more that has not installed a sprinkler system in the common areas of the building shall mark the building with a sign or symbol approved by the State Fire Marshal in a manner sufficient to warn persons

conducting fire control and other emergency operations of the lack of a sprinkler system in the common areas.

(2) The State Fire Marshal shall adopt rules necessary to implement the provisions of this section, including, but not limited to:

(a) The dimensions and color of such sign or symbol.

(b) The time within which the condominium or cooperative buildings without sprinkler systems shall be marked as required by this section.

(c) The location on each condominium or cooperative building without a sprinkler system where such sign or symbol must be posted.

(3) The State Fire Marshal, and local fire officials in accordance with s. 633.118, shall enforce this section. An owner who fails to comply with the requirements of this section is subject to penalties as provided in s. 633.228.

Section 2. Subsections (12) and (13) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, and voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with subparagraph (c)5. However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for 1 year.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 ~~5~~ working days after receipt of a written request by the board or its

designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

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

access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her

authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

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

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

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this

subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

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

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The

responses herein are made in good faith and to the best of my ability as to their accuracy."

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

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial

reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

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

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

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

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).~~

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

(c) An association may prepare, without a meeting of or approval by the unit owners:

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

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

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

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

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

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

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

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the

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

Section 3. Paragraphs (c) and (l) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

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

(c) Board of administration meetings.—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to

attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Notice of any meeting in which a regular or special assessment against unit owners is to be considered must specifically state that assessments will be considered and provide the estimated amount and a description of the purposes for such assessments. ~~However,~~ Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically

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

of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice providing a hypertext link to the website where the notice is posted. ~~Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.~~

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

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

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

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

(l) Certificate of compliance.—A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance ~~of the condominium units~~ with the applicable fire and life safety code must be included. Notwithstanding chapter 633, s. 509.215, s. 553.895(1), or ~~of~~ any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association~~, residential condominium,~~ or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that is 75 feet or less in height. There is no obligation to retrofit for a building greater than 75 feet in height, calculated from the lowest level of fire department vehicle access to the floor of the highest occupiable story ~~has been certified for occupancy by the applicable governmental entity~~ if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium.

There is no requirement that owners in condominiums of 75 feet or less conduct an opt-out vote and such condominiums are exempt from fire sprinkler or other engineered lifesafety retrofitting. The preceding sentence is intended to clarify existing law. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or other engineered lifesafety system before January 1, 2022 ~~2020~~. By December 31, 2018 ~~2016~~, an ~~a residential condominium~~ association that operates a residential condominium that is not in compliance with the requirements for a fire sprinkler system or other engineered lifesafety system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2021 ~~2019~~.

1. A vote to forego required retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association attesting to such vote in the public records of the county where the condominium is located. When an opt-out vote is to be conducted at a meeting, the association shall mail or ~~hand~~ deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego

retrofitting of the required fire sprinkler system or other engineered lifesafety system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests or by a majority of the board of directors. ~~Such a vote may only be called once every 3 years.~~ Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. ~~Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a

certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting. Compliance with this administrative reporting requirement does not affect the validity of an opt-out vote.

4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

5. The provisions of this paragraph do not apply to timeshare condominium associations, which shall be governed by s. 721.24.

Section 4. Subsection (2) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(2)(a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided

therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act ~~October 1, 2008~~.

(b) There shall not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein. If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required before the material alterations or substantial additions are commenced. This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium operated by the same association or requiring board approval

before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) There shall not be any material alteration or substantial addition made to association real property operated by a multicondominium association, except as provided in the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein. If the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein do not specify the procedure for approving an alteration or addition to association real property, the approval of 75 percent of the total voting interests of the association is required before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

Section 5. Subsections (1) and (3) of section 718.117, Florida Statutes, are amended, and subsection (21) is added to that section to read:

718.117 Termination of condominium.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Condominiums are created as authorized by statute and are subject to covenants that encumber the land and restrict the use of the use of real property.

(b) In some circumstances, the continued enforcement of those covenants ~~that~~ may create economic waste, areas of disrepair that threaten the safety and welfare of the public, or cause obsolescence of the ~~a condominium~~ property for its intended use and thereby lower property tax values, and ~~the Legislature further finds that~~ it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

(c) ~~The Legislature further finds that~~ It is contrary to the public policy of this state to require the continued operation of a condominium when to do so constitutes economic waste or when the ability to do so is made impossible by law or regulation.

(d) It is in the best interest of the state to provide for termination of the covenants of a declaration of condominium in certain circumstances, in order to:

1. Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.

2. Avoid transferring the expense of maintaining infrastructure serving the condominium property, including, but not limited to, stormwater systems and conservation areas to the general tax bases of the state and local governments.

3. Prevent covenants from impairing the continued productive use of the property.

4. Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.

5. Provide for fair treatment and just compensation for individuals, preserve property values, and preserve the local property tax base.

6. Preserve the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium. ~~This section applies to all condominiums in this state in existence on or after July 1, 2007.~~

(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 meeting the requirements of this section and approved by the division. Before a residential association submits a plan to the division, the plan must be approved by at

least 80 percent of the total voting interests of the condominium. However, if 5 ~~10~~ percent or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections~~,~~ the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. 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.

2. If 5 ~~10~~ percent or more 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 24 ~~18~~ months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 10 ~~5~~ years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner 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. For a person ~~an original purchaser from the developer who rejects the plan of termination and~~ whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association ~~and any mortgage encumbering the unit~~ as of the date the plan of termination is recorded, the fair market value for the unit owner rejecting the plan shall be at least the original purchase price paid for the unit. 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. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit's share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

5. Before a plan of termination is presented 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 25 ~~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 10 ~~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.

d. The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

(d) 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.

(e) Upon approval of a plan of termination by the unit owners in a residential condominium, the plan shall be filed with the division. The division shall review a plan of termination utilizing the procedures promulgated pursuant to s. 718.205. If the division determines that the conditions required

by this section have been met and the plan complies with the procedural requirements of this section, the division shall authorize the termination and the termination may proceed pursuant to this section.

(f) The provisions of subsection (2) do not apply to optional termination pursuant to this subsection.

(21) APPLICABILITY.—This section applies to all condominiums in this state in existence on or after July 1, 2007.

Section 6. The amendments made by Section 5 are intended to clarify existing law, are remedial in nature and intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

Section 7. For the 2017-2018 fiscal year, the sums of $85,006 in recurring funds and $4,046 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund are appropriated to the Department of Business and Professional Regulation and one full-time equivalent position with associated salary rate of 56,791 is authorized, for the purpose of implementing Section 5 of this act.

Section 8. Section 718.707, Florida Statutes, is amended to read:

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

the condominium parcels were acquired on or after July 1, 2010~~,~~ ~~but before July 1, 2018~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 9. Paragraphs (a) and (b) of subsection (2) and paragraphs (b) and (c) of subsection (4) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than 7 years.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records of the association must be maintained within the state for at least 7 years. The records of

the association shall be made available to a unit owner within 45 miles of the cooperative property or within the county in which the cooperative property is located within 10 ~~5~~ working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(4) FINANCIAL REPORT.—

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

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

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

3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement.

4. The requirement to have the financial statement compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

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

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

2.~~3.~~ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

Section 10. Subsection (5) of section 719.1055, Florida Statutes, is amended to read:

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

(5) The bylaws must include a provision whereby a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance ~~of the cooperative units~~ with the applicable fire and life safety code.

(a)1. Notwithstanding chapter 633, s. 509.215, s. 553.895(1), or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association ~~a cooperative~~ or unit owner is not obligated to retrofit the common elements or units of a residential cooperative with a fire sprinkler system or other engineered lifesafety system in a building that is 75 feet or less in height. There is no obligation to retrofit for a building greater than 75 feet in height, calculated from the lowest level of fire department vehicle access to the floor of the highest occupiable story ~~has been certified for occupancy by the applicable governmental entity~~ if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected cooperative. There is no requirement that owners in cooperatives of 75 feet or less conduct an opt-out vote and such cooperatives are exempt from fire sprinkler or other engineered life safety retrofitting. The preceding sentence is intended to clarify existing law. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or other engineered life safety system before January 1, 2022 ~~the end of 2019~~. By December 31, 2018 ~~2016~~, a cooperative that is not in compliance with the requirements for a fire sprinkler system or other engineered lifesafety system and has not voted to forego retrofitting of such a system must initiate an

application for a building permit for the required installation with the local government having jurisdiction demonstrating that the cooperative will become compliant by December 31, 2021 ~~2019~~.

2. A vote to forego required retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association attesting to such vote in the public records of the county where the cooperative is located. When the opt-out vote is to be conducted at a meeting, the cooperative shall mail or ~~hand~~ deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or other engineered lifesafety system is to take place. Within 30 days after the cooperative's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the cooperative. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner

before closing and by a unit owner to a renter before signing a lease.

(b) If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests or by a majority of the board of directors. ~~Such vote may only be called once every 3 years.~~ Notice must be provided as required for any regularly called meeting of the unit owners, and the notice must state the purpose of the meeting. ~~Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

(c) As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting. Compliance with this administrative reporting requirement does not affect the validity of an opt-out vote.

Section 11. Paragraphs (a) and (c) of subsection (1) of section 719.106, Florida Statutes, are amended, and paragraph (m) is added to that subsection, to read:

719.106 Bylaws; cooperative ownership.—

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

(a) Administration.—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In a residential cooperative association of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless the co-owners own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the

bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election

to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3. When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any

additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(c) Board of administration meetings.—Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated amount and description of the purposes for such assessments. ~~However,~~ Written notice of

any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property not less than 14 days before the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a notice posted physically on the cooperative property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the

authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the cooperative association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the cooperative property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice providing a hypertext link to the website where the notice is posted. ~~Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.~~ Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's

attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

(m) Director or officer delinquencies.—A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Section 12. Paragraph (b) of subsection (1) of section 719.107, Florida Statutes, is amended to read:

719.107 Common expenses; assessment.—

(1)

(b) If so provided in the bylaws, the cost of communications services as defined in chapter 202, information services, or Internet services~~a master antenna television system or duly franchised cable television service~~ obtained pursuant to a bulk contract shall be deemed a common expense, and if not obtained pursuant to a bulk contract, such cost shall be considered common expense if it is designated as such in a written contract between the board of administration and the company providing the communications services as defined in chapter 202, information services, or Internet services~~master television antenna system or the cable television service~~. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after April 2, 1992, for a community antenna system or duly franchised cable television service, communications services as defined in chapter 202, information services, or Internet services may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 719.108 to enforce payment of the shares of such costs by the unit owners receiving cable television.

Section 13. Paragraphs (a) and (c) of subsection (2) and subsections (6) and (7) of section 720.303, Florida Statutes, are amended to read:

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

(2) BOARD MEETINGS.—

(a) Members of the board of administration may use e-mail as a means of communication, but may not cast a vote on an association matter via e-mail. A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. Meetings of the board must be open to all members, except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. A meeting of the board must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific

parcel of residential property owned by a member of the community.

(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include ~~provide~~ the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to

allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or

disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(6) BUDGETS; BUDGET MEETINGS.—

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(b) In addition to annual operating expenses, for all associations incorporated after July 1, 2017, and any association incorporated prior to that date which, by a majority vote of the members of the association present, in person or by proxy, at a meeting of the association at which a quorum is present, affirmatively votes to be bound by the provisions of this subsection as amended effective July 1, 2017, the budget must ~~may~~ include a disclosure of reserves ~~reserve accounts~~ for capital expenditures and deferred maintenance ~~for~~ which are

obligations of the association under ~~is responsible. If reserve accounts are not established pursuant to paragraph (d), funding of such reserves is limited to the extent that~~ the governing documents for any item that has a deferred maintenance expense that exceeds $100,000. The amount to be reserved must be computed using a formula based upon the estimated deferred maintenance expense of each reserve item divided by the estimated remaining useful life of that item. However, and notwithstanding the amount disclosed as being the total required reserve amount, each parcel which is obligated to pay reserves to the association each year shall be assessed for reserves only the amount determined by dividing the total annual reserve amount disclosed in the budget by the total number of parcels that will ultimately be operated by the association. Therefore, the assessments actually collected will be less than the full amount of required reserves as disclosed in the proposed annual budget until all parcels are obligated to pay assessments for reserves. The association may adjust the deferred maintenance reserve ~~limit increases in~~ assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item, the anticipated cost of the deferred maintenance and any changes in the number of parcels that will ultimately be operated by the association. This subsection does not apply to an adopted budget for which members of an association have determined, by a majority vote of the members

of the association present, in person or by proxy, and voting at a meeting~~, including reserves. If the budget~~ of the association, at which a quorum is present, to provide no reserves or less reserves than required by this subsection ~~includes reserve accounts established pursuant to paragraph (d), such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts pursuant to paragraph (d), the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection~~. This section does not preclude an association from ceasing to add amounts to~~the termination of~~ a reserve account established pursuant to this paragraph upon approval of a majority of the total voting interests present in person or by proxy and voting at a meeting of the association at which a quorum is present~~of the association~~. Upon such approval, no reserves shall be included in ~~the terminating reserve account shall be removed from~~ the budget for that year. Amounts in the reserve account may be used only for deferred maintenance and for no other purpose. Only parcels with completed improvements as evidenced by certificates of occupancy for such improvements are obligated to pay assessments for reserves. A developer that subsidizes the association's budget pursuant to s. 720.308(1) is not obligated to include reserve contributions in any such subsidy payments. If a developer establishes a guarantee under s. 720.308(2) or otherwise subsidizes the association budget,

the developer is not obligated to include reserve contributions in any such guarantee or subsidy payments.

(c) ~~1.~~ The developer may vote the voting interests allocated to its parcels with completed improvements, as evidenced by certificates of occupancy for such improvements, to waive the reserves or reduce the funding of reserves ~~If the budget of the association does not provide for reserve accounts pursuant to paragraph (d) and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) must contain the following statement in conspicuous type:~~

~~THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT~~.

~~2. If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the~~

~~preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type: THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.~~

~~(d) An association is deemed to have provided for reserve accounts if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves. If reserve accounts are established by the developer, the budget must designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided by the developer, the membership of the association may elect to do so upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership must state that reserve accounts shall be provided for in the budget and must designate the components for which~~

~~the reserve accounts are to be established. Upon approval by the membership, the board of directors shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).~~

~~(e) The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item.~~

~~(f) After one or more reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section~~. If a meeting of the parcel ~~unit~~ owners has been called to determine whether to waive or reduce the funding of reserves and such result is not achieved or a quorum is not present, the reserves as included in the budget go into effect. ~~After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this~~

~~subsection to waive or reduce reserves is applicable only to one budget year.~~

(d) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and may be used only for authorized reserve expenditures and may not be used for any other purpose.

(e) The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves are the voting interests of the parcels subject to assessment to fund the reserves in question. Any vote taken pursuant to this subsection to waive or reduce reserves is applicable only to one budget year. Proxy questions relating to waiving or reducing the funding of reserves must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, MAY RESULT IN PARCEL OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(f) Funding formulas for reserves required by this section shall be based on a pooled analysis of two or more of the items for which reserves are required to be accrued pursuant to this subsection. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall have constant funding each year. However, each parcel which is obligated to pay reserves to the

association each year shall be assessed for reserves only the amount determined by dividing the total annual reserve amount disclosed in the budget by the total number of parcels that will ultimately be operated by the association. Therefore, the assessments actually collected will be less than the full amount of required reserves as disclosed in the proposed annual budget until all parcels are obligated to pay assessments for reserves.

(g) As alternative to the pooled analysis method described in paragraph (f) and, if approved by a majority vote of the members present, in person or by proxy, at a meeting of the members of the association at which a quorum is present, the funding formulas for reserves required ~~authorized~~ by this section may ~~must~~ be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

~~1.~~ If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account is the sum of the following two calculations:

1.~~a.~~ The total amount necessary, if any, to bring a negative component balance to zero.

2.~~b.~~ The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period the budget will be in effect. The remainder, if

greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds. An association may convert its funding formulas from a component method to a pooled method, as described in paragraph (f), at any time if approved by a majority vote of the members present, in person or by proxy, at a meeting at which a quorum is present.

~~2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget may not be less than that required to ensure that the balance on hand at the beginning of the period the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the~~

~~allowance for doubtful accounts. The reserve funding formula may not include any type of balloon payments.~~

(h) 1. ~~Reserve funds and~~ Any ~~interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at~~ a meeting at which a proposed annual budget of an association will be considered by the board or ~~a quorum is present. Prior to turnover of control of an association by a developer to~~ parcel owners shall be open to all parcel owners~~, the developer controlled association shall not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association~~.

2.a. If a board adopts in any fiscal year an annual budget which requires assessments against parcel owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the parcel owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the board shall hand deliver to each

parcel owner, or mail to each parcel owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Parcel owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the governing documents require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled.

b. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any provision for reasonable reserves for repair or deferred maintenance of items which are the obligations of the association under the governing documents, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the common areas, association property, or other items which are the obligation of the association under the governing documents.

(i) The provisions of paragraphs (b)-(h) do not apply to mandatory reserve accounts required to be established and

maintained by an association at the direction of a county or municipal government, water or drainage management district, community development district, or other political subdivision that has the authority to approve and control subdivision infrastructure which is being entrusted to the care of an association on the condition that the association establish and maintain one or more mandatory reserve accounts for the deferred maintenance of the infrastructure in accordance with the requirements of that entrusting authority.

(j) Reserve funds must be held in a separate bank account established for such funds.

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

(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

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

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

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

2.~~3.~~ A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and

expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

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

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

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

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

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

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

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

Section 14. Paragraph (a) of subsection (9) of section 720.306, Florida Statutes, is amended to read:

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

(9) ELECTIONS AND BOARD VACANCIES.—

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. Except as provided in paragraph (b), all members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows

candidates to be nominated in advance of the meeting, the association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist. If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted and such candidates shall commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

Section 15. Paragraph (b) of subsection (3) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any

administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law.

Section 16. Paragraph (a) of subsection (1) of section 720.401, Florida Statutes, is amended to read:

720.401 Prospective purchasers subject to association membership requirement; disclosure required; covenants; assessments; contract cancellation.—

(1)(a) A prospective parcel owner in a community must be presented a disclosure summary before executing the contract for sale. The disclosure summary must be in a form substantially similar to the following form:

DISCLOSURE SUMMARY

FOR

(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.

3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS $.... PER ..... YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS $.... PER .....

4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.

6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS $.... PER .....

7. THE BUDGET OF THE ASSOCIATION MAY NOT INCLUDE RESERVE FUNDS FOR DEFERRED MAINTENANCE SUFFICIENT TO COVER THE FULL COST OF DEFERRED MAINTENANCE OF COMMON AREAS. YOU SHOULD REVIEW THE BUDGET TO DETERMINE THE LEVEL OF RESERVE FUNDING, IF ANY.

8~~7~~. THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

9~~8~~. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.

10~~9~~. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

DATE: PURCHASER:

PURCHASER:

The disclosure must be supplied by the developer, or by the parcel owner if the sale is by an owner that is not the developer. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until they have received and read the disclosure summary required by this section.

Section 17. This act shall take effect July 1, 2017.

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

Remove everything before the enacting clause and insert:

An act relating to community associations; creating s. 633.2225, F.S.; requiring certain condominium or cooperative associations to post certain signs or symbols on buildings; requiring the State Fire Marshal to adopt rules governing such signs or symbols; providing for enforcement; providing penalties; amending s. 718.111, F.S.; revising reporting requirements; amending s. 718.112, F.S.; authorizing an association to adopt rules for posting certain notices on a website; revising provisions relating to required condominium and cooperative association bylaws; revising provisions relating to evidence of condominium and cooperative association compliance with the fire and life safety code; revising unit and common elements required to be retrofitted; revising provisions relating to an association vote to forego retrofitting; providing applicability; amending s. 718.113, F.S.; revising voting requirements relating to alterations and additions to certain common elements or association property; amending s. 718.117, F.S.; providing legislative findings; revising voting requirements for the rejection of a plan of termination; increasing the amount of time to consider a plan of termination under certain conditions; revising applicability; revising the requirements to qualify for payment as a homestead owner if the owner has rejected a plan of termination; revising and providing notice requirements; requiring the Department of Business and Professional Regulation to review and approve a plan of

termination; providing applicability; providing an appropriation and authorizing a position; amending s. 718.707, F.S.; revising the time period for classification as bulk assignee or bulk buyer; amending s. 719.104, F.S.; revising recordkeeping and reporting requirements; amending s. 719.1055, F.S.; revising provisions relating to required condominium and cooperative association bylaws; revising provisions relating to evidence of condominium and cooperative association compliance with the fire and life safety code; revising unit and common elements required to be retrofitted; revising provisions relating to an association vote to forego retrofitting; providing applicability; amending s. 719.106, F.S.; revising requirements to serve as a board member; prohibiting a board member from voting via e-mail; requiring that directors who are delinquent in certain payments owed in excess of certain periods of time be deemed to have abandoned their offices; authorizing an association to adopt rules for posting certain notices on a website; amending s. 719.107, F.S.; specifying certain services which are obtained pursuant to a bulk contract to be deemed a common expense; amending s. 720.303, F.S.; prohibiting a board member from voting via e-mail; revising certain notice requirements relating to board meetings; revising and providing budget requirements; providing an exemption to certain requirements; revising financial reporting requirements; authorizing an association to adopt rules for posting certain

notices on a website; amending s. 720.306, F.S.; revising elections requirements; amending s. 720.3085, F.S.; providing applicability; amending s. 720.401, F.S.; revising the disclosure summary form; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 775 Motor Vehicle Warranty Repairs and Recall Repairs
SPONSOR(S): Careers & Competition Subcommittee; Diaz, M.
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N, As CS	Willson	Anstead
2) Civil Justice & Claims Subcommittee		MacNamara	Bond
3) Commerce Committee			

SUMMARY ANALYSIS

Current law regulates the contractual relationship between motor vehicle manufacturers and motor vehicle dealers and provides for the licensing of manufacturers, factory branches, distributors, or importers. Moreover, remedies are available for dealers where a manufacturer or other licensed entity violates current law regulating these contractual relationships.

The bill prohibits a motor vehicle manufacturer, distributor or importer ("manufacturer"), except as authorized by law, from denying a motor vehicles dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer for performing covered warranty or recall repairs on a used motor vehicle under specified circumstances.

The bill requires that a manufacturer, which has a franchise agreement with a motor vehicle dealer, compensate the dealer for a used vehicle that:

- Was originally manufactured, imported, or distributed by the manufacturer;
- Is subject to a recall notice;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice as a result of a trade-in, lease return, or other transaction;
- Cannot be repaired due to unavailability of a remedy within 30 days of the recall, unless the manufacturer has issued a written statement to the dealer indicating that the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill requires that such compensation be paid within 30 days of the dealer's application and be the greater of:

- Payment of at least 2 percent of the motor vehicle value for each month or portion of a month that the dealer does not receive a remedy for the vehicle; or
- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the manufacturer for the dealer's costs associated with holding the used vehicle.

The bill exempts motorcycle manufacturers from these requirements.

The bill may have an insignificant fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida has regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.[1] Initially, consumer protections laws were safeguards designed to protect consumers from abusive practices at the hands of motor vehicle dealers.[2] In 1970, the Legislature passed comprehensive legislation, embodied in chapter 320, F.S.,[3] regulating the contractual relationship between manufacturers and motor vehicle dealers and requiring the licensing of manufacturers.[4]

Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer ("manufacturer") must be licensed under s. 320.61(1), F.S., to engage in business in Florida. Sections 320.60-320.70, F.S., the "Florida Automobile Dealers Act"[5] (act), primarily regulate the contractual business relationship between dealers and manufacturers, and provide for the licensure of manufacturers, factory branches, distributors, or importers. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for manufacturers who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a manufacturer must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- The damages that can be assessed against a manufacturer who is in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Section 320.64, F.S., currently lists 40 different criteria that may cause the DHSMV to deny, suspend, or revoke the manufacturer's license. A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with any of these provisions by an applicant or manufacturer will or can adversely and pecuniarily affect the dealer, is entitled to pursue an injunction against the manufacturer, treble damages, and attorney's fees.[6] The manufacturer has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.[7]

Applicability

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the act, including amendments to the act, unless specifically providing otherwise.

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[1] Ch. 9157, Laws of Fla. (1923); Ch. 20236, Laws of Fla. (1941).
[2] Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr (last visited Mar. 23, 2017).
[3] *See* ch. 70-424, L.O.F. (1970)
[4] *See* s. 320.60(11), F.S.
[5] Walter E. Forehand, *supra* note 2 at 1065.
[6] *See* ss. 320.64, 320.694, and 320.697, F.S.
[7] Section 320.697, F.S.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.[8] The DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Motor Vehicle Warranties

A motor vehicle warranty is any written warranty, or affirmation of fact or promise issued or made by the motor vehicle manufacturer in connection with the sale of a motor vehicle to a consumer. A warranty relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance.[9]

Chapter 681, F.S., the "Motor Vehicle Warranty Enforcement Act," provides a regulatory framework for consumers and motor vehicle manufacturers when dealing with motor vehicle sales warranties.

Motor Vehicle Warranty Repairs

A manufacturer is required to timely compensate a motor vehicle dealer who performs work to maintain or repair a manufacturer's product under a warranty.[10] For this purpose, "timely" means within 30 days of receipt of the claim, and "compensate" includes payment for all labor (employee time spent for diagnosis and repair) and parts (replacement parts and accessories) included in the work.[11]

Motor Vehicle Recalls

Upon finding that a motor vehicle or its equipment contains a defect related to motor vehicle safety or does not comply with applicable federal motor vehicle safety standards, a manufacturer can decide to issue a recall notice, or may be required to issue a recall notice if ordered by the National Highway Traffic Safety Administration (NHTSA).[12] A manufacturer is required to submit a report to NHTSA not more than five working days after a defect in its vehicle or its equipment is determined to be safety related or noncompliant with motor vehicle safety standards; however, a manufacturer may choose to petition for exemption from recall notification and remedy requirements if the defect or noncompliance is inconsequential to motor vehicle safety.[13] If it is determined the defect or noncompliance does pose a risk to safety, the manufacturer is required to:

- Notify owners, purchasers, and dealers of the vehicle or equipment; and
- Remedy the defect or noncompliance (either by repairing or replacing it, offering a refund, or repurchasing the vehicle.)[14]

The recall notice must be issued no later than 60 days from the date the manufacturer filed its report with NHTSA.[15] Recall notifications sent to motor vehicle dealers and distributors must contain a clear statement identifying the notification as being a safety recall notice, and include:

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[8] *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. *See also, In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

[9] Section 681.102(22), F.S.

