State Administration & Technology Appropriations Subcommittee

Tuesday, February 13, 2024
11:30 AM - 2:30 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Demi Busatta Cabrera
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Administration & Technology Appropriations Subcommittee

Start Date and Time: Tuesday, February 13, 2024 11:30 am

End Date and Time: Tuesday, February 13, 2024 02:30 pm

Location: Webster Hall (212 Knott)

Duration: 3.00 hrs

Consideration of the following bill(s):

CS/HB 161 Payments for Health Care Providers and Surgical Procedures under Workers' Compensation by Insurance & Banking Subcommittee, Daley, LaMarca

CS/HB 497 Continuing Education Requirements by Regulatory Reform & Economic Development Subcommittee, Melo

HB 611 Public Deposits by Botana

CS/HB 613 Mobile Home Park Lot Tenancies by Regulatory Reform & Economic Development Subcommittee, Stark

CS/HB 1021 Community Associations by Regulatory Reform & Economic Development Subcommittee, Lopez, V.

CS/HB 1029 My Safe Florida Condominium Pilot Program by Insurance & Banking Subcommittee, Lopez, V., Hunschofsky

HB 1217 Florida Homeowners' Construction Recovery Fund by Daniels

CS/HB 1263 My Safe Florida Home Program by Insurance & Banking Subcommittee, LaMarca

CS/HB 1555 Cybersecurity by Energy, Communications & Cybersecurity Subcommittee, Giallombardo

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the “Visiting the House” tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 02/09/2024 4:16PM by EHP

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 161 Payments for Health Care Providers and Surgical Procedures under Workers' Compensation
SPONSOR(S): Insurance & Banking Subcommittee, Daley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Herrera	Lloyd
2) State Administration & Technology Appropriations Subcommittee		Perez	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

Florida's Workers' Compensation Law (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require. The Department of Financial Services (DFS), Division of Workers' Compensation (DWC), provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers.

A three-member panel (panel) consisting of the Chief Financial Officer (CFO) or his or her designee and two Governor's appointees sets the maximum reimbursement allowances (MRAs). DWC incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. The panel develops three different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The WC Law manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement, while reimbursement for surgical procedures is limited to 140 percent of Medicare.

The WC Law limits the amount a health care provider can be paid for expert testimony during depositions on a workers' compensation claim. As an expert medical witness, a workers' compensation health care provider is limited to a maximum $200, per hour, unless they only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute, then they are limited to a maximum of $200, per day.

The bill increases the maximum hourly amount allowed expert witnesses from $200, per hour, to $300, per hour. For those expert witnesses' subject to the daily rate, the maximum amount allowed is increased from $200, per day, to $300, per day.

Also, the bill increases the maximum reimbursement for physician licensed under ch. 458 or ch. 459, from 110 percent, to 150 percent of the reimbursement allowed by Medicare. Additionally, the bill increases the maximum reimbursement for surgical procedures from 140 percent, to 150 percent of the reimbursement allowed by Medicare.

The bill has an indeterminate negative impact on state and local government expenditures, and positive and negative impacts on the private sector. *See* Fiscal Analysis & Economic Impact Statement.

The bill is effective July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Division of Workers' Compensation

Florida's Workers' Compensation Law[1] (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.[2] The Department of Financial Services (DFS), Division of Workers' Compensation (DWC) provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate workers' compensation health care providers[3] that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel (panel) is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.[4] DWC incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals[5] through the rulemaking process provided by the Administrative Procedures Act.[6] In 2023, CS/CS/HB 487 eliminated the authority of the Three-Member Panel to adopt MRA's for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers.[7] Instead, it mandates DWC to annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1st, effective the following January 1st.[8]

Medical Services

DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers. Healthcare providers must receive authorization from the insurer before providing treatment and submit treatment reports to the insurer. Insurers must reimburse healthcare providers based on statewide schedules of maximum reimbursement allowances developed by the DWC or an agreed-upon contract price. DWC mediates utilization and reimbursement disputes.[9]

Reimbursement for Healthcare Providers

The panel consisting of the Chief Financial Officer (CFO) or their designee and two Governor appointees, set the MRAs.[10] Beginning with rates developed in 2024 and implemented with rates effective January 1, 2025, health care providers and non-hospital rates are annually published by DWC, instead of being included in the reimbursement manuals through rulemaking.[11] DWC incorporates the panel's statewide schedules of the MRAs through rulemaking. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;[12] the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary

[1] Ch. 440, F.S.
[2] S. 440.13(2)(a), F.S.
[3] The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429. S. 440.13(1)(g), F.S.
[4] S. 440.13(12), F.S.
[5] Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.
[6] Ch. 120, F.S.
[7] Ch. 2023-144, Laws of Fla.
[8] *Id*.
[9] S. 440.13, F.S.
[10] *Id*.
[11] Ch. 2023-144, Laws of Fla.
[12] S. 440.13(12)(i)(1), F.S.

medical care; and the financial impact of the MRAs on healthcare providers and facilities.[13] Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.[14]

There are three different reimbursement manuals that determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual, developed by the DWC, limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,[15] while reimbursement for surgical procedures is limited to 140 percent of Medicare.[16] The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,[17] while other outpatient services are limited to 75 percent of usual and customary charges.[18] Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.[19] The ambulatory surgical centers manual, developed by the panel, limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a $4.18 dispensing fee.[20] Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an $8.00 dispensing fee.[21] Fees may not exceed the schedules adopted under ch. 440, F.S., and department rule.[22]

Expert Witness Fees for Health Care Providers

The law limits the amount a health care provider can be paid for expert testimony during depositions on a workers' compensation claim. As an expert medical witness, a workers' compensation health care provider is limited to a maximum of $200, per hour, unless they only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute, then they are limited to a maximum of $200, per day.[23]

Effect of the Bill

The bill increases the maximum hourly amount allowed expert witnesses from $200, per hour, to $300, per hour. For those expert witnesses' subject to the daily rate, the maximum amount allowed is increased from $200, per day, to $300, per day.

Also, the bill increases the maximum reimbursement for physician licensed under ch. 458 or ch. 459, from 110 percent to 150 percent of the reimbursement allowed by Medicare. Additionally, the bill increases the maximum reimbursement for surgical procedures from 140 percent to 150 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is higher.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations.

[13] S. 440.13(12)(i)(2), F.S.
[14] S. 440.13(12)(i)(3), F.S.
[15] S. 440.13(12)(f), F.S.
[16] S. 440.13(12)(g), F.S.
[17] S. 440.13(12)(d), F.S.
[18] S. 440.13(12)(a), F.S.
[19] *Id*.
[20] S. 440.13(12)(h), F.S.
[21] *Id*.
[22] S. 440.13(12)(f), F.S.
[23] S. 440.13(10), F.S.

Section 2. Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

3. The bill will likely have a negative fiscal impact on the State Risk Management Trust Fund (from which the state's worker compensation costs are paid). The National Council on Compensation Insurance (NCCI) analysis of the bill forecasts a 6.9% increase in workers compensation rates if the bill becomes law.[24]

   The bill may have a negative, likely insignificant, impact on expenditures for litigated state employee workers' compensation claims to the extent the state elects to increase expert witness fees, as allowed by the bill. NCCI expects this to be a minimal increase (minimal defined in this context as overall system costs of less than plus 0.2 percent increase).[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a negative fiscal impact on local government expenditures, potentially resulting in a 6.9 percent increase in workers' compensation rates.[26]

   The bill may have a negative, likely insignificant, impact on self-insured local government expenditures for litigated public employee workers' compensation claims to the extent they elect to increase expert witness fees, as allowed by the bill. NCCI expects this to be a minimal increase (minimal defined in this context as overall system costs of less than plus 0.2 percent increase).[27]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase payments to medical providers who appear as expert witnesses in litigated workers' compensation claim and to physicians for medical services provided to injured workers.

The bill may increase worker's compensation claim costs in litigated cases. If this is significant enough to impact workers' compensation rates, it may increase workers' compensation premiums paid by employers.

D. FISCAL COMMENTS:

None.

