

Civil Justice & Courts Policy Committee

**Tuesday, February 2, 2010
8:00 AM - 9:45 AM
Reed Hall (102 HOB)**

Action Packet

**Larry Cretul
Speaker**

**Carl J. Domino
Chair**

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

2/2/2010 8:00:00AM

Location: Reed Hall (102 HOB)

Summary:

Civil Justice & Courts Policy Committee

Tuesday February 02, 2010 08:00 am

HB 285 Favorable With Committee Substitute Yeas: 10 Nays: 3

HB 329 Temporarily Deferred

HB 561 Favorable With Committee Substitute Yeas: 11 Nays: 2

Committee meeting was reported out: Tuesday, February 02, 2010 2:19:03PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

2/2/2010 8:00:00AM

Location: Reed Hall (102 HOB)

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Carl Domino (Chair)	X		
Eric Eisnaugle	X		
Adam M. Fetterman	X		
Anitere Flores	X		
James Frishe	X		
Audrey Gibson	X		
Eduardo Gonzalez	X		
Tom Grady	X		
Dave Murzin	X		
H. Marlene O'Toole	X		
Ralph Poppell	X		
Darren Soto	X		
Michael Weinstein	X		
Totals:	13	0	0

Committee meeting was reported out: Tuesday, February 02, 2010 2:19:03PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

2/2/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 285 : Parental Authority

Favorable With Committee Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman		X			
Anitere Flores	X				
James Frishe	X				
Audrey Gibson		X			
Eduardo Gonzalez		X			
Tom Grady	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
Total Yeas: 10		Total Nays: 3			

Appearances:

Parental Authority (Bill & Amendment)

Michael A. Haggard, FJA President - Opponent

Florida Justice Association
 13505 SW 73rd Ave
 Miami Florida 33156
 Phone: 786-506-9946

Parental Authority (Bill & Amendment)

Stacey Webb (Lobbyist) - Proponent

Associated Industries of Florida
 120 South Monroe
 Tallahassee Florida 32301
 Phone: 850-671-4401

Parental Authority (Bill & Amendment)

Maritza Delgado - Opponent

Crime Victims Resource Network
 782 NW 42 Avenue, #343
 Miami Florida 33156
 Phone: 786-231-4870

Parental Authority (Bill & Amendment)

William Large (Lobbyist) - Proponent

Florida Justice Refore Institute
 210 S. Monroe Street
 Tallahassee Florida 32301
 Phone: 850-222-0170

Committee meeting was reported out: Tuesday, February 02, 2010 2:19:03PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

2/2/2010 8:00:00AM

Location: Reed Hall (102 HOB)

Parental Authority

Winn Peebles (Lobbyist) - Proponent

Unlimited Sports/Florida Motorcycle Dealers Assoc.

207 West Park Avenue, Suite B

Tallahassee Florida 32301

Phone: 850-524-2038

Parental Authority (Bill & Amendment)

Samantha Hunter Padgett, Deputy General Counsel (Lobbyist) - Proponent

Florida Retail Federation

227 S. Adams Street

Tallahassee Florida 32301

Phone: 850-222-4082

Parental Authority (Bill & Amendment)

Warren Husband (Lobbyist) - Proponent

Florida Chamber of Commerce

PO Box 10909

Tallahassee Florida 32302

Phone: 850-205-9000

Parental Authority

Jim Brainerd, Attorney (Lobbyist) - Information Only

Florida Assoc. of Insurance Agents

2814 Rabbit Hill Road

Tallahassee Florida 32308

Phone: 850-508-6716

Parental Authority

Bob Harris (Lobbyist) - Proponent

Diving Equipment & Marketing Assn

2618 Centennial Place

Tallahassee Florida 32308

Phone: 850-222-0720

Parental Authority

David Cullen (Lobbyist) - Opponent

Advocacy Institute for Children

1674 University Pkwy

Sarasota Florida 34243

Phone: 941-323-2404

Committee meeting was reported out: Tuesday, February 02, 2010 2:19:03PM

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	<input checked="" type="checkbox"/>	(Y/N)
ADOPTED AS AMENDED	<input type="checkbox"/>	(Y/N)
ADOPTED W/O OBJECTION	<input type="checkbox"/>	(Y/N)
FAILED TO ADOPT	<input type="checkbox"/>	(Y/N)
WITHDRAWN	<input type="checkbox"/>	(Y/N)
OTHER	<input type="checkbox"/>	

*Adopted
with objection
2-2-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Horner offered the following:

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Amendment (with title amendment)

Remove everything after the enacting clause and insert:
Section 1. Paragraph (g) of subsection (1) and subsection (3)
of section 549.09, Florida Statutes, are amended to read:

549.09 Motorsport nonspectator liability release.—

(1) As used in this section:

(g) "Nonspectators" means event participants who have signed a motorsport liability release, including a minor if the minor's parent or guardian has also signed the release.

(3)(a) A motorsport liability release may be signed by more than one person if so long as the release form appears on each page, or side of a page, which is signed. A motorsport liability release shall be printed in 8 point type or larger.

(b) A release signed by a minor is valid if the release is also signed by the minor's parent or guardian.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 285 (2010)

Amendment No. 1

20 Section 2. Subsection (2) of section 744.301, Florida
21 Statutes, is amended to read:

22 744.301 Natural guardians.-

23 (2) (a) Natural guardians are authorized, on behalf of any
24 of their minor children, to:

25 1.-(a) Settle and consummate a settlement of any claim or
26 cause of action accruing to any of their minor children for
27 damages to the person or property of any of said minor children;

28 2.-(b) Collect, receive, manage, and dispose of the
29 proceeds of any such settlement;

30 3.-(c) Collect, receive, manage, and dispose of any real or
31 personal property distributed from an estate or trust;

32 4.-(d) Collect, receive, manage, and dispose of and make
33 elections regarding the proceeds from a life insurance policy or
34 annuity contract payable to, or otherwise accruing to the
35 benefit of, the child; and

36 5.-(e) Collect, receive, manage, dispose of, and make
37 elections regarding the proceeds of any benefit plan as defined
38 by s. 710.102, of which the minor is a beneficiary, participant,
39 or owner, without appointment, authority, or bond, when the
40 amounts received, in the aggregate, do not exceed \$15,000.