[10] Section 320.696(1), F.S.

[11] *Id.*

[12] 49 C.F.R. ss. 577.5 and 577.6

[13] 49 C.F.R. s. 573.6

[14] NHTSA's Safercar.gov website, *Vehicle Recalls: Frequently Asked Questions*, https://vinrcl.safercar.gov/vin/faq.jsp (last visited Mar. 23, 2017).

[15] 49 C.F.R. s. 577.7

- An identification of the motor vehicles or equipment included in the recall;
- A description of the defect or noncompliance;
- A brief evaluation of the risk to motor vehicle safety related to the defect or noncompliance;
- A complete description on the recall remedy;
- The estimated date on which the remedy will be available; and
- An advisory stating that it is a Federal violation for a dealer to deliver a new motor vehicle or any new or used item of motor vehicle equipment covered by the notification under a sale or lease until the defect or noncompliance is remedied.[16]

A 2015 NHTSA annual report of recalls by year shows a steady increase in the number of recalls issued from 1995 to 2015.[17] In 2015, 973 recalls were issued affecting over 87.5 million vehicles or equipment.[18]

Recalls on New Vehicles

Federal law prohibits the sale of new motor vehicles determined to have a safety defect or noncompliance with motor vehicle safety standards[19], and requires a manufacturer, after selling the motor vehicle or equipment to the dealer and before it is sold by the dealer, to:

- Immediately repurchase the vehicle or equipment from the motor vehicle dealer at the same price paid, plus transportation charges and at least one percent a month of the price paid prorated from the date of notice to the date of repurchase; or
- Immediately give the dealer, at the manufacturer's expense, the part or equipment needed to remedy the defect or noncompliance, plus cost of installation and one percent a month of the price paid prorated from the date of notice to the date the defect or noncompliance is remedied.[20]

Recalls on Used Vehicles

Federal law, generally, does not prohibit the resale of used vehicles subject to a safety recall. However, manufacturers may choose to direct their dealers to stop selling such vehicles. Additionally, such vehicles may be required to be held in the dealer's inventory without an available remedy.

In 2016, Virginia and Maryland passed laws to require manufacturers to compensate their franchise dealers if the dealer is instructed or coerced by the manufacturer not to sell used vehicles within its inventory that have a recall with no remedy available. Specifically, Maryland law requires if a manufacturer issues a stop sale directive to its franchise dealer on a used vehicle held in inventory by that dealer without a remedy for the recall available, the manufacturer must compensate the dealer by:

- Providing payment to the dealer at a rate of at least one percent per month or portion of a month of the value of the vehicle; or
- Compensating the dealer under a national program that is applicable to all dealers holding a franchise from the manufacturer for the dealer's costs associated with the stop sale directive.[21]

Virginia prohibits a manufacturer from coercing or requiring any dealer, whether by agreement program, incentive provision, or for loss of incentive payments or other benefits, to refrain from selling

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[16] 49 C.F.R. s. 577.13
[17] NHTSA's Safercar.gov website, *2015 Annual Recalls Report*, https://www.safercar.gov/staticfiles/safercar/pdf/2015-annual-recalls-report.pdf (last visited Mar. 23, 2017).
[18] *Id.*
[19] Commonly referred to as "stop sale" notices.
[20] 49 U.S.C. s. 30116
[21] Maryland General Assembly, *House Bill 525 – Enrolled*, (Enacted May 28, 2016), *available at* http://mgaleg.maryland.gov/2016RS/bills/hb/hb0525E.pdf (last visited Mar. 23, 2017).

any used motor vehicle subject to a recall, stop sale directive, technical service bulletin[22], or other manufacturer notification unless the manufacturer has a remedy available. If no remedy is available, the manufacturer must compensate the dealer for any affected used motor vehicle in its inventory that the dealer is instructed not to sell by the manufacturer at least one percent a month or any part of a month of the cost of such used vehicle, including repairs and re-conditioning expenses.[23]

Effect of the Bill

The bill amends s. 320.64, F.S., to prohibit a manufacturer, notwithstanding the terms of any franchise agreement, and except as authorized by law upon detection of fraudulent payments, from denying a dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer for performing covered warranty or recall repairs on a used motor vehicle due to:

- Discovery of the need for such repairs by the dealer during the course of a separate repair requested by the consumer.
- Notification by the dealer to the consumer of the need for such repairs after issuance of an outstanding recall for a safety-related defect.

The bill creates s. 320.6407, F.S., relating to recall notices under franchise agreements. The bill requires that a manufacturer, which has a franchise agreement with a motor vehicle dealer, compensate the dealer for a used vehicle that:

- Was originally manufactured, imported, or distributed by the manufacturer;
- Is subject to a recall notice;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice due to a trade-in, lease return, or other transaction;
- Cannot be repaired due to unavailability of a remedy for the vehicle within 30 days after issuance of the recall notice; and
- For which the manufacturer has not issued a written statement to the dealer indicating the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill requires such compensation be paid within 30 days of the dealer's application and to be the greater of:

- Payment of at least 2 percent of the motor vehicle value (as determined by the average Black Book value for that vehicle's model year and condition) for each month or portion of a month that the dealer does not receive a remedy for the vehicle, calculated from the later of either the date the recall was issued or when the vehicle was acquired by the dealer; or
- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the manufacturer for the dealer's costs associated with holding the used vehicle.

The bill exempts motorcycle manufacturers, distributors, and importers from the provisions of s. 320.6407, F.S.

The bill reenacts s. 320.6992, F.S., providing that amendments made to the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

The bill takes effect upon becoming law.

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[22] Technical service bulletins, not to be confused with recalls, are notices issued to dealers from manufacturers for nonsafety-related defects. These bulletins usually include recommended procedures for repairing vehicles if certain issues arise.

[23] Virginia Acts of Assembly – 2016 Session, *Chapter 534* (Mar. 29, 2016), available at https://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0534+pdf (last visited Mar. 23, 2017).

B. SECTION DIRECTORY:

Section 1 Amends s. 320.64, F.S.; prohibiting a manufacturer, factory branch, distributor, or importer from denying a claim of a motor vehicle dealer, reducing compensation to a motor vehicle dealer, or processing a chargeback to a motor vehicle dealer because of specified circumstances.

Section 2 Creates s. 320.6407, F.S.; requiring a manufacturer, factory branch, distributor, or importer to compensate a motor vehicle dealer for a used motor vehicle under specified circumstances; requiring the manufacturer, factory branch, distributor, or importer to pay the compensation within a specified timeframe after the motor vehicle dealer's application for payment; requiring such application to be made through the manufacturer's, factory branch's, distributor's, or importer's warranty application system or certain other system or process; providing for calculation of the amount of compensation.

Section 3 Reenacts s. 320.6992, F.S., relating to applicability of specified provisions to systems of distribution of motor vehicles in this state, to incorporate s. 320.6407, F.S., as created by the act, in references thereto.

Section 4 Provides an effective date.

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:

   DHSMV may experience an increase in the number of administrative hearings as a result of the bill.

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 fiscal impact to the private sector is indeterminate. To the extent that agreements between dealers and manufacturers change, the parties could be impacted positively or negatively. Dealers with vehicles in their inventory impacted by a recall that cannot be repaired will likely experience a positive fiscal impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

   The Federal Contracts Clause provides that no state shall pass any law impairing the obligation of contracts. U.S. Const. Art. I s. 10. However, the Contracts Clause prohibition must be weighed against the State's inherent power to safeguard its people's interests. Three factors are considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.[24]

   Some state laws regulating contracts between automobile manufacturers and dealers have been found to have violated the constitution while other laws have been upheld as constitutional.[25]

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 21, 2017, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment revises the bill as follows:

- reduces the minimum rate for dealer compensation under the bill, from 2.43% to 2.00%;
- increases the number of days, from 15 to 30, that parts must be unavailable following the issuance of a recall notice;
- specifies that compensation is not required when the manufacturer has issued a written statement to the dealer indicating the vehicle may be sold or delivered to a retail customer before completion of the recall repair; and
- exempts motorcycle manufacturers, distributors, and importers from the requirements established in s. 320.6407, F.S.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.

[24] *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).

[25] *See Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV.A. 99 N 1985, 2001 WL 36400171, at 13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors).

A bill to be entitled

An act relating to motor vehicle warranty repairs and recall repairs; amending s. 320.64, F.S.; prohibiting a manufacturer, factory branch, distributor, or importer from denying a claim of a motor vehicle dealer, reducing compensation to a motor vehicle dealer, or processing a chargeback to a motor vehicle dealer because of specified circumstances; creating s. 320.6407, F.S.; requiring a manufacturer, factory branch, distributor, or importer to compensate a motor vehicle dealer for a used motor vehicle under specified circumstances; requiring the manufacturer, factory branch, distributor, or importer to pay the compensation within a specified timeframe after the motor vehicle dealer's application for payment; requiring such application to be made through the manufacturer's, factory branch's, distributor's, or importer's warranty application system or certain other system or process; providing for calculation of the amount of compensation; reenacting s. 320.6992, F.S., relating to applicability of specified provisions to systems of distribution of motor vehicles in this state, to incorporate s. 320.6407, F.S., as created by the act, in references thereto; providing an effective date.

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

Section 1. Subsection (41) is added to section 320.64, Florida Statutes, to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(41) Notwithstanding the terms of any franchise agreement, and except as authorized under subsection (25), a licensee may not deny a claim of a motor vehicle dealer, reduce the amount of compensation to a motor vehicle dealer, or process a chargeback to a motor vehicle dealer for performing covered warranty repairs or required recall repairs on a used motor vehicle due to either of the following circumstances:

(a) Discovery by the motor vehicle dealer of the need for warranty or recall repairs during the course of a separate

repair requested by the consumer.

(b) Notification by the motor vehicle dealer to the consumer of the need for recall repairs after the licensee or an authorized governmental agency issues a notice of an outstanding recall for a safety-related defect.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or can adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 2. Section 320.6407, Florida Statutes, is created to read:

320.6407 Recall notices under franchise agreements; compensation.—

(1) As provided in subsection (3), a licensee that has entered into a franchise agreement with a motor vehicle dealer must compensate the motor vehicle dealer for a used motor vehicle:

(a) That was originally manufactured, imported, or distributed by the licensee;

(b) That is subject to a recall notice issued by the licensee or an authorized governmental agency, regardless of whether the vehicle is identified by its vehicle identification

number;

(c) That is held by the motor vehicle dealer in the dealer's inventory at the time the recall notice is issued or that is taken by the motor vehicle dealer into the dealer's inventory after the recall notice as a result of a trade-in, lease return, or otherwise;

(d) That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of a remedy or parts necessary for the motor vehicle dealer to make the recall repair; and

(e) For which the licensee has not issued a written statement to the motor vehicle dealer indicating that the used motor vehicle may be sold or delivered to a retail customer before completion of the recall repair.

(2) The licensee shall pay the required compensation within 30 days after the motor vehicle dealer's application for payment. Applications for payment must be submitted monthly, as necessary, through the licensee's existing warranty application system or another system or process established by the licensee which is not unduly burdensome or which does not require information unnecessary for the payment.

(3) Compensation under this section must be the greater of:

(a) Payment at a rate of at least 2 percent per month of the motor vehicle value, as determined by the average Black Book

value of the corresponding model year vehicle of average condition, of each eligible used motor vehicle in the motor vehicle dealer's inventory for each month that the dealer does not receive a remedy or parts to complete the required recall repair. Such payment must be prorated for any period less than 1 month based on the number of days during the month each eligible used motor vehicle is in the motor vehicle dealer's inventory. Payment shall be calculated from the date the recall was issued or the vehicle was acquired, whichever is later.

(b) Payment under a national program applicable to all motor vehicle dealers holding a franchise agreement with the licensee for the motor vehicle dealer's costs associated with holding the eligible used motor vehicles.

(4) For purposes of this section, a licensee does not include a motorcycle manufacturer, distributor, or importer.

Section 3. For the purpose of incorporating section 320.6407, Florida Statutes, as created by this act, in references thereto, section 320.6992, Florida Statutes, is reenacted to read:

320.6992 Application.—Sections 320.60-320.70, including amendments to ss. 320.60-320.70, apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

Sections 320.60-320.70 do not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60-320.70, including any amendments to ss. 320.60-320.70 which have been or may be from time to time adopted, unless the amendment specifically provides otherwise, and except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 829 Timeshare Plans
SPONSOR(S): La Rosa
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 818

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	15 Y, 0 N	Cooper	Smith
2) Civil Justice & Claims Subcommittee		Stranburg CCJ	Bond MB
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Vacation Plan and Timesharing Act (Act) establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers. Authority to implement the Act has been granted to the Division of Florida Condominiums, Timeshares and Mobile Homes (Division) within the Department of Business and Professional Regulation.

The bill makes the following changes to the Act:

- Revises the term "interestholder" with respect to a multisite timeshare plan by excluding certain entities from the definition;
- Revises requirements for instruments that establish or govern a component site property regime, including the requirement to issue or provide certain documents to creditors;
- Revises requirements for terminations of timeshare plans;
- Revises requirements for extensions of timeshare plans, which apply to all timeshare properties in the state;
- Allows reasonable termination expenses to be paid pro rata by owners of former timeshare properties; and
- Amends requirements for voting upon an extension of a term of a timeshare plan, including meeting notices, voter eligibility, proxies, and quorum requirements.

The bill does not appear to have a fiscal impact on state or local governments. The bill may have an indeterminate effect on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 721, F.S., the Florida Vacation Plan and Timeshare Act (Act), governs vacation plans and timesharing. The purposes of the chapter are to: 1) recognize real and personal property timeshare plans in the state; 2) establish procedures for the creation, sale, exchange, promotion and operation of timeshare plans; 3) provide full and fair disclosure to the purchasers and prospective purchasers of timeshare plans; 4) require every timeshare plan in the state to be subjected to the provisions of the chapter; 5) require full and fair disclosure of terms, conditions, and services by resale service providers; and 6) recognize that a uniform and consistent method of regulation is necessary in order to safeguard Florida's tourism industry and the state's economic well-being.[1]

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods[2] or a condominium unit in which timeshare estates have been created.[3] A timeshare plan is any arrangement, plan, or similar device in which a purchaser gives consideration for ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years.[4]

Some timeshares are purchased as part of vacation clubs. A vacation club is a multisite timeshare.[5] A multisite timeshare plan is any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site,[6] only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan.[7]

Definition of Interestholder

An interestholder is a developer, an owner of the underlying fee or owner of the underlying personal property, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the accommodations or facilities of the timeshare plan.[8] The bill amends the definition of interestholder to exclude certain persons that have interests in a multisite timeshare plan that has a component site that is also part of a single-site timeshare plan, condominium, or other property regime. Those excluded as interestholders in a multisite timeshare plan with a component site property regime are:

- A developer;
- An owner of the underlying fee or personal property;
- A mortgagee, judgment creditor, or other lienor; or
- Any other person having an interest in or lien or encumbrance against a timeshare interest in a single-site timeshare plan, or an interest in or lien or encumbrance against a unit in a

[1] s. 721.02, F.S.
[2] s. 721.05(41), F.S.
[3] s. 718.103(26), F.S.
[4] s. 721.05(39), F.S.
[5] s. 721.52(8), F.S.
[6] "Component site" means a specific geographic site where a portion of the accommodations and facilities of the multisite timeshare plan are located. s. 721.52(2), F.S.
[7] s. 721.52(4), F.S.
[8] s. 721.05(21), F.S.

condominium or property regime, unless the timeshare interest[9] or the unit is "specifically subject to, or otherwise dedicated to, the multisite timeshare plan."

The effect of this change is that persons who own a single-site timeshare interest or a unit in a component site would not be actual interestholders with respect to a multisite timeshare plan simply because they own such interests in a component site. Thus, an owner of a single-site timeshare interest in a component site cannot take action that would result in the loss of the use of the accommodations and facilities of a multisite timeshare plan by purchasers of interests in such plans. Whereas currently all owners of timeshare interests or units in the component site need to consent to an individual's participation in a multisite timeshare plan, the bill allows only those purchasers directly affected by the multisite timeshare plan to consent.

The bill states that the revision to the existing definition of interestholder is a clarification of existing law.

Escrow Accounts, Non-Disturbance Instruments and Notice to Creditors

The bill provides that a timeshare instrument,[10] declaration of condominium,[11] or other instrument establishing or governing a component site property regime is not an encumbrance [12] under ch. 721, F.S. It also states such documents do not require a nondisturbance and notice to creditors instrument under s. 721.08, F.S. Also, for each accommodation or facility of multisite timeshare plan involving a component site property regime, a subordination and notice to creditors instrument is not required from the managing entity, owners' association, or any other person. As with the changes regarding the definition of interestholder the bill states the revision here is a clarification of existing law.

Termination or Extension of Timeshare Plans

Section 721.125, F.S., created in 2015,[13] specifies procedures for the extension or termination of timeshare plans. This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of specified termination or extension vote or consent requirements.[14] It allows for a vote or written consent, or a combination thereof, of 60 percent of all voting interests in a timeshare plan to extend or terminate the term of the timeshare plan.[15]

If the plan is extended, all rights privileges, duties, and obligations created by applicable law or the timeshare instrument continue in full force as if the extended termination date were the original termination date of the timeshare plan.[16] If the plan is terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument as if the date of termination were the original date of termination.[17] If the vote or consent for termination or extension is proposed for a component site of a multisite timeshare plan located in the state, the proposed termination or extension is only effective if the person authorized to make additions or substitutions of accommodations and facilities also approves the termination or extension.[18]

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[9] "Timeshare interest" means a timeshare estate, a personal property timeshare interest, or a timeshare license. s. 721.05(36), F.S.
[10] "Timeshare instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a timeshare plan. s. 721.05(35), F.S.
[11] "Declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended. s. 718.103 (15), F.S.
[12] "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property. s. 679.1021(1)(ff), F.S.
[13] ch. 2015-144, L.O.F.
[14] s. 721.125(3), F.S,
[15] s. 721.125(1), F.S.
[16] *Id.*
[17] *Id.*
[18] s. 721.125(2), F.S.

Effect of the Bill- Termination

The bill deletes all references to extension of timeshare plans in s. 721.125, F.S. Consequently, the current law and the changes to this section in the bill will only apply to termination of time share plans and not extensions. However, the bill does create a new section of Florida Statues, in s. 721.1255, F.S., relating to extension of timeshare plans.

Regarding termination, the bill provides if a timeshare property is managed by an owners' association that is separate from any underlying condominium, cooperative, or homeowners association, the termination of the timeshare plan does not change the corporate status of the owners' association and the following provisions apply:

- The owners' association will continue to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets. However, the owners' association may not act except as necessary to conclude its affairs and to carry out the provisions of this subsection.
- After termination of a timeshare plan, the board of administration of the owners' association must serve as the termination trustee, and may bring an action in partition on behalf of the tenants in common in each former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all such tenants in common.
- The termination trustee has all powers reasonably necessary to partition or sell the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.
- All reasonable expenses incurred by the termination trustee relating to the performance of its duties, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common in the former timeshare property being partitioned or sold in proportion to their respective ownership interests.
- The termination trustee is also required to adopt reasonable procedures to implement the partition or sale of the former timeshare property and the other termination provisions.

If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association if such association managed the former timeshare property, must :

- Designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association.
- Allow the voting representative to vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

Effect of the Bill- Extension

The bill creates s. 721.1255, F.S., relating to the extension of timeshare plans.

Findings

The bill makes the following findings regarding extension of timeshare plans:

- That timeshare plans are authorized by general law and many older timeshare plans are based on a condominium structure and are approaching their termination dates.
- That many older timeshare plans located in Florida have been well-maintained and continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters, and others.

- That in order to preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the public policy of this state requires the creation of a general law to enable the owners of these timeshare properties to extend the terms of their timeshare plans, notwithstanding contrary provisions in the timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.
- That this section applies to all timeshare properties in this state.

These findings apply to all Florida timeshare properties. Allowing owners to extend the terms of their plans notwithstanding contrary provisions in the timeshare instruments raises issues of impairment of contracts.

Voting Measures

The bill changes the voting and eligibility requirements for an extension of the term of a timeshare plan. The bill provides that unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, of at least 66 percent of all eligible voting interests is required for an extension to a timeshare plan. The voting interests may be present in person or by proxy at a duly noticed, called, and constituted meeting of the owners' association.

The bill revises the quorum requirement for a timeshare extension vote. The bill provides that unless the timeshare instrument specifically provides for a lower quorum, the quorum for an owners' association meeting is 50 percent of all eligible voting interests in the timeshare plan.

The bill also provides that if the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan. This provision is in current law and is moved to this section.

Although these changes regarding quorum and voting to extend timeshare plans would seem to increase the number of voters necessary for taking action, the effect may be the opposite. The current law mandates a floor for quorums and voting; the bill establishes a ceiling. According to representatives of the timeshare industry most timeshare instruments require a much higher percentage for obtaining a quorum and for voting and in many cases require a 100 percent vote of all timeshare owners. Thus, one effect of the bill is that there should be greater opportunities for owners to extend their use of such plans. On the other hand, those who desire for the timeshare plan to terminate rather than extend might experience increased difficulty in achieving that objective.

For meetings to vote whether to extend a timeshare plan, the bill provides that a duly called and constituted meeting may be held at any time before the termination of the plan, thereby allowing more scheduling flexibility than currently available in some timeshare instruments. The bill also provides that the board of administration of the owners' association may determine that any person or entity holding a voting interest that is delinquent in the payment of more than two years of assessments is ineligible to vote on any extension of the timeshare plan unless the delinquency is paid in full before the vote. Finally, regarding voting procedures, the bill provides that a proxy for a vote to extend a timeshare plan may be valid for a period of up to three years and is revocable unless it states that it is irrevocable. Currently, the duration and revocability of proxies for voting on matters respecting timeshare plans are not addressed in statute.

The bill provides that an extension for a component site of a multisite timeshare plan is effective only if the extension is approved by the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument.

B. SECTION DIRECTORY:

Section 1 amends s. 721.05, F.S., relating to definitions.

Section 2 amends s. 721.08, F.S., relating to escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title.

Section 3 amends s. 721.125, F.S., relating to extension and termination of timeshare plans.

Section 4 creates s. 721.1255, F.S., relating to extension of timeshare plans.

Section 5 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For timeshare owners wishing to extend their plans, the bill may allow them to continue to use and enjoy their property without facing termination. For those owners who want their plan to terminate they may face having to sell or forfeit their interest to avoid paying additional maintenance fees.

D. FISCAL COMMENTS:

The Department of Business and Professional Regulation notes there is no fiscal impact to the private sector or to state government.[19]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

[19] Florida Department of Business and Professional Regulation, Agency Analysis of 2017 House Bill 829, p. 4 (March 2, 2017).

2. Other:

Article I, Section 10, of the Florida Constitution provides, in relevant part, "[n]o . . . law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws that retroactively burden or alter contractual relations.[20] Not all contractual impairments warrant overturning an otherwise valid law. Contract rights are clearly subject to the state's power of taxation.[21] Also, the state has some ability to modify contractual remedies without transgressing the Contract Clause. In *Ruhl v. Perry*,[22] the Florida Supreme Court stated "[i]t is well established that, by legislative enactment, a state may modify existing remedies, including a statute of limitations, without impairing the obligation of contracts so long as a sufficient remedy is left or another sufficient remedy is provided."[23]

State statutes that impair contractual obligations are measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced.[24] The court, in *Pomponio v. Cladridge of Pompano Condo., Inc.*,[25] enumerated several factors it might weigh when making such determinations:

a. Whether the law was enacted to deal with a broad economic or social problem;

b. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and

c. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[20] *In re Advisory Op. to the Governor,* 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities Dist. v. Volusia Cnty.,* 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto Owners Ins. Co.,* 363 So.2d 1077 (Fla. 1978).
[21] *Straughn v. Camp,* 293 So.2d 689 (Fla. 1974).
[22] 390 So.2d 353 (Fla. 1980.
[23] *Id.* at 355
[24] *Yellow Cab Co. of Dade Cnty. v. Dade Cnty.*, 412 So.2d 395 (Fla. 3d DCA 1982).
[25] 378 So.2d 774 (Fla. 1980).

A bill to be entitled

An act relating to timeshare plans; amending s. 721.05, F.S.; revising a definition; clarifying existing law; amending s. 721.08, F.S.; providing that certain instruments are not an encumbrance; providing applicability; clarifying existing law; amending s. 721.125, F.S.; deleting provisions relating to the extension of timeshare plans; providing requirements relating to the corporate status during a termination of the timeshare plan; providing requirements for the board of administration of the owners' association; providing requirements related to expenses; providing voting requirements; creating s. 721.1255, F.S.; providing requirements related to the extension of a timeshare plan; providing legislative findings; providing applicability; providing voting, quorum, and meeting requirements; providing requirements for a vote to extend a component site of a multisite timeshare plan; providing an effective date.

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

Section 1. Subsection (21) of section 721.05, Florida Statutes, is amended to read:

721.05 Definitions.—As used in this chapter, the term:

(21)(a) "Interestholder" means a developer, an owner of the underlying fee or owner of the underlying personal property, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the accommodations or facilities of the timeshare plan.