[24] NCCI, Analysis of Florida Medical Fee Schedule Changes (2024 Session, HB 161/SB 362) (Feb. 06, 2024).
[25] *Id.*
[26] *Id.*
[27] *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill necessitates local governments to allocate additional funds, particularly for those providing increased workers' compensation reimbursements to physicians, including self-insured employers; however, an exception may apply. The bill applies to all similarly situated entities that provide workers' compensation.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Insurance & Banking Subcommittee considered the bill, adopted a line amendment, and reported the bill favorably as a committee substitute. The amendment reduced the proposed increase from 200% of the Medicare allowed amount to a uniform 150%, applicable to both surgical and non-surgical health care provider reimbursements.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to payments for health care providers and surgical procedures under workers' compensation; amending s. 440.13, F.S.; increasing the maximum amounts of certain witness fees related to workers' compensation cases; increasing the maximum reimbursements for physicians and surgical procedures under workers' compensation; providing an effective date.

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

Section 1. Subsection (10) and paragraphs (f) and (g) of subsection (12) of section 440.13, Florida Statutes, are amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(10) WITNESS FEES.—Any health care provider who gives a deposition shall be allowed a witness fee. The amount charged by the witness may not exceed $300 ~~$200~~ per hour. An expert witness who has never provided direct professional services to a party but has merely reviewed medical records and provided an expert opinion or has provided only direct professional services that were unrelated to the workers' compensation case may not be allowed a witness fee in excess of $300 ~~$200~~ per day.

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(f) Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be 150 ~~110~~ percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(g) Maximum reimbursement for surgical procedures shall be 150 ~~140~~ percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler,

distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 497 Continuing Education Requirements
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Melo and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Herrera	Anstead
2) State Administration & Technology Appropriations Subcommittee		Helpling	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professions in Florida. Each profession is regulated by an individual practice act and by ch. 455, F.S., which provide regulatory and licensure authority. Generally, to act as a regulated professional, a person must hold an appropriate license. Applicants for licensure for each profession must meet specific statutory requirements, including education and/or experience requirements, and must pay all applicable licensing and application fees. Licensees who wish to renew their license must pay a license renewal fee and may be subject to continuing education requirements and other conditions in the various practice acts.

A board, or DBPR in the absence of a board, may provide by rule that distance learning may be used to satisfy continuing education requirements. However, a board or DBPR must approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements for persons licensed to engage in community association management services, home inspection services, mold-related services, real estate services (i.e., brokers, sales associates, and schools), and real estate appraisal services. In addition, for these specified professions, a board or DBPR may not require centralized examinations for completion of continuing education requirements.

The bill requires that a board, or DBPR in the absence of a board, must allow distance learning as an alternative to classroom courses for satisfying continuing education requirements.

Additionally, the bill requires professional boards, or DBPR if there is no board, to exempt an individual from completing the continuing education required for renewal of a license for a renewal period if:

- The individual holds an active license issued by the board or DBPR to practice the profession;
- The individual has continuously held the license for at least 10 years; and
- No disciplinary action is imposed on the individual's license.

The bill requires DBPR and relevant boards to adopt rules to implement these provisions. The bill grants DBPR authority to enact emergency rules to streamline procedures for exempting eligible individuals from continuing education, with these rules effective for 6 months and renewable during the process of adopting permanent rules. This provision expires on January 1, 2026.

The bill may have an indeterminate, insignificant negative fiscal impact on state government. *See* Fiscal analysis and Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

Professional Licensure

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professions in Florida.[1]

DBPR has authority over the following professional boards and programs:

- Board of Architecture and Interior Design;
- Board of Auctioneers;
- Barbers' Board;
- Building Code Administrators and Inspectors Board;
- Construction Industry Licensing Board;
- Board of Cosmetology;
- Electrical Contractors' Licensing Board;
- Board of Employee Leasing Companies;
- Board of Landscape Architecture;
- Board of Pilot Commissioners;
- Board of Professional Geologists;
- Board of Veterinary Medicine;
- Home inspection services licensing program;
- Mold-related services licensing program;
- Florida Board of Professional Engineers;
- Board of Accountancy;
- Florida Real Estate Commission; and
- Florida Real Estate Appraisal Board.[2]

Each profession is regulated by an individual practice act and by ch. 455, F.S., which provide regulatory and licensure authority. Generally, to act as a regulated professional, a person must hold an appropriate license. Applicants for licensure for each profession must meet specific statutory requirements, including education and/or experience requirements, and must pay all applicable licensing and application fees.[3] Licensees who wish to renew their license must pay a license renewal fee[4] and may be subject to continuing education requirements[5] and other conditions in the various practice acts.

Powers and Duties of DBPR

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[6] The chapter also provides the procedural and administrative framework for those divisions and the professional boards within DBPR.[7]
The term "profession" means any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[8]

[1] S. 20.165, F.S.
[2] S. 20.165(1)-(4), F.S.
[3] S. 455.201, F.S.
[4] S. 455.203, F.S.
[5] S. 455.2123, F.S.
[6] Section 455.01(6), F.S.
[7] *See* s. 455.203, F.S. DBPR must also provide legal counsel for boards within DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of DBPR. *See* s. 455.221(1), F.S.
[8] S. 455.01(6), F.S.

DBPR's regulation of professions is to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[9] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[10]

However, DBPR and its boards may not create a regulation that has an unreasonable effect on job creation or job retention or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.[11]

Ch. 455, F.S., provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[12]

When a person is authorized to engage in a profession or occupation in Florida, DBPR issues a "permit, registration, certificate, or license" to the licensee.[13] DBPR has the authority to charge license fees and license renewal fees.[14] Each board within DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.[15]

However, the general licensing provisions for professions were revised for Fiscal Years 2023-2024 and 2024-2025,[16] to direct DBPR to waive a portion of certain license fees for the professions regulated under ch. 455, F.S., as follows:

- 50 percent of the *initial licensing fee* for those applying for an initial license, up to $200 per year per license; and
- 50 percent of the *license renewal fee* for those renewing licenses, up to $200 per year per license.

The fee waivers may not include any applicable unlicensed activity or background check fees.

Continuing Education Course Requirements

A board, or DBPR in the absence of a board, may provide by rule that distance learning may be used to satisfy continuing education requirements. However, a board or DBPR must approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements for persons licensed to engage in community association management services,[17] home inspection services,[18] mold-related services,[19] real estate services (i.e., brokers, sales associates, and schools),[20] and real estate appraisal services.[21] In addition, for these specified professions, a board or DBPR may not require centralized examinations for completion of continuing education requirements.

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[9] S. 455.201(2), F.S.
[10] *Id*.
[11] S. 455.201(4)(b), F.S.
[12] *See* s. 455.203, F.S. DBPR must also provide legal counsel for boards within DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. *See* s. 455.221(1), F.S.
[13] S. 455.01(4) and (5), F.S.
[14] S. 455.203 and 455.213, F.S.
[15] S. 455.219(1), F.S.
[16] *See* s. 455.213(15), F.S. For Fiscal Year 2023-2024, the sum of $50 million in nonrecurring funds was appropriated from the General Revenue Fund to DBPR to implement the fee waiver, with any unexpended funds to be used during Fiscal Year 2024-2025 for the same purpose. *See* ch. 2063-68, Laws of Fla.
[17] *See* part VIII of ch. 468, F.S.
[18] *See* part XV of ch. 468, F.S.
[19] *See* part XVI of ch. 468, F.S.
[20] *See* part I of ch. 475, F.S.
[21] *See* part II of ch. 475, F.S.

However, the following boards have no continuing education requirements:[22]

- Board of Auctioneers[23]
- Talent Agencies[24]
- Athlete Agents[25]
- Board of Employee Leasing Companies[26]
- Board of Professional Geologists[27]

The terms "distance learning" and "distance-learning" are not defined in ch. 455, F.S., or elsewhere in the Florida Statutes as of the date of this analysis. However, a rule adopted by the Florida Real Estate Appraisal Board provides the term "distance education" means "education that takes place when the learner is separated from the source of instruction by time and/or distance."[28]

Renewal and Proration of Continuing Education Courses

A board, or DBPR in the absence of a board, has the authority to prorate continuing education for new licensees as follows:

- Half of the required continuing education for an applicant who becomes licensed with more than half of the renewal period remaining.
- No continuing education requirement for any applicant who becomes licensed with half or less than half of the renewal period remaining.

Effect of the Bill

The bill requires that a board, or DBPR in the absence of a board, must allow distance learning as an alternative to classroom courses for satisfying continuing education requirements.

Additionally, the bill requires professional boards, or DBPR if there is no board, to exempt an individual from completing the continuing education required for renewal of a license for a renewal period if:

- The individual holds an active license issued by the board or DBPR to practice the profession;
- The individual has continuously held the license for at least 10 years; and
- No disciplinary action is imposed on the individual's license.