41 (b) In addition to the authority granted in paragraph (a),
42 natural guardians are authorized, on behalf of any of their
43 minor children, to waive and release, in advance, any claim or
44 cause of action that would accrue to any of their minor children
45 to the same extent that any adult may do so on his or her own
46 behalf.

Amendment No. 1

47 1. No waiver and release under this paragraph shall relieve
48 a released party of liability for injuries sustained by a minor
49 child for the released party's intentional misconduct, including
50 any act of sexual misconduct committed against the minor child.
51 As used in this paragraph "intentional misconduct" means that
52 the released party had actual knowledge of the wrongfulness of
53 the conduct and the high probability that injury to the minor
54 child would result and, despite that knowledge, pursued a course
55 of conduct resulting in injury.

56 2. No waiver and release under this paragraph shall
57 relieve a released party of liability for injuries sustained by
58 a minor child for the released party's gross negligence if such
59 gross negligence is established by clear and convincing
60 evidence. As used in this paragraph, "gross negligence" means
61 conduct by act or omission so reckless or wanting in care that
62 it constituted a conscious disregard or indifference to the life
63 or safety of the minor child. In any civil action, no claim or
64 cause of action under this subparagraph shall be permitted
65 unless there is, along with the initial pleading, a reasonable
66 showing by evidence in the record or proffered by the claimant
67 that would provide a reasonable basis for stating a cause of
68 action for gross negligence.

69 3. Liability that has been established for injuries
70 sustained by a minor child under the circumstances described in
71 subparagraphs 1. or 2. may not be imposed against an employer,
72 principal, corporation, or other legal entity for the conduct of
73 its employee or agent unless the claimant establishes, by clear
74 and convincing evidence, that:

Amendment No. 1

75 a. The employer, principal, corporation, or other legal
76 entity actively and knowingly participated in the employee's or
77 agent's conduct;

78 b. The officers or directors of the employer, principal,
79 corporation, or other legal entity knowingly condoned, ratified,
80 or consented to the employee's or agent's conduct; or

81 c. The employer, principal, corporation, or other legal
82 entity engaged in conduct that constituted intentional
83 misconduct or gross negligence and contributed to the injuries
84 suffered by the minor child.

85 Section 3. This act shall take effect July 1, 2010.

86
87
88 -----
89 **T I T L E A M E N D M E N T**

90 Remove the entire title and insert:

91 A bill to be entitled

92 An act relating to parental authority; amending s. 549.09,
93 F.S.; providing that a motorsport liability release signed
94 by a minor is valid if the release is also signed by the
95 minor's parent or guardian; amending s. 744.301, F.S.;
96 authorizing natural guardians to waive and release, in
97 advance, any claim or cause of action that would accrue to
98 any of their minor children to the same extent that any
99 adult may do so on his or her own behalf; providing that
100 such waiver and release shall not relieve a party of
101 liability for any acts of intentional misconduct committed
102 against the minor child; providing that such waiver and

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 285 (2010)

Amendment No. 1

103 release shall not relieve a party of liability for gross
104 negligence against a minor child; specifying circumstances
105 under which an employer, principal, corporation or other
106 legal entity may be liable for injuries sustained by a
107 minor child by conduct of an employee or agent; providing
108 an effective date.
109



HOUSE OF REPRESENTATIVES

Council/Committee on

Civil Justice & Courts Policy Committee

Date

2-2-10

Action

Amendment 1

HOUSE AMENDMENT FOR DRAFTING PURPOSES ONLY

(may be used in Council/Committee, but **not** on House Floor)

Failed to Adopt
2-2-10
ML

Amendment No.

2

Bill No.

285

(For filing with the Clerk, Council, Committee and Member Amendments **must** be prepared by House Bill Drafting Services (Rule 12.1))

Representative(s)/The Council/Committee on

Soto / Civil Justice

and courts policy committee

offered the following amendment:

on Amendment 1 to HB 285

Amendment:

on page

3

, line(s)

58-84

"a minor child that are not caused by an inherent risk of said activity. "Inherent risk of said activity" means those dangers or conditions which are an integral part of the activity participated in, including, but not limited to:

- (a) those dangers or conditions which cannot be avoided by taking reasonable precautions; or
- (b) those dangers or conditions which a reasonable person would expect when participating in such activity.