(b) With respect to a multisite timeshare plan governed by part II that contains a component site which is also part of a single-site timeshare plan or condominium or other property regime, the term does not include a developer; an owner of the underlying fee or owner of the underlying personal property; a mortgagee, judgment creditor, or other lienor; or any other person having an interest in or lien or encumbrance against a timeshare interest in such single-site timeshare plan, or interest in or lien or encumbrance against a unit in such condominium or property regime, except as to any timeshare interest or unit that is specifically subjected or otherwise dedicated to the multisite timeshare plan. This paragraph is a clarification of existing law.

Section 2. Subsection (11) is added to section 721.08, Florida Statutes, to read:

721.08 Escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title.—

(11) A timeshare instrument, declaration of condominium, or other instrument establishing or governing a component site property regime is not an encumbrance for purposes of this

chapter and does not require a nondisturbance and notice to creditors instrument for purposes of this section or a subordination and notice to creditors instrument for purposes of s. 721.53 from the managing entity, owners' association, or any other person. This paragraph is a clarification of existing law.

Section 3. Section 721.125, Florida Statutes, is amended to read:

721.125 ~~Extension or~~ Termination of timeshare plans.—

(1) Unless the timeshare instrument provides otherwise, the vote or written consent, or both, of 60 percent of all voting interests in a timeshare plan may ~~extend or~~ terminate the term of the timeshare plan at any time. ~~If the term of a timeshare plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan.~~ If a timeshare plan is terminated pursuant to this section, the termination has immediate effect pursuant to applicable law and the timeshare instrument as if the effective date of the termination were the original date of termination.

(2) If a termination ~~or extension~~ vote or consent pursuant to subsection (1) is proposed for a component site of a multisite timeshare plan located in this state, the proposed termination ~~or extension~~ is effective only if the person

authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the termination ~~or extension~~.

(3)(a) If a timeshare property is managed by an owners' association that is separate from any underlying condominium, cooperative, or homeowners association, the termination of the timeshare plan does not change the corporate status of the owners' association. The owners' association shall continue to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets. However, the owners' association may not act except as necessary to conclude its affairs and to carry out the provisions of this subsection.

1. After termination of a timeshare plan, the board of administration of the owners' association shall serve as the termination trustee, and in such fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all such tenants in common. The termination trustee shall have all powers reasonably necessary to effect the partition or sale of the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.

2. All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this subsection, including the reasonable fees of attorneys and other professionals, shall be paid by the tenants in common in the former timeshare property being partitioned or sold in proportion to their respective ownership interests.

3. The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former timeshare property and the other provisions of this subsection.

(b) If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association if such association managed the former timeshare property, shall designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association. The voting representative may vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

(4) ~~(3)~~ This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective

date of the termination ~~or extension~~ vote or consent required by subsection (1).

Section 4. Section 721.1255, Florida Statutes, is created to read:

721.1255 Extension of timeshare plans.—

(1)(a) The Legislature finds that timeshare plans are created as authorized by general law and that many older timeshare properties located in this state are based on a condominium structure and are approaching the termination dates established in the timeshare instruments.

(b) The Legislature further finds that there are many older timeshare properties in this state which have been well maintained over the years and which continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters and others. In order to preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the Legislature finds that the public policy of this state requires the creation of a general law to enable the owners of these timeshare properties to extend the terms of their timeshare plans, notwithstanding contrary provisions in the timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

(c) This section applies to all timeshare properties in

this state.

(2)(a) Unless the timeshare instrument provides for a lower vote, the vote or written consent, or both, of at least 66 percent of all eligible voting interests present in person or by proxy at a duly called and constituted meeting of the owners' association may extend the term of the timeshare plan. If the term of a timeshare plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan.

(b) Unless the timeshare instrument provides for a lower quorum, the quorum for the owners' association meeting held pursuant to paragraph (a) is 50 percent of all eligible voting interests in the timeshare plan.

(c) The owners' association meeting held pursuant to paragraph (a) may be held at any time before the termination of the timeshare plan.

(d) The board of administration of the owners' association may determine that any voting interest that is delinquent in the payment of more than 2 years of assessments is ineligible to vote on any extension of the timeshare plan unless such delinquency is paid in full before the vote.

(e) A proxy for a vote to extend a timeshare plan pursuant

to this section is valid for up to 3 years and is revocable unless the proxy states it is irrevocable.

(3) If an extension vote or consent pursuant to this section is proposed for a component site of a multisite timeshare plan located in this state, the proposed extension is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the extension.

Section 5. This act shall take effect upon becoming a law.

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: Civil Justice & Claims Subcommittee

Representative La Rosa offered the following:

Amendment

Remove lines 34-155 and insert:

regime, the term, except as to any timeshare interest, timeshare unit, or other unit that is specifically subject to, or otherwise dedicated to, the multisite timeshare plan, does not include a developer; an owner of the underlying fee or owner of the underlying personal property; a mortgagee, judgment creditor, or other lienor; or any other person having an interest in or lien or encumbrance against a timeshare interest in such single-site timeshare plan, or an interest in or lien or encumbrance against a timeshare unit or other unit in such

condominium or property regime. This paragraph is intended only as a clarification of existing law.

Section 2. Subsection (11) is added to section 721.08, Florida Statutes, to read:

721.08 Escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title.—

(11) A timeshare instrument, declaration of condominium, or other instrument establishing or governing a component site property regime is not an encumbrance for purposes of this chapter and does not create a requirement for a nondisturbance and notice to creditors instrument for purposes of this section or a subordination and notice to creditors instrument for purposes of s. 721.53 from the managing entity, owners' association, or any other person. This subsection is intended only as a clarification of existing law.

Section 3. Section 721.125, Florida Statutes, is amended to read:

721.125 ~~Extension or~~ Termination of timeshare plans.—

(1) Unless the timeshare instrument provides otherwise, the vote or written consent, or both, of 60 percent of all voting interests in a timeshare plan may ~~extend or~~ terminate the term of the timeshare plan at any time. ~~If the term of a timeshare plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same~~

~~extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan.~~ If a timeshare plan is terminated pursuant to this section, the termination has immediate effect pursuant to applicable law and the timeshare instrument as if the effective date of the termination were the original date of termination.

(2) If a termination ~~or extension~~ vote or consent pursuant to subsection (1) is proposed for a component site of a multisite timeshare plan located in this state, the proposed termination ~~or extension~~ is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the termination ~~or extension~~.

(3)(a) If the timeshare property is managed by an owners' association that is separate from any underlying condominium, cooperative, or homeowners' association, the termination of a timeshare plan does not change the corporate status of the owners' association. The owners' association continues to exist only for the purposes of concluding its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, collecting and dividing its assets, and otherwise complying with this subsection.

1. After termination of a timeshare plan, the board of administration of the owners' association shall serve as the

termination trustee, and in such fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all such tenants in common. The termination trustee also has all other powers reasonably necessary to effect the partition or sale of the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.

2. All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this subsection, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common of the former timeshare property subject to partition or sale, proportionate to their respective ownership interests.

3. The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former timeshare property and comply with the requirements of this subsection.

(b) If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or

conducted by the board of administration of the condominium or cooperative association, if such association managed the former timeshare property, shall designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association. The voting representative may vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

(4) ~~(3)~~ This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of the termination ~~or extension~~ vote or consent required by subsection (1).

Section 4. Section 721.1255, Florida Statutes, is created to read:

721.1255 Extension of timeshare plans.—

(1)(a) The Legislature finds that timeshare plans are created as authorized by statute. Most of the older timeshare properties located in this state are based on a condominium structure, and many of these older timeshare properties are approaching the termination dates set forth in their timeshare instruments.

(b) The Legislature further finds that there are many older timeshare properties located in this state which have been well-maintained over the years and continue to be financially supported, used, and enjoyed by their owners, exchangers,

guests, renters, and others. In order to preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the Legislature further finds that the public policy of this state requires the creation of a statutory method to enable the owners of these timeshare properties to extend the terms of their timeshare plans, notwithstanding contrary provisions in their timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

(2)(a) Unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, of at least 66 percent of all eligible voting interests present in person or by proxy at a duly noticed, called, and constituted meeting of the owners'

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1159 Uniform Voidable Transactions Act
SPONSOR(S): Moraitis, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Aziz PA	Bond MB
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Uniform Fraudulent Transfer Act (UFTA) provides a creditor with a means to reach assets a debtor has transferred to another person or entity. Florida adopted UFTA in 1987.

In 2014, the Uniform Law Commission amended UFTA for the first time since its creation in 1984. The amendments replaced UFTA with the Uniform Voidable Transactions Act (UVTA), which address issues with UFTA such as providing a choice of law provision, specifying the burden of proof on creditors and debtors in actions under the UVTA, and making clear that fraudulent intent is not required when seeking to set aside a transfer of property.

The bill adopts the Uniform Voidable Transaction Act to replace the UFTA. The bill provides that a creditor making a claim has the burden of proving the elements of their claim by a preponderance of the evidence. The bill removes the way partnerships are considered insolvent and instead subjects partnerships to the same solvency standard as other debtors. The bill adds a choice of law provision by providing a claim for relief is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. The bill also outlines how the UVTA applies to a business organization structured as a series organization, a form of business organization recognized in some other states.

The statute of limitations for filing an action to set aside a transfer or obligation is the later of 4 years from the transfer or obligation, or one year from when the transfer or obligation was or could have been discovered. The bill changes the one year provision to provide that it starts when the wrongful nature of the transfer or obligation was or could reasonably have been discovered.

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

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Uniform Fraudulent Transfer Act

According to the National Conference of Commissioners on Uniform State Laws, the Uniform Fraudulent Transfer Act (UFTA) was enacted by 45 states, as well as the District of Columbia and the U.S. Virgin Islands.[1] Florida adopted the UFTA in 1987.[2] Chapter 726, F.S., the Florida Uniform Fraudulent Transfer Act (FUFTA), gives a present or future creditor the ability to reach assets that a debtor has transferred to another person or entity if the transfer was made to shield the assets from being used to satisfy a debt to the creditor.

For present and future creditors, s. 726.105, F.S., provides that a transfer made or an obligation incurred by a debtor is fraudulent if the debtor made the transfer or incurred the obligation:

- With actual intent to hinder, delay, or defraud any creditor; or
- Without receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
    - Engaged, or about to engage, in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
    - Intended to incur or believed that he or she would incur debts beyond his or her ability to pay as they became due.[3]

For present creditors only, a transfer made or an obligation incurred by a debtor is fraudulent if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent or became insolvent because of the transfer or obligation.[4]

The FUFTA provides a statutory remedy for creditors primarily through a "clawback" action in which a creditor may have a debtor's transfer or obligation voided and surrendered back to the creditor.[5] This remedy is subject to a 4-year statute of limitations.[6]

Uniform Voidable Transactions Act

In 2014, the Uniform Law Commission amended the Uniform Fraudulent Transfer Act for the first time since its creation in 1984.[7] The Commission changed the name of UFTA to the Uniform Voidable Transaction Act (UVTA) to clarify its purpose and application. According to the Commission, fraud has never been a necessary element of a claim under UFTA and UFTA has always applied to the incurrence of obligations as well as transfers to property.[8] Additionally, UVTA makes the following changes:

- Adds a choice of law rule for claims governed by UVTA;
- Creates uniform rules allocating the burden of proof;
- Deletes the special definition of insolvency for partnerships; and

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[1] Uniform Law Commission, Legislative Fact Sheet – Fraudulent Transfer Act, *available at* http://uniformlaws.org/LegislativeFactSheet.aspx?title=Fraudulent Transfer Act (1984)(1984) (last visited March 20, 2017).
[2] Ch. 1987-79, Laws of Fla. The short title for ch. 726, F.S., is the "Uniform Fraudulent Transfer Act."
[3] s. 726.105, F.S.
[4] s. 726.106(1), F.S.
[5] *See* s. 726.108, F.S.
[6] s. 726.110, F.S.
[7] Uniform Law Commission, "The Uniform Voidable Transactions Act (2014 Amendments)", http://www.uniformlaws.org/shared/docs/fraudulent%20transfer/UVTA%20-%20Summary.pdf (last visited March 20, 2017).
[8] *Id.*

- Revises the defenses available to a transferee or obligee.[9]

UVTA has been enacted in 10 states[10] and legislation has been introduced in 9 states[11] in 2017.[12]

Effect of the Bill
The bill adopts UVTA in Florida and replaces FUFTA.

Title
The bill renames ch. 726, F.S., from "Fraudulent Transfers" to "Voidable Transactions." The bill amends s. 726.101, F.S., to be cited as the "Uniform Voidable Transactions Act." The bill removes the term "fraudulent" from ch. 726, F.S., and replaces it with "voidable."

Definitions
The bill amends s. 726.102, F.S, regarding definitions for ch. 726, F.S. The bill adds the following definitions:

- "claims law" means a fraudulent conveyance, fraudulent transfer, or voidable transfer laws or other laws of similar effect.
- "electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- "organization" means a person other than an individual.
- "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- "sign" means to execute or adopt a tangible symbol, or attach to or logically associate with the record an electronic symbol, sound, or process, with present intent to authenticate or adopt a record .

The bill amends the definition of person to include limited partnership, business corporation, nonprofit business corporation, public corporation, limited liability company, limited cooperative association, unincorporated nonprofit association, common law business trust, statutory trust, and association joint venture.

Insolvency
Current law provides that a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets.[13] A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.[14] FUFTA treats the calculation of insolvency for partnerships different than the way a person is calculated as being insolvent. A partnership is considered insolvent if the sum of the partnership's debts is greater than the aggregate, at fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.[15]

The bill amends s. 726.103, F.S, to remove the special definition of insolvency for partnerships and treats a partnership like a person. Thus, under the bill, a partnership is insolvent if, at a fair valuation, the sum of the partnership's debts is greater than the sum of the partnerships' assets. The bill limits the presumption of insolvency to provide where a debt is not being paid because of a dispute, that

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[9] *Id.*
[10] California, Georgia, Idaho, Iowa, Kentucky, Michigan, Minnesota, New Mexico, North Carolina, and North Dakota.
[11] Alabama, Arkansas, Indiana, New Jersey, New York, South Carolina, Utah, Vermont, and Washington.
[12] Uniform Law Commission, Legislative Fact Sheet-Voidable Transactions Act Amendments (2014)-Formerly Fraudulent Transfer Act, http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Voidable Transactions Act Amendments (2014) - Formerly Fraudulent Transfer Act(last visited March 20, 2017).
[13] s. 726.103(1), F.S.
[14] s. 726.103(2), F.S.
[15] s. 726.103(3), F.S.

non-payment does not trigger a finding of insolvency. Additionally, the bill provides that the presumption of insolvency is placed on the debtor to prove he or she is not insolvent.

Burden of Proof

Section 726.105(1), F.S., provides that a creditor who is a victim of fraud may have some recourse against the recipient of a transfer from the debtor if the transfer was made with actual intent to hinder, delay, or defraud any creditor of the debtor, or if the transfer was made without receiving reasonably equivalent value in exchange for the transfer. Section 726.106(1), F.S., provides a transfer by a debtor is per se fraudulent when the debtor made the transfer without receiving a reasonably equivalent value in exchange and the debtor was insolvent at the time or the transfer made the debtor insolvent.[16] Also, s. 726.106(2), F.S., provides a transfer made by a debtor is fraudulent as to a creditor if the transfer was made to an insider for an antecedent debt,[17] the debtor was insolvent at that time, and the insider had reasonable cause to believe that debtor was insolvent.

The bill amends ss. 726.105-.106, F.S., to provide that a creditor making a claim for relief under ss. 726.105 or 726.106, F.S., has the burden of proving the voidable transaction by a preponderance of the evidence.[18]

Defenses

A creditor may obtain a judgment on a claim against a debtor and may, if the court so orders, levy execution on the asset transferred or its proceeds if such transfer is voidable pursuant to ch. 726, F.S.[19] However, s. 726.109, F.S., provides a number of defenses or protections to a transferee. For example, a transfer or obligation is not voidable against a person who took in good faith and for a reasonably equivalent value.[20] Additionally, a good faith transferee is entitled to a lien on or a right to retain any interest in the asset transferred.[21]

The bill provides recovery pursuant to a judgment of the asset transferred or its proceeds is available only against the first transferee of the asset and an immediate transferee and exempts good faith transferees and their immediate good faith transferees, from having judgments enforced against them.

Another defense provided in ch. 726, F.S., is that a transfer is not voidable if the transfer results from a termination of a lease upon default by the debtor when the termination is pursuant to the lease terms or by enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

The bill outlines who carries the burden of proving the defenses or right to attach judgments against transferees. Anyone seeking to invoke the defenses in s. 726.109, F.S., has the burden of proving the applicability of that defense. A creditor has the burden of proving applicability of judgments against a first transferee or an immediate transferee. A good faith transferee has the burden of proving they are a good faith transferee or a mediate good faith transferee. The standard of proof is a preponderance of the evidence.

Statute of Limitations

Section 726.110(1), F.S., provides a cause of action relating to a fraudulent transfer or obligation is barred unless brought within 4 years after the transfer was made or obligation was incurred or, if later, within 1 year after the transfer or obligation was discovered by claimant. The bill adds the element of

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[16] s. 726.106(1), F.S.; *Gass v. Comreal Miami*, 653 So. 2d 1069, 1071 (Fla. 3d DCA 1995).

[17] Antecedent debt means "a debtor's prepetition obligation that existed before a debtor's transfer of an interest in property." BLACK'S LAW DICTIONARY (8th ed. 2004).

[18] Preponderance of the evidence means "the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force." BLACK'S LAW DICTIONARY (8th ed 2004).

[19] s. 726.108, F.S.

[20] s. 726.109(1), F.S.

[21] s. 726.109(4), F.S.

discovery of the wrongful nature of the transfer or obligation to the 1 year statute of limitations that applies once the transfer is discovered.

Choice of Law

The bill creates s. 726.113, F.S., to provide that a claim for relief under ch. 726, F.S., is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. For purposes of determining a debtor's physical location, the bill provides:

- An individual debtor's physical location is at his or her principal residence;
- A debtor's physical location, if the debtor is an organization with only one place of business, is at the debtor's place of business; and
- A debtor's physical location, if the debtor is an organization and has more than one place of business, is at its chief executive office.

The bill provides this choice of law provision does not govern any claims between the parties arising outside of ch. 726, F.S. The bill also provides that if a foreign jurisdiction applies, it will not affect the debtor's entitlement to any protections under the debtor's homestead under the Florida Constitution.

Application to Series Organizations

A series organization is a business organization concept in which a limited partnership or a limited liability company may designate their separate assets in specific series.[22] Once designated, the creditors to an individual series may not look to the assets of another series, even if both series are owned by the same limited liability company or partnership.[23] In the context of limited partnerships, the series is intended to emulate the existence of multiple limited partnerships without creating separate entities.[24] Twelve states have enacted legislation regarding series organizations.[25]

The bill creates s. 726.114, to outline how ch. 726, F.S., applies to a series organization. A series organization and each protected series organization is a separate person for purposes of ch. 726, F.S., even if for other purposes a protected series is not a person separate from the organization. The bill defines a series organization as an organization that, pursuant to the law under which it is organized, has the following characteristics:

- The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series.
- Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only and not against the property of or associated with the organization or other protected series of the organization.
- Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

The bill defines protected series as an arrangement, however denominated, created by a series organization that meets the requirements of a series organization. By enacting this application on series organizations even when Florida law does not contemplate a series organization, a Florida court may

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[22] Adam Hiller, *But Series-ly, Folks--The Series Laws, and How They (May) Intersect with Bankruptcy Law*, 20 AM. BANKR. INST. L. REV. 353, 354 (2012).

[23] For example, if an investor group wished to purchase a chain of thirty-five fast food restaurants, the investors can create a single limited liability company, isolate each restaurant into its own series, and divert creditors of one restaurant from reaching assets of other owned restaurants. *Id.* at 355.

[24] *Id* at 354.

[25] Alabama, Delaware, Illinois, Iowa, Kansas, Missouri, Montana, Nevada, Oklahoma, Tennessee, Texas and Utah. Michelle Masoner, *In This Issue:, Lien on Me, How Are Security Interests in Series LLC Assets Perfected, and Is It Even Possible?*, 35-9 ABIJ 22, fn. 2 (Sept. 2016).

find a voidable transaction of a series organization organized in a state which has adopted series organization laws.

Electronic Signatures in Global and National Commerce Act

The Electronic Signatures in Global and National Commerce Act of 2000 (E-Sign Act) provides electronic signatures, contracts, and records with respect to a transaction are valid as a written document.[26] The E-Sign Act does not require contracts, records, or signatures in electronic form.[27] It also provides that if a statute requires a transaction to a consumer be made in writing, then the use of electronic record satisfies the requirement if the consumer consents or is informed of the right to have it in non-electronic form.[28] Additionally, the E-Sign Act does not apply to court orders, notice of cancellation of utility services, foreclosure or eviction, cancellation of health insurance, or a recall of a product.[29]

The bill provides ch. 726, F.S., modifies, limits, and supersedes the E-Sign Act but does not modify limit or supersede the portion of the Act regarding consumer disclosures, or authorize electronic delivery of any of the prohibited notices described in the E-Sign Act.

B. SECTION DIRECTORY:

Section 1 renames ch. 726, F.S., as "Voidable Transactions."

Section 2 amends s. 726.101, F.S., relating to the Uniform Fraudulent Transfer Act.

Section 3 amends s. 726.102, F.S., relating to definitions.

Section 4 amends s. 726.103, F.S., relating to insolvency.

Section 5 amends s. 726.105, F.S., relating to transfers fraudulent as to present and future creditors.

Section 6 amends s. 726.106, F.S., relating to transfers or obligations fraudulent as to present creditors.

Section 7 amends s. 726.107, F.S., relating to when transfer made or obligation incurred.

Section 8 amends s. 726.108, F.S., relating to remedies of creditors.

Section 9 amends s. 726.109, F.S., relating to defenses, liability, and protection of transferee.

Section 10 amends s. 726.110, F.S., relating to extinguishment of cause of action.

Section 11 amends s. 726.111, F.S., relating to supplementary provisions.

Section 12 amends s. 726.112, F.S., relating to uniformity of application and construction.

Section 13 creates s. 726.113, F.S., relating to governing law.

Section 14 creates s. 726.114, F.S., relating to application to series organization.

Section 15 creates s. 726.115, F.S., relating to relation to Electronic Signatures in Global and National Commerce Act.

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[26] 15 U.S.C. s. 7001(a).
[27] 15 U.S.C. s. 7001(b).
[28] 15 U.S.C. s. 7001(c).
[29] 15 U.S.C. s. 7003(b).

Section 16 provides an effective date of July 1, 2017.

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 revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce, the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 512: The bill refers to electronic delivery of any of the notices described in s. 103(b) of the E-Sign Act, 15 U.S.C. s. 7001(b). However, the UVTA, as drafted by the Uniform Law Commission, refers to 15 U.S.C. s. 7003(b).[30]

[30] National Conference of Commissioners on Uniform State Laws, Uniform Voidable Transaction Act, p48 http://www.uniformlaws.org/shared/docs/Fraudulent%20Transfer/2014_AUVTA_Final%20Act_2016mar8.pdf .

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to Uniform Voidable Transactions Act; providing a directive to the Division of Law Revision and Information; amending s. 726.101, F.S.; revising a short title; amending s. 726.102, F.S.; revising and providing definitions; amending s. 726.103, F.S.; removing conditions under which a partnership is insolvent; imposing the burden of proving insolvency upon certain debtors; amending ss. 726.105 and 726.106, F.S.; imposing the burden of proving elements of a claim for relief upon certain creditors; amending s. 726.107, F.S.; conforming provisions to changes made by the act; amending s. 726.108, F.S.; providing conditions under which attachments or other provisional remedies are available to creditors; amending s. 726.109, F.S.; revising the parties subject to judgements for recovery of a creditor's claim; revising conditions under which a transfer is not voidable; imposing the burden of proving certain applicability, claim elements, and adjustments; providing requirements for standard of proof; amending ss. 726.110, 726.111, and 726.112, F.S.; conforming provisions to changes made by the act; creating s. 726.113, F.S.; providing that claims for relief are governed by specified claims law; creating s. 726.114,

F.S.; providing definitions; providing applicability of specified provisions for series organizations and the protected series of such organizations; creating s. 726.115, F.S.; providing applicability for a specified federal act; providing an effective date.

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

Section 1. The Division of Law Revision and Information is directed to rename chapter 726, Florida Statutes, entitled "FRAUDULENT TRANSFERS," as "VOIDABLE TRANSACTIONS."

Section 2. Section 726.101, Florida Statutes, is amended to read:

726.101 Short title.—This act may be cited as the "Uniform Voidable Transactions ~~Fraudulent Transfer~~ Act."

Section 3. Section 726.102, Florida Statutes, is amended to read:

726.102 Definitions.—As used in this chapter ~~ss. 726.101-726.112~~:

(1) "Affiliate" means:

(a) A person that ~~who~~ directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that ~~who~~ holds the securities:

1. As a fiduciary or agent without sole discretionary

power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(b) A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that ~~who~~ directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that ~~who~~ holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person that ~~who~~ operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid lien;

(b) Property to the extent it is generally exempt under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Charitable contribution" means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(4) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) "Claims law" means fraudulent conveyance, fraudulent transfer, or voidable transfer laws or other laws of similar effect.

(6)~~(5)~~ "Creditor" means a person that ~~who~~ has a claim.

(7)~~(6)~~ "Debt" means liability on a claim.

(8)~~(7)~~ "Debtor" means a person that ~~who~~ is liable on a claim.

(9) "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10)~~(8)~~ "Insider" includes:

(a) If the debtor is an individual:

1. A relative of the debtor or of a general partner of the debtor;

2. A partnership in which the debtor is a general partner;

3. A general partner in a partnership described in subparagraph 2.; or

4. A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

1. A director of the debtor;

2. An officer of the debtor;

3. A person in control of the debtor;

4. A partnership in which the debtor is a general partner;

5. A general partner in a partnership described in subparagraph 4.; or

6. A relative of a general partner, director, officer, or person in control of the debtor.

(c) If the debtor is a partnership:

1. A general partner in the debtor;

2. A relative of a general partner in, a general partner of, or a person in control of the debtor;

3. Another partnership in which the debtor is a general partner;

4. A general partner in a partnership described in <u>this paragraph</u> ~~subparagraph 3.~~; or

5. A person in control of the debtor.

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor.