The exemption from continuing education requirements in the bill does not apply to engineers regulated under ch. 471, certified public accountants regulated under ch. 473, brokers, broker associates, and sales associates regulated under part I of ch. 475, appraisers regulated under part II of ch. 475, architects or interior designers regulated under part I of ch. 481, and contractors regulated under ch. 489, F.S.

The bill requires that DBPR and each relevant board adopt rules, as outlined in ss. 120.536(1) and 120.54, F.S., to implement the provisions of this section

The bill grants DBPR rulemaking authority to adopt emergency rules for the purpose of implementing the amendment made by the bill, including streamlining procedures for exempting eligible individuals

[22] DBPR, Agency Analysis of 2024 SB 382, p. 2 (Nov. 21, 2023).
[23] Ch. 468, Part VI, F.S.
[24] Ch. 468, Part VII, F.S.
[25] Ch. 468, Part IX, F.S.
[26] Ch. 468, Part XI, F.S.
[27] Ch. 492, F.S.
[28] In addition, the Florida Real Estate Commission (FREC) has issued its Distance Education Checklist at http://www.myfloridalicense.com/dbpr/re/documents/frec_distance_ed_chk_list.pdf (last visited Jan. 31, 2024), which lists the information required to be submitted by education providers seeking to offer FREC educational courses via distance education. The Checklist provides "[d]istance learning necessitates a high level of self-direction and should, therefore, require students to read, conduct research, complete timed exams and similar assignments, designed to measure the student's competency relative to the required subject matter objectives." *See also* other rules referencing similar but undefined terms, such as Fla. Admin. Code R. 64B15-13.001 (a Board of Osteopathic Medicine rule that provides "CME courses may be obtained in any format, including in a distance learning format, provided that the format includes an ability to interact with the presenter of the course;" and Fla. Admin. Code R. 61G4-18.001, (a Construction Industry Licensing Board rule that requires "at least 14 classroom or interactive distance learning hours of continuing education in one or more courses from a continuing education provider approved by the Board.").

from completing continuing education. These emergency rules will be effective for 6 months, renewable during the adoption of permanent rules. This provision expires on January 1, 2026.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 455.2123, F.S., relating to continuing education.

Section 2: Amends s. 455.2124, F.S., relating to proration of or not requiring continuing education.

Section 3: Creates rulemaking authority under s. 120.54(4), F.S., for the Department of Business and Professional Regulation.

Section 4: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate effect on state government expenditures because DBPR must assess license holders for disciplinary actions before each profession's renewal cycles to determine which licensees must fulfill continuing education (CE) requirements for renewal. This assessment will influence CE renewal notifications, as well as the functioning of the Versa Regulation (VR) and Versa Online (VO) systems, and renewal processing. However, DBPR believes any potential effects could be managed within existing resources.[29]

   Moreover, the fiscal impact on the service operations division remains indeterminate. The CE exemption for eligible licenses is expected to decrease call volumes to the Customer Contact Center during peak renewal periods. However, the precise number of potentially exempted licensees who historically contacted the Customer Contact Center regarding CE reporting to the department cannot be determined at this time.[30]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate. Continuing education providers may experience a decrease in revenue because of licensees being exempt from continuing education requirements if certain requirements are met. While, licensees may experience a decrease in expenditures as a result of being able to complete more continuing education via distance learning, as well as being exempt from continuing education requirements if certain requirements are met.

D. FISCAL COMMENTS:

None.

[29] DBPR, Agency Analysis of 2024 SB 382, p. 7 (Nov. 21, 2023).
[30] *Id*.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires rulemaking by DBPR and the affected board, and authorizes emergency rulemaking by DBPR pending the adoption of permanent rules to implement the exemption from continuing education requirements granted to eligible licensees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR recommends that the following professions be excluded from the provisions of the bill, so that the affected licensees will be kept informed of laws, rules, and industry advancements to protect the health, safety, and welfare of the public, and the portability of such licensing for use in other jurisdictions will be maintained[31]:

- Certified Public Accountants[32];
- Veterinary Medicine;
- Landscape Architecture;
- Cosmetology and Barbers;
- Building Code Administrators and Inspectors;
- Community Association Managers; and
- Construction Contractors.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2024, the Regulatory Reform and Economic Development Subcommittee considered the bill, adopted an amendment, an amendment to the amendment, and reported the bill favorably as a committee substitute. The amendment makes the following changes:

- Removed provisions related to medical boards or departments regulated by the Department of Health.
- Exempted the following professionals from the provisions that allow professional licensees with more than 10 years' experience to skip continuing education requirements:
    - Brokers, broker associates and sales associates, in addition to engineers, CPA's, appraisers, interior designers, and contractors, which are already exempted in this bill.
- Granted DBPR rulemaking authority to adopt emergency rules for the purpose of implementing the amendment made by the bill.
- Made technical changes.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform and Economic Development Subcommittee.

[31] *Id*. at 9.

[32] DBPR's General Counsel's Office indicates that 30 to 40 percent of prosecutions of certified public accountants (CPAs) involve the failure to meet continuing education requirements, so the elimination of the continuing education requirement for CPAs who have held active licenses continuously for at least 10 years with no disciplinary action imposed on the license could result in fewer violations and prosecutions. *Id*. at 10.

A bill to be entitled

An act relating to continuing education requirements; amending s. 455.2123, F.S.; requiring, rather than authorizing, a board, or the Department of Business and Professional Regulation when there is no board, to allow by rule that distance learning may be used to satisfy continuing education requirements; revising the requirements that such continuing education must satisfy; amending s. 455.2124, F.S.; requiring the board, or the department when there is no board, to exempt certain individuals from completing their continuing education requirements; providing applicability; requiring the department and each affected board to adopt rules; authorizing the department to adopt emergency rules; specifying time in which such emergency rules are effective; authorizing renewal of such emergency rules in certain circumstances; providing for the expiration of such rulemaking authority; providing an effective date.

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

Section 1. Section 455.2123, Florida Statutes, is amended to read:

455.2123 Continuing education.—A board, or the department

when there is no board, shall allow ~~may provide~~ by rule that distance learning may be used to satisfy continuing education requirements. A board, or the department when there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements. A board, or the department when there is no board, ~~provided for in part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475 and~~ may not require centralized examinations for completion of continuing education requirements for the professions licensed under part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475.

Section 2. Section 455.2124, Florida Statutes, is amended to read:

455.2124 Proration of or not requiring continuing education.—

(1) A board, or the department when there is no board, may:

(a) ~~(1)~~ Prorate continuing education for new licensees by requiring half of the required continuing education for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or

(b) ~~(2)~~ Require no continuing education until the first full renewal cycle of the licensee.

These options shall also apply when continuing education is first required or the number of hours required is increased by law or the board, or the department when there is no board.

(2)(a) A board, or the department when there is no board, shall exempt an individual from completing the continuing education required for renewal of a license for a renewal period if:

1. The individual holds an active license issued by the board or the department to practice the profession.

2. The individual has continuously held the license for at least 10 years.

3. Disciplinary action has not been imposed on the individual's license.

(b) This subsection does not apply to:

1. Engineers regulated by chapter 471;

2. Certified public accountants regulated by chapter 473;

3. Brokers, broker associates, and sales associates regulated by part I of chapter 475;

4. Appraisers regulated by part II of chapter 475;

5. Architects or interior designers regulated by part I of chapter 481; or

6. Contractors regulated by chapter 489.

(3) The department and each affected board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this

section.

Section 3. (1) The Department of Business and Professional Regulation is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the amendments made by this act to s. 455.2124, Florida Statutes, including establishing procedures to facilitate the exemption for eligible individuals from completing continuing education.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires on January 1, 2026.

Section 4. This act shall take effect July 1, 2024.

HB 611

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 611 Public Deposits
SPONSOR(S): Botana
TIED BILLS: **IDEN./SIM. BILLS:** SB 1018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 2 N	Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee		Perez	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

Unless exempted by law, state and local governments are required to deposit public funds in a qualified public depository (QPD) pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act). The Act is administered by the Chief Financial Officer (CFO) and the Department of Financial Services (DFS).

Before a QPD accepts or retains a public deposit, it must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD. Currently, banks, savings banks, and savings associations are the only types of financial institutions eligible to be a QPD or a custodian for another QPD's pledged collateral.