Copy to Council/Committee Administrative Assistant

FORMER DISNEY EMPLOYEES ARRESTED FOR POSSESSING AND/OR ENGAGING IN CHILD PORNOGRAPHY



Charles Hurrey



Andrew Neston



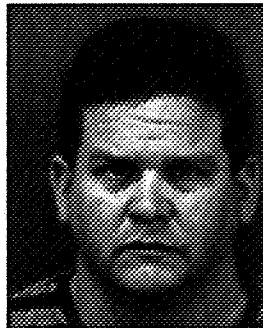
Tony Guerra



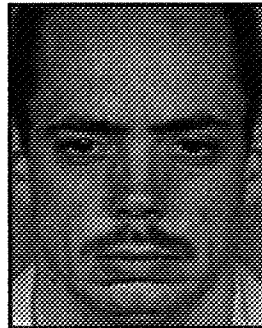
Paul Fazio



Michael T. Bott



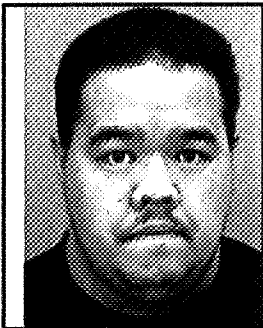
Timothy Lillo



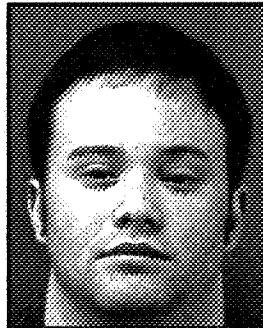
Michael Chartrand



Christian Johnson

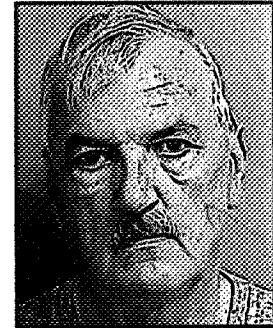


Kaulana Hiramawa

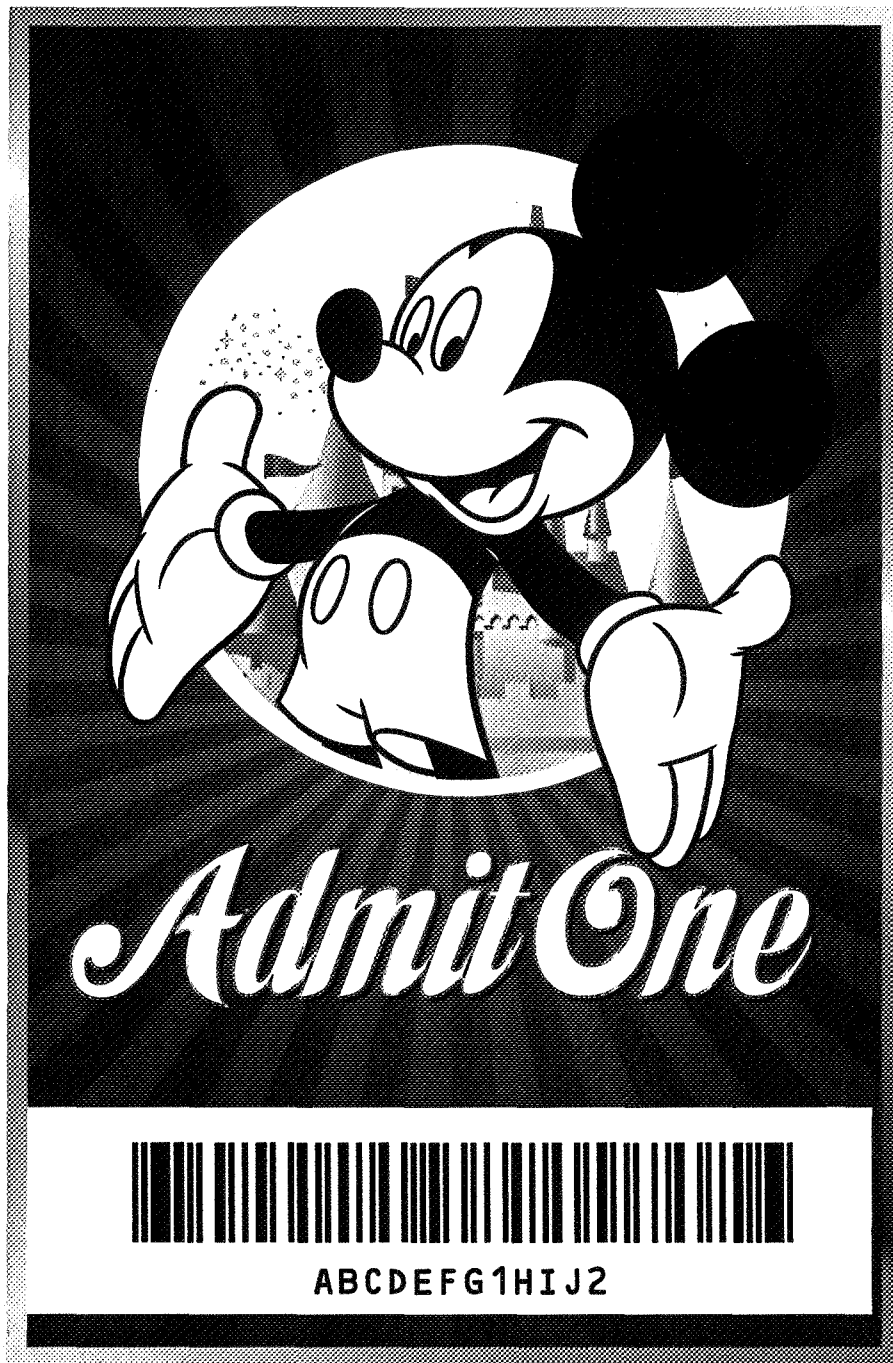


Adrijk Duran

20
ARRESTED
12,000
images found
in child
pornography



Rodney Dillon



BY PURCHASING A TICKET

**ANY NEGLIGENCE
AGAINST A CHILD**

IS WAIVED!!!

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

2/2/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 329 : Condominium Foreclosures

Temporarily Deferred

Appearances:

Condominium Foreclosures
Alice Vickers, Attorney (Lobbyist) - Opponent
Florida Legal Services, Inc.
2425 Torreya Drive
Tallahassee Florida 32303
Phone: 850-385-7900

Committee meeting was reported out: Tuesday, February 02, 2010 2:19:03PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	<u>✓</u>	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Adopted
w/out objection
2-2-10*

HB 329 TP -
POSTPONED
2-2-10

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative Robaina offered the following:

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) is added to section 83.46,
Florida Statutes, to read:

83.46 Rent; duration of tenancies.—

(4) (a) If assessments upon a condominium unit subject to a
rental agreement are delinquent for more than 30 days, the
association may require the tenant to pay the association any
moneys the unit owner landlord owes the association, not to
exceed the amount of moneys the tenant owes the unit owner
landlord during the pendency of the rental agreement. Any
payment made by the tenant to the association shall be credited
to the unit owner landlord's account with the condominium
association.

Amendment No. 1

19 (b) If a unit is subject to a rental agreement, and if a
20 unit or the unit owner's monetary obligations to the association
21 become delinquent, the unit's tenant is jointly and severally
22 liable with the unit and unit owner for the unit and unit
23 owner's monetary obligations to the association.