(e) A managing agent of the debtor.

(11)~~(9)~~ "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(12) "Organization" means a person other than an individual.

(13)~~(10)~~ "Person" means an individual, partnership, limited partnership, business corporation, nonprofit business corporation, public corporation, limited liability company, limited cooperative association, unincorporated nonprofit association, ~~organization,~~ government or governmental subdivision, instrumentality, or agency, business trust, common law business trust, statutory trust, estate, trust, association, joint venture, or any other legal or commercial entity.

(14)~~(11)~~ "Property" means anything that may be the subject of ownership.

(15)~~(12)~~ "Qualified religious or charitable entity or organization" means:

(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) ~~(13)~~ "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(18) "Sign" means with present intent to authenticate or adopt a record to:

(a) Execute or adopt a tangible symbol; or

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

(19) ~~(14)~~ "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(20) ~~(15)~~ "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Section 4. Section 726.103, Florida Statutes, is amended to read:

726.103 Insolvency.—

(1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum ~~all~~ of the debtor's assets ~~at a fair valuation~~.

(2) A debtor that ~~who~~ is generally not paying their ~~his or her~~ debts as they become due for reasons other than as a result of a bona fide dispute is presumed to be insolvent. The party against which the presumption is directed, has the burden of proving that the nonexistence of insolvency is more probable than its existence.

~~(3) A partnership is insolvent under subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.~~

(3)~~(4)~~ Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter ~~ss. 726.101-726.112~~.

(4)~~(5)~~ Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Section 5. Section 726.105, Florida Statutes, is amended to read:

726.105 Transfers or obligations voidable ~~fraudulent~~ as to present and future creditors.—

(1) A transfer made or obligation incurred by a debtor is voidable ~~fraudulent~~ as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that the debtor ~~he or she~~ would incur, debts beyond the debtor's ~~his or her~~ ability to pay as they became due.

(2) In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider.

(b) The debtor retained possession or control of the property transferred after the transfer.

(c) The transfer or obligation was disclosed or concealed.

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) The transfer was of substantially all the debtor's assets.

(f) The debtor absconded.

(g) The debtor removed or concealed assets.

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) The debtor transferred the essential assets of the business to a lienor that ~~who~~ transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Section 6. Section 726.106, Florida Statutes, is amended to read:

726.106 Transfers or obligations voidable ~~fraudulent~~ as to present creditors.—

(1) A transfer made or obligation incurred by a debtor is voidable ~~fraudulent~~ as to a creditor whose claim arose before

the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable ~~fraudulent~~ as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to s. 726.103(2), a creditor making a claim for relief under subsection (1) or subsection (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Section 7. Section 726.107, Florida Statutes, is amended to read:

726.107 When transfer made or obligation incurred.—For the purposes of this chapter ~~ss. 726.101-726.112~~:

(1) A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against which ~~whom~~ applicable law permits

the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee.

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter ~~ss. 726.101-726.112~~ that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter ~~ss. 726.101-726.112~~, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a record ~~writing~~, when the record signed ~~writing executed~~ by the obligor is delivered to or for the benefit of the obligee.

Section 8. Section 726.108, Florida Statutes, is amended to read:

726.108 Remedies of creditors.—

(1) In an action for relief against a transfer or obligation under this chapter ~~ss. 726.101-726.112~~, a creditor, subject to the limitations in s. 726.109 may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if and to the extent available under ~~in accordance with~~ applicable law;

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

1. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

2. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

3. Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Section 9. Section 726.109, Florida Statutes, is amended to read:

726.109 Defenses, liability, and protection of transferee or obligee.—

(1) A transfer or obligation is not voidable under s.

726.105(1)(a) against a person that ~~who~~ took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2)(a) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under s. 726.108(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

1.~~(a)~~ The first transferee of the asset or the person for whose benefit the transfer was made; or

2.~~(b)~~ An immediate or mediate transferee of the first ~~Any subsequent~~ transferee other than:

a. A good faith transferee that ~~who~~ took for value; or

b. An immediate or mediate good faith transferee of a person described in sub-subparagraph a ~~from any subsequent transferee~~.

(b) Recovery pursuant to s. 726.108(1)(a) or (2) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subparagraph (a)1. or subparagraph(a)2.

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter ~~ss. 726.101-726.112~~, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain an ~~any~~ interest in the asset transferred;

(b) Enforcement of an ~~any~~ obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under s. 726.105(1)(b) or s. 726.106 if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under s. 726.106(2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent ~~unless~~ the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value

given for that purpose as well as an antecedent debt of the debtor.

(7)(a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1)(b) or s. 726.106(1).

(b) However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the debtor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

(8)(a) A party that seeks to invoke subsection (1), subsection (4), subsection (5), or subsection (6) has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in paragraphs (c) and (d), the creditor has the burden of proving each applicable element of subsection (2) or subsection (3).

(c) The transferee has the burden of proving the applicability to the transferee under subparagraph (2)(a)2.

(d) A party that seeks adjustment under subsection (3) has the burden of proving the adjustment.

(9) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

(10) The creditor has the burden of proving the requisite elements of any claim under this chapter, as set forth in ss. 726.105(3) and 726.106(3).

Section 10. Section 726.110, Florida Statutes, is amended to read:

726.110 Extinguishment of claim for relief ~~cause of action~~.~~—~~A claim for relief ~~cause of action~~ with respect to a ~~fraudulent~~ transfer or obligation under this chapter ~~ss. 726.101-726.112~~ is extinguished unless action is brought:

(1) Under s. 726.105(1)(a), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation and its wrongful nature was or could reasonably have been discovered by the claimant;

(2) Under s. 726.105(1)(b) or s. 726.106(1), within 4 years after the transfer was made or the obligation was

incurred; or

(3) Under s. 726.106(2), within 1 year after the transfer was made or the obligation was incurred.

Section 11. Section 726.111, Florida Statutes, is amended to read:

726.111 Supplementary provisions.—Unless displaced by the provisions of this chapter ~~ss. 726.101-726.112~~, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement those provisions.

Section 12. Section 726.112, Florida Statutes, is amended to read:

726.112 Uniformity of application and construction.—Chapter 87-79, Laws of Florida, shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the law among states enacting the law ~~it~~.

Section 13. Section 726.113, Florida Statutes, is created to read:

726.113 Governing law.—

(1) For the purposes of this section, the following provisions shall determine a debtor's physical location:

(a) A debtor that is an individual is located at his or

her principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

(3) This section does not affect the governing law for any other claims or issues between the parties arising outside of this chapter or other claims law. If this section requires the application of the claims law of a foreign jurisdiction, such a determination does not affect which jurisdiction's exemption laws apply, the availability of exemptions under applicable law, or the debtor's entitlement to any protections afforded to the debtor's homestead under the Florida Constitution.

Section 14. Section 726.114, Florida Statutes, is created to read:

726.114 Application to series organization.-

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

(a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, meets the criteria set forth in paragraph (b).

(b) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

1. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series.

2. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

3. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. Provisions of law other than this chapter

determines whether and to what extent a series organization and each protected series of the organization is a separate person for purposes other than the purposes of this chapter.

Section 15. Section 726.115, Florida Statutes, is created to read:

726.115 Relation to Electronic Signatures in Global and National Commerce Act.—This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7001(b).

Section 16. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1159 (2017)

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: Civil Justice & Claims Subcommittee

Representative Moraitis offered the following:

Amendment

Remove line 232 and insert:

(h) The value of the consideration received by the debtor, including value by way of asset substitution or otherwise,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1159 (2017)

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: Civil Justice & Claims Subcommittee

Representative Moraitis offered the following:

Amendment (with title amendment)

Between lines 396 and 397, insert:

(8) If, with respect to the formation of an entity or the conversion of any entity into another form of entity, regardless of the local law of such entity, it is subsequently determined that, as a result of such formation or conversion, a holder of equity interests in such entity violated any other provisions of this chapter, such formation or conversion shall not presumptively be deemed to be voidable, and the creditors of such member shall have available all other remedies and actions under this Act. For purposes of this subsection (8), "entity" shall be defined as provided in s. 605.0102(23) notwithstanding

the fact that such entity may be organized under the laws of a foreign jurisdiction.

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

Remove line 19 and insert:

not voidable; providing that certain actions related to the formation or conversion of an entity are not voidable; imposing the burden of proving certain

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1159 (2017)

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: Civil Justice & Claims Subcommittee

Representative Moraitis offered the following:

Amendment

Remove line 512 and insert:

7003(b).

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1271 Construction Defect Claims
SPONSOR(S): Trumbull
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MacNamara	Bond
2) Careers & Competition Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides a method for resolving construction defect disputes prior to filing a lawsuit. Specifically, a person who intends to sue regarding a construction defect (a claimant) must notify the contractor (claim recipient) of the claim so that the contractor has an opportunity to offer to fix the problem before suit is filed.

The bill makes the following changes for resolving construction defect disputes:

- Requires a claimant to personally sign any notice of claim to be served on a party and any notice of acceptance or rejection of a settlement offer.
- Requires a claim recipient to serve any notice of claim on any contractor or other party that he or she reasonably believes is responsible for each defect specified in the notice of claim.
- Requires any experts retained by a claimant for a construction defect claim to be physically present during any inspection identifying the location of the construction defects.
- Requires a claimant to serve a written request for mediation prior to rejecting any settlement offer.
- Provides that the statute of limitations for construction defect claims may be tolled in some instances until thirty days after mediation is concluded, terminated, or an impasse is declared.

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

The bill has an effective of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 558, F.S., provides a method for resolving construction defect disputes before filing a lawsuit. In short, it provides for notice and an opportunity to cure. Before the property owner may sue a contractor, the property owner is required to notify the contractor of the defect and to give the contractor the opportunity to examine the defect. If the contractor agrees that the defect exists, the contractor is given a reasonable opportunity to repair the defect or make some other offer in settlement. If the parties are still in disagreement, the matter may proceed to court. Similar methods for pre-suit notice and resolution are required in other areas, including medical negligence, claims against nursing homes, and eminent domain.[1]

Moreover, pursuant to s. 558.004(12), F.S., and except as specifically provided in ch. 558, F.S., the chapter does not:

- Bar or limit any rights, including the right of specific performance to the extent available in the absence of the chapter, any causes of action, or any theories on which liability may be based;
- Bar or limit any defense, or create any new defense; or
- Create any new rights, causes of action, or theories on which liability may be based.

The construction defect procedure applies to each alleged construction defect, but multiple defects may be included in one notice of claim. In addition, the initial list of defects may be amended by the claimant to identify additional or new construction defects as they become known. Only alleged construction defects that are noticed and for which the claimant has complied with the construction defect procedure may be addressed in a trial. Similar to other disputes arising under state law, construction defect lawsuits often require the retention of an expert witness to assist parties with technical issues or issues concerning standard practices within the construction industry.

The bill relates to notice of claims for construction defects, for both the claimants and contractors under ch. 558, F.S. The bill also requires expert witnesses retained by a claimant to be present for inspections. Lastly, the bill requires a written demand for mediation to be served along with any settlement offers and provides that mediations between the parties may toll the applicable statute of limitations.

Current Law and Effect of Bill

Notice of Claim

Section 558.004(1), F.S., requires a claimant to provide pre-suit notice of an alleged construction defect to the contractor, subcontractor, supplier, or designer, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels. The notice of claim must describe in reasonable detail the nature of each construction defect and, if known, the damage or loss resulting from the defect. This requires the claimant, based upon at least a visual inspection, to identify the location of each defect in the notice.[2]

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[1] *See* s. 720.311, F.S., related to homeowners association disputes; ch. 766., F.S., related to medical negligence claims; s. 429.293(3), F.S., related to assisted care communities; s. 400.0233(3), related to nursing homes; and, s. 73.015, F.S., related to eminent domain.

[2] s. 558.004(1)(b), F.S.

If the construction defect claim arises from work performed under a contract, the written notice of claim must be served on the person with whom the claimant contracted. The claimant must try to serve the notice of claim within 15 days after discovery of an alleged defect, but the failure to do so does not bar the filing of an action.[3]

Under s. 558.004(3), F.S., within 10 days after service of the notice of claim (within 30 days for a claim involving an association claimant), the claim recipient *has the option* to serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom the claim recipient reasonably believes is responsible for each defect specified in the notice of claim (the subsequent claim recipient). The claim recipient must then identify the specific defect for which it believes the particular subsequent claim recipient is responsible.

The bill provides that claimants must personally sign any notice of claim served on a contractor, subcontractor, supplier, or design professional.

The bill also removes claim recipient's discretion with respect to subsequently serving the notice of claim to additional parties. Rather, claim recipients are required to serve such notices on any contractor, subcontractor, supplier, or design professional that he or she reasonably believes is responsible for each defect specified in the notice of claim.

Reasonable Inspection

Under s. 558.004(2), F.S., within 30 days after service of the notice of claim (or within 50 days for a claim involving an association claimant), the person served with the notice of claim may inspect the property or each unit subject to the claim to assess each alleged construction defect. The claimant is also required to provide the claim recipient, its contractors, or its agents reasonable access to the property during normal working hours to inspect the property, to determine the nature and cause of each alleged construction defect, and determine the nature and extent of any repairs or replacements necessary to remedy each defect.

Claim recipients are required to reasonably coordinate the timing and manner of any and all inspections with the claimant to minimize the number of inspections. If mutually agreed, the inspection may include destructive testing under the terms as provided under s. 558.004(2), F.S.

The bill provides that the claimant and any experts retained by the claimant with respect to the claim must be physically present during the inspection to identify the location of any alleged construction defects.

Settlement Offers

Under s. 558.004(7), F.S., a claimant who receives a timely settlement offer must accept or reject the offer by serving written notice of acceptance or rejection on the person making the offer within 45 days after receiving the settlement offer. If a claimant initiates an action without first accepting or rejecting the offer, the court is required to stay the action upon timely motion until the claimant serves the required written response.

The bill provides that prior to rejecting a settlement offer under the section, the claimant must serve a written demand for mediation on the party making the offer explaining why the claimant considers the offer inadequate. The 45 day time limit to respond to settlement offers under s. 558.004(7)(a), F.S., is tolled until the mediation is concluded, terminated, or an impasse is declared.

Moreover, unless mediation is waived in writing by the party making the offer, the bill requires that the parties meet with a mutually selected, certified circuit court mediator within 20 days after service of the

[3] s. 558.004(1)(c), F.S.

demand for mediation. A mediator may extend mediation under the bill for good cause or upon stipulation of both parties. The party making the offer is responsible for the costs of mediation, unless the parties do not mutually agree on a mediator. In that case, each party is responsible for the costs of its own mediator and must equally split any other mediation costs.

Lastly, the bill provides that a written notice of acceptance or rejection of the offer must be personally signed by the claimant.

Statute of Limitations

Service of a written notice of claim tolls the applicable statute of limitations for those persons covered by the construction defect procedure in ch. 558, F.S., (and any bond surety) until the later of:

- Ninety, or 120 days, after service of the notice of claim; or
- Thirty days after the end of the repair period or payment period stated in the offer, if the claimant has accepted the offer; this time period may be extended by stipulation of the parties, which tolls the statute of limitations during the extension.

The bill provides that mediations pursuant to s. 558.004(7), F.S., also act to toll the statute of limitations for persons covered by the construction defect proceedings. Specifically, the bill states that applicable statute of limitations is tolled until the later of to the scenarios listed above or thirty days after the mediation is concluded, terminated, or an impasse is declared.

B. SECTION DIRECTORY:

Section 1 amends s. 558.004, F.S., relating to notice and opportunity to repair.

Section 2 provides an effective date of July 1, 2017.

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 government revenues.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lead to an increase in mediations in construction defect actions, and thus could have a positive fiscal impact for certified circuit court mediators.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to construction defect claims; amending s. 558.004, F.S.; providing additional requirements for notices of claim, inspections, and notices of acceptance or rejection of settlement offers; requiring, rather than authorizing, certain persons to serve copies of notices of claim to certain professionals; revising provisions relating to tolling certain statutes of limitations; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsections (2), (3), (7), and (10) of section 558.004, Florida Statutes, are amended to read:

558.004 Notice and opportunity to repair.—

(1)(a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels, serve written notice of claim, personally signed by him or her, on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. If the construction defect claim arises from work performed under a

contract, the ~~written~~ notice of claim must be served on the person with whom the claimant contracted.

(2) Within 30 days after service of the notice of claim, or within 50 days after service of the notice of claim involving an association representing more than 20 parcels, the person served with the notice of claim under subsection (1) is entitled to perform a reasonable inspection of the property or of each unit subject to the claim to assess each alleged construction defect. An association's right to access property for either maintenance or repair includes the authority to grant access for the inspection. The claimant shall provide the person served with notice under subsection (1) and such person's contractors or agents reasonable access to the property during normal working hours to inspect the property to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each defect. <u>The claimant and any experts retained by the claimant with respect to the claim must be physically present for the inspection to identify the location of the alleged construction defects.</u> The person served with notice under subsection (1) shall reasonably coordinate the timing and manner of any and all inspections with the claimant to minimize the number of inspections. The inspection may include destructive testing by mutual agreement under the following reasonable terms and conditions:

(a) If the person served with notice under subsection (1) determines that destructive testing is necessary to determine the nature and cause of the alleged defects, such person shall notify the claimant in writing.

(b) The notice shall describe the destructive testing to be performed, the person selected to do the testing, the estimated anticipated damage and repairs to or restoration of the property resulting from the testing, the estimated amount of time necessary for the testing and to complete the repairs or restoration, and the financial responsibility offered for covering the costs of repairs or restoration.

(c) If the claimant promptly objects to the person selected to perform the destructive testing, the person served with notice under subsection (1) shall provide the claimant with a list of three qualified persons from which the claimant may select one such person to perform the testing. The person selected to perform the testing shall operate as an agent or subcontractor of the person served with notice under subsection (1) and shall communicate with, submit any reports to, and be solely responsible to the person served with notice.

(d) The testing shall be done at a mutually agreeable time.

(e) The claimant or a representative of the claimant may be present to observe the destructive testing.

(f) The destructive testing shall not render the property

uninhabitable.

(g) There shall be no construction lien rights under part I of chapter 713 for the destructive testing caused by a person served with notice under subsection (1) or for restoring the area destructively tested to the condition existing prior to testing, except to the extent the owner contracts for the destructive testing or restoration.

If the claimant refuses to agree and thereafter permit reasonable destructive testing, the claimant shall have no claim for damages which could have been avoided or mitigated had destructive testing been allowed when requested and had a feasible remedy been promptly implemented.

(3) Within 10 days after service of the notice of claim, or within 30 days after service of the notice of claim involving an association representing more than 20 parcels, the person served with notice under subsection (1) must ~~may~~ serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular contractor, subcontractor, supplier, or design professional is responsible. The notice described in this subsection may not be construed as an admission of any kind. Each such contractor, subcontractor, supplier, and design

professional may inspect the property as provided in subsection (2).

(7)(a) A claimant who receives a timely settlement offer must accept or reject the offer by serving written notice of such acceptance or rejection, personally signed by him or her, on the person making the offer within 45 days after receiving the settlement offer. If a claimant initiates an action without first accepting or rejecting the offer, the court shall stay the action upon timely motion until the claimant complies with this subsection.

(b) Before rejecting the offer, the claimant shall serve a written demand for mediation on the person making the offer. The demand must explain why the claimant considers the offer inadequate. Unless mediation is waived in writing by the person making the offer, the parties must, within 20 days after service of the demand for mediation, mutually select an independent certified mediator and meet with the mediator to attempt to resolve the dispute. The meeting must take place in the county in which the subject real property is located, at a mutually convenient date, time, and location to be selected by the mediator, unless otherwise agreed to by the parties. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties. The person making the offer shall bear the costs of mediation, unless the parties are unable to mutually select a mediator, in which case

each party shall select and bear the cost of its own mediator and equally split any other mediation costs. Mediation must be conducted by a certified circuit court mediator, pursuant to the mediation rules of practice and procedures for circuit court adopted by the Florida Supreme Court and pursuant to the Mediation Confidentiality and Privilege Act, unless otherwise agreed to by the parties. The time for serving written notice under paragraph (a) is tolled until the mediation is concluded or terminated, or an impasse is declared.

(10) A claimant's service of the written notice of claim under subsection (1) tolls the applicable statute of limitations relating to any person covered by this chapter and any bond surety until the later of:

(a) Ninety days, or 120 days, as applicable, after service of the notice of claim pursuant to subsection (1);

(b) Thirty days after the mediation pursuant to paragraph (7)(b) is concluded or terminated, or an impasse is declared; or

(c) ~~(b)~~ Thirty days after the end of the repair period or payment period stated in the offer, if the claimant has accepted the offer. By stipulation of the parties, the period may be extended and the statute of limitations is tolled during the extension.

Section 2. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1271 (2017)

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: Civil Justice & Claims Subcommittee

Representative Trumbull offered the following:

Amendment

Remove lines 124-127 and insert:

making the offer shall bear the cost of mediation. Mediation must be

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1337 Child Support and Parenting Time Plans
SPONSOR(S): Diaz, J.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MacNamara	Bond
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Title IV-D of the Social Security Act provides federal grants to states that implement certain laws and procedures regarding child support awards and enforcement. Florida complies with Title IV-D through the child support program administered by the Department of Revenue (department). The program assists with setting and enforcing child support. The program cannot assist with setting or enforcement of timesharing issues, which must be referred to the judicial system.

The amount of child support that one parent owes to the other is based on a formula. The formula uses the relative incomes of the parties and the timesharing agreement between the parties to arrive at an appropriate child support award.

The bill authorizes the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions. The bill requires the department to provide parents with a Title IV-D Parenting Time Plan with a proposed administrative support order. The bill also creates a standard Title IV-D Parenting Time Plan that may be used by parents. In the event the parents cannot agree on a parenting time plan, they will be referred to the circuit court for the establishment of a plan. In these instances, parents will not pay a fee to file a petition to determine a parenting time plan.

In FY 2017-18, the bill appropriates $419,520 in nonrecurring funds and $111,856 in recurring funds from the General Revenue Fund to the Department of Revenue to implement this bill. The department believes the appropriation is insufficient. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of January 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: Child Support

Child support is a parent's legal obligation to contribute to the economic maintenance and education of his or her child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.[1] This obligation arises since each parent has a duty to support[2] his or her minor or legally dependent child.[3] Child support can be entered into voluntarily, by court order, or by an administrative agency. Child support is an important source of income for millions of children in the United States. Child support payments represent on average 40 percent of income for poor custodial families who receive them; such payments lifted one million people above poverty in 2008.[4]

Establishment of Child Support Obligation

When parents live apart because they never married or are divorced or separated, the court may order a parent who owes a duty of support to a child to pay support to the other parent, or in the case of both parents, to a third party who has custody, in accordance with the guidelines schedule in s. 61.30, F.S.[5] Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of child support according to a formula that is based on a parents' income and the amount of time that the child spends with each parent. The judicial officer is permitted to deviate from the guideline amount plus or minus 5 percent after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent.[6] The judicial officer may also deviate from the guideline amount more than plus or minus 5 percent, but he or she must include a written finding in the support order explaining why the guideline amount is unjust or inappropriate.[7] Establishment of a child support award, or enforcement of one, may be through the judicial system or the state child support program.

Department of Revenue Child Support Program

As required by Title IV-D of the Social Security Act,[8] the federal Department of Health and Human Services (HHS) coordinates with child support enforcement programs administered in each state, which perform collection and enforcement services.[9] Each state's child support enforcement agency operates under an approved state plan based on the program standards and policy set by the federal government.[10] In Florida, the Department of Revenue (department) administers the child support program.[11] [12]

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[1] Black's Law Dictionary 100 (3rd pocket ed. 2006).
[2] s. 61.046(22), F.S., defines "support" as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.
[3] s. 61.29, F.S. See generally ss. 744.301 and 744.361, F.S.
[4] National Conference of State Legislatures, *Child Support Overview*, March 15, 2016, available at http://www.ncsl.org/research/human-services/child-support-homepage.aspx (last viewed March 24, 2017).
[5] s. 61.13(1)(a), F.S.
[6] s. 61.30(1)(a), F.S.
[7] *Id.*
[8] *See* 42 U.S.C. ss. 651 et seq.
[9] National Conference of State Legislatures, *Child Support 101: State Administration*, April 2013, available at http://www.ncsl.org/research/human-services/child-support-adminstration.aspx (last viewed March 24, 2017).
[10] *Id.*
[11] s. 409.2557(1), F.S.
[12] Department of Revenue, *About the Child Support Program*, 2016, available at http://floridarevenue.com/dor/childsupport/about_us.html (last viewed March 24, 2017).

Child support program structures vary widely from state to state, but at a minimum, services offered in all child support programs include:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying support orders;
- Collecting support payments and enforcing child support orders; and
- Referring noncustodial parents to employment services.[13]

Any parent or person with custody of a child who needs help to establish a child support order or to collect support payments may apply for services. Individuals receiving public assistance from the state are required to participate in the state child support program.[14] IV-D cases are cases in which a state provides child support services through the state or tribal IV-D program to a custodial parent. The program is funded under Title IV-D of the Social Security Act. There are three subtypes of state IV-D cases:

- Public or Current Assistance Cases: Parents who receive public assistance under the state's Temporary Assistance for Needy Families (TANF) program are required to assign their rights to child support payments to the state. The state automatically refers these cases to the Office of Child Support Enforcement in order to attempt to collect child support directly from the noncustodial parent.
- Non-Public Assistance Cases: Non-public assistance cases are those in which the family is not currently or is no longer receiving cash assistance or Medicaid but the state child support agency is providing collection services.
- Foster Care and Adoption Assistance (IV-E Cases): Cases where the state currently provides benefits or services for foster care maintenance to a child that meets IV-E eligibility guidelines. In these cases, someone other than a parent is caring for a child or children—this could include a relative caregiver or the foster care system. These cases are also automatically referred to the child support agency in order to attempt to recoup costs from the noncustodial parent(s).