The bill:

- Allows state-chartered and federally-chartered credit unions to become QPDs and custodians for another QPD's pledged collateral;
- Provides criteria a credit union must meet before the CFO can designate the credit union as a QPD;
- Requires credit union QPDs to make the same attestations required of other QPDs;
- Creates separate mutual responsibility and contingent liability provisions for credit union QPDs to prevent banks from sharing liability with credit unions in the event of a credit union QPD's default or insolvency, and vice versa; and
- Requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any banks, savings bank, or savings association.

The bill may have a significant fiscal impact. See *Fiscal Impact on State Government* section. Further, the bill does not include an appropriation to fund DFS's implementation and ongoing maintenance of credit unions as QPDs. The bill has an indeterminate fiscal impact on local governments and the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Depositories

Pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act), and unless exempted therein, state and local governments are required to deposit public funds in a qualified public depository (QPD).[1] A QPD is any bank, savings bank, or savings association that:

- is organized and exists under the laws of the United States, the laws of this state, or any other state or territory of the United States (i.e., state or federally chartered);
- has its principal place of business in this state or has a branch office in this state which is authorized under Florida or federal laws to receive deposits in this state;
- has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended;[2]
- has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- meets all the requirements of the Act; and
- has been designated by the Chief Financial Officer (CFO) as a QPD.[3]

Upon approval from the CFO, these banks, savings banks, and savings associations may accept "public deposits" from state and local governments. The Act does not permit credit unions to become QPDs, due to their absence from the definition of "qualified public depository." As of December 1, 2023, there are approximately 117 active QPDs in this state.[4]

Before a QPD can accept or retain a public deposit, the QPD must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD.[5] The Act's collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.[6] Losses are satisfied first through the standard maximum federal deposit insurance of $250,000,[7] and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO's authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.[8]

A "custodian" can be the CFO or any state or federally chartered bank, savings association, or trust company approved by the CFO to hold collateral pledged by QPDs to secure public deposits.[9] Collateral may be pledged, deposited or issued using the following collateral agreements as approved the CFO to meet the requisite collateral:

- regular custody arrangement for collateral pledged to the CFO, subject to certain requirements;[10]

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[1] S. 280.03(1)(b), F.S.
[2] 12 U.S.C. ss. 1811 *et seq.*
[3] S. 280.02(26), F.S.
[4] Email from Parker Powell, Deputy Director of Legislative Affairs, Department of Financial Services, RE: HB 3 Attestations (Dec. 1, 2023).
[5] S. 280.04, F.S. *See also* ch. 69C-2, F.A.C.
[6] S. 280.041(6), F.S.
[7] 12 U.S.C. § 1821(a)(1)(E).
[8] S. 280.07, F.S.
[9] Ss. 280.02(10) and 280.041(1)(a), F.S.
[10] S. 280.041(1)(a), F.S.

- Federal Reserve Bank custody arrangement for collateral pledged to the CFO, subject to certain requirements;[11]
- CFO's custody arrangement for collateral deposited in the CFO's name, subject to certain requirements;[12]
- Federal Home Loan Bank letter of credit arrangement for collateral issued with the CFO as beneficiary, subject to certain requirements.[13]

DFS oversees the Act's reporting and collateral pledging requirements through its public deposits program and Bureau of Collateral Management.[14] The CFO has authority to act against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.[15] In the event of loss to public depositors, the CFO has the authority to oversee the payment of losses.[16]

Required Attestation

Under the Act, QPDs are required to attest, under penalty of perjury and on a form prescribed by the CFO, whether the entity is in compliance with s. 280.02(26)(e) and (f).[17] Specifically, QPDs must attest that:

- The QPD makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member;[18] and
- The QPD does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:
    - The person's political opinions, speech, or affiliations;
    - Except as otherwise provided in law, the person's religious beliefs, religious exercise, or religious affiliations;
    - Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or
    - The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on certain enumerated factors.[19]

Regulation of Credit Unions

Like banks, savings banks, and savings associations, credit union accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[20] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."[21] State-chartered credit unions have both a state regulator, the Office of Financial Regulation, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934[22] and are regulated by the NCUA.

[11] S. 280.041(1)(b), F.S.
[12] S. 280.041(1)(c), F.S.
[13] S. 280.041(1)(d), F.S.
[14] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[15] S. 280.05, F.S.
[16] *Id.* at (10).
[17] S. 280.025, F.S.
[18] S. 280.02(26)(e), F.S.
[19] S. 280.02(26)(f), F.S.
[20] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[21] S. 657.003, F.S.
[22] Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq*.

In addition to regulating both state-chartered and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-chartered credit unions.[23] All state-chartered credit unions operating in Florida must carry NCUSIF insurance.[24] The standard maximum share insurance amount is $250,000.[25]

Effect of the Bill

The bill makes state-chartered and federally-chartered credit unions eligible to become QPDs and custodian for another QPD's pledged collateral. Specifically, the bill creates s. 280.042, F.S., which provides criteria that a credit union must meet before the CFO can designate a credit union as a QPD. These criteria are designed to protect public deposits.

Attestation Required

Beginning July 1, 2024, the bill requires credit union QPDs to make the same attestations required of other QPDs relating to the provision of services based on risk factors unique to each customer and the unsafe and unsound practice of denying or canceling services on the basis of environmental, social, or governance factors.

Collateral Agreements

The bill requires a credit union QPD to submit its agreement of contingent liability and its collateral agreement to the CFO and meet the following requirements:

- The credit union must submit a signed statement from a public depositor (i.e., a state or local government) indicating that, if the credit union is designated as a QPD, the public depositor intends to deposit public funds with the credit union; and
- There are at least four other credit unions that are designated as QPDs or have applied to be designated as QPDs and have submitted an agreement of contingent liability, a collateral agreement, and a signed statement from a public depositor of intent to deposit public funds with the credit union.

The CFO must withdraw from a collateral agreement previously entered into with a credit union if, during any 90 calendar days, the combined total of the number of credit unions designated as QPDs and the number of eligible credit unions applying to be designated as QPDs is less than five. As a result of the CFO's withdrawal, the credit union loses its designation as a QPD, and must within 10 days after the CFO's notification of such withdrawal, return all public deposits that the credit union holds to the public depositor who deposited the funds. Additionally, the CFO may limit the amount of public deposits any one credit union may hold in order to make sure that no single credit union holds an amount of public deposits that might adversely affect the integrity of the public deposits program.

Shared Contingent Liability

In order to prevent credit unions from sharing contingent liability with banks, and vice versa, the bill creates separate mutual responsibility and contingent liability provisions for credit unions. Any credit union that is designated as a QPD and that is not insolvent must guarantee public depositors against loss caused by the default or insolvency of *other credit unions* that are designated as QPDs.

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[23] Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. See NCUA, *How Your Accounts Are Federally Insured*, https://www.ncua.gov/files/publications/guides-manuals/NCUAHowYourAcctInsured.pdf (last visited Jan. 5, 2024).
[24] Ss. 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.
[25] NCUA, *supra* note 20.

In the event of a default or insolvency of a credit union QPD, any loss to public depositors would be satisfied through any applicable share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The CFO may assess QPDs, subject to the segregation of contingent liability provided in s. 280.07, F.S., for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

Segregation of Penalties; Public Deposit Program

The bill requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any bank, savings bank, or savings association. Subject to this segregation of funds requirement, the CFO is authorized to pay any losses to public depositors from the Public Deposits Trust Fund.

Lastly, the bill makes conforming changes to allow credit unions to participate in the public deposit program and to subject credit union QPDs to the regulatory oversight of the CFO.

B. SECTION DIRECTORY:

Section 1. Amends s. 17.68, F.S., relating to Financial Literacy Program for Individuals with Developmental Disabilities.

Section 2. Amends s. 280.02, F.S., relating to definitions.

Section 3. Amends s. 280.025, F.S., relating to attestation required.

Section 4. Amends s. 280.03, F.S., relating to public deposits to be secured; prohibitions; exemptions.

Section 5. Creates s. 280.042, F.S., relating to credit union designations as qualified public depositories; withdrawal by the Chief Financial Officer from collateral agreements; limits on public deposits.

Section 6. Amends s. 280.05, F.S., relating to powers and duties of the Chief Financial Officer.

Section 7. Amends s. 280.052, F.S., relating to order of suspension or disqualification; procedure.

Section 8. Amends s. 280.053, F.S., relating to period of suspension or disqualification; obligations during period; reinstatement.

Section 9. Amends s. 280.055, F.S., relating to cease and desist order; corrective order; administrative penalty.

Section 10. Amends s. 280.07, F.S., relating to mutual responsibility and contingent liability.