24 1. The tenant's monetary obligations to the association
25 include, but are not limited to, all assessments and
26 installments, late charges, collection costs, attorney's fees
27 and court costs, and other monetary obligations from the unit
28 owner to the association, and any interest thereon, that come
29 due against the unit or the unit owner from the date of the
30 association's notice to the tenant, and accruing to the date all
31 the monetary obligations are paid in full, regardless of whether
32 the lease is terminated or otherwise concluded. In addition to
33 all other remedies, the association may enforce the tenant's
34 liability by evicting the tenant, either in the association's
35 name or in the name of the unit owner, and by suspending the
36 unit's right to utilize common elements other than those
37 necessary for ingress and egress.

38 2. The liability of a tenant is limited to the amount of
39 moneys due from the tenant to the unit owner. However, a
40 tenant's prepayment of a lease obligation does not excuse the
41 tenant for liability for the amount of the prepayment unless the
42 prepayment is either expressly stated in the lease or is for an
43 installment of monthly rent as expressly provided in the lease
44 and paid within 5 days after the installment due date, and the
45 tenant provides the association proof of payment in the form of
46 a canceled check.

Amendment No. 1

47 3. Upon the association's notice to the tenant, the tenant
48 shall pay all moneys, whether as rent or otherwise, owed
49 pursuant to the lease, directly to the association until payment
50 of the monetary obligations due and accruing from the unit owner
51 to the association are paid in full, for which the unit owner,
52 contingent upon the unit owner's default, transfers, assigns,
53 conveys, sets over, and delivers to the association all moneys,
54 whether as rent or otherwise, owed under the lease with the
55 right, but without the obligation, to collect all of such moneys
56 that may come due under the lease.

57 Section 2. Section 627.714, Florida Statutes, is created
58 to read:

59 627.714 Residential condominium unit owner coverage; loss
60 assessment coverage required; excess coverage provision
61 required.-For policies issued or renewed on or after July 1,
62 2010, coverage under a unit owner's residential property policy
63 shall include property loss assessment coverage of at least
64 \$2,000 for all assessments made as a result of the same direct
65 loss to the property, regardless of the number of assessments,
66 owned by all members of the association collectively when such
67 loss is of the type of loss covered by the unit owner's
68 residential property insurance policy, to which a deductible
69 shall apply of no more than \$250 per direct property loss. If a
70 deductible was or will be applied to other property loss
71 sustained by the unit owner resulting from the same direct loss
72 to the property, no deductible shall apply to the loss
73 assessment coverage. Every individual unit owner's residential
74 property policy must contain a provision stating that the

Amendment No. 1

75 coverage afforded by such policy is excess coverage over the
76 amount recoverable under any other policy covering the same
77 property.

78 Section 3. Subsection (6) is added to section 718.106,
79 Florida Statutes, to read:

80 718.106 Condominium parcels; appurtenances; possession and
81 enjoyment.-

82 (6) Notwithstanding the provisions of this section, if a
83 condominium unit is in foreclosure and the unit has unpaid
84 assessments of 90 days or more, the association may, but is not
85 required to, take one or more of the following actions:

86 (a) Deny any owner or tenant the right to occupy the
87 condominium unit.

88 (b) Deny any owner or tenant of the unit the use of the
89 common areas. However, this paragraph shall not prevent any
90 owner or tenant from using the common areas in order to leave
91 the premises.

92 (c) Deny any owner or tenant of the unit use of
93 recreational facilities.

94 (d) Deny any owner or tenant of the unit the use of a
95 marina space, which may be enforced by towing of the vessel at
96 the expense of the owner.

97 (e) Deny any owner of his or her voting rights.

98
99 Notwithstanding any provision of this subsection, if a tenant is
100 paying a fair market rent and the tenant pays the entire rental
101 amount due for a rental period to the association, the
102 association may not deny the tenant under this subsection the

)
Amendment No. 1

103 right to occupy the unit, the use of common areas, the use of
104 recreational facilities, or the use of parking areas during such
105 rental period. Any rent paid by the tenant to the association
106 shall be credited to the landlord's account with the condominium
107 association for that unit pursuant to s. 83.46(4).

108 Section 4. Paragraphs (a), (b), (c), (d), (f), (g), (j),
109 and (n) of subsection (11) of section 718.111, Florida Statutes,
110 are amended to read:

111 718.111 The association.—

112 (11) INSURANCE.—In order to protect the safety, health,
113 and welfare of the people of the State of Florida and to ensure
114 consistency in the provision of insurance coverage to
115 condominiums and their unit owners, this subsection applies to
116 every residential condominium in the state, regardless of the
117 date of its declaration of condominium. It is the intent of the
118 Legislature to encourage lower or stable insurance premiums for
119 associations described in this subsection.

120 (a) Adequate property hazard insurance, regardless of any
121 requirement in the declaration of condominium for coverage by
122 the association for full insurable value, replacement cost, or
123 similar coverage, shall be based upon the replacement cost of
124 the property to be insured as determined by an independent
125 insurance appraisal or update of a prior appraisal. The
126 replacement cost ~~full insurable value~~ shall be determined at
127 least once every 36 months.

128 1. An association or group of associations may provide
129 adequate property hazard insurance through a self-insurance fund
130 that complies with the requirements of ss. 624.460-624.488.

Amendment No. 1

131 2. The association may also provide adequate property
132 ~~hazard~~ insurance coverage for a group of no fewer than three
133 communities created and operating under this chapter, chapter
134 719, chapter 720, or chapter 721 by obtaining and maintaining
135 for such communities insurance coverage sufficient to cover an
136 amount equal to the probable maximum loss for the communities
137 for a 250-year windstorm event. Such probable maximum loss must
138 be determined through the use of a competent model that has been
139 accepted by the Florida Commission on Hurricane Loss Projection
140 Methodology. No policy or program providing such coverage shall
141 be issued or renewed after July 1, 2008, unless it has been
142 reviewed and approved by the Office of Insurance Regulation. The
143 review and approval shall include approval of the policy and
144 related forms pursuant to ss. 627.410 and 627.411, approval of
145 the rates pursuant to s. 627.062, a determination that the loss
146 model approved by the commission was accurately and
147 appropriately applied to the insured structures to determine the
148 250-year probable maximum loss, and a determination that
149 complete and accurate disclosure of all material provisions is
150 provided to condominium unit owners prior to execution of the
151 agreement by a condominium association.