Judges issuing an administrative order for child support may include provisions for monetary support, retroactive support, health care, and other elements of support set forth under state law.[15] Procedures set forth by statute include:

- The drafting and service by the department of a notice of proceeding to establish an administrative support order;
- The execution and service of financial affidavits by the child's parents;
- The drafting and service of a proposed administrative support order;
- Parental request for a hearing before the Division of Administrative Hearings;
- Judicial review of an administrative support order; and
- Enforcement of an administrative support order.[16]

An administrative child support order has the same force and effect as a court order until and unless it is modified by the department, vacated on appeal, or superseded by a subsequent court order.[17] Thus, an administrative order may be enforced in the same manner as a court order, except that an administrative order may not be enforced through contempt.[18] Neither the department nor the Department of Administrative Hearings have jurisdiction to authorize a timesharing schedule. To obtain

[13] *See* footnote 9.; *see also* s. 409.2557(2), F.S.
[14] s. 409.2572(3), F.S.
[15] *See* s. 409.2563(1)(a), F.S.
[16] *See* s. 409.2563, F.S.
[17] s. 409.2563(12), F.S.
[18] ss. 409.2563(9)(d), 409.2563(10)(d), F.S.

a determination regarding timesharing, either parent at any time may file a civil action in a circuit having jurisdiction and proper venue for the filing of such an action.[19]

Non IV-D cases are cases where child support is established and maintained privately, most often following a divorce where support orders are determined as part of the divorce proceedings. Any family is eligible for support enforcement services from the state. Some private cases become state IV-D cases when they are referred to help collect unpaid child support.

During the 2015 federal fiscal year, approximately $32.4 billion in child support was collected on behalf of the 15.9 million children served by child support enforcement programs across the country.[20] Also during that fiscal year, Florida had a total caseload of 650,421 cases and collected approximately $1.4 billion in child support collections. However, the total amount of arrearages was approximately $5.7 billion.[21] In fiscal year 2015-2016, the department's IV-D child support enforcement hearing officers held 131,474 hearings and signed 139,817 orders for child support establishment, modification, and enforcement.[22]

Establishing Non-Judicial Timesharing in Other States

Some states or jurisdictions (Michigan, Texas, Orange County, California, Hennepin County, Minnesota) have child support initiatives that incorporate parenting time agreements into initial child support orders, many focusing on parenting agreements where the parents already agree on the division of time.[23] The Texas Family Code requires that a final order that stems from a suit affecting a parent-child relationship must include a parenting plan.[24] Unlike other states, Texas provides a statutory "standard possession order" that is presumed to provide a noncustodial parent with reasonable minimum time with his or her child and to be in the best interest of the child.[25]

In 1989, the Texas legislature moved forward with not only the required child support guidelines as required by the federal government, but also with statutory presumptive visitation guidelines in the form of a standard order.[26] If there is a history of domestic violence or sexual abuse, the standard possession order may be inapplicable. The court must consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a noncustodial parent.[27]

In the initial creation of the Title IV-D program, Congress provided financial subsidies for the operation of state Title IV-D programs through financial incentives based on support collections. Because the activities that are eligible for federal funding are limited to those required to establish paternity, establish and enforce child support obligations, collect and distribute payment, and locate absent parents, most states have taken the position that child support orders obtained or issued by IV-D

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[19] s. 409.2563(2)(e), F.S.
[20] National Conference of State Legislatures, *2015 State by State Data on Child Support Collections*, April 25, 2016, available at http://www.ncsl.org/research/human-services/2015-state-by-state-data-on-child-support-collections.aspx#5 (last viewed March 24, 2017).
[21] *Id.*
[22] Florida Courts, *Uniform Data Reporting, Child Support FY2015-16*, 2017, available at http://www.flcourts.org/publications-reports-stats/statistics/uniform-data-reporting.stml#Support (last viewed March 24, 2017).
[23] U.S. Department of Health and Human Services, Administration for Children & Families, *Promoting Child Well-Being & Family Self-Sufficiency, Child Support and Parenting Time: Improving Coordination to Benefit Children*, Child Support Fact Sheet Series, Number 13. https://www.acf.hhs.gov/sites/default/files/programs/css/13_child_support_and_parenting_time_final.pdf (Last visited March 24, 2017).
[24] Alicia G. Key, *Parenting Time in Texas Child Support Cases*, Family Court Review. Vol 53 No. 2, April 2015 258-266, on file with the Senate Committee on Children, Families & Elder Affairs.
[25] *See* Tex. Fam. Code s. 153.252 (West 2013).
[26] Key, *supra* note 4, at 111.
[27] Key, *supra* at 261.

programs not include provisions regarding parenting time, at the risk of jeopardizing federal funding for their programs.[28]

Texas's program includes parenting plans in its support order for the last 30 years by maintaining that the cost of establishing a visitation order, coinciding with the establishment of paternity and/or a support obligation is a reasonable and minimal expense that must be incurred as part of the support order establishment process. Texas has stated that its success is based on:

- the existence in Texas law of the standard possession order,
- simple child support guidelines,
- agency policies and practices with dealing with cases where any dispute regarding parenting time, and
- the agency's successful public educational and outreach activities.[29]

The Texas Office of Attorney General (the Title IV-D agency in Texas) has adopted policies and practices to make the visitation order establishment process highly efficient. The agency is not involved in the resolution of any disputed possession issue between the parties. Disputed cases are referred to the appropriate trial court for a final resolution of visitation disputes.[30] However, the parties do not need to file additional pleadings or incur additional expense at the second hearing for a decision on the visitation issues that may be in dispute.[31]

Effect of the Bill

In short, the bill authorizes the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions.

Statement of Public Policy

The bill amends s. 409.2551, F.S., to provide that it is the public policy of the state to encourage frequent contact between and child and each parent and that there is no presumption against the father or mother or for or against any specific time-sharing schedule.

Authority to Establish Parenting Plan

The bill amends s. 409.2557, F.S., to provide the department the authority, in addition to the establishment of paternity or support obligations, to establish Title IV-D Standard Parenting Time Plans or any other parenting time plan agreed to by the parents.

Definitions

The bill amends s. 409.2554, F.S., to provide definitions for "State Case Registry", State Disbursement Unit" and "Title IV-D Standard Parenting Time Plans" as:

- "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1988. Such records must consist of data elements as required by the United States Secretary of Health and Human Services.
- "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases

[28] *See* 45 C.F.R., Section 304.20(b) (1982).
[29] Key, *supra* at 263.
[30] See Tex. Fam. Code Section 201.007(b)
[31] Key, *supra* at 263.

not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.
- "Title IV-D Standard Parenting Time Plans" means a document which may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plans set forth in s. 409.25633, F.S., include timetables that specify the time, including overnights and holidays, that a minor child 3 years of age or older may spend with each parent.

Notification to the Parties Regarding Standard Plan

The bill creates s. 409.25633, F.S., to provide that a Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the department if the parents agree to the plan. If there is no agreement as to a parenting time plan, then the department must enter an administrative order for child support and refer the parents to a court of appropriate jurisdiction to establish a parenting time plan. The department must also provide information to the parents on the process to establish such plan.

Any notifications by the department to parents will not include a Title IV-D Standard Parenting Time Plan if Florida is not the child's home state, if one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or where the parent who owes child support is incarcerated.

When the department provides notice of proceeding to establish an administrative support order it shall include a copy of the Title IV-D Standard Parenting Time Plans. Copies of proposed administrative support orders provided to parents will include a copy of the Title IV-D Standard Parenting Time Plan, along with other required documents. If a hearing is held, an administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

The bill amends s. 409.2563, F.S., to allow the department to establish parenting time plans only if the parents are in agreement. This section also provides that if the parents do not have a parenting time plan and do not agree to a Title IV-D Standard Parenting Time Plan one will not be included in the initial administrative order setting child support. A statement explaining the absence of the parenting time plan will be included with the initial administrative order setting child support.

The Standard Plans

Section 409.25633, F.S., created by the bill, also creates two different Title IV-D Standard Parenting Time Plans:

Where the parents live within 100 miles of each other and the child is 3 years of age or older, the parent paying child support shall have the following time with the child:

- Every other weekend.—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;
- One evening per week.—One weekday beginning at 6 p.m. and ending at 8 p.m. or if both parents agree, from when the child is released from school until 8 p.m.;
- Thanksgiving break.—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving, until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;
- Winter break.—In odd-numbered years, the first half of winter break, from the day school is released, beginning at 6 p.m. or, if both parents agree, upon the child's release from school,

until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes, or, if both parents agree, upon the child's return to school;
- Spring break.—In even-numbered years, the week of spring break from 6 p.m. the day that school is released until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and
- Summer break.—Two weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

Where the parents live more than 100 miles of each other and the child is 3 years of age or older, the parties may agree on the schedule above or this recommended plan:

- One weekend per month.—The second or fourth full weekend of the month throughout the year beginning Friday at 6 p.m. through Sunday at 6 p.m. The parent who owes child support can choose the one weekend per month within 90 days after the parents begin to live more than 100 miles apart; and
- Summer break.—Forty-two days of parenting time during the summer months. The parent who is owed child support will have parenting time one weekend beginning on Friday at 6 p.m. through Sunday at 6 p.m. during any one extended period during the summer.

Where the child is under 3 the parents may agree on a parenting time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits and either a parenting time plan agreed to by both parents or into the appropriate Title IV-D Standard Parenting Time Plan.

The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns.

The department is also directed to create and provide a form for a court petition to establish a parenting time plan for parents who have not agreed to a parenting schedule at the time of the child support hearing. The department will provide the form to the parents but will not file the petition or represent either parent at a hearing to establish parenting time. The parents will not be required to pay a filing fee to file the petition to establish a parenting time plan.

Incorporation Into Administrative Order

The bill provides that if both parents have agreed to a parenting time plan before the administrative support order is established, the plan will be incorporated into the administrative support order. However, the department does not have the jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order.

Lastly, the bill amends s. 409.2564, F.S., to provide that when the department institutes an action to secure the payment of current support or any arrearage that may have accrued under an existing order of support, and a parenting time plan was not incorporated into the existing order of support and is appropriate, the department will include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan.

Appropriation to the Department of Revenue

The bill provides a nonrecurring general revenue appropriation for contracted services to the Department of Revenue for the fiscal year 2017-2018 in the amount of $419,520 for the purpose of implementing this act. Recurring general revenue is appropriated in the amount of $20,729 for expenses, and $91,127 for salaries and benefits for the fiscal year 2017-2018.

The effective date of the bill is January 1, 2018.

B. SECTION DIRECTORY:

Section 1 amends s. 409.2551, F.S., relating to legislative intent.

Section 2 amends s. 409.2554, F.S., relating to definitions.

Section 3 amends s. 409.2557, F.S., relating to the state agency for administering the child support enforcement program.

Section 4 amends s. 409.2563, F.S., relating to the administrative establishment of child support obligations.

Section 5 creates s. 409.25633, F.S., relating to a Title IV-D standard parenting time plan.

Section 6 amends s. 409.2564, F.S., relating to actions for support.

Section 7 amends s. 409.256, F.S., relating to orders to appear for genetic testing in an administrative proceeding to establish paternity or paternity and child support.

Section 8 amends s. 409.2572, F.S., relating to cooperation.

Section 9 provides an appropriation.

Section 10 provides an effective date of January 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate negative fiscal impact on state government revenues collected by the clerks of court. See Fiscal Comments.

2. Expenditures:

   In FY 2017-18, the bill appropriates $419,520 in nonrecurring funds and $111,856 in recurring funds from the General Revenue Fund to the Department of Revenue to implement this bill. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lower costs to parents regarding the setting of a timesharing agreement.

D. FISCAL COMMENTS:

Impacts on the Department of Revenue

The department will have to modify the Child Support Automated Management System to conform to the new requirements and develop new forms, procedures, and training. Additional resources will be required to allow time for team members to confer with parents and incorporate agreed upon parenting time plans into support orders. It is also estimated by the department that hearing times may be increased by approximately 15 minutes due to the inclusion of parenting time plans in support orders.

The department provided a fiscal impact updating the estimates used in drafting the bill. The initial fiscal impact was based on an estimate of fewer cases. The department's updated determination anticipates a nonrecurring cost for fiscal year 2017-2018 of $690,650 for the modification of the Child Support Automated Management System to conform to the new requirements and developing new forms, procedures, and training. The department's updated fiscal impact for recurring costs is $33,373 for expenses and $159,012 for salaries and benefits starting in fiscal year 2017-2018.

Impacts on the Clerks of Court and State Courts System

Currently, parties who must utilize the court system to establish judicial timesharing agreements must pay a filing fee to the clerk of court. To the extent that this bill lowers the number of court filings, it may have a negative fiscal impact on clerk revenues. However, many such parties seeking a court order regarding timesharing already qualify for a waiver of filing fees as indigent persons.[32]

The bill may decrease the number of family law cases utilizing the court system, but the court system is unlikely to realize a fiscal impact as those judicial resources would be absorbed in resolving other cases.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[32] s. 57.081, F.S., provides for waiver of civil filing fees for indigent persons. s. 57.082, F.S., proscribes the process for determining that one qualifies for civil indigent status. Notably, s. 57.082(2)(a)1., F.S, provides that a person qualifies for civil indigent status if he or she earns less than 200% of the current federal poverty level.

A bill to be entitled

An act relating to child support and parenting time plans; amending s. 409.2551, F.S.; stating legislative intent to encourage frequent contact between a child and each parent; amending s. 409.2554, F.S.; defining terms; amending s. 409.2557, F.S.; authorizing the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions; amending s. 409.2563, F.S.; requiring the department to mail Title IV-D Standard Parenting Time Plans with proposed administrative support orders; providing requirements for including parenting time plans in certain administrative orders; creating s. 409.25633, F.S.; providing the purpose of and requirements for Title IV-D Standard Parenting Time Plans; requiring the department to refer parents who do not agree on a parenting time plan to a circuit court; requiring the department to create and provide a form for a petition to establish a parenting time plan under certain circumstances; specifying that the parents are not required to pay a fee to file the petition; authorizing the department to adopt rules; amending s. 409.2564, F.S.; authorizing the department to incorporate either an agreed-upon parenting time plan or a Title IV-D Standard Parenting Time Plan in a

child support order; amending ss. 409.256 and 409.2572, F.S.; conforming cross-references; providing appropriations; providing an effective date.

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

Section 1. Section 409.2551, Florida Statutes, is amended to read:

409.2551 Legislative intent.—Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent children by persons responsible for their support have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by additional remedies directed to the resources of the responsible parents. In order to render resources more immediately available to meet the needs of dependent children, it is the legislative intent that the remedies provided herein

are in addition to, and not in lieu of, existing remedies. It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs. It is also the public policy of this state to encourage frequent contact between a child and each parent to optimize the development of a close and continuing relationship between each parent and the child. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when a parenting time plan is created.

Section 2. Section 409.2554, Florida Statutes, is reordered and amended to read:

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 409.2551-409.2598, the term:

(5) ~~(1)~~ "Department" means the Department of Revenue.

(6) ~~(2)~~ "Dependent child" means any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacitated when such incapacity began before ~~prior to~~ such person reached ~~reaching~~ the age of 18. This definition may ~~shall~~ not be construed to impose an obligation for child support beyond the child's attainment of majority except as imposed in s. 409.2561.

(3) "Court" means the circuit court.

(4) "Court order" means any judgment or order of any court of appropriate jurisdiction of the state, or an order of a court of competent jurisdiction of another state, ordering payment of a set or determinable amount of support money.

(7) ~~(5)~~ "Health insurance" means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage available to either parent, under which medical services could be provided to a dependent child.

(8) ~~(6)~~ "Obligee" means the person to whom support payments are made pursuant to an alimony or child support order.

(9) ~~(7)~~ "Obligor" means a person who is responsible for making support payments pursuant to an alimony or child support order.

(12) ~~(8)~~ "Public assistance" means money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.

(10) ~~(9)~~ "Program attorney" means an attorney employed by the department, under contract with the department, or employed by a contractor of the department, to provide legal representation for the department in a proceeding related to the determination of paternity or the establishment, modification,

or enforcement of support brought pursuant to law.

(11)~~(10)~~ "Prosecuting attorney" means any private attorney, county attorney, city attorney, state attorney, program attorney, or an attorney employed by an entity of a local political subdivision who engages in legal action related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to this act.

(13) "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1998. Such records must consist of data elements as required by the United States Secretary of Health and Human Services.

(14) "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

(16) "Title IV-D Standard Parenting Time Plan" means a document which may be agreed to by the parents to govern the

relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plans set forth in s. 409.25633 include timetables that specify the time, including overnights and holidays, that a minor child 3 years of age or older may spend with each parent.

(15) ~~(11)~~ "Support," unless otherwise specified, means:

(a) Child support, and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living.

(b) Child support only in cases not being enforced by the Department of Revenue.

(1) ~~(12)~~ "Administrative costs" means any costs, including attorney ~~attorney's~~ fees, clerk's filing fees, recording fees and other expenses incurred by the clerk of the circuit court, service of process fees, or mediation costs, incurred by the Title IV-D agency in its effort to administer the Title IV-D program. The administrative costs that ~~which~~ must be collected by the department shall be assessed on a case-by-case basis based upon a method for determining costs approved by the Federal Government. The administrative costs shall be assessed periodically by the department. The methodology for determining administrative costs shall be made available to the judge or any party who requests it. Only those amounts ordered independent of current support, arrears, or past public assistance obligation

shall be considered and applied toward administrative costs.

(2)~~(13)~~ "Child support services" includes any civil, criminal, or administrative action taken by the Title IV-D program to determine paternity or to~~,~~ establish, modify, enforce, or collect support.

(17)~~(14)~~ "Undistributable collection" means a support payment received by the department which the department determines cannot be distributed to the final intended recipient.

(18)~~(15)~~ "Unidentifiable collection" means a payment received by the department for which a parent, depository or circuit civil numbers, or source of the payment cannot be identified.

Section 3. Subsection (2) of section 409.2557, Florida Statutes, is amended to read:

409.2557 State agency for administering child support enforcement program.—

(2) The department in its capacity as the state Title IV-D agency has ~~shall have~~ the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent possible. The department's authority includes ~~shall include~~, but is not ~~be~~ limited to, the establishment of paternity or support obligations, the establishment of a Title IV-D Standard Parenting Time Plan or any other parenting time plan agreed to

by the parents, and ~~as well as~~ the modification, enforcement, and collection of support obligations.

Section 4. Subsections (2), (4), (5), and (7) of section 409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support obligations.—

(2) PURPOSE AND SCOPE.—

(a) It is not the Legislature's intent to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support or parenting time. This section is intended to provide the department with an alternative procedure for establishing child support obligations and establishing a parenting time plan only if the parents are in agreement, in Title IV-D cases in a fair and expeditious manner when there is no court order of support. The procedures in this section are effective throughout the state and shall be implemented statewide.

(b) If the parents do not have an existing time-sharing schedule or parenting time plan and do not agree to a parenting time plan, a parenting time plan will not be included in the initial administrative order, only a statement explaining its absence.

(c) If the parents have a judicially established parenting time plan, the plan will not be included in the administrative or initial judicial order.

(d) Any notification provided by the department will not include Title IV-D Standard Parenting Time Plans if Florida is not the child's home state, when one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or when the parent who owes support is incarcerated.

(e) ~~(b)~~ The administrative procedure set forth in this section concerns only the establishment of child support obligations and, if agreed to by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan. This section does not grant jurisdiction to the department or the Division of Administrative Hearings to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity, except for a determination of paternity as provided in s. 409.256, ~~or award of~~ or change of time-sharing. If both parents have agreed to a parenting time plan before the establishment of the administrative support order, the department or the Division of Administrative Hearings will incorporate the agreed-upon parenting time plan into the administrative support order. This paragraph notwithstanding, the department and the Division of Administrative Hearings may make findings of fact that are necessary for a proper determination of a parent's support obligation as authorized by this section.

(f) ~~(c)~~ If there is no support order for a child in a Title

IV-D case whose paternity has been established or is presumed by law, or whose paternity is the subject of a proceeding under s. 409.256, the department may establish a parent's child support obligation pursuant to this section, s. 61.30, and other relevant provisions of state law. The administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to by both parents. The parent's obligation determined by the department may include any obligation to pay retroactive support and any obligation to provide for health care for a child, whether through insurance coverage, reimbursement of expenses, or both. The department may proceed on behalf of:

1. An applicant or recipient of public assistance, as provided by ss. 409.2561 and 409.2567;

2. A former recipient of public assistance, as provided by s. 409.2569;

3. An individual who has applied for services as provided by s. 409.2567;

4. Itself or the child, as provided by s. 409.2561; or

5. A state or local government of another state, as provided by chapter 88.

(g) ~~(d)~~ Either parent, or a caregiver if applicable, may at any time file a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any. A support order issued by a circuit court

prospectively supersedes an administrative support order rendered by the department.

(h) ~~(c)~~ Pursuant to paragraph (e) ~~(b)~~, neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact. The department or the Division of Administrative Hearings will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to by both parents into the administrative support order. Either parent may at any time file a civil action in a circuit having jurisdiction and proper venue for a determination of child custody and rights of parental contact.

(i) ~~(f)~~ The department shall terminate the administrative proceeding and file an action in circuit court to determine support if within 20 days after receipt of the initial notice the parent from whom support is being sought requests in writing that the department proceed in circuit court or states in writing his or her intention to address issues concerning time-sharing or rights to parental contact in court and if within 10 days after receipt of the department's petition and waiver of service the parent from whom support is being sought signs and returns the waiver of service form to the department.

(j) ~~(g)~~ The notices and orders issued by the department under this section shall be written clearly and plainly.

(4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE

SUPPORT ORDER.—To commence a proceeding under this section, the department shall provide to the parent from whom support is not being sought and serve the parent from whom support is being sought with a notice of proceeding to establish administrative support order, a copy of the Title IV-D Standard Parenting Time Plans, and a blank financial affidavit form. The notice must state:

(a) The names of both parents, the name of the caregiver, if any, and the name and date of birth of the child or children.~~,~~

(b) That the department intends to establish an administrative support order as defined in this section.~~,~~

(c) That the department will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan, as agreed to by both parents, into the administrative support order.

(d)~~(c)~~ That both parents must submit a completed financial affidavit to the department within 20 days after receiving the notice, as provided by paragraph (13)(a).~~,~~

(e)~~(d)~~ That both parents, or parent and caregiver if applicable, are required to furnish to the department information regarding their identities and locations, as provided by paragraph (13)(b).~~,~~

(f)~~(e)~~ That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses to ensure receipt of all

subsequent pleadings, notices, and orders, as provided by paragraph (13)(c).~~;~~

(g)~~(f)~~ That the department will calculate support obligations based on the child support guidelines schedule in s. 61.30 and using all available information, as provided by paragraph (5)(a), and will incorporate such obligations into a proposed administrative support order.~~;~~

(h)~~(g)~~ That the department will send by regular mail to both parents, or parent and caregiver if applicable, a copy of the proposed administrative support order, the department's child support worksheet, and any financial affidavits submitted by a parent or prepared by the department.~~;~~

(i)~~(h)~~ That the parent from whom support is being sought may file a request for a hearing in writing within 20 days after the date of mailing or other service of the proposed administrative support order or will be deemed to have waived the right to request a hearing,~~;~~

(j)~~(i)~~ That if the parent from whom support is being sought does not file a timely request for hearing after service of the proposed administrative support order, the department will issue an administrative support order that incorporates the findings of the proposed administrative support order~~,~~ and any agreed-upon parenting time plan. The department will send by regular mail a copy of the administrative support order and any incorporated parenting time plan to both parents~~,~~ or to the

parent and the caregiver, if applicable.~~;~~

(k)~~(j)~~ That after an administrative support order is rendered incorporating any agreed-upon parenting time plan, the department will file a copy of the order with the clerk of the circuit court.~~;~~

(l)~~(k)~~ That after an administrative support order is rendered, the department may enforce the administrative support order by any lawful means. The department does not have jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order.~~;~~

(m)~~(l)~~ That either parent, or caregiver if applicable, may file at any time a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any, and that a support order issued by a circuit court supersedes an administrative support order rendered by the department.~~;~~

(n)~~(m)~~ That neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact or time-sharing, and these issues may be addressed only in circuit court. The department or the Division of Administrative Hearings may incorporate, if agreed to by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan when the administrative support order is established.

1. The parent from whom support is being sought may

request in writing that the department proceed in circuit court to determine his or her support obligations.

2. The parent from whom support is being sought may state in writing to the department his or her intention to address issues concerning custody or rights to parental contact in circuit court.

3. If the parent from whom support is being sought submits the request authorized in subparagraph 1., or the statement authorized in subparagraph 2. to the department within 20 days after the receipt of the initial notice, the department shall file a petition in circuit court for the determination of the parent's child support obligations, and shall send to the parent from whom support is being sought a copy of its petition, a notice of commencement of action, and a request for waiver of service of process as provided in the Florida Rules of Civil Procedure.

4. If, within 10 days after receipt of the department's petition and waiver of service, the parent from whom support is being sought signs and returns the waiver of service form to the department, the department shall terminate the administrative proceeding without prejudice and proceed in circuit court.

5. In any circuit court action filed by the department pursuant to this paragraph or filed by a parent from whom support is being sought or other person pursuant to paragraph (m) ~~(l)~~ or paragraph (o) ~~(n)~~, the department shall be a party

only with respect to those issues of support allowed and reimbursable under Title IV-D of the Social Security Act. It is the responsibility of the parent from whom support is being sought or other person to take the necessary steps to present other issues for the court to consider.

(o) ~~(n)~~ That if the parent from whom support is being sought files an action in circuit court and serves the department with a copy of the petition within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court. ~~;~~

(p) ~~(o)~~ Information provided by the Office of State Courts Administrator concerning the availability and location of self-help programs for those who wish to file an action in circuit court but who cannot afford an attorney.