Section 11. Amends s. 280.08, F.S., relating to procedure for payment of losses.

Section 12. Amends s. 280.085, F.S., relating to notice to claimants.

Section 13. Amends s. 280.09, F.S., relating to Public Deposits Trust Fund.

Section 14. Amends s. 280.10, F.S., relating to effect of merger, acquisition, or consolidation; change of name or address.

Section 15. Amends s. 280.13, F.S., relating to eligible collateral.

Section 16. Amends s. 280.17, F.S., relating to requirements for public depositors; notice to public depositors and governmental units; loss of protection.

Sections 17-36. Reenacts various sections of statutes to incorporate amendments to ch. 280, F.S.

Section 37. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DFS, allowing credit unions to be QPDs will require $167,858 for workload and programming costs:[26]

- $86,680 in non-recurring expenditures for DFS's Office of Information Technology (OIT) to make:
  - Significant programming changes to the Collateral Administration Program (CAP), a computer application used to administer Florida's public deposits program.
  - Modifications to the Florida Planning Accounting, and Ledger Management (PALM) system to accommodate the required segregated accounting of collateral proceeds, assessments, or administrative penalties attributable to credit unions.
- $5,728 in recurring expenditures for independent ranking service data on credit unions.
- $75,450 in recurring expenditures for one additional Financial Examiner/Analyst II FTE, class code 1564, pay grade 023.

However, as of February 6, 2024, the Department of Financial Services had 291.50 vacant FTE. Of these FTE, 66.00 have been vacant for 365 days or more.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill's impact on local government revenues is indeterminate. However, a 2014 study by the Office of Program Policy Analysis and Government Accountability explained the potential positive impact to local government public depositors:

> Federal and state tax differences between credit unions and banks may allow credit unions a competitive advantage when bidding for local government public deposits. Credit unions may also benefit from lower overhead costs since these institutions may use office space belonging to a sponsoring organization. The combined effect of lower taxes and overhead may allow credit unions to pay higher interest rates for public deposits and to provide other business services to local governments at a lower cost than banks.[27]

[26] Email from Chase Mitchell, Director of Legislative Affairs and Policy, Florida Department of Financial Services, RE: HB 611 – Public Deposits (Jan. 17, 2024). A bill analysis for the 2024 version of the bill has been requested from DFS.
[27] Office of Program Policy Analysis and Government Accountability, *Issues Related to Credit Unions Operating as Qualified Public Depositories*, Nov. 13, 2014, at 5.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Allowing credit unions to accept public deposits may generate additional income for the credit unions and provide more options for the public depositors. It is unclear what impact the bill will have on existing QPDs (banks, savings banks, or savings associations). The bill's impact on the private sector is indeterminate due to the number of variables involved in determining such impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The CFO has rulemaking authority to administer ch. 280, F.S. To add credit unions as QPDs, rulemaking is necessary to amend ch. 69C-2, F.A.C., and several forms incorporated by reference in the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public deposits; amending s. 17.68, F.S.; conforming provisions to changes made by the act; amending s. 280.02, F.S.; revising definitions; adding credit unions to a list of financial institutions that are eligible to be qualified public depositories; amending s. 280.025, F.S.; providing applicability of qualified public depository provisions to credit unions; amending s. 280.03, F.S.; conforming a provision to changes made by the act; creating s. 280.042, F.S.; prohibiting the Chief Financial Officer from designating credit unions as qualified public depositories unless certain conditions are met; requiring the Chief Financial Officer to withdraw from a collateral agreement with a credit union under certain circumstances; specifying a requirement for and a restriction on a credit union that is a party to a withdrawn collateral agreement; authorizing the Chief Financial Officer to limit the amount of public deposits a credit union may hold; amending ss. 280.05, 280.052, 280.053, and 280.055, F.S.; providing applicability of qualified public depository provisions to credit unions; amending s. 280.07, F.S.; specifying the losses against which certain solvent banks, savings banks, savings

associations, and credit unions must guarantee public depositors; amending ss. 280.08 and 280.085, F.S.; conforming provisions to changes made by the act; amending s. 280.09, F.S.; requiring the Chief Financial Officer to segregate and separately account for proceeds, assessments, and administrative penalties attributable to a credit union from those attributable to other specified financial institutions; revising a condition for the payment of losses to public depositors; amending s. 280.10, F.S.; conforming provisions to changes made by the act; amending s. 280.13, F.S.; providing that a specified limit on securities eligible to be pledged as collateral apply to qualified public depositories, rather than to banks and savings associations; amending s. 280.17, F.S.; conforming a provision to changes made by the act; reenacting ss. 280.17(1)(a), 17.57(7)(a), 24.114(1), 125.901(3)(e), 136.01, 159.608(11), 175.301, 175.401(8), 185.30, 185.50(8), 190.007(3), 191.006(16), 215.34(2), 218.415(16)(c), (17)(c), and (23)(a), 255.502(4)(h), 280.051(15), 280.18(1), 331.309(1) and (2), 373.553(2), 631.221, and 723.06115(3)(c), F.S., relating to requirements for public depositors; deposits and investments of state money; bank deposits and control of lottery

transactions; children's services and independent special districts; county depositories; powers of housing finance authorities; depositories for pension funds; retiree health insurance subsidies; depositories for retirement funds; retiree health insurance subsidies; boards of supervisors; general powers; state funds and noncollectible items; local government investment policies; definitions; grounds for suspension or disqualification of a qualified public depository; protection of public depositors and liability of the state; treasurer, depositories, and fiscal agent for Space Florida; treasurer of the board, payment of funds, and depositories; deposit of moneys collected; and the Florida Mobile Home Relocation Trust Fund, respectively, to incorporate the amendments made by this act to s. 280.02, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (4) of section 17.68, Florida Statutes, is amended to read:

17.68 Financial Literacy Program for Individuals with Developmental Disabilities.—

(4) Within 90 days after the department establishes the

website clearinghouse and publishes the brochure, each bank, credit union, savings association, and savings bank that is a qualified public depository as defined in s. 280.02 shall:

(a) Make copies of the department's brochures available, upon the request of the consumer, at its principal place of business and each branch office located in this state which has in-person teller services by having copies of the brochure available or having the capability to print a copy of the brochure from the department's website. Upon request, the department shall provide copies of the brochure to a bank, credit union, savings association, or savings bank.

(b) Provide on its website a hyperlink to the department's website clearinghouse. If the department changes the website address for the clearinghouse, the bank, credit union, savings association, or savings bank must update the hyperlink within 90 days after notification by the department of such change.

Section 2. Subsections (6), (10), (21), (23), and (26) of section 280.02, Florida Statutes, are amended to read:

280.02 Definitions.—As used in this chapter, the term:

(6) "Capital account" or "tangible equity capital" means total equity capital, as defined on the balance-sheet portion of the Consolidated Reports of Condition and Income (call report), or net worth, as described in the National Credit Union Administration 5300 Call Report, less intangible assets, as submitted to the regulatory financial ~~banking~~ authority.

(10) "Custodian" means the Chief Financial Officer or a bank, credit union, savings association, or trust company that:

(a) Is organized and existing under the laws of this state, any other state, or the United States;

(b) Has executed all forms required under this chapter or any rule adopted hereunder;

(c) Agrees to be subject to the jurisdiction of the courts of this state, or of the courts of the United States which are located within this state, for the purpose of any litigation arising out of this chapter; and

(d) Has been approved by the Chief Financial Officer to act as a custodian.

(21) "Pool figure" means the total average monthly balances of public deposits held by all banks, savings banks, or savings associations or held separately by all credit unions ~~qualified public depositories~~ during the immediately preceding 12-month period.

(23) "Public deposit" means the moneys of the state or of any state university, county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, which are placed on deposit in a bank, credit union, savings bank, or savings association. This

includes, but is not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposit. Moneys in deposit notes and in other nondeposit accounts such as repurchase or reverse repurchase operations are not public deposits. Securities, mutual funds, and similar types of investments are not public deposits and are not subject to this chapter.

(26) "Qualified public depository" means a bank, credit union, savings bank, or savings association that:

(a) Is organized and exists under the laws of the United States, ~~or~~ the laws of this state, or the laws of any other state or territory of the United States.

(b) Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.

(c) Is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund ~~Has deposit insurance pursuant to the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq~~.

(d) Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits.