152 3. When determining the adequate amount of property hazard
153 insurance coverage, the association may consider deductibles as
154 determined by this subsection.

155 (b) If an association is a developer-controlled
156 association, the association shall exercise its best efforts to
157 obtain and maintain insurance as described in paragraph (a).
158 Failure to obtain and maintain adequate property hazard

Amendment No. 1

159 insurance during any period of developer control constitutes a
160 breach of fiduciary responsibility by the developer-appointed
161 members of the board of directors of the association, unless the
162 members can show that despite such failure, they have made their
163 best efforts to maintain the required coverage.

164 (c) Policies may include deductibles as determined by the
165 board.

166 1. The deductibles shall be consistent with industry
167 standards and prevailing practice for communities of similar
168 size and age, and having similar construction and facilities in
169 the locale where the condominium property is situated.

170 2. The deductibles may be based upon available funds,
171 including reserve accounts, or predetermined assessment
172 authority at the time the insurance is obtained.

173 3. The board shall establish the amount of deductibles
174 based upon the level of available funds and predetermined
175 assessment authority at a meeting of the board. ~~Such meeting~~
176 ~~shall be open to all unit owners in the manner set forth in s.~~
177 ~~718.112(2)(e). The notice of such meeting must state the~~
178 ~~proposed deductible and the available funds and the assessment~~
179 ~~authority relied upon by the board and estimate any potential~~
180 ~~assessment amount against each unit, if any. The meeting~~
181 ~~described in this paragraph may be held in conjunction with a~~
182 ~~meeting to consider the proposed budget or an amendment thereto.~~

183 (d) An association controlled by unit owners operating as
184 a residential condominium shall use its best efforts to obtain
185 and maintain adequate property insurance to protect the
186 association, the association property, the common elements, and

Amendment No. 1

187 the condominium property that is required to be insured by the
188 association pursuant to this subsection.

189 (f) Every property hazard insurance policy issued or
190 renewed on or after January 1, 2009, for the purpose of
191 protecting the condominium shall provide primary coverage for:

192 1. All portions of the condominium property as originally
193 installed or replacement of like kind and quality, in accordance
194 with the original plans and specifications.

195 2. All alterations or additions made to the condominium
196 property or association property pursuant to s. 718.113(2).

197 3. The coverage shall exclude all personal property within
198 the unit or limited common elements, and floor, wall, and
199 ceiling coverings, electrical fixtures, appliances, water
200 heaters, water filters, built-in cabinets and countertops, and
201 window treatments, including curtains, drapes, blinds, hardware,
202 and similar window treatment components, or replacements of any
203 of the foregoing which are located within the boundaries of the
204 unit and serve only such unit. Such property and any insurance
205 thereupon shall be the responsibility of the unit owner.

206 (g) A condominium unit owner's policy shall conform to the
207 requirements of s. 627.714. Every hazard insurance policy issued
208 or renewed on or after January 1, 2009, to an individual unit
209 owner must contain a provision stating that the coverage
210 afforded by such policy is excess coverage over the amount
211 recoverable under any other policy covering the same property.
212 Such policies must include special assessment coverage of no
213 less than \$2,000 per occurrence. An insurance policy issued to
214 an individual unit owner providing such coverage does not

Amendment No. 1

215 ~~provide rights of subrogation against the condominium~~
216 ~~association operating the condominium in which such individual's~~
217 ~~unit is located.~~

218 ~~1. All improvements or additions to the condominium~~
219 ~~property that benefit fewer than all unit owners shall be~~
220 ~~insured by the unit owner or owners having the use thereof, or~~
221 ~~may be insured by the association at the cost and expense of the~~
222 ~~unit owners having the use thereof.~~

223 ~~2. The association shall require each owner to provide~~
224 ~~evidence of a currently effective policy of hazard and liability~~
225 ~~insurance upon request, but not more than once per year. Upon~~
226 ~~the failure of an owner to provide a certificate of insurance~~
227 ~~issued by an insurer approved to write such insurance in this~~
228 ~~state within 30 days after the date on which a written request~~
229 ~~is delivered, the association may purchase a policy of insurance~~
230 ~~on behalf of an owner. The cost of such a policy, together with~~
231 ~~reconstruction costs undertaken by the association but which are~~
232 ~~the responsibility of the unit owner, may be collected in the~~
233 ~~manner provided for the collection of assessments in s. 718.116.~~

234 ~~1.3.~~ All reconstruction work after a property casualty
235 loss shall be undertaken by the association except as otherwise
236 authorized in this section. A unit owner may undertake
237 reconstruction work on portions of the unit with the prior
238 written consent of the board of administration. However, such
239 work may be conditioned upon the approval of the repair methods,
240 the qualifications of the proposed contractor, or the contract
241 that is used for that purpose. A unit owner shall obtain all

Amendment No. 1

242 required governmental permits and approvals prior to commencing
243 reconstruction.

244 ~~2.4.~~ Unit owners are responsible for the cost of
245 reconstruction of any portions of the condominium property for
246 which the unit owner is required to carry property casualty
247 insurance, and any such reconstruction work undertaken by the
248 association shall be chargeable to the unit owner and
249 enforceable as an assessment pursuant to s. 718.116. ~~The~~
250 ~~association must be an additional named insured and loss payee~~
251 ~~on all casualty insurance policies issued to unit owners in the~~
252 ~~condominium operated by the association.~~

253 ~~3.5.~~ A multicondominium association may elect, by a
254 majority vote of the collective members of the condominiums
255 operated by the association, to operate such condominiums as a
256 single condominium for purposes of insurance matters, including,
257 but not limited to, the purchase of the property hazard
258 insurance required by this section and the apportionment of
259 deductibles and damages in excess of coverage. The election to
260 aggregate the treatment of insurance premiums, deductibles, and
261 excess damages constitutes an amendment to the declaration of
262 all condominiums operated by the association, and the costs of
263 insurance shall be stated in the association budget. The
264 amendments shall be recorded as required by s. 718.110.