The department may serve the notice of proceeding to establish an administrative support order and Title IV-D Standard Parenting Time Plans by certified mail, restricted delivery, return receipt requested. Alternatively, the department may serve the notice by any means permitted for service of process in a civil action. For purposes of this section, an authorized employee of the department may serve the notice and execute an affidavit of service. Service by certified mail is completed when the certified mail is received or refused by the addressee

or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. The department shall provide the parent from whom support is not being sought or the caregiver with a copy of the notice by regular mail to the last known address of the parent from whom support is not being sought or caregiver.

(5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

(a) After serving notice upon a parent in accordance with subsection (4), the department shall calculate that parent's child support obligation under the child support guidelines schedule as provided by s. 61.30, based on any timely financial affidavits received and other information available to the department. If either parent fails to comply with the requirement to furnish a financial affidavit, the department may proceed on the basis of information available from any source, if such information is sufficiently reliable and detailed to allow calculation of guideline schedule amounts under s. 61.30.

If a parent receives public assistance and fails to submit a financial affidavit, the department may submit a financial affidavit or written declaration for that parent pursuant to s. 61.30(15). If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period.

(b) The department shall send by regular mail to both parents, or to a parent and caregiver if applicable, copies of the proposed administrative support order, a copy of the Title IV-D Standard Parenting Time Plans, its completed child support worksheet, and any financial affidavits submitted by a parent or prepared by the department. The proposed administrative support order must contain the same elements as required for an administrative support order under paragraph (7)(e).

(c) The department shall provide a notice of rights with the proposed administrative support order, which notice must inform the parent from whom support is being sought that:

1. The parent from whom support is being sought may, within 20 days after the date of mailing or other service of the proposed administrative support order, request a hearing by filing a written request for hearing in a form and manner specified by the department;

2. If the parent from whom support is being sought files a

timely request for a hearing, the case shall be transferred to the Division of Administrative Hearings, which shall conduct further proceedings and may enter an administrative support order;

3. A parent from whom support is being sought who fails to file a timely request for a hearing shall be deemed to have waived the right to a hearing, and the department may render an administrative support order pursuant to paragraph (7)(b);

4. The parent from whom support is being sought may consent in writing to entry of an administrative support order without a hearing;

5. The parent from whom support is being sought may, within 10 days after the date of mailing or other service of the proposed administrative support order, contact a department representative, at the address or telephone number specified in the notice, to informally discuss the proposed administrative support order and, if informal discussions are requested timely, the time for requesting a hearing will be extended until 10 days after the department notifies the parent that the informal discussions have been concluded; and

6. If an administrative support order that establishes a parent's support obligation and incorporates either a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents is rendered, whether after a hearing or without a hearing, the department may enforce the administrative support

order by any lawful means. The department does not have the jurisdiction or authority to enforce a parenting time plan.

(d) If, after serving the proposed administrative support order but before a final administrative support order is rendered, the department receives additional information that makes it necessary to amend the proposed administrative support order, it shall prepare an amended proposed administrative support order, with accompanying amended child support worksheets and other material necessary to explain the changes, and follow the same procedures set forth in paragraphs (b) and (c).

(7) ADMINISTRATIVE SUPPORT ORDER.—

(a) If a hearing is held, the administrative law judge of the Division of Administrative Hearings shall issue an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents, or a final order denying an administrative support order, which constitutes final agency action by the department. The Division of Administrative Hearings shall transmit any such order to the department for filing and rendering.

(b) If the parent from whom support is being sought does not file a timely request for a hearing, the parent will be deemed to have waived the right to request a hearing.

(c) If the parent from whom support is being sought waives the right to a hearing, or consents in writing to the entry of

an order without a hearing, the department may render an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

(d) The department shall send by regular mail a copy of the administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents, or the final order denying an administrative support order, to both parents, or a parent and caregiver if applicable. The parent from whom support is being sought shall be notified of the right to seek judicial review of the administrative support order in accordance with s. 120.68.

(e) An administrative support order must comply with ss. 61.13(1) and 61.30. The department shall develop a standard form or forms for administrative support orders. An administrative support order must provide and state findings, if applicable, concerning:

1. The full name and date of birth of the child or children;

2. The name of the parent from whom support is being sought and the other parent or caregiver;

3. The parent's duty and ability to provide support;

4. The amount of the parent's monthly support obligation;

5. Any obligation to pay retroactive support;

6. The parent's obligation to provide for the health care

needs of each child, whether through health insurance, contribution toward the cost of health insurance, payment or reimbursement of health care expenses for the child, or any combination thereof;

7. The beginning date of any required monthly payments and health insurance;

8. That all support payments ordered must be paid to the ~~Florida~~ State Disbursement Unit as provided by s. 61.1824;

9. That the parents, or caregiver if applicable, must file with the department when the administrative support order is rendered, if they have not already done so, and update as appropriate the information required pursuant to paragraph (13)(b);

10. That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses pursuant to paragraph (13)(c); and

11. That if the parent ordered to pay support receives reemployment assistance or unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed the amount owed.

An income deduction order as provided by s. 61.1301 must be incorporated into the administrative support order or, if not

incorporated into the administrative support order, the department or the Division of Administrative Hearings shall render a separate income deduction order.

Section 5. Section 409.25633, Florida Statutes, is created to read:

409.25633.—Title IV-D Standard Parenting Time Plans.

(1) The Title IV-D Standard Parenting Time Plans are intended for use by parents and families with no domestic or family violence concerns. A Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the Title IV-D program to determine paternity or to establish or modify support if the parents agree upon it. If the parents do not agree to a Title IV-D Standard Parenting Time Plan or if an agreed-upon parenting time plan is not included, the Department of Revenue must enter an administrative support order and refer the parents to the court of appropriate jurisdiction to establish a parenting time plan. The department must note on the referral that an administrative support order has been entered. If a parenting time plan is not included in the administrative support order entered under s. 409.2563, the department must provide information to the parents on the process to establish such plan.

(2) If the parents live within 100 miles of each other and the child is 3 years of age or older, the parent who owes support shall have parenting time with the child:

(a) *Every other weekend.*—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;

(b) *One evening per week.*—One weekday beginning at 6 p.m. and ending at 8 p.m. or if both parents agree, from when the child is released from school until 8 p.m.;

(c) *Thanksgiving break.*—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving, until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;

(d) *Winter break.*—In odd-numbered years, the first half of winter break, from the day school is released, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes, or, if both parents agree, upon the child's return to school;

(e) *Spring break.*—In even-numbered years, the week of spring break from 6 p.m. the day that school is released until 6 p.m. the night before school resumes. If both parents agree, the

spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and

(f) *Summer break.*—Two weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

(3) If the parents live more than 100 miles from each other and the child is 3 years of age or older, the parties may agree to follow the schedule set forth in subsection (2), or else the parent who owes child support has parenting time with the child:

(a) *One weekend per month.*—The second or fourth full weekend of the month throughout the year beginning Friday at 6 p.m. through Sunday at 6 p.m. The parent who owes child support can choose the one weekend per month within 90 days after the parents begin to live more than 100 miles apart; and

(b) *Summer break.*—Forty-two days of parenting time during the summer months. The parent who is owed child support will have parenting time one weekend beginning on Friday at 6 p.m. through Sunday at 6 p.m. during any one extended period during the summer.

(4) If the child is under 3 years of age, the parents may agree on a parenting time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits and either a parenting time plan agreed to by both parents or the Title IV-D Standard Parenting Time Plan set

out in this section.

(5) In the event the parents have not agreed on a parenting schedule at the time of the child support hearing, the department shall enter an administrative support order and refer the parents to a court of appropriate jurisdiction for the establishment of a parenting plan.

(6) The department shall create and provide a form for a petition to establish a parenting time plan for parents who have not agreed on a parenting schedule at the time of the child support hearing. The department shall provide the form to the parents but may not file the petition or represent either parent at the hearing.

(7) The parents are not required to pay a fee to file the petition to establish a parenting time plan.

(8) The department may adopt rules to implement and administer this section.

Section 6. Subsections (1) and (2) of section 409.2564, Florida Statutes, are amended to read:

409.2564 Actions for support.—

(1) In each case in which regular support payments are not being made as provided herein, the department shall institute, within 30 days after determination of the obligor's reasonable ability to pay, action as is necessary to secure the obligor's payment of current support and any arrearage that ~~which~~ may have accrued under an existing order of support, and, if a parenting

time plan was not incorporated into the existing order of support and is appropriate, include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan. The department shall notify the program attorney in the judicial circuit in which the recipient resides setting forth the facts in the case, including the obligor's address, if known, and the public assistance case number. Whenever applicable, the procedures established under ~~the provisions of~~ chapter 88, Uniform Interstate Family Support Act, chapter 61, Dissolution of Marriage; Support; Time-sharing, chapter 39, Proceedings Relating to Children, chapter 984, Children and Families in Need of Services, and chapter 985, Delinquency; Interstate Compact on Juveniles, may govern actions instituted under ~~the provisions of~~ this act, except that actions for support under chapter 39, chapter 984, or chapter 985 brought pursuant to this act shall not require any additional investigation or supervision by the department.

(2) The order for support entered pursuant to an action instituted by the department under ~~the provisions of~~ subsection (1) shall require that the support payments be made periodically to the department through the depository. An order for support entered under the provisions of subsection (1) must include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan, if appropriate. Upon receipt of a payment made by the obligor pursuant to any order of the court, the

depository shall transmit the payment to the department within 2 working days, except those payments made by personal check which shall be disbursed in accordance with s. 61.181. Upon request, the depository shall furnish to the department a certified statement of all payments made by the obligor. Such statement shall be provided by the depository at no cost to the department.

Section 7. Paragraph (g) of subsection (2) and paragraph (a) of subsection (4) of section 409.256, Florida Statutes, are amended to read:

409.256 Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.—

(2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO THE COURTS.—

(g) Section 409.2563(2)(h), (i), and (j) ~~409.2563(2)(e), (f), and (g)~~ apply to a proceeding under this section.

(4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue shall commence a proceeding to determine paternity, or a proceeding to determine both paternity and child support, by serving the respondent with a notice as provided in this section. An order to appear for genetic testing may be served at the same time as a notice of the proceeding or may be served

separately. A copy of the affidavit or written declaration upon which the proceeding is based shall be provided to the respondent when notice is served. A notice or order to appear for genetic testing shall be served by certified mail, restricted delivery, return receipt requested, or in accordance with the requirements for service of process in a civil action. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. For purposes of this section, an employee or an authorized agent of the department may serve the notice or order to appear for genetic testing and execute an affidavit of service. The department may serve an order to appear for genetic testing on a caregiver. The department shall provide a copy of the notice or order to appear by regular mail to the mother and caregiver, if they are not respondents.

(a) A notice of proceeding to establish paternity must

state:

1. That the department has commenced an administrative proceeding to establish whether the putative father is the biological father of the child named in the notice.

2. The name and date of birth of the child and the name of the child's mother.

3. That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.

4. That the respondent is required to submit to genetic testing.

5. That genetic testing will establish either a high degree of probability that the putative father is the biological father of the child or that the putative father cannot be the biological father of the child.

6. That if the results of the genetic test do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with that child shall cease unless a second or subsequent test is required.

7. That if the results of the genetic test indicate a statistical probability of paternity that equals or exceeds 99 percent, the department may:

a. Issue a proposed order of paternity that the respondent may consent to or contest at an administrative hearing; or

b. Commence a proceeding, as provided in s. 409.2563, to

establish an administrative support order for the child. Notice of the proceeding shall be provided to the respondent by regular mail.

8. That, if the genetic test results indicate a statistical probability of paternity that equals or exceeds 99 percent and a proceeding to establish an administrative support order is commenced, the department shall issue a proposed order that addresses paternity and child support. The respondent may consent to or contest the proposed order at an administrative hearing.

9. That if a proposed order of paternity or proposed order of both paternity and child support is not contested, the department shall adopt the proposed order and render a final order that establishes paternity and, if appropriate, an administrative support order for the child.

10. That, until the proceeding is ended, the respondent shall notify the department in writing of any change in the respondent's mailing address and that the respondent shall be deemed to have received any subsequent order, notice, or other paper mailed to the most recent address provided or, if a more recent address is not provided, to the address at which the respondent was served, and that this requirement continues if the department renders a final order that establishes paternity and a support order for the child.

11. That the respondent may file an action in circuit

court for a determination of paternity, child support obligations, or both.

12. That if the respondent files an action in circuit court and serves the department with a copy of the petition or complaint within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court.

13. That, if paternity is established, the putative father may file a petition in circuit court for a determination of matters relating to custody and rights of parental contact.

A notice under this paragraph must also notify the respondent of the provisions in s. 409.2563(4)(n) and (p). ~~s. 409.2563(4)(m) and (o)~~.

Section 8. Subsection (5) of section 409.2572, Florida Statutes, is amended to read:

409.2572 Cooperation.—

(5) As used in this section only, the term "applicant for or recipient of public assistance for a dependent child" refers to such applicants and recipients of public assistance as defined in s. 409.2554(12) ~~s. 409.2554(8)~~, with the exception of applicants for or recipients of Medicaid solely for the benefit of a dependent child.

Section 9. For the 2017-2018 fiscal year, the following sums are appropriated for the purpose of implementing this act:

(1) The sum of $419,520 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for contracted services.

(2) The sum of $20,729 in recurring funds is appropriated from the General Revenue Fund to the Department of Revenue for expenses.

(3) The sum of $91,127 in recurring funds is appropriated from the General Revenue Fund to the Department of Revenue for salaries and benefits.

Section 10. This act shall take effect January 1, 2018.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1337 (2017)

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: Civil Justice & Claims Subcommittee

Representative Diaz, J. offered the following:

Amendment

Between lines 631 and 632, insert:

(6) The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns.

(7) If after the incorporation of an agreed-upon parenting time plan into an administrative support order, a parent becomes concerned about the safety of the child during the child's time with the other parent, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

STORAGE NAME: h6517.CJC
DATE: 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6517 - Representative Alexander
Relief/Reginald Jackson/City of Lakeland

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $312,500 AGAINST THE CITY OF LAKELAND FOR INJURIES AND DAMAGES SUFFERED BY REGINALD JACKSON WHEN HE WAS SHOT BY A CITY OF LAKELAND POLICE OFFICER ON OCTOBER 18, 2001.

FINDING OF FACT:

In the late night of October 18, 2001, Reginald "Reggie" Jackson was driving down West Memorial Boulevard in Lakeland when Lakeland Police Officer Michael Cochran pulled him over because his tag was invalid. His tag came back invalid because Officer Cochran made a mistake when he input the tag number into his computer. By substituting a "V" for an "N," Officer Cochran ran a tag that, apparently, didn't exist. After pulling Mr. Jackson over, Officer Cochran reran the tag at Mr. Jackson's request and found that it was in fact valid. Nevertheless, he gave Mr. Jackson a ticket for not having a proper child restraint device for his girlfriend's 18-month-old son, who was sitting next to him on the front bench seat. Officer Cochran instructed Mr. Jackson to properly restrain the child before traveling any further, even though it was midnight and Mr. Jackson told him that he only had a few more blocks to travel.

From here, the testimony of the various witnesses diverges. Mr. Jackson claims that he tried to use the payphone in the parking lot of the Church's Chicken where Officer Cochran originally pulled him over, but that phone was not working. He saw another payphone less than a block away and drove over to use it. As he was attempting to use the payphone, Officer Cochran pulled up behind his car and startled him when told him he was under arrest. Mr. Jackson, startled by the Officer, ran to his car, started it up, and put it in reverse. Seeing that he couldn't back up because of Officer Cochran's patrol car, he put his car in drive and pumped his brakes twice, which made the car bounce or lurch forward twice. When he pumped the brakes the second time, Officer Cochran fired his weapon through the windshield, hitting Mr. Jackson in his neck, rendering him unconscious.

Officer Cochran describes the first meeting of the two gentlemen as somewhat tense. Mr. Jackson, understandably upset that Officer Cochran pulled him over for what turned out to be a mistake, felt that he had been racially profiled, and responded by challenging Officer Cochran. The first challenge—that his tag was actually valid—turned in his favor, while the second challenge—that Officer Cochran couldn't give him a ticket for the failure to properly restrain the child—did not. After initially refusing to sign the ticket, Mr. Jackson acquiesced. Officer Cochran left the scene and traveled a short distance down the road where he parked his patrol car where Mr. Jackson cannot see it and waited to see if Mr. Jackson would disobey his order.

From Officer Cochran's perspective, Mr. Jackson directly disobeyed his order and set out to drive the rest of the way home without properly restraining the young child. When Mr. Jackson saw Officer Cochran's vehicle in a nearby alleyway, he quickly darted into the parking lot at The Blue Bar. Impliedly, Officer Cochran felt that Mr. Jackson's protest that he was just driving over to use the phone was a ruse to cover up the fact that he had intended to drive home in direct contradiction to his order. No one but Mr. Jackson will ever know if that was true or not.

The separate eyewitness accounts of the few seconds between when Officer Cochran pulled up to arrest Mr. Jackson and when Officer Cochran shot Mr. Jackson coalesce to form a cohesive story with only a few divergences. Officer Cochran pulled his patrol car up behind Mr. Jackson's car so as to block a rearward escape. Mr. Jackson was at the payphone when Officer Cochran shouted at him, "you're under arrest!" Some say that Mr. Jackson immediately ran around the payphone and back to his car, while others claim that he turned and started walking toward Officer Cochran, who then drew his firearm. Officer Cochran doesn't remember exactly when he drew his firearm, but claims it was shortly after Mr. Jackson turned and

fled. Officer Cochran states that he drew his firearm when he saw that Mr. Jackson was headed back to his car because he hadn't searched the car and didn't know if he was going for a weapon or not. Mr. Jackson got in his car and put it in reverse. Officer Cochran was now positioned at the driver-side fender/tire where he was right up against the car with his hand on the hood shouting at Mr. Jackson to stop or he would shoot him. After coasting in reverse for a short period with Officer Cochran running with the car, Mr. Jackson put the car in drive and turned the wheels toward Officer Cochran to try to get back onto West Memorial Boulevard. At this point, the car lurched forward twice as Mr. Jackson pumped the brakes. Officer Cochran believed that he was in danger when he felt the car accelerate. Officer Shrader, who pulled up right as the episode was unfolding, observed the events from his patrol car on West Memorial Boulevard. He saw that Officer Cochran was in danger because as the car turned and was pushing him closer to a storm drain, which made the drop off from the sidewalk to the street a more precarious physical presence. He had decided to ram Mr. Jackson's car back into the parking lot and away from Officer Cochran when the car lurched for the second time. Officer Cochran reacted by shooting through the windshield and hitting Mr. Jackson on the left side of his neck. The shot lodged in the skin at the exit wound on his right shoulder and rendered him unconscious.

Mr. Jackson's car then idled across West Memorial Boulevard, coming to rest in the parking lot of a seafood market across the street. Officer Shrader followed the car over to the parking lot and directed Officer Cochran to get the child out of the car while he secured Mr. Jackson and called for emergency medical services.

Mr. Jackson was treated at Lakeland Regional Medical Center and taken to the Polk County Jail. He was charged with attempted murder of a police officer but the charges were later dropped.

LITIGATION HISTORY:

On November 12, 2008, Mr. Jackson filed a lawsuit against the City of Lakeland Police Department in the circuit court of the Tenth Judicial Circuit in and for Polk County. After a three day trial held in February 2009, a jury found the City of Lakeland 75% at fault and Mr. Jackson 25% at fault. The jury awarded a verdict in the amount of $550,000 for past and future pain and suffering. The jury verdict was reduced in accordance with Mr. Jackson's negligence and a final judgment was entered in for $412,500. The City of Lakeland has paid the statutory cap of $100,000.

CLAIMANT'S POSITION:

Claimant argues Officer Cochran breached the duty of care he owed to Mr. Jackson by negligently handling and discharging his firearm in his attempt to stop and/or arrest Mr. Jackson.

RESPONDENT'S POSITION: The City of Lakeland argues Officer Cochran's actions were reasonable.

CONCLUSION OF LAW:

The legislature is not bound by the jury's findings of fact. A claim bill is an act of legislative grace in which the legislature allows a citizen to collect damages where they would normally be barred by common law sovereign immunity. The legislature can give the jury's findings of fact weight in making its own determination, but the legislature should conduct its own inquiry of the facts and make its own determination of the facts and law at issue. It is my opinion that the jury was mistaken in this case.

The issue here is whether or not Officer Cochran's use of his firearm constituted negligence. The Florida Supreme Court has said, regarding an officer's negligent use of his or her firearm:

> 'Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist of either doing something that a reasonably careful person would [not][1] do under like circumstances or in the failure to do that which a reasonably careful person would do under like circumstances. In determining this issue, you should consider whether the force used was that which reasonably prudent police officers would have used based on their knowledge of the situation in this case.' It [i]s up to the jury to determine whether the police officers acted as reasonable men.[2]

The current Lakeland Police Department General Order 16 contains guidance for how and when officers should use deadly force. At 16-2.3, the General Order states that an officer is authorized to use lethal force when he or she believes it reasonably necessary "to defend [his or herself] or another person who is in imminent danger of serious physical injury, when making an arrest." Officer Cochran claimed that he feared that Mr. Jackson was going to hit him with the car, which

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[1] The original text reads, "would do," but the sentence only makes sense if the court mistakenly left out the word, "not."

[2] *Cleveland v. City of Miami*, 263 So. 2d 573, 578 (Fla. 1972).

could have caused serious bodily injury or death. That belief seems reasonable given his testimony that the car moved forward in a smooth manner until it accelerated and he shot. The eyewitness testimony confirms that factual situation. All the eyewitnesses saw the car bounce or lurch forward at least twice before Officer Cochran shot. Second, "Prior to the use of lethal force, authorized members will, when feasible, identify themselves as police officers and order the subject to stop the activity which authorizes the use of lethal force." Gen. Order 16-2.3(B). No one disputes that Officer Cochran told Mr. Jackson he was under arrest and repeatedly commanded that he stop the car. General Order 16-2.9(B) presents a problem for Officer Cochran. It states, "Sworn members are expected to use care with respect to the direction a firearm is pointed, and take into consideration the potential to cause serious injury or death to innocent parties who may be in the line of fire." Officer Cochran did point the firearm at Mr. Jackson while there was an innocent 18-month-old child sitting right next to him. General Order 16-2.10(B)(3) states, "Sworn members shall not discharge a firearm [a]t a moving vehicle unless the member reasonably believes it is necessary to do so in order to protect themselves or others from death or great bodily harm." Here, we are back to the original question. Was it objectively reasonable for Officer Cochran to believe that he was in danger of death or serious bodily injury? The answer seems clearly to be, yes.

The State Attorney, in a letter laying out why his office was declining to charge Officer Cochran criminally, stated that Officer Cochran's use of his firearm was reasonable. State Attorney Jerry Hill premised this conclusion on the fact that Mr. Jackson's actions—making the car lurch toward the officer and turning the wheels toward him—were sufficient to give Officer Jackson a reasonable fear that his life was in imminent danger. Whether or not Officer Cochran put himself in a dangerous position is not important for determining whether or not he negligently discharged his firearm. The question of negligence is whether or not Officer Cochran's actions were objectively reasonable given the situation he found himself in.

It should be mentioned that the claimants put emphasis on *Lewis v. City of St. Petersburg*, 260 F.3d 1260, 1261-65 (11th Cir. 2001), to support the idea that there is a specific legal claim for the negligent use of a firearm. Though federal district and circuit court cases are persuasive, they are not controlling in Florida's state courts. There is no reason to question the validity of this legal claim. As mentioned above, in *Cleveland*, the Florida Supreme Court implicitly acknowledged the existence of a legal claim that a law enforcement officer negligently discharged his or her firearm. *Lewis*, though, makes clear that this claim is distinct from the more common claim of an excessive use of force. Some of Mr. Jackson's attorney's arguments in the 2009 claim bill hearing conflated these two

legal claims. It should be made clear that this case does not hinge on whether or not Officer Cochran's decision to use deadly force was correct. In fact, the claim is that, in using deadly force, Officer Cochran made some negligent action. Normally, this claim would come about when an innocent bystander was hit by a law enforcement officer's gun fire.

Damages
The jury verdict was solely for past and future pain and suffering. Nevertheless, Mr. Jackson argues for permanent physical and mental damages. Claimant states that prolonged strenuous activity can lead to numbness in his fingers and tightening in his shoulder joint. However, the claimant maintains a job almost identical to the one he had before being shot, and he makes a very similar wage. His psychologist has reported that any mental and emotional problems he had due to the shooting, e.g., PTSD, are all in remission at this point.

Since I find that Officer Cochran was not negligent in his actions, the $100,000 paid to Mr. Jackson is a graceful and sufficient amount for any and all of his damages. However, the Legislature is not bound by this report, jury verdicts, or settlement agreements. Any claim bill passed is an act of legislative grace.[3] The Legislature may feel called under a moral obligation to pass this claim bill to reconcile the actions taken place on October 18, 2001.

ATTORNEY'S/
LOBBYING FEES: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 10% of his attorney fee to the lobbyist. There are no outstanding costs.

LEGISLATIVE HISTORY: This is the first time this claim has been filed in the House.

This claim was first filed in the 2010 legislative session as Senate Bill 66 by Senator Smith and died in the Senate Special Master on Claim Bills. Additionally, in the 2012 legislative session, the claim was filed as Senate Bill 48 by Senator Margolis. It was never heard in a committee and died in the Senate Judiciary Committee.

RECOMMENDATIONS: For the reasons set forth above, I respectfully recommend that House Bill 6517 be reported **UNFAVORABLY**

Respectfully submitted,

[3] Gamble v. Wells, 450 So. 2d 850, 853 (Fla. 1984).