(e) Makes determinations about the provision of services or the denial of services based on an analysis of risk factors

unique to each customer or member. This paragraph does not restrict a qualified public depository that claims a religious purpose from making such determinations based on the religious beliefs, religious exercise, or religious affiliations of a customer or member.

(f) Does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:

1. The person's political opinions, speech, or affiliations;

2. Except as provided in paragraph (e), the person's religious beliefs, religious exercise, or religious affiliations;

3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

4. The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

a. The person's political opinions, speech, or affiliations.

b. The person's religious beliefs, religious exercise, or religious affiliations.

c. The person's lawful ownership of a firearm.

d. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

e. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

f. The person's support of the state or Federal Government in combating illegal immigration, drug trafficking, or human trafficking.

g. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this subparagraph.

h. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

(I) Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

(II) Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

(III) Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

(IV) Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(g) Meets all the requirements of this chapter.

(h) Has been designated by the Chief Financial Officer as a qualified public depository.

Section 3. Subsection (1) of section 280.025, Florida Statutes, is amended to read:

280.025 Attestation required.—

(1) Beginning July 1, 2024 ~~2023~~, the following entities must attest, under penalty of perjury, on a form prescribed by the Chief Financial Officer, whether the entity is in compliance with s. 280.02(26)(e) and (f):

(a) A bank, savings bank, credit union, or savings association, upon application or reapplication for designation as a qualified public depository.

(b) A qualified public depository, upon filing the report required by s. 280.16(1)(d).

Section 4. Paragraph (a) of subsection (3) of section 280.03, Florida Statutes, is amended to read:

280.03 Public deposits to be secured; prohibitions; exemptions.—

(3) The following are exempt from the requirements of, and protection under, this chapter:

(a) Public deposits deposited in a bank, credit union, or

savings association by a trust department or trust company which are fully secured under trust business laws.

Section 5. Section 280.042, Florida Statutes, is created to read:

280.042 Credit union designations as qualified public depositories; withdrawal by the Chief Financial Officer from collateral agreements; limits on public deposits.—

(1) The Chief Financial Officer may not designate a credit union as a qualified public depository unless, at the time the credit union submits its agreement of contingent liability and its collateral agreement:

(a) The credit union submits a signed statement from a public depositor indicating that if the credit union is designated as a qualified public depository, the public depositor intends to deposit public funds with the credit union.

(b) The combined total of the numbers in subparagraphs 1. and 2. is at least four:

1. The number of credit unions designated as qualified public depositories.

2. The number of credit unions that meet all of the following requirements:

a. Apply to be designated as qualified public depositories.

b. Meet the requirements in paragraph (a).

(2) The Chief Financial Officer must withdraw from a

collateral agreement previously entered into with a credit union if, during any 90 calendar days, the combined total of the number of credit unions designated as qualified public depositories and the number of eligible credit unions applying to be designated as qualified public depositories is less than five.

(3) A credit union that is a party to a collateral agreement from which the Chief Financial Officer withdraws in accordance with subsection (2) may no longer be designated as a qualified public depository. Within 10 business days after the Chief Financial Officer notifies the credit union that the Chief Financial Officer has withdrawn from the collateral agreement, the credit union must return all public deposits that the credit union holds to the public depositor who deposited the funds. The notice provided for in this subsection may be sent to a credit union by regular mail or by e-mail.

(4) The Chief Financial Officer may limit the amount of public deposits that a credit union may hold in order to make sure that no single credit union holds an amount of public deposits that might adversely affect the integrity of the public deposits program.

Section 6. Subsection (11) of section 280.05, Florida Statutes, is amended to read:

280.05 Powers and duties of the Chief Financial Officer.—In fulfilling the requirements of this act, the Chief Financial

Officer has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

(11) Sell securities for the purpose of paying losses to public depositors not covered by deposit or share insurance.

Section 7. Subsection (1) of section 280.052, Florida Statutes, is amended to read:

280.052 Order of suspension or disqualification; procedure.—

(1) The suspension or disqualification of a bank, credit union, or savings association as a qualified public depository must be by order of the Chief Financial Officer and must be mailed to the qualified public depository by registered or certified mail.

Section 8. Paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of section 280.053, Florida Statutes, are amended to read:

280.053 Period of suspension or disqualification; obligations during period; reinstatement.—

(1)

(c) Upon expiration of the suspension period, the bank, credit union, or savings association may, by order of the Chief Financial Officer, be reinstated as a qualified public depository, unless the cause of the suspension has not been corrected or the bank, credit union, or savings association is

otherwise not in compliance with this chapter or any rule adopted pursuant to this chapter.

(2)

(c) Upon expiration of the disqualification period, the bank, credit union, or savings association may reapply for qualification as a qualified public depository. If a disqualified bank, credit union, or savings association is purchased or otherwise acquired by new owners, it may reapply to the Chief Financial Officer to be a qualified public depository before ~~prior to~~ the expiration date of the disqualification period. Redesignation as a qualified public depository may occur only after the Chief Financial Officer has determined that all requirements for holding public deposits under the law have been met.

Section 9. Section 280.055, Florida Statutes, is amended to read:

280.055 Cease and desist order; corrective order; administrative penalty.—

(1) The Chief Financial Officer may issue a cease and desist order and a corrective order upon determining that:

(a) A qualified public depository has requested and obtained a release of pledged collateral without approval of the Chief Financial Officer;

(b) A bank, credit union, savings association, or other financial institution is holding public deposits without a

certificate of qualification issued by the Chief Financial Officer;

(c) A qualified public depository pledges, deposits, or arranges for the issuance of unacceptable collateral;

(d) A custodian has released pledged collateral without approval of the Chief Financial Officer;

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer, when the Chief Financial Officer requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian;

(f) A qualified public depository; a bank, credit union, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Chief Financial Officer determines may be remedied by a cease and desist order or corrective order; or

(g) A qualified public depository no longer meets the definition of a qualified public depository under s. 280.02.

(2) Any qualified public depository or other bank, credit union, savings association, or financial institution or custodian that violates a cease and desist order or corrective order of the Chief Financial Officer is subject to an

administrative penalty not exceeding $1,000 for each violation of the order. Each day the violation of the order continues constitutes a separate violation.

Section 10. Section 280.07, Florida Statutes, is amended to read:

280.07 Mutual responsibility and contingent liability.—

(1) A ~~Any~~ bank, savings bank, or savings association that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other banks, savings banks, or savings associations that are designated as qualified public depositories.

(2) A credit union that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other credit unions that are designated as qualified public depositories.

Each qualified public depository shall execute a form prescribed by the Chief Financial Officer for such guarantee which must ~~shall~~ be approved by the board of directors and must ~~shall~~ become an official record of the institution.

Section 11. Subsections (1) and (3) of section 280.08, Florida Statutes, are amended to read:

280.08 Procedure for payment of losses.—When the Chief

Financial Officer determines that a default or insolvency has occurred, he or she shall provide notice as required in s. 280.085 and implement the following procedures:

(1) The Division of Treasury, in cooperation with the Office of Financial Regulation of the Financial Services Commission or the receiver of the qualified public depository in default, shall ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit or share insurance applicable to such deposits.

(3)(a) The loss to public depositors shall be satisfied, insofar as possible, first through any applicable deposit or share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The Chief Financial Officer may assess qualified public depositories as provided in paragraph (b), subject to the segregation of contingent liability in s. 280.07, for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

(b) The Chief Financial Officer shall provide coverage of any remaining loss by assessment against the other qualified public depositories. The Chief Financial Officer shall determine such assessment for each qualified public depository by multiplying the total amount of any remaining loss to all public depositors by a percentage which represents the average monthly balance of public deposits held by each qualified public

depository during the previous 12 months divided by the total average monthly balances of public deposits held by all qualified public depositories, excluding the defaulting depository, during the same period. The assessment calculation must ~~shall~~ be computed to six decimal places.

Section 12. Subsection (4) of section 280.085, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

280.085 Notice to claimants.—

(1) Upon determining the default or insolvency of a qualified public depository, the Chief Financial Officer shall notify, by first-class mail, all public depositors that have complied with s. 280.17 of such default or insolvency. The notice must direct all public depositors having claims or demands against the Public Deposits Trust Fund occasioned by the default or insolvency to file their claims with the Chief Financial Officer within 30 days after the date of the notice.

(4) The notice required in subsection (1) is not required if the default or insolvency of a qualified public depository is resolved in a manner in which all Florida public deposits are acquired by another insured bank, credit union, savings bank, or savings association.