265 (j) Any portion of the condominium property required to be
266 insured by the association against property casualty loss
267 pursuant to paragraph (f) which is damaged ~~by casualty~~ shall be
268 reconstructed, repaired, or replaced as necessary by the
269 association as a common expense. All property hazard insurance

Amendment No. 1

270 deductibles, uninsured losses, and other damages in excess of
271 property hazard insurance coverage under the property hazard
272 insurance policies maintained by the association are a common
273 expense of the condominium, except that:

274 1. A unit owner is responsible for the costs of repair or
275 replacement of any portion of the condominium property not paid
276 by insurance proceeds, if such damage is caused by intentional
277 conduct, negligence, or failure to comply with the terms of the
278 declaration or the rules of the association by a unit owner, the
279 members of his or her family, unit occupants, tenants, guests,
280 or invitees, without compromise of the subrogation rights of any
281 insurer ~~as set forth in paragraph (g)~~.

282 2. The provisions of subparagraph 1. regarding the
283 financial responsibility of a unit owner for the costs of
284 repairing or replacing other portions of the condominium
285 property also apply to the costs of repair or replacement of
286 personal property of other unit owners or the association, as
287 well as other property, whether real or personal, which the unit
288 owners are required to insure ~~under paragraph (g)~~.

289 3. To the extent the cost of repair or reconstruction for
290 which the unit owner is responsible under this paragraph is
291 reimbursed to the association by insurance proceeds, and, to the
292 extent the association has collected the cost of such repair or
293 reconstruction from the unit owner, the association shall
294 reimburse the unit owner without the waiver of any rights of
295 subrogation.

296 4. The association is not obligated to pay for
297 reconstruction or repairs of property casualty losses as a

Amendment No. 1

298 common expense if the property casualty losses were known or
299 should have been known to a unit owner and were not reported to
300 the association until after the insurance claim of the
301 association for that property casualty was settled or resolved
302 with finality, or denied on the basis that it was untimely
303 filed.

304 (n) The association is not obligated to pay for any
305 reconstruction or repair expenses due to property casualty loss
306 to any improvements installed by a current or former owner of
307 the unit or by the developer if the improvement benefits only
308 the unit for which it was installed and is not part of the
309 standard improvements installed by the developer on all units as
310 part of original construction, whether or not such improvement
311 is located within the unit. This paragraph does not relieve any
312 party of its obligations regarding recovery due under any
313 insurance implemented specifically for any such improvements.

314 Section 5. Paragraph (h) ~~is added to subsection (1) of~~
315 section 718.116, Florida Statutes, and subsection (2) of that
316 section is amended, to read:

317 718.116 Assessments; liability; lien and priority;
318 interest; collection; rent during foreclosure.-

319 (1)(a) A unit owner, regardless of how his or her title
320 has been acquired, including by purchase at a foreclosure sale
321 or by deed in lieu of foreclosure, is liable for all assessments
322 which come due while he or she is the unit owner. Additionally,
323 a unit owner is jointly and severally liable with the previous
324 owner for all unpaid assessments that came due up to the time of
325 transfer of title. This liability is without prejudice to any

Amendment No. 1

326 right the owner may have to recover from the previous owner the
327 amounts paid by the owner.

328 (b) The liability of a first mortgagee or its successor or
329 assignees who acquire title to a unit by foreclosure or by deed
330 in lieu of foreclosure for the unpaid assessments that became
331 due prior to the mortgagee's acquisition of title is limited to
332 the lesser of:

333 1. The unit's unpaid common expenses and regular periodic
334 assessments which accrued or came due during the 6 months
335 immediately preceding the acquisition of title and for which
336 payment in full has not been received by the association; or

337 2. One percent of the original mortgage debt. The
338 provisions of this paragraph apply only if the first mortgagee
339 joined the association as a defendant in the foreclosure action.
340 Joinder of the association is not required if, on the date the
341 complaint is filed, the association was dissolved or did not
342 maintain an office or agent for service of process at a location
343 which was known to or reasonably discoverable by the mortgagee.

344 (h) Where it is anticipated that the assessments owed by a
345 unit will in the near future be limited by paragraph (b), the
346 board of administration may elect to negotiate with, and accept
347 from, the first mortgagee or his or her successor or assignee a
348 payment in full settlement of the future obligation that is less
349 than the sum that will be due in the future as limited by
350 paragraph (b). The settlement shall only limit the obligations
351 owed by the unit should the mortgagee or his or her successor or
352 assignee acquire title to the unit in the foreclosure case
353 pending at the time of the settlement. A settlement or agreement

Amendment No. 1

354 under this paragraph does not limit the amount due from a unit
355 owner under paragraph (a).

356 (2) The liability for assessments may not be avoided by
357 waiver of the use or enjoyment of any common element, denial of
358 the use or enjoyment of the unit, denial of the use or enjoyment
359 of any common element, or by abandonment of the unit for which
360 the assessments are made.

361 Section 6. This act shall take effect July 1, 2010.

362

363

364

365

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

366
367 Remove the entire title and insert:

368 A bill to be entitled

369 An act relating to condominium associations; amending s.
370 83.46, F.S.; ~~requiring certain condominium unit tenants to~~
371 pay moneys owed on behalf of the unit to the association;
372 providing liability; providing a tenant's obligations to
373 the association; creating s. 627.714, F.S.; requiring that
374 coverage under a unit owner's policy for certain
375 assessments include at least a minimum amount of loss
376 assessment coverage; requiring that every property
377 insurance policy issued to an individual unit owner
378 contain a specified provision; amending s. 718.106, F.S.;
379 providing condominium associations with certain powers
380 relating to owners and tenants of a unit in foreclosure
381 and more than 90 days delinquent; providing an exception