PARKER AZIZ

House Special Master

cc: Representative Alexander, House Sponsor
Senator Rouson, Senate Sponsor
Tom Cibula, Senate Special Master

A bill to be entitled

An act for the relief of Reginald Jackson by the City of Lakeland; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the City of Lakeland; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on October 18, 2001, Officer Michael Cochran, an employee of the Lakeland Police Department, carried out a traffic stop after he ran a check of the license plate on Reginald Jackson's vehicle and the license plate registered as invalid, and

WHEREAS, it was later determined that Officer Cochran had entered an incorrect license plate number and that Mr. Jackson's license plate was, in fact, valid, and

WHEREAS, upon approaching Mr. Jackson's vehicle, Officer Cochran observed a child of approximately 18 months of age occupying the front passenger seat unrestrained, and

WHEREAS, Officer Cochran issued Mr. Jackson a citation for failure to properly restrain the child and informed him that he could not operate the vehicle with the child as a passenger until the child was properly restrained, and

WHEREAS, Mr. Jackson attempted to use a pay telephone in the vicinity of the traffic stop in order to call someone to

bring a car seat for the child, but the pay telephone was not in working order, and

WHEREAS, Mr. Jackson moved his vehicle a short distance to a nearby parking lot where another pay telephone was located, and as Mr. Jackson was walking toward the pay telephone, Officer Cochran pulled into the parking lot and told Mr. Jackson that he was under arrest, and

WHEREAS, Mr. Jackson ran toward his vehicle, and Officer Cochran chased him with his firearm drawn, and

WHEREAS, as Mr. Jackson sat, unarmed, in the driver seat of his vehicle with a 1-year-old child also sitting in the front seat, Officer Cochran discharged his firearm into the windshield of Mr. Jackson's vehicle, striking him in the neck, and

WHEREAS, Mr. Jackson lost consciousness while behind the steering wheel of the vehicle, and the vehicle traveled over the median and across the roadway before coming to rest in an adjacent parking lot, and

WHEREAS, the wound to Mr. Jackson's neck required medical attention, and he was taken to Lakeland Regional Medical Center for treatment, and

WHEREAS, Officer Cochran, while acting within the scope of his employment with the Lakeland Police Department, owed a duty to Mr. Jackson to conduct himself in a reasonable manner, properly handle his firearm, and exercise reasonable care while drawing and discharging the weapon during his stop and arrest of

Mr. Jackson, and Officer Cochran breached this duty by discharging his firearm into the windshield of Mr. Jackson's vehicle and otherwise conducting himself in a careless and negligent manner, and

WHEREAS, this breach of duty caused injury to Mr. Jackson's body and extremities which has caused him pain and suffering, emotional and mental anguish, and loss of enjoyment of life and for which he has incurred numerous medical expenses, and as such injury is permanent or continuing in nature, Mr. Jackson is expected to suffer these losses in the future, and

WHEREAS, pursuant to a verdict rendered on February 25, 2009, Mr. Jackson was awarded the sum of $412,500 in damages, $100,000 of which was satisfied by the City of Lakeland pursuant to a final judgment entered on April 23, 2009, and the balance of which remains unsatisfied, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Lakeland is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant in the sum of $312,500 payable to Reginald Jackson as compensation for injuries and damages sustained as a result of the negligence of an employee of the City of Lakeland.

Section 3. The amount paid by the City of Lakeland pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the injury to Reginald Jackson. The total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

ATTORNEYS FEES AFFIDAVIT

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME, the undersigned authority to take oaths this day, personally appeared Attorney Daryl D. Parks having being duly sworn according to the law, do hereby declare the following:

1. Affiant is legal counsel for claimant Reginald Jackson with the firm of Parks & Crump, LLC.

2. Affiant states that the above-referenced Plaintiff has incurred and is obligated for the following attorneys fees and costs in a civil action against the City of Lakeland on behalf of Reginald Jackson.

a. Parks & Crump, LLC	25% of any recovery against defendants covered by sovereign immunity.
b. Larry D. Hardaway, Esquire	25% of any attorney fees recovered by Parks & Crump, LLC in regards to the above-referenced cause of action.
c. Pittman Law Group, PL	10% of any attorney fees recovered by Parks & Crump, LLC in regards to the above-referenced cause of action.

3. The attorneys fees and lobbying fees are separate and will be deducted from the amount awarded by the legislature.

4. There are no outstanding costs that will be paid from the award granted by the legislature.

5. The attorneys costs received from the statutory cap was $25,063.56.

6. The breakdown of attorneys costs is as follows:
   a. $21,372.91 is for expert retainer costs, depositions, process service, trial testimony for experts, travel costs for experts for trial, court reporters, and publication costs.
   b. $3,690.65 is for the firm's internal overhead costs such as hotels, car rental and meals during trial, copy costs and overnight mailing costs.

FURTHER AFFIANT SAYETH NAUGHT.
Signed and delivered this 6 day of March, 2017.

Daryl D. Parks, Affiant

STATE OF FLORIDA
COUNTY OF LEON

SWORN TO and SUBSCRIBED before me this 8 day of March, 2017 by Daryl D. Parks, who is personally known to me.

JENNIFER M. MORGAN
MY COMMISSION # FF 029887
EXPIRES: October 21, 2017
Bonded Thru Notary Public Underwriters

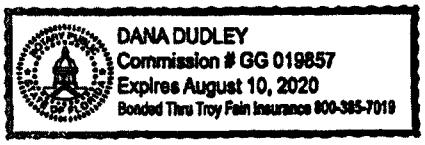
Notary Public

FURTHER AFFIANT SAYETH NAUGHT.
Signed and delivered this 8th day of March, 2017.

Sean Pittman for
Pittman Law Group

STATE OF FLORIDA
COUNTY OF LEON

SWORN TO and SUBSCRIBED before me this 8th day of March, 2017 by Sean Pittman, who is personally known to me.



Notary Public

Dana Dudley

ATTORNEYS FEES AFFIDAVIT

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME, the undersigned authority to take oath this day, personally appeared Sean Pittman having being duly sworn according to the law, do hereby declare the following:

1. Affiant is the lobbyist for claimant Reginald Jackson with the firm of Pittman Law Group.

2. Affiant states that he has incurred and is obligated to the following lobbying fees in a civil action against the City of Lakeland on behalf of Reginald Jackson.

a. Pittman Law Group, PL	10% of any attorney fees recovered by Parks & Crump, LLC in regards to the above-referenced cause of action.

3. The lobbying fees are included in the attorneys fees and will be deducted from the amount awarded by the legislature.

FURTHER AFFIANT SAYETH NAUGHT.
Signed and delivered this 9th day of March, 2017.

Sean Pittman for
Pittman Law Group

STATE OF FLORIDA
COUNTY OF LEON

SWORN TO and SUBSCRIBED before me this 9th day of March, 2017 by Sean Pittman, who is personally known to me.

DANA DUDLEY
Commission # GG 019857
Expires August 10, 2020
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Public
Dana Dudley

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6517 (2017)

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: Civil Justice & Claims Subcommittee

Representative Alexander offered the following:

Amendment

Remove lines 81-84 and insert:

in the injury to Reginald Jackson. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $70,312.50, the total amount paid for lobbying fees may not exceed $7,812.50, and no amount of the act may be paid for costs and other similar expenses relating to this claim.

STORAGE NAME: h6543.CJC
DATE: 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6543 - Representative Santiago
Relief/Erin Joynt/Volusia County

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $1.9 MILLION AGAINST VOLUSIA COUNTY FOR INJURIES AND DAMAGES SUFFERED BY ERIN JOYNT WHEN A VOLUSIA COUNTY TRUCK DROVE OVER HER BODY ON JULY 31, 2011.

FINDING OF FACT:

Erin Joynt ("Claimant") was struck by a Volusia County ("the County") truck while sunbathing on Daytona Beach on July 31, 2011. She suffered multiple facial fractures and a perforated ear drum. On April 5, 2012, Claimant filed suit against Volusia County. A trial was held in June 2014, in which a jury returned a verdict in the amount of $2.6 million. On appeal, the Fifth District Court of Appeal reduced the verdict to $2 million because economic and medical damages were not supported by the evidence presented at trial. After an amended final judgement was entered on January 12, 2016, the County paid the statutory cap payment of $85,000. Claimant seeks the remainder of the amended final judgment in this instant claim bill.

The Incident

On July 30, 2011, Claimant was on vacation with her husband and two children. They were traveling from their home in

Wichita, Kansas to their final destination of Walt Disney World. After a day of driving, on July 31, 2011, they arrived at Daytona Beach to enjoy the famous Florida beach. In the morning, around 10:00 AM, Claimant's husband and two children were playing in the water while Claimant rested in the sand, lying on her stomach and sunbathing.

That same morning, Thomas Moderie, a Volusia County beach patrol employee, was driving a Volusia County F-150 pickup truck on the same beach. Mr. Moderie was driving north on the beach when a pedestrian flagged him down to report broken glass on the beach from a two vehicle collision that occurred earlier that morning further south on the beach. Mr. Moderie initiated a U-turn, but instead of steering his truck to the left and utilizing the other designated lane for vehicle traffic on the beach, he steered his truck to the right and towards beach patrons. He was attempting to turn right and head south on the beach towards the reported broken glass when his pickup truck's left front tire ran over Claimant's head and torso. According to the Florida Highway Patrol Crash Report, Mr. Moderie was not operating his vehicle in emergency mode at the time the collision occurred.

Claimant's daughter, who was eight years old, witnessed the truck run over her mother. Another beach patron ran over to Claimant and rendered first aid as an ambulance was called to the scene. Claimant was taken to nearby Halifax Medical Center, where she would spend the next six days recovering from her injuries.

Claimant's Injuries

As a result of the impact with the Volusia County pickup truck, Claimant suffered multiple cranial and facial fractures, multiple rib fractures, hearing loss, vision problems, and permanent facial paralysis.

In the months following the incident, Claimant underwent two procedures to help her in her recovery. First, Claimant had her perforated eardrum reconstructed in her left ear on August, 27, 2011 in Wichita, Kansas. This procedure involved grafting a posterior superior tympanic membrane perforation and a placement of an ossicular prosthesis. Second, on September 26, 2011, Claimant underwent a procedure to aid her in closing her right eye by having a gold weight sewn into her eyelid.

LITIGATION HISTORY:

On April 5, 2012, Claimant along with her husband and two children, filed suit against Volusia County in the circuit court in the Seventh Judicial Circuit, in and for, Volusia County. Claimant alleged negligence by Volusia County for the actions of Mr. Moderie. Claimant's husband and two children brought loss of consortium claims against the County. Prior to trial, Claimant's husband settled with the County for $134,500 and the children's claims were settled for $15,000 ($7,500/per

claim). Prior to trial, the County admitted liability and solely contested damages. The trial began on June 23, 2014 and lasted four days. Claimant presented evidence of the cost of her ongoing care, such as her deficient hearing ability that may one day require the assistance of a hearing aid. Claimant also presented evidence that she may not be able to continue her employment as a paraeducator, assisting elementary age students in reading. On June 27, 2014, the jury returned a verdict in the amount of $2,600,000. The verdict was broken down as follows:

- $500,000 for past pain and suffering;
- $1,500,000 for future pain and suffering;
- $500,000 for diminished earning capacity; and
- $100,000 for future medical expenses.

The County appealed the jury's award for diminished earning capacity and future medical expenses. The County argued that Claimant failed to present evidence at trial that would allow the jury to quantify any diminished ability to earn money in the future or future medical expenses. At the time of the injury, Claimant was unemployed and taking care of her youngest child.[1] After her injury, she was able to return to full time employment as a paraeducator, a position she held in the years prior to her injury. At trial, Claimant's supervisor testified that Claimant has performed satisfactory and that none of Claimant's physical limitations would affect Claimant's ability to be promoted. The Fifth District Court of Appeal, in an opinion filed on November 13, 2015, held there was "absolutely no testimony presented to indicate Joynt was completely disabled from further gainful employment as the result of her injuries or was unable to work to the same age she would have otherwise."[2] Accordingly, the Fifth District Court of Appeal struck the jury's award of $500,000 for diminished earning capacity.

The County also challenged the jury award of $100,000 for future medical expenses as there was no reasonably certain basis for such an award. The County argued the testimony presented at trial showed Claimant may need future care but it was only a possibility. At trial, Claimant presented doctors who stated Claimant possibly would need to continue pain medication and it was possible she would need a hearing aid but it was Claimant's choice. The Fifth District Court of Appeal held Claimant's injuries are either not reasonably certain to be incurred or evidence was not presented at trial to determine the amount of future expenses. The jury award of $100,000 for future medical costs was reversed and the final judgment was reduced from $2.6 million to $2 million.

On January 12, 2016, a second amended final judgment was

[1] At the time of the incident, Claimant was on her husband's AETNA health insurance plan.
[2] *Volusia Cnty. v. Joynt*, 179 So. 3d 448, 449 (Fla. 5th DCA 2015).

entered against the County for $2,000,000. The County paid the remainder of its statutory cap of $85,000 to Claimant.[3]

Following the imposition of the amended final judgment, Claimant's attorneys brought a declaratory judgment action against Volusia County and its insurer, Star Insurance Company, to force Star Insurance to pay the remaining $1.9 million. The action was removed to the United States District Court for the Middle District of Florida where it currently is pending. Volusia County has filed a motion to dismiss and Claimant's attorneys have filed a motion to remand to state court.

As a backdrop to the declaratory judgment dispute, it is worthwhile reviewing how the parties arrived here. Section 768.28(5), F.S., provides "Any settlement or judgment in excess of the caps may be reported to the Legislature and be paid in part or in whole only by further act of the Legislature." However, the same section provides "the state, or an agency, or subdivision thereof" may pay a settlement or judgment without further action by the Legislature as long as the settlement or judgment is within the limits of their insurance. This allows local subdivisions to pay a settlement that exceeds the statutory cap with their insurance[4] and avoid the legislative claim bill process.

Here, the County is insured by Star Insurance Company for $5 million. According to Claimant's attorneys, Star Insurance's policy for excess coverage in effect on July 31, 2011 does not consider a claim bill and the insurer is required to pay the remaining balance of the final judgment. According to Star Insurance, its obligation to pay is not triggered until a claim bill is passed. A trial is set for June 2017 to resolve this dispute. Claimant's attorneys state that if this claim bill is passed and enacted they will subsequently move to dismiss the request for a declaratory judgment.

CLAIMANT'S POSITION:

Claimant argues the County is liable for the injuries sustained from the County's truck driving over Claimant and seeks the remaining final judgment to compensate her for the past and future pain and suffering.

RESPONDENT'S POSITION:

The County argues the claim bill award is excessive and unsupported by the facts and circumstances of this case. The

[3] The County had a $200,000/occurrence statutory cap under s. 768.28(5), F.S. (2011) and Claimant's husband received $100,000 and their two children received $7,500 each. That left a remaining $85,000 in the statutory cap towards Claimant's final judgment. Note that Claimant's husband received $34,500 from the County's excess insurer, Star Insurance Company.

[4] The Florida Supreme Court has defined insurance to not include self-insurance, which many local subdivisions rely on instead of purchasing commercial insurance. *See Hillsborough Cnty. Hosp. & Welfare Bd. v. Taylor*, 546 So. 2d 1055, 1057 (Fla. 1989).

County argues that Claimant and her family have already received a sufficient amount to compensate her for her loss and the Legislature should not pass claim bills for non-economic damages.

CONCLUSION OF LAW:

Whether or not there is a settlement agreement or a jury verdict, as there is here, every claim bill must be based on facts sufficient to meet the preponderance of the evidence standard. Here, the County admits their employee, Mr. Moderie, was operating within the scope of his duties on July 31, 2011, owed a duty to Claimant and was negligent when he drove the F-150 pickup truck over Claimant's body. However, even without the County's admission, I find Mr. Moderie owed a duty to Claimant and was negligent in operating the truck.

The sole issue in this claim is damages. While a jury found damages for both pain and suffering and economic damages (future economic and future medical), the Fifth District Court of Appeal reduced the jury's award and the final judgment was amended. The Legislature is not bound by jury verdicts, appellate decisions or this report. Claim bills are an act of legislative grace.[5] As such, this Legislature may choose to honor the full jury verdict, the reduced final judgment or even less. The bill as filed and presented before this Special Master seeks only the reduced final judgment amount of $1.9 million. At the special master hearing, Claimant's attorneys admitted this claim seeks only to compensate the Claimant for her past and future pain and suffering.

The County argues Claimant has made a remarkable recovery and has been adequately compensated for any pain and suffering sustained. From the final judgment of $2 million, Claimant has received $85,000. The County contends the settlements between the County and Claimant's husband and children should be seen as compensating her for her injuries. Additionally, the County contends Claimant was enriched by receiving $20,000 from Mr. Moderie's own insurance policy. Through the settlement of her family's claims and collateral sources, the County argues Claimant has received $254,500.

Despite the County's contention, I find the remaining final judgment of $2 million to be a fair and just amount for Claimant's pain and suffering. Claimant has suffered disfigurement to her face and will never look the way she did prior to the incident. Dr. William Triggs, a medical doctor hired by the County to evaluate Claimant's damages, found Claimant suffers from a residual left facial palsy and that the facial weakness will never recover. This paralysis is an emotional toll on Claimant, of which she will live with for the rest of her life.

Finally, the County argues the Legislature should not pass a

[5] *Gamble v. Wells*, 450 So. 2d 850, 853 (Fla. 1984).

claim bill consisting solely of pain and suffering damages. This contention and issue is outside the purview of this report and only for the individual members to decide.

ATTORNEY'S/ LOBBYING FEES: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 4% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $74,094.75.

COLLATERAL SOURCES: Claimant received $20,000 from Mr. Moderie's own insurance. As previously mentioned, Claimant's husband received $134,500 from the County to settle his claims. Additionally, the County paid $15,000 to settle Claimant's two children's claims. Claimant received $85,000 of the amended final judgment of $2 million.

Though this claim is for Claimant's past and future pain and suffering, Claimant was and is covered by her husband's health insurance.

RESPONDENT'S ABILITY TO PAY: The County has an excess liability insurance policy with Star Insurance in the amount of $5 million. If the claim were to pass, Star Insurance would pay the entirety of the award.

LEGISLATIVE HISTORY: This is the first time this instant claim has been brought before the Legislature.

SUGGESTED AMENDMENTS:

The amended final judgment is in the amount of $2,000,000. The County exhausted the statutory caps of $200,000 when it paid $100,000 to Claimant's husband[6], $15,000 for Claimant's children's claims, and $85,000 to Claimant. Since the trial was over Claimant's claim only, there still remains an outstanding final judgment in the amount of $1,915,000. However, the bill as filed is in the amount of $1,900,000. Additionally, Volusia County is entitled to a setoff of the settlement amount ($20,000) paid by Thomas Moderie to Claimant.[7]

The bill should be amended to reflect the correct amount of $1,895,000.

Furthermore, lines 50-51 inaccurately states that Volusia County supports passage of the claim bill.

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[6] Star Insurance paid the additional $34,500 to resolve his claim.
[7] *See* s. 768.041(2), F.S.; *Honeywell Int'l, Inc. v. Guilder*, 23 So. 3d 867, 871 (Fla. 3d DCA 2009).

RECOMMENDATIONS: I recommend that House Bill 6543 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Santiago, House Sponsor
Senator Simmons, Senate Sponsor
Ashley Peacock, Senate Special Master

A bill to be entitled

An act for the relief of Erin Joynt by Volusia County; providing for an appropriation to compensate Erin Joynt for injuries sustained as a result of the negligence of an employee of Volusia County; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, on July 31, 2011, Erin Joynt, her husband, and two children were vacationing beachgoers on Daytona Beach as they journeyed from their native Wichita, Kansas, to their planned destination of Walt Disney World, and

WHEREAS, at the same time, in the regular course of his employment duties, Thomas Moderie, an employee of the Volusia County Beach Patrol, was driving a Ford F-150 pickup truck owned by the county along the beach, and

WHEREAS, Mr. Moderie negligently operated the truck, running over Mrs. Joynt while she was sunbathing on the beach, and

WHEREAS, as a result of the impact with the truck, Mrs. Joynt sustained severe injuries, including, but not limited to, multiple cranial and facial fractures, rib fractures, permanent

facial injuries, and chronic back pain, and

WHEREAS, Mrs. Joynt continues to suffer as a result of the impact and is unable to blink her right eye without the assistance of a gold weight sewn into her eyelid and has a perforated eardrum and resulting hearing loss, permanent facial paralysis, speech and neurological deficits, and chronic pain, and

WHEREAS, after a 4-day trial in June 2014 at which Volusia County acknowledged the negligence of Mr. Moderie, a jury found the county liable for Mrs. Joynt's injuries and awarded her compensatory damages in the amount of $2.6 million, and

WHEREAS, on January 12, 2016, following resolution of an appeal initiated by the county, a final judgment in the amount of $2 million was entered against Volusia County by the trial court, and

WHEREAS, Volusia County is insured for Mrs. Joynt's claim for damages through an excess liability insurance policy underwritten by Star Insurance Company, which has refused to compensate Mrs. Joynt and maintains that its duty to indemnify the county is not imposed until passage of this claim bill, and

WHEREAS, Volusia County has already paid $100,000 of the judgment pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, which were in effect at the time that Mrs. Joynt's claim arose, and

WHEREAS, Volusia County has agreed to support the passage

of a claim bill to ensure that the remainder of the judgment is satisfied, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Volusia County is authorized and directed to appropriate from funds of the county not otherwise encumbered, or from the county's liability insurance coverage, and to draw a warrant in the sum of $1.9 million, payable to Erin Joynt as compensation for injuries and damages sustained.

Section 3. The amount paid by Volusia County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Erin Joynt. The total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE me, the undersigned authority, personally appeared JOHN M. PHILLIPS, ESQUIRE and PATRICK BELL, who are personally known to me, and who after being first duly sworn, depose and say:

1. JOHN M. PHILLIPS of the Law Office of John M. Phillips, LLC is the lead attorney in the above referenced matter. His principal place of business is located at 4230 Ortega Boulevard, Jacksonville, FL 32210.

2. PATRICK BELL of Capitol Solutions, LLC was retained as a lobbyist in the above referenced matter.

3. On or about August 6, 2011, John M. Phillips, along with the Law Office of John M. Phillips, were retained to represent Erin Joynt under a standard Florida contingency fee contract.

4. Said contract provided for an attorney fee of not greater than twenty-five percent (25%) of any recovery against the state or any of its agencies or subdivisions consistent with §768.28(8), Florida Statutes plus any costs advanced to a third party on the client's behalf. A copy of the said contract is attached hereto as Exhibit A.

5. A proposed Closing Statement was originally submitted attached to affiant's first Affidavit dated January 4, 2017, detailing the attorney fee

percentage and itemizing all known costs. Said first proposed Closing Statement is attached hereto has Exhibit B.

6. Upon further review of the file, additional costs advanced to third parties on behalf of Mrs. Joynt were discovered and the corrected cost chart of JOHN M. PHILLIPS itemizing $74,094.75 of costs advanced to third parties on behalf of Ms. Joynt is attached hereto as Exhibit C.

7. Additionally, a fee of 33 1/3% was charged for settlement with Defendant Thomas Moderie. This has been reduced to 25%.

8. In pursuit of the requested claims bill, it has become necessary to retain the services of a lobbyist. As such, the undersigned retained Patrick Bell at Capitol Solutions, Inc. For his services, Mr. Bell charges, and Mrs. Joynt has agreed to pay, a fee of four percent (4%) of the amount recovered by claims bill. A copy of said contract with agreement is attached hereto as Exhibit D.

9. The four percent (4%) lobbyist fee referenced above is included in the twenty-five percent (25%) attorney's fees as referenced above, and are itemized on the revised proposed Closing Statement. See attached exhibits.

10. The full amount of $74,094.75 outstanding costs itemized on the attached Cost Chart of John M. Phillips, will be paid from the amount that may be awarded by the Legislature. See attached Exhibit C.

11. None of the outstanding costs itemized on the attached revised Costs Chart have been paid from the statutory cap payment, as these funds remain in an IOTA account pending resolution.

12. Of the $74,094.75 in costs advanced on behalf of Mrs. Joynt, $2,887.50 was for internal costs of the Law Office of John M. Phillips.

13. Additionally, even though lost wages and future medical expenses were not included in the trial or awarded on the verdict, The Rawlings Company has recently presented their demand to have their lien of $34,241.79 honored. This is an additional amount that was not presented previously. However, Ms. Joynt would pay this sum out of the requested $1,915,000.00.

14. Finally, in addition to the costs itemized on the proposed Closing Statement and attached Cost Chart, Ms. Joynt has incurred significant out of pocket expenses for travel and accommodations for necessary appearances in Florida for two Compulsory Medical Examinations, Mediation, Trial and the Special Masters hearing. Currently these costs amount to $3,638.04. Ms. Joynt would be reimbursed for this sum out of the requested $1,915,000.00.

FURTHER AFFIANTS SAYETH NOT.

JOHN M. PHILLIPS, ESQUIRE

SUBSCRIBED and SWORN to before me this 1st day of March, 2017.

KATHI DENISE LANG-THORBS
Commission # FF 235256
Expires May 27, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Public, State of Florida

PATRICK BELL

SUBSCRIBED and SWORN to before me this 1st day of March, 2017.

DIANE W. GREGG
MY COMMISSION EXPIRES
June 29, 2018
#FF 128817
Bonded thru Troy Fain - Insurance
NOTARY PUBLIC, STATE OF FLORIDA

Notary Public, State of Florida

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6543 (2017)

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: Civil Justice & Claims Subcommittee

Representative Santiago offered the following:

Amendment (with title amendment)

Remove lines 61-70 and insert:

warrant in the sum of $727,400, payable to Erin Joynt as compensation for injuries and damages sustained.

Section 3. The amount paid by Volusia County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Erin Joynt. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $152,754 the total amount paid for lobbying fees may not exceed $29,096, and the

total amount paid for costs and other similar expenses relating to this claim may not exceed $74,094.75.

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

Remove lines 43-52 and insert:
underwritten by Star Insurance Company, and
WHEREAS, Volusia County has already paid $85,000 of the judgment to Mrs. Joynt pursuant to the statutory limits liability set forth in s. 768.28, Florida Statutes, which were in effect at the time that Mrs. Joynt's claim arose, NOW, THEREFORE,

STORAGE NAME: h6551.CJC
DATE: 3/24/2017

March 24, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6551 - Representative Santiago
Relief/Ramiro Companioni/City of Tampa

THIS IS A CONTESTED CLAIM FOR $17,828,800 BASED ON A JURY VERDICT AGAINST THE CITY OF TAMPA, IN WHICH THE JURY DETERMINED THAT THE CITY WAS 90 PERCENT RESPONSIBLE FOR INJURIES SUSTAINED BY RAMIRO COMPANIONI DUE TO THE NEGLIGENT OPERATION OF A CITY TRUCK BY ONE OF ITS EMPLOYEES.