Section 13. Section 280.09, Florida Statutes, is amended to read:

280.09 Public Deposits Trust Fund.—

(1) In order to facilitate the administration of this chapter, there is created the Public Deposits Trust Fund, hereafter in this section designated "the fund." The proceeds from the sale of securities or draw on letters of credit held as collateral or from any assessment pursuant to s. 280.08 must ~~shall~~ be deposited into the fund. The Chief Financial Officer must segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from any collateral proceeds, assessments, or administrative penalties attributable to any bank, savings bank, or savings association. Any administrative penalty collected pursuant to this chapter shall be deposited into the Treasury Administrative and Investment Trust Fund.

(2) The Chief Financial Officer is authorized to pay any losses to public depositors from the fund, subject to the limitations provided in subsection (1), and there are hereby appropriated from the fund such sums as may be necessary from time to time to pay the losses. The term "losses," for purposes of this chapter, must ~~shall~~ also include losses of interest or other accumulations to the public depositor as a result of penalties for early withdrawal required by Depository Institution Deregulatory Commission Regulations or applicable successor federal laws or regulations because of suspension or disqualification of a qualified public depository by the Chief Financial Officer pursuant to s. 280.05 or because of withdrawal

from the public deposits program pursuant to s. 280.11. In that event, the Chief Financial Officer is authorized to assess against the suspended, disqualified, or withdrawing public depository, in addition to any amount authorized by any other provision of this chapter, an administrative penalty equal to the amount of the early withdrawal penalty and to pay that amount over to the public depositor as reimbursement for such loss. Any money in the fund estimated not to be needed for immediate cash requirements shall be invested pursuant to s. 17.61.

Section 14. Subsections (1) and (3) of section 280.10, Florida Statutes, are amended to read:

280.10 Effect of merger, acquisition, or consolidation; change of name or address.—

(1) When a qualified public depository is merged into, acquired by, or consolidated with a bank, credit union, savings bank, or savings association that is not a qualified public depository:

(a) The resulting institution shall automatically become a qualified public depository subject to the requirements of the public deposits program.

(b) The contingent liability of the former institution shall be a liability of the resulting institution.

(c) The public deposits and associated collateral of the former institution shall be public deposits and collateral of

the resulting institution.

(d) The resulting institution shall, within 90 calendar days after the effective date of the merger, acquisition, or consolidation, deliver to the Chief Financial Officer:

1. Documentation in its name as required for participation in the public deposits program; or

2. Written notice of intent to withdraw from the program as provided in s. 280.11 and a proposed effective date of withdrawal which shall be within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(e) If the resulting institution does not meet qualifications to become a qualified public depository or does not submit required documentation within 90 calendar days after the effective date of the merger, acquisition, or consolidation, the Chief Financial Officer shall initiate mandatory withdrawal actions as provided in s. 280.11 and shall set an effective date of withdrawal that is within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(3) If the default or insolvency of a qualified public depository results in acquisition of all or part of its Florida public deposits by a bank, credit union, savings bank, or savings association that is not a qualified public depository, the bank, credit union, savings bank, or savings association

acquiring the Florida public deposits is subject to subsection (1).

Section 15. Subsection (1) of section 280.13, Florida Statutes, is amended to read:

280.13 Eligible collateral.—

(1) Securities eligible to be pledged as collateral by qualified public depositories ~~banks and savings associations~~ shall be limited to:

(a) Direct obligations of the United States Government.

(b) Obligations of any federal agency that are fully guaranteed as to payment of principal and interest by the United States Government.

(c) Obligations of the following federal agencies:

1. Farm credit banks.

2. Federal land banks.

3. The Federal Home Loan Bank and its district banks.

4. Federal intermediate credit banks.

5. The Federal Home Loan Mortgage Corporation.

6. The Federal National Mortgage Association.

7. Obligations guaranteed by the Government National Mortgage Association.

(d) General obligations of a state of the United States, or of Puerto Rico, or of a political subdivision or municipality thereof.

(e) Obligations issued by the Florida State Board of

Education under authority of the State Constitution or applicable statutes.

(f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.

(g) Public housing authority obligations.

(h) Revenue bonds or certificates of a state of the United States or of a political subdivision or municipality thereof.

(i) Corporate bonds of any corporation that is not an affiliate or subsidiary of the qualified public depository.

Section 16. Paragraph (b) of subsection (4) of section 280.17, Florida Statutes, is amended, and, for the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 280.17, Florida Statutes, is reenacted, to read:

280.17 Requirements for public depositors; notice to public depositors and governmental units; loss of protection.—In addition to any other requirement specified in this chapter, public depositors shall comply with the following:

(1)(a) Each official custodian of moneys that meet the definition of a public deposit under s. 280.02 shall ensure such moneys are placed in a qualified public depository unless the moneys are exempt under the laws of this state.

(4) If public deposits are in a qualified public depository that has been declared to be in default or insolvent,

each public depositor shall:

(b) Submit to the Chief Financial Officer for each public deposit, within 30 days after the date of official notification from the Chief Financial Officer, the following:

1. A claim form and agreement, as prescribed by the Chief Financial Officer, executed under oath, accompanied by proof of authority to execute the form on behalf of the public depositor.

2. A completed public deposit identification and acknowledgment form, as described in subsection (2).

3. Evidence of the insurance afforded the deposit pursuant to the Federal Deposit Insurance Act or the Federal Credit Union Act, as appropriate.

Section 16. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (a) of subsection (7) of section 17.57, Florida Statutes, is reenacted to read:

17.57 Deposits and investments of state money.—

(7) In addition to the deposits authorized under this section and notwithstanding any other provisions of law, funds that are not needed to meet the disbursement needs of the state may be deposited by the Chief Financial Officer in accordance with the following conditions:

(a) The funds are initially deposited in a qualified public depository, as defined in s. 280.02, selected by the Chief Financial Officer.

Section 17. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (1) of section 24.114, Florida Statutes, is reenacted to read:

24.114 Bank deposits and control of lottery transactions.—

(1) All moneys received by each retailer from the operation of the state lottery, including, but not limited to, all ticket sales, interest, gifts, and donations, less the amount retained as compensation for the sale of the tickets and the amount paid out as prizes, shall be remitted to the department or deposited in a qualified public depository, as defined in s. 280.02, as directed by the department. The department shall have the responsibility for all administrative functions related to the receipt of funds. The department may also require each retailer to file with the department reports of the retailer's receipts and transactions in the sale of lottery tickets in such form and containing such information as the department may require. The department may require any person, including a qualified public depository, to perform any function, activity, or service in connection with the operation of the lottery as it may deem advisable pursuant to this act and rules of the department, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person.

Section 18. For the purpose of incorporating the amendment

made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (e) of subsection (3) of section 125.901, Florida Statutes, is reenacted to read:

125.901 Children's services; independent special district; council; powers, duties, and functions; public records exemption.—

(3)

(e)1. All moneys received by the council on children's services shall be deposited in qualified public depositories, as defined in s. 280.02, with separate and distinguishable accounts established specifically for the council and shall be withdrawn only by checks signed by the chair of the council and countersigned by either one other member of the council on children's services or by a chief executive officer who shall be so authorized by the council.

2. Upon entering the duties of office, the chair and the other member of the council or chief executive officer who signs its checks shall each give a surety bond in the sum of at least $1,000 for each $1 million or portion thereof of the council's annual budget, which bond shall be conditioned that each shall faithfully discharge the duties of his or her office. The premium on such bond may be paid by the district as part of the expense of the council. No other member of the council shall be required to give bond or other security.

3. No funds of the district shall be expended except by

check as aforesaid, except expenditures from a petty cash account which shall not at any time exceed $100. All expenditures from petty cash shall be recorded on the books and records of the council on children's services. No funds of the council on children's services, excepting expenditures from petty cash, shall be expended without prior approval of the council, in addition to the budgeting thereof.

Section 19. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 136.01, Florida Statutes, is reenacted to read:

136.01 County depositories.—Each county depository shall be a qualified public depository as defined in s. 280.02 for the following funds: county funds; funds of all county officers, including constitutional officers; funds of the school board; and funds of the community college district board of trustees. This enumeration of funds is made not by way of limitation, but of illustration; and it is the intent hereof that all funds of the county, the board of county commissioners or the several county officers, the school board, or the community college district board of trustees be included.