Amendment No. 1

382 for a tenant who pays the rent directly to the
383 association; amending s. 718.111, F.S.; requiring that
384 adequate property insurance be based upon the replacement
385 cost of the property to be insured as determined by an
386 independent appraisal or update of a prior appraisal;
387 requiring that such replacement cost be determined at
388 least once within a specified period; providing means by
389 which an association may provide adequate property
390 insurance; providing requirements for such coverage for a
391 group of communities covering their probable maximum loss
392 for a specified windstorm event; authorizing an
393 association to consider deductibles when determining an
394 adequate amount of property insurance; providing that
395 failure to maintain adequate property insurance
396 constitutes a breach of fiduciary duty by the members of
397 the board of directors of an association; revising the
398 procedures for the board to establish the amount of
399 deductibles; requiring that an association controlled by
400 unit owners operating as a residential condominium use its
401 best efforts to obtain and maintain adequate property
402 insurance to protect the association and certain property;
403 requiring that every property insurance policy issued or
404 renewed on or after a specified date provide certain
405 coverage; excluding certain items from such requirement;
406 providing that excluded items and any insurance thereupon
407 are the responsibility of the unit owner; requiring that
408 condominium unit owners' policies conform to certain
409 provisions of state law; deleting provisions relating to

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

Amendment No. 1

410 certain hazard and casualty insurance policies; conforming
411 provisions to changes made by the act; amending s.
412 718.116, F.S.; authorizing the board of administration to
413 settle the future obligation of a lender to pay prior
414 assessments owed; specifying that such settlement does not
415 limit the personal liability of the unit owner; specifying
416 additional circumstances for which liability for
417 assessments may not be avoided; providing an effective
418 date.

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

2/2/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 561 : Condominiums

Favorable With Committee Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman		X			
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto		X			
Michael Weinstein	X				
Carl Domino (Chair)	X				
Total Yeas: 11 Total Nays: 2					

Appearances:

Condominiums

Yeline Goin, Attorney (Lobbyist) - Proponent
 Community Association Leadership Lobby
 Phone: 850-284-2460

Condominiums

Travis Moore (Lobbyist) - Proponent
 Community Associations Institute
 P.O. Box 781
 Largo Florida 33779
 Phone: 727-421-6902

Condominiums

David Hart, VP Gov't Affairs (Lobbyist) - Proponent
 FHBA
 201 E. Park Avenue
 Tallahassee Florida
 Phone: 850-224-4316

Condominiums

John Gatlin, Deputy Chief - Opponent
 Florida Fire Chiefs Assoc
 327 N. Adams Street
 Tallahassee Florida 32301
 Phone: 850-891-6600

Committee meeting was reported out: Tuesday, February 02, 2010 2:19:03PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

2/2/2010 8:00:00AM

Location: Reed Hall (102 HOB)
Condominiums (Amendment)
Jim Brainerd, Attorney (Lobbyist) - Proponent
Florida Association of Insurance Agents
2814 Rabbit Hill Road
Tallahassee Florida 32308
Phone: 850-508-6716

Committee meeting was reported out: Tuesday, February 02, 2010 2:19:03PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 561 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

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

*Adopted
w/out
objection
2-2-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Bogdanoff offered the following:

4
5 **Amendment**

6 Remove lines 144-148 and insert:

7 (13) A condominium that is less than three stories in
8 height and has an exterior means of egress corridor is exempt
9 from installing a manual fire alarm system as required in s. 9.6
10 of the most recent edition of the Life Safety Code adopted in
11 the Florida Fire Prevention Code, or as same may be amended or
12 renumbered.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 561 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

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

*Adopted w/out
objection
2-2-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee
3 Representative(s) Bogdanoff offered the following:

4
5 **Amendment**

6 Remove line 452 and insert:
7 otherwise permitted by the bylaws. In the event that the ~~bylaws~~
8 governing documents

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 561 (2010)

Amendment No. 3

COUNCIL/COMMITTEE ACTION

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

*Adopted
w/out
objection
2-2-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Bogdanoff offered the following:

4
5 **Amendment**

6 Remove line 598 and insert:

7 from service on the board. Notwithstanding the foregoing, a
8 director shall not be automatically removed from the board if
9 the director's failure to provide the completed education
10 certificate results from a failure of the education provider to
11 timely provide it. The secretary shall cause the

Amendment No. 4

COUNCIL/COMMITTEE ACTION

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

*Adopted
w/out
objection
2-2-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Bogdanoff offered the following:
4

5 **Amendment**

6 Remove lines 680-703 and insert:

7 ~~of common areas~~ with a sprinkler system or any other form of
8 engineered lifesafety system before the end of 2019 ~~2014~~.

9 1. A vote to forego retrofitting may be obtained by
10 limited proxy or by a ballot personally cast at a duly called
11 membership meeting, or by execution of a written consent by the
12 member, and shall be effective upon the recording of a
13 certificate attesting to such vote in the public records of the
14 county where the condominium is located. The association shall
15 mail, or hand deliver, ~~or electronically transmit~~ to each unit
16 owner written notice at least 14 days prior to such membership
17 meeting in which the vote to forego retrofitting of the required
18 fire sprinkler system or any other form of engineered lifesafety
19 system is to take place. Within 30 days after the association's

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 561 (2010)

Amendment No. 4

20 opt-out vote, notice of the results of the opt-out vote shall be
21 mailed, or hand delivered, ~~or electronically transmitted~~ to all
22 unit owners. Evidence of compliance with this 30-day notice
23 shall be made by an affidavit executed by the person providing
24 the notice and filed among the official records of the
25 association. After such notice is provided to each owner, a copy
26 of such notice shall be provided by the current owner to a new
27 owner prior to closing and shall be provided by a unit owner to
28 a renter prior to signing a lease.