FINDING OF FACT:

It is undisputed that on November 22, 1996, at approximately 11:57 AM, 33-year-old Ramiro Companioni was travelling on his motorcycle, wearing a helmet, eastbound on East Hillsborough Avenue, a major east-west road that has three lanes in each direction with a shared turn lane in the median. Somewhere on the far-right of the south side of the road, three City Water Department employees had been working on a water valve – with a large flashing sign behind the three trucks to notify drivers of their presence. The three city employees were driving separate city-owned pick-up trucks and had packed up to leave to break for lunch. The drivers were Mr. Pierola, Mr. Foster, and Mr. Allen. Mr. Pierola was driving the truck that was involved in the collision and Mr. Allen was driving the truck pulling the flashing sign board. All three drivers testified that they never saw or heard Mr. Companioni prior to

the collision.

There is conflicting evidence as to which lane Mr. Companioni was in, the speed he was traveling, whether the City trucks were in the far right lane or off the road on the shoulder, what order the trucks were parked, which truck pulled from the lane first, and where the trucks were heading. I find, by the greater weight of the evidence in the record that Mr. Companioni was driving in the lane closest to the median turn lane. Mr. Companioni has no memory from the collision other than he was in the median-side lane. The three City drivers all say they never saw the motorcycle.

I find that the three City Water Department trucks were parked in the far-right eastbound lane on the south side of the road, the lane closest to the shoulder, with the towed flashing sign-board – leaving only two available lanes for eastbound traffic. They were not parked on the shoulder as was assumed by the City's accident reconstruction expert, nor were they parked in the order assumed by the expert. Mr. Pierola's truck was parked furthest forward, Mr. Foster was parked in the middle, and Mr. Allen was parked furthest back (meaning furthest west) towing the flashing sign-board to warn approaching traffic.

It is unclear as to what order the trucks pulled away. The record supports a finding that Mr. Allen, the truck behind the other two, pulled out first into the center lane to pass the first two trucks, and then returned to the curbside lane in front of the other trucks – whereby he proceeded forward and pulled right into a vacant lot in order to lower the flashing sign-board he had in tow. Mr. Allen never saw the accident and was not aware of what the other trucks did as they pulled away.

The greater weight of the evidence is that Mr. Pierola pulled away next and was heading to the middle turn lane – thereby requiring that he cross from the curbside lane, across the middle lane, across the median-side lane in order to get in the median turn lane to make his left-hand turn at 50th street. This becomes apparent because Mr. Foster stated that he did not see the motorcycle until, while driving in the center lane, he saw the motorcycle crash into Mr. Pierola's truck – the crash occurring in the median side lane to his left and ahead of him. If Mr. Foster had pulled away prior to Mr. Pierola, he would not have seen the collision.

There is a wide range of evidence and testimony in the record as to the speed the motorcycle was traveling prior to the collision. Mr. Companioni claims he was traveling at the 45 miles per hour speed limit. Officer Thiel, with the Tampa Police Department, wrote a traffic report that stated Mr. Companioni was going 60 to 70 miles per hour. However, in the same report, Officer Thiel stated those numbers are not based on facts. Officer Thiel stated that based on the damage to the bike

and the victim lead him to believe that Mr. Companioni was speeding.[1] Mr. Foster testified they were going 5-10 miles per hour, no more than 15 mph. Mr. Pierola says he was going 20-25 mph.

Mr. Pierola testified that he pulled out behind Mr. Allen and was headed for a nearby park to eat his lunch he had brought with him that day. He stated that he wanted to cross the eastbound lanes on East Hillsborough Avenue to make a left-hand turn on 50th to go to the park. While crossing these lanes, he testified that he heard a noise and thought a barricade had fallen from the truck bed. Mr. Pierola drove his vehicle into the median turn lane and got out of his truck to retrieve the barricade. It was at this time that Mr. Pierola saw the motorcycle lodged under the truck's bumper. Mr. Pierola later testified that he never saw the motorcycle and he never heard a loud motorcycle noise before the collision but did feel the impact when he was changing lanes. The collision occurred in the median side lane.

Mr. Foster, who was driving the third vehicle, told the responding officer that after entering the roadway he looked forward and saw that a motorcycle had hit the back of Mr. Pierola's truck. Mr. Foster further testified that the motorcycle must have driven by him as he entered the roadway, but he did not see or hear it.

Responding Officer Thiel reported that, in his estimate, Mr. Companioni was traveling 25 miles per hour over the speed limit based on the damage he observed to the vehicles, but the officer could not accurately make this calculation without knowing the speed of the truck. His report found that Mr. Pierola had violated Mr. Companioni's right of way with an improper lane change. Tampa Detective Willenham also indicated that he believed both drivers contributed to the accident.

Mr. Companioni was rendered unconscious at the scene and taken to Tampa General Hospital where he was in an induced coma in ICU for nearly a month. In the months and years since the accident, Mr. Companioni has undergone more than 20 surgeries relating to his injuries sustained from the accident. His injuries include internal lacerations of his organs resulting in the loss of his large intestine, removal of his spleen, multiple fractures of his right hip and the loss of control of his right hip, leg and foot.

LITIGATION HISTORY:

Ramiro Companioni filed a lawsuit against the City of Tampa for negligence in the 13th Judicial Circuit, in and for Hillsborough County, Florida. In March of 2004, almost eight years after the accident, the case went to verdict and a Final

[1] However, no citations for excessive speed were issued regarding the accident.

Judgment was entered in favor of Mr. Companioni in the amount of $19,932,000. The jury determined that the City was 90% negligent and Mr. Companioni was 10% comparatively at fault for the accident, reducing the amount owed by the City to $17,928,800.

The City of Tampa has paid $100,000 pursuant to the sovereign immunity limit imposed by s. 768.28, F.S., effective at the time of the accident, leaving the amount requested under the claim bill of $17,828,800. From the $100,000 already paid by the City, the attorneys collected $25,000 in fees[2] and the following costs: $33,194.08 in costs incurred by D. Russell Stahl, $9,466.53 in costs incurred by Dominic O. Fariello, P.A., $4,733.23 to satisfy medical liens, $13,000 to Peachtree Settlement Services for post settlement advance/loan, and $5,378.09 to satisfy other outstanding medical liens. Of the $100,000 payment, the Claimant received $14,504.54.

The City filed and argued two motions for new trial and remittitur. The first motion alleged improper conduct by Plaintiff's counsel, and the motion was denied. The record reflects numerous objections by the City as to Plaintiff's counsel's presentation; however, defense counsel did not move for a mistrial. The Court denied the City's motions to sanction Plaintiff's counsel and hold him in contempt but did sustain objections with regards to Plaintiff's counsel's conduct.

The trial court granted the City's second motion for a new trial concerning allegations of misrepresentations made by two jurors during voir dire. It was later determined that two of the six jurors were convicted felons, and they hid that information from the court. In a split decision, the Second District Court of Appeal reversed the trial court's grant of a new trial.[3]

Additionally, the City made attempts to have the judgment set aside or reduced on the grounds that the verdict was excessive, but those attempts were rejected.[4]

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[2] $15,000 was paid to D. Russell Stahl, $5,000 was paid to Dominic O. Fariello, P.A., $4,000 was paid to Podhurst Orseck – Joel Easton, Esq., and $1,000 was paid to Web Brennan, Esq.

[3] *Companioni v. City of Tampa,* 958 So. 2d 404, 417 (Fla. 2d DCA 2007)(Court held the City was not entitled to a new trial on the basis of the jurors' prior felony convictions because there had been no showing of actual bias or prejudice or that the City did not receive a fair and impartial trial.).

[4] *City of Tampa v. Companioni,* 74 So. 3d 585, 587 (Fla. 2d DCA 2011). ("The verdict against the City is indeed substantial; however, the record reflects that Mr. Companioni sustained horrific injuries that, as noted by the trial court, are extensive and permanent. We also note that while the City challenges the award as excessive at trial it offered no suggestion to the jury as to what would be a proper award for injuries it acknowledged were 'serious.' In fact, the City recognized that for the remainder of his life, Mr. Companioni 'was going to have problems' because of his disability which caused him 'discomfort and pain and suffering.' When it went to deliberate, the jury had only the damage figures suggested by Mr. Companioni's counsel, and given the nature of the injuries Mr. Companioni sustained, it is not surprising the jury picked a figure at the high end of the range counsel suggested.").

CLAIMANT'S POSITION:

Claimant testified at trial that he was going the speed limit, 45 miles per hour, at the time of the accident. Additionally, at trial, Claimant offered the testimony of former Highway Patrolman and accident investigator Dennis Payne who reviewed medical records, the motorcycle, and photographs of the truck and opined that Mr. Companioni was traveling at 45 miles per hour. Mr. Payne further noted that, based on scientific data, it was highly unlikely that Mr. Companioni struck the truck at a speed of 55 miles per hour and survived an impact speed of greater than 30 miles per hour.

Further, Claimant posited that regardless of his speed, he had the right-of-way in the outside lane, and had Mr. Pierola not improperly entered Mr. Companioni's lane and cut him off, the accident might have been avoided.

RESPONDENT'S POSITION:

Both before and after the accident Mr. Companioni was cited for violations of excessive speed and reckless driving. He was cited for driving while his license was suspended five times before and up to the accident and two times after the accident. On the day of the accident, Mr. Companioni was driving with a suspended license but has stated that he did not know his license was suspended at the time.

In the accident report from the crash, the police estimated Mr. Companioni was traveling 70 miles per hour at the time of the crash.[5] The City offered testimony of accident reconstructionist, Dr. Charles Benedict, who testified that based on his reconstruction of the scene Mr. Companioni was traveling far above 45 miles per hour and but for the excessive rate of speed at which he was traveling, Mr. Companioni could have avoided the accident. Dr. Benedict stated that Mr. Companioni was traveling between 60 and 70 miles per hour and, before the impact, braked to slow down to an impact speed of 55 miles per hour at the time of the crash, resulting in an impact speed of 35 miles per hour.

CONCLUSION OF LAW:

Liability

Like any motorist, Mr. Pierola had a duty to operate his vehicle with consideration for the safety of other drivers.[6] By pulling in front of Mr. Companioni, Mr. Pierola breached his duty of care, which was the direct and proximate cause of Mr. Companioni's injuries. The City, as Mr. Pierola's employer, is liable for Mr. Pierola's negligent act.[7]

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[5] The officer investigating the scene noticed what appeared to be marks left from Mr. Companioni's leather gloves and leather plastered to the truck's paint. Additionally, the officer noted that there were dents in the tailgate from Mr. Companioni's body striking it. The officer determined that the damage done would require Mr. Companioni to have been traveling at least 70 miles per hour. No citations were issued in connection to this accident.

[6] *Pedigo v. Smith*, 395 So.2d 615, 616 (Fla. 5th DCA 1981).

[7] *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981)(holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope

As discussed above, the jury determined that Ms. Pierola, based upon the negligent operation of his vehicle, was 90 percent at fault in this accident. This conclusion by the jury is supported by the greater weight of the evidence and is affirmed by the undersigned Special Master.

The City argued that it was not liable whatsoever for the accident. However, the record does not support this conclusion. Mr. Companioni had the right of way, had no reason to think Mr. Pierola would come into his lane, and was unable to avoid the accident once Mr. Pierola unlawfully pulled in front of him. This is supported by the record, as well as by the City Traffic Report and the Jury's Verdict.

As for the City's contention of Mr. Companioni's speed, the jury rightfully considered this matter and found Mr. Companioni to be 10% at fault. At trial, the jury heard the testimony of Dennis Payne, a former highway patrol trooper and accident reconstructionist. Mr. Payne testified that if Mr. Companioni was traveling at the speeds listed in the traffic report, then the impact would have killed Mr. Companioni. The City presented the testimony of Dr. Charles Benedict, a mechanical engineer, who estimated Mr. Companioni was traveling at 65 miles per hour. Certainly, speed was a factor in this accident but even if Mr. Companioni was traveling at excessive speed, it does not bar his recovery.[8] The jury weighed his actions and found him to be 10% at fault. This special master finds no reason to disturb the jury's finding of fault.

Damages

The City argued that the damages awarded were too high. However, the undersigned finds that the damages, as found by the Jury, are supported by a preponderance of the evidence in the record. As stated by the doctors in the record – it is amazing Mr. Companioni survived this accident. The suffering caused by the numerous and lengthy medical procedures is incalculable. His loss of use of his bowels, resulting in the lifetime use of the colostomy bag, is daily reminder of the accident.

Upon his arrival at the Trauma Unit at Tampa General, it was noted that Mr. Companioni's rectum was fileted through the scrotum. Dr. Michael Albrink, his primary physician, testified

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of their employment); *see also Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000)(holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another"). Also, *see* s. 768.28(9)(a), F.S., which provides that "[t]he exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity... of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."

[8] s. 768.81(2), F.S.

that Mr. Companioni's legs were ripped apart, like breaking a wish bone and that he suffered from multiple open fractures of the pelvis, shoulder, elbow, lumbar vertebrae, and right knee. Additionally, Mr. Companioni sustained a bowel injury and a ruptured urethra, lost portions of his colon, and suffered bleeding and damage to his peritoneal cavity and organs. His anus was ripped and sphincter ruined which has resulted in a permanent colostomy. Additionally, he injured the nerves to his genitals which has permanently damaged his sexual function. Both the femoral artery and sciatic nerve were severely injured.

Mr. Companioni underwent a tracheostomy and has tracheal scarring resulting in difficulty swallowing. He must use a colostomy bag to defecate and has bladder spasms and incontinence. He has frequent kidney stones. His core muscles are scarred, atrophied and weakened as a result of the accident and the more than twenty surgeries he has undergone since the accident.

Additionally, his four lower vertebrae and coccyx have been fused; his right hip is fused, and he has arthritis and bone calcification in his knee and hip joint. Mr. Companioni wears a right leg brace and one-third of his right quadriceps has been removed. He is dependent on a cane.

Neither side engaged a life planner or economist to determine the monetary amount necessary to sustain Mr. Companioni. Dr. Albrink, however, did testify that Mr. Companioni will need a lifetime amount of future medical care for his injuries.

Nothing has been presented to this special master to disturb the jury's determination of damages.

ATTORNEY'S/ LOBBYING FEES: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 7% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $4,512.32.

SOURCE OF FUNDS: The City of Tampa has no insurance in connection with the claim bill. The City of Tampa has not specifically appropriated funding to pay the final judgment which is the subject of this claim bill. Any funds paid by the City for this claim bill will come from the City's self-insurance reserve fund or other funds legally available to the City for this purpose.

PRIOR LEGISLATIVE HISTORY: This is the fourth session this claim has been introduced to the Legislature. In the 2016 Legislative Session, the claim was introduced as Senate Bill 42 by Senator Braynon and House Bill 3533 by Representative Rooney. Neither bill was heard in any committee of reference.

In the 2015 Legislative Session, the claim was introduced as Senate Bill 56 by Senator Braynon and House Bill 3537 by Representative Rooney. Neither bill was heard in any committee of reference.

In the 2014 Legislative Session, the claim was introduced as Senate Bill 48 by Senator Braynon and House Bill 3517 by Representative Rooney. Neither bill was heard in any committee of reference.

In the 2013 Legislative Session, the claim was introduced as Senate Bill 42 by Senator Braynon and House Bill 1053 by Representative Workman. Neither bill was heard in any committee of reference.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that House Bill 6551 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Santiago, House Sponsor
Senator Galvano, Senate Sponsor
Diana Caldwell, Senate Special Master

A bill to be entitled

An act for the relief of Ramiro Companioni by the City of Tampa; providing for an appropriation to compensate Mr. Companioni for injuries sustained as a result of the negligence of an employee of the City of Tampa; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, at about noon on November 22, 1996, 34-year-old Ramiro Companioni was operating his motorcycle in the inside, eastbound lane of East Hillsborough Avenue near its intersection with North 50th Street, and

WHEREAS, a City of Tampa Water Department truck operated by city employee Faustino Pierola, which was accompanied by two other similar vehicles owned by the city and operated by city employees, pulled into the outside, eastbound lane from the south shoulder of Hillsborough Avenue and steered across three lanes of traffic into the path of Mr. Companioni, and

WHEREAS, although Mr. Companioni attempted to avoid the collision by laying down his motorcycle, he and his motorcycle struck the rear of the city-owned truck, violently ejecting him from the motorcycle onto the pavement, causing him massive and catastrophic injuries, and

WHEREAS, an independent eyewitness interviewed at the scene told traffic accident investigators that he witnessed the city-

owned truck pull away from the shoulder and steer across the lanes of traffic into the lane in which Mr. Companioni was traveling, and

WHEREAS, the eyewitness estimated that Mr. Companioni had been traveling at a speed of 40 miles per hour as he approached the city-owned truck, which was well within the maximum speed limit of 45 miles per hour, and

WHEREAS, the eyewitness stated that the driver of the city-owned truck, Mr. Pierola, was the cause of the accident, and

WHEREAS, additional witnesses testified that the three-truck caravan owned and operated by the city appeared to be a "wagon train," and that Mr. Companioni was "cut off" by the trucks and had "nowhere to go," and

WHEREAS, Mr. Pierola admitted that he failed to observe any oncoming traffic despite an even roadway, clear visibility, and the absence of obstructions, indicating that he was negligent by failing to properly look for oncoming traffic, and

WHEREAS, despite an obvious conflict of interest, the City of Tampa Police Department failed to call in an independent law enforcement agency to conduct the official traffic accident investigation and attributed fault to both Mr. Pierola and Mr. Companioni, opining that, despite eyewitness testimony to the contrary, Mr. Companioni may have been operating his vehicle in excess of the speed limit, and

WHEREAS, city employees at the scene, including Mr.

Pierola, did not assert that Mr. Companioni was operating his vehicle in excess of the maximum speed limit, and

WHEREAS, as a result of the collision, Mr. Companioni was rendered unconscious and suffered massive catastrophic injuries resulting in a coma; multiple internal lacerations of the midsection organs resulting in the loss of the large intestine and necessitating a colostomy and urethral catheter; removal of the spleen; multiple fractures of his right hip and four spinal vertebra; a severed right sciatic nerve, resulting in loss of control of the right hip, leg, and foot; laceration and partial severance of the urethra and testicles; and multiple lacerations and abrasions from contact with the road surface causing permanent scarring and disfigurement, and

WHEREAS, Mr. Companioni's permanent injuries include fusions of his hips and lower back, surgeries of the midsection to repair the abdomen, multiple bouts of sepsis and infection, reattachment of the urethra and testicles, severe concussion syndrome, and posttraumatic stress disorder, and

WHEREAS, Mr. Companioni's medical expenses totaled more than $1.2 million, and

WHEREAS, Mr. Companioni, who was an executive chef at the time of the accident, has suffered a loss of earnings and his earning capacity has been devastated, and

WHEREAS, although permanently disabled, Mr. Companioni has persevered and attempted to support himself by operating a hot

dog stand at Tampa Bay Buccaneer games and other crowd events, and

WHEREAS, at the time of the accident, Mr. Companioni was an active, physically fit man in the prime of his life and had served his country as a Third Class Naval Reservist in a special unit attached to a Marine Corps and Navy Seal assault landing craft unit, and

WHEREAS, on March 26, 2004, a Hillsborough County jury found the City of Tampa, by and through its employee, Mr. Pierola, to be negligent and 90 percent at fault for the accident and resulting injuries to Mr. Companioni, and found Mr. Companioni to be 10 percent comparatively negligent, and

WHEREAS, the jury determined Mr. Companioni's damages to be in the amount of $17,928,800, and

WHEREAS, final judgment was entered on April 5, 2004, in the amount of the jury verdict, plus interest at the statutory rate of 7 percent per annum, and

WHEREAS, following multiple posttrial motions and appeals, which have denied Mr. Companioni justice for more than 10 years, the Florida Supreme Court and the Second District Court of Appeal upheld the verdict and final judgment, and

WHEREAS, the City of Tampa has paid $100,000, which is the sovereign immunity limit applicable to this case, leaving a remaining balance of $17,828,800, plus interest at the statutory rate of 7 percent per annum, for which Mr. Companioni seeks

satisfaction, and

WHEREAS, all legal remedies have been exhausted, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Tampa is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $17,828,800, plus interest at the statutory rate of 7 percent per annum, payable to Ramiro Companioni as compensation for injuries and damages sustained.

Section 3. The amount paid by the City of Tampa pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Mr. Companioni. The total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

HB 6551
RELIEF OF RAMIRO COMPANIONI BY THE CITY OF TAMPA/

SECOND AMENDED AFFIDAVIT AND VERIFIED STATEMENT OF LANCE BLOCK

STATE OF FLORIDA)

COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared, LANCE BLOCK, who being first duly sworn, deposes and says:

1. My name is Lance Block and I represent the claimant, Ramiro Companioni, as his attorney.

2. I am a member of the Florida Bar and am also registered as the lead lobbyist on behalf of the claimant.

3. If approved by the Legislature, the attorney fees shall be a total of 18 percent of the claim bill recovery for legal services rendered by Lance Block, P.A., and for legal services rendered to the claimant by prior attorneys D. Russell Stahl, Esq.; Dominic Fariello, P.A; Joel Eaton, Esq.; and Web Brennan, Esq.; all who were previously discharged by Mr. Companioni but have liens pending in the Circuit Court.

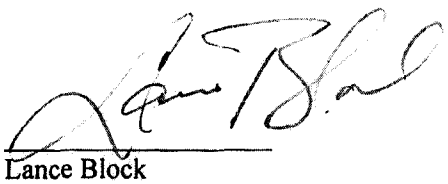
4. If approved by the Legislature, the lobbyist fees shall be a total of 7 percent of the claim bill recovery to be paid 3 percent to Ballard Partners P.A.; 3 percent to Corcoran and Johnston, P.A.; and 1 percent to Lance Block, P.A. The lobbyist fees are separate from the attorney fees.

5. If approved by the Legislature, the dollar amount of outstanding costs to be paid from any amount that may be awarded by the Legislature amount to $4,512.32 to be paid to Lance Block, P.A. for reimbursement of Special Master litigation and prehearing discovery, transcripts, travel related expenses between Tallahassee and Tampa, records review fee charged by Mr. Companioni's physician, photocopying of records and disc prepared by copying service for submissions to Special Masters, lobbying fees, and newspaper ads for Notices of Publication; and $540.00 owed to Ballard Partners, P.A. All costs to be reimbursed are external, out-of-pocket costs.

6. All costs resulting from the underlying litigation have been paid.

I declare that I have read the foregoing affidavit and that the facts stated in it are believed to be true.

FURTHER AFFIANT SAYETH NOT.



Lance Block

Under penalty of perjury Affiant has verified this affidavit without notarization as authorized by § 92.525, Fla. Stat. (1986). *See Dodrill v. Infe, Inc.*, 837 So.2d 1187 (Fla. 4th DCA 2003); *Goines v. State*, 691 So.2d 593 (Fla. 1st DCA 1997).

HB 6551
RELATING TO RELIEF/RAMIRO COMPANIONI/CITY OF TAMPA

AMENDED AFFIDAVIT OF MATHEW FORREST

STATE OF FLORIDA)

COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared, MATHEW FORREST, who being first duly sworn, deposes and says:

1. My name is Mathew Forrest. I am a member of Ballard Partners.

2. Ballard Partners and I are registered as lobbyists on behalf of the claimant.

3. If approved by the Legislature, my firm will receive three (3) percent from the recovery of the claim bill in this matter.

4 Our cost for expenses are $540.00 to be recovered from the claim bill.

5. All expenses are external costs.

I declare that I have read the foregoing affidavit and that the facts stated in it are believed to be true.

FURTHER AFFIANT SAYETH NAUGHT.

MATHEW FORREST

The foregoing instrument was acknowledged before me this 20th day of March, 2017, Mathew Forrest, **who is personally known to me** or who has produced N/A as identification and who did take an oath.

Notary Signature

SHANNA KAYE CRAWLEY
Commission # FF 161627
Expires January 4, 2019
Bonded thru Troy Fain Insurance 800-385-7019

Notary name – print

NOTARY PUBLIC, State of Florida

HB 6551
RELIEF OF RAMIRO COMPANIONI BY THE CITY OF TAMPA/

AMENDED AFFIDAVIT OF MATTHEW BLAIR

STATE OF FLORIDA)

COUNTY OF PASCO)

BEFORE ME, the undersigned authority, personally appeared, MATTHEW BLAIR, who being first duly sworn, deposes and says:

1. My name is Matthew Blair. I am a member of Corcoran and Johnston.

2. Corcoran and Johnston and I are registered as lobbyists on behalf of the claimant.

3. If approved by the Legislature, my firm will receive 3 percent from the recovery of the claim bill in this matter.

I declare that I have read the foregoing affidavit and that the facts stated in it are believed to be true.

FURTHER AFFIANT SAYETH NAUGHT.

MATTHEW BLAIR

The foregoing instrument was acknowledged before me this 20th day of March, 2017, Matthew Blair, who is personally known to me or who has produced _____ as identification and who did take an oath.

Notary Signature
Michelle A. Kazouris
Notary name – print

NOTARY PUBLIC, State of Florida

MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 7, 2017
Bonded Thru Budget Notary Services

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6551 (2017)

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: Civil Justice & Claims Subcommittee

Representative Santiago offered the following:

Amendment

Remove lines 111-122 and insert:

warrant in the sum of $17,828,800 payable to Ramiro Companioni as compensation for injuries and damages sustained.

Section 3. The amount paid by the City of Tampa pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Mr. Companioni. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $3,209,184, the total amount paid for lobbying fees may not exceed $1,248,016,

and the total amount paid for costs and other similar expenses relating to this claim may not exceed $4,512.32.