29 2. If there has been a previous vote approving the
30 association to forego retrofitting, a vote to require
31 retrofitting may be obtained at a special meeting of the unit
32 owners called by a petition of least 10 percent of the voting
33 interests. Such a vote may only be called for once every 3
34 years. Notice
35

Amendment No. 5

COUNCIL/COMMITTEE ACTION

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

*Adopted
w/out
objection
2-2-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Bogdanoff offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 119-120, insert:

7 Section 1. Subsection (5) of section 719.1055, Florida
8 Statutes, is amended to read:

9 719.1055 Amendment of cooperative documents; alteration and
10 acquisition of property.--

11 (5) There shall be a provision that a certificate of
12 compliance from a licensed electrical contractor or electrician
13 may be accepted by the association's board as evidence of
14 compliance of the cooperative units with the applicable fire and
15 life safety code. Notwithstanding the provisions of chapter 633
16 or of any other code, statute, ordinance, administrative rule,
17 or regulation, or any interpretation of the foregoing, a
18 cooperative or unit owner is not obligated to retrofit the
19 common elements, common areas, association-owned property, or

Amendment No. 5

20 units of a residential cooperative with a fire sprinkler system
21 or any other form of engineered life safety system in a building
22 that has been certified for occupancy by the applicable
23 governmental entity, if the unit owners have voted to forego
24 such retrofitting and engineered life safety system by the
25 affirmative vote of two-thirds of all voting interests in the
26 affected cooperative. ~~However, a cooperative may not forego the~~
27 ~~retrofitting with a fire sprinkler system of common areas in a~~
28 ~~high-rise building. For purposes of this subsection, the term~~
29 ~~"high-rise building" means a building that is greater than 75~~
30 ~~feet in height where the building height is measured from the~~
31 ~~lowest level of fire department access to the floor of the~~
32 ~~highest occupiable story. For purposes of this subsection, the~~
33 ~~term "common areas" means any enclosed hallway, corridor, lobby,~~
34 ~~stairwell, or entryway. In no event shall the local authority~~
35 ~~having jurisdiction require completion of retrofitting of common~~
36 ~~areas with a sprinkler system or other form of engineered~~
37 lifesafety system before the end of 2019 2014.

38 (a) A vote to forego retrofitting may be obtained by
39 limited proxy or by a ballot personally cast at a duly called
40 membership meeting, or by execution of a written consent by the
41 member, and shall be effective upon the recording of a
42 certificate attesting to such vote in the public records of the
43 county where the cooperative is located. The association shall
44 mail, or hand deliver, ~~or electronically transmit~~ to each unit
45 owner written notice at least 14 days prior to such membership
46 meeting in which the vote to forego retrofitting of the required
47 fire sprinkler system or any other form of engineered lifesafety

Amendment No. 5

48 system is to take place. Within 30 days after the association's
49 opt-out vote, notice of the results of the opt-out vote shall be
50 mailed, or hand delivered, ~~or electronically transmitted~~ to all
51 unit owners. Evidence of compliance with this 30-day notice
52 shall be made by an affidavit executed by the person providing
53 the notice and filed among the official records of the
54 association. After such notice is provided to each owner, a copy
55 of such notice shall be provided by the current owner to a new
56 owner prior to closing and shall be provided by a unit owner to
57 a renter prior to signing a lease.

58 (b) If there has been a previous vote approving the
59 association to forego retrofitting, a vote to require
60 retrofitting may be obtained at a special meeting of the unit
61 owners called by a petition of least 10 percent of the voting
62 interests. Such a vote may only be called for once every 3
63 years. Notice shall be provided as required for any regularly
64 called meeting of the unit owners, and the notice shall state
65 the purpose of the meeting. Electronic transmission may not be
66 used as a method of giving notice of a meeting called in whole
67 or in part for this purpose.

68 (c)-(b) As part of the information collected annually from
69 cooperatives, the division shall require associations to report
70 the membership vote and recording of a certificate under this
71 subsection and, if retrofitting has been undertaken, the per-
72 unit cost of such work. The division shall annually report to
73 the Division of State Fire Marshal of the Department of
74 Financial Services the number of cooperatives that have elected
75 to forego retrofitting.

Amendment No. 5

76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92

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

Remove line 2 and insert:

An act relating to community associations; amending s. 719.1055, F.S.; deleting a provision prohibiting an association from foregoing the retrofitting with a fire sprinkler system of common areas in a high-rise building; prohibiting local authorities having jurisdiction from requiring retrofitting with a sprinkler system or other engineered lifesafety system before a specified date; providing requirements for a special meeting of unit owners that may be called every 3 years in order to vote to require retrofitting of the sprinkler system or other engineered lifesafety system; providing meeting notice requirements; creating s. 627.714,

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 561 (2010)

Amendment No. 6

COUNCIL/COMMITTEE ACTION

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

*Adopted
w/out
objection
2-2-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee
3 Representative(s) Bogdanoff offered the following:

Amendment

6 Remove lines 663-665 and insert:

7 unit owner is not obligated to retrofit the common elements,
8 common areas, association-owned property, or units of a
9 residential condominium with a fire sprinkler system or any
10 other form of engineered lifesafety system in a building that
11 has

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

2/2/2010 8:00:00AM

Location: Reed Hall (102 HOB)

Other Business Appearance:

Foreclosure

Jennifer D. Bailey, Circuit Court Judge (State Employee) - Information Only
Florida Supreme Court Task Force on Residential Mortgage Foreclosures
73 W. Flagler Street, #1307
Miami Florida 33130
Phone: 305-349-7152

Foreclosure Mediation

Anthony DiMarco (Lobbyist) - Information Only
Florida Bankers Association, EVP
1001 Thomasville Road
Tallahassee Florida 32303
Phone: 850-224-2265

Supreme Court Administrative Order Re: Foreclosures

David Muller, Co-Executive Director (Lobbyist) - Information Only
Community Association Leadership Lobby
6230 University Drive, Suite 204
Sarasota Florida
Phone: 941-366-8826

Supreme Court Administrative Order Re: Foreclosure Mandatory Mediations

Marc Ben-Ezra - Opponent
Ben-Ezra & Katz, P.A.
2901 Stirling Road, Suite 300
Ft. Lauderdale Florida 33312
Phone: 305-770-4100

Committee meeting was reported out: Tuesday, February 02, 2010 2:19:03PM