Section 20. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (11) of section 159.608, Florida Statutes, is reenacted to read:

159.608 Powers of housing finance authorities.—A housing finance authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this act, and shall exercise its power to borrow only for the purpose as provided herein:

(11) To invest and reinvest surplus funds of the housing finance authority in accordance with s. 218.415. However, in addition to the investments expressly authorized in s. 218.415(16)(a)-(g) and (17)(a)-(d), a housing finance authority may invest surplus funds in interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation regardless of whether the bank or financial institution in which the deposit or investment is made is a qualified public depository as defined in s. 280.02. This subsection is supplementary to and may not be construed as limiting any powers of a housing finance authority or providing or implying a limiting construction of any other statutory provision.

Section 21. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 175.301, Florida Statutes, is reenacted to read:

175.301 Depository for pension funds.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or

local law plan under this chapter, all funds of the firefighters' pension trust fund of any chapter plan or local law plan under this chapter may be deposited by the board of trustees with the treasurer of the municipality or special fire control district, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality or special fire control district. However, any funds so deposited with the treasurer of the municipality or special fire control district shall be kept in a separate fund by the treasurer or clearly identified as such funds of the firefighters' pension trust fund. In lieu thereof, the board of trustees shall deposit the funds of the firefighters' pension trust fund in a qualified public depository as defined in s. 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280.

Section 22. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, subsection (8) of section 175.401, Florida Statutes, is reenacted to read:

175.401 Retiree health insurance subsidy.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, under the broad grant of home rule powers under the State Constitution and chapter 166,

municipalities have the authority to establish and administer locally funded health insurance subsidy programs. In addition, special fire control districts may, by resolution, establish and administer locally funded health insurance subsidy programs. Pursuant thereto:

(8) DEPOSIT OF HEALTH INSURANCE SUBSIDY FUNDS.—All funds of the health insurance subsidy fund may be deposited by the board of trustees with the treasurer of the municipality or special fire control district, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality or special fire control district. Any funds so deposited shall be segregated by the treasurer in a separate fund, clearly identified as funds of the health insurance subsidy fund. In lieu thereof, the board of trustees shall deposit the funds of the health insurance subsidy fund in a qualified public depository as defined in s. 280.02, which shall conform to and be bound by the provisions of chapter 280 with regard to such funds. In no case shall the funds of the health insurance subsidy fund be deposited in any financial institution, brokerage house trust company, or other entity that is not a public depository as provided by s. 280.02.

Section 23. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 185.30, Florida Statutes, is

reenacted to read:

185.30 Depository for retirement fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, all funds of the municipal police officers' retirement trust fund of any municipality, chapter plan, local law municipality, or local law plan under this chapter may be deposited by the board of trustees with the treasurer of the municipality acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. However, any funds so deposited with the treasurer of the municipality shall be kept in a separate fund by the municipal treasurer or clearly identified as such funds of the municipal police officers' retirement trust fund. In lieu thereof, the board of trustees shall deposit the funds of the municipal police officers' retirement trust fund in a qualified public depository as defined in s. 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280.

Section 24. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, subsection (8) of section 185.50, Florida Statutes, is reenacted to read:

185.50 Retiree health insurance subsidy.—For any municipality, chapter plan, local law municipality, or local law

plan under this chapter, under the broad grant of home rule powers under the State Constitution and chapter 166, municipalities have the authority to establish and administer locally funded health insurance subsidy programs. Pursuant thereto:

(8) DEPOSIT OF PENSION FUNDS.—All funds of the health insurance subsidy fund may be deposited by the board of trustees with the treasurer of the municipality, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. Any funds so deposited shall be segregated by said treasurer in a separate fund, clearly identified as funds of the health insurance subsidy fund. In lieu thereof, the board of trustees shall deposit the funds of the health insurance subsidy fund in a qualified public depository as defined in s. 280.02, which shall conform to and be bound by the provisions of chapter 280 with regard to such funds. In no case shall the funds of the health insurance subsidy fund be deposited in any financial institution, brokerage house trust company, or other entity that is not a public depository as provided by s. 280.02.

Section 25. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (3) of section 190.007, Florida Statutes, is reenacted to read:

190.007 Board of supervisors; general duties.—

(3) The board is authorized to select as a depository for its funds any qualified public depository as defined in s. 280.02 which meets all the requirements of chapter 280 and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the board may deem just and reasonable.

Section 26. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (16) of section 191.006, Florida Statutes, is reenacted to read:

191.006 General powers.—The district shall have, and the board may exercise by majority vote, the following powers:

(16) To select as a depository for its funds any qualified public depository as defined in s. 280.02 which meets all the requirements of chapter 280 and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.

Section 27. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (2) of section 215.34, Florida Statutes, is reenacted to read:

215.34 State funds; noncollectible items; procedure.—

(2) Whenever a check, draft, or other order for the payment of money is returned by the Chief Financial Officer, or by a qualified public depository as defined in s. 280.02, to a state officer, a state agency, or the judicial branch for collection, the officer, agency, or judicial branch shall add to the amount due a service fee of $15 or 5 percent of the face amount of the check, draft, or order, whichever is greater. An agency or the judicial branch may adopt a rule which prescribes a lesser maximum service fee, which shall be added to the amount due for the dishonored check, draft, or other order tendered for a particular service, license, tax, fee, or other charge, but in no event shall the fee be less than $15. The service fee shall be in addition to all other penalties imposed by law, except that when other charges or penalties are imposed by an agency related to a noncollectible item, the amount of the service fee shall not exceed $150. Proceeds from this fee shall be deposited in the same fund as the collected item. Nothing in this section shall be construed as authorization to deposit moneys outside the State Treasury unless specifically authorized by law.

Section 28. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, paragraph (c) of subsection (16), paragraph (c) of subsection (17), and paragraph (a) of subsection (23) of section 218.415, Florida Statutes, are reenacted to read:

218.415 Local government investment policies.—Investment

activity by a unit of local government must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government and maintained by the unit of local government or, in the alternative, such activity must be conducted in accordance with subsection (17). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(16), or shall meet the alternative investment guidelines contained in subsection (17). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local government shall adopt policies that are commensurate with the nature and size of the public funds within its custody.

(16) AUTHORIZED INVESTMENTS; WRITTEN INVESTMENT POLICIES.—Those units of local government electing to adopt a written investment policy as provided in subsections (1)-(15) may by resolution invest and reinvest any surplus public funds in their control or possession in:

(c) Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02.

(17) AUTHORIZED INVESTMENTS; NO WRITTEN INVESTMENT POLICY.—Those units of local government electing not to adopt a

written investment policy in accordance with investment policies developed as provided in subsections (1)-(15) may invest or reinvest any surplus public funds in their control or possession in:

(c) Interest-bearing time deposits or savings accounts in qualified public depositories, as defined in s. 280.02.

The securities listed in paragraphs (c) and (d) shall be invested to provide sufficient liquidity to pay obligations as they come due.

(23) AUTHORIZED DEPOSITS.—In addition to the investments authorized for local governments in subsections (16) and (17) and notwithstanding any other provisions of law, a unit of local government may deposit any portion of surplus public funds in its control or possession in accordance with the following conditions:

(a) The funds are initially deposited in a qualified public depository, as defined in s. 280.02, selected by the unit of local government.

Section 29. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (h) of subsection (4) of section 255.502, Florida Statutes, is reenacted to read:

255.502 Definitions; ss. 255.501-255.525.—As used in this act, the following words and terms shall have the following

meanings unless the context otherwise requires:

(4) "Authorized investments" means and includes without limitation any investment in:

(h) Savings accounts in, or certificates of deposit of, qualified public depositories as defined in s. 280.02, in an amount that does not exceed 15 percent of the net worth of the institution, or a lesser amount as determined by rule by the State Board of Administration, provided such savings accounts and certificates of deposit are secured in the manner prescribed in chapter 280.

Investments in any security authorized in this subsection may be under repurchase agreements or reverse repurchase agreements.

Section 30. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (15) of section 280.051, Florida Statutes, is reenacted to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(15) No longer meets the definition of a qualified public depository under s. 280.02.

Section 31. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a

reference thereto, subsection (1) of section 280.18, Florida Statutes, is reenacted to read:

280.18 Protection of public depositors; liability of the state.—

(1) When public deposits are made in accordance with this chapter, there shall be protection from loss to public depositors, as defined in s. 280.02, in the absence of negligence, malfeasance, misfeasance, or nonfeasance on the part of the public depositor or on the part of his or her agents or employees.

Section 32. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, subsections (1) and (2) of section 331.309, Florida Statutes, are reenacted to read:

331.309 Treasurer; depositories; fiscal agent.—

(1) The board shall designate an individual who is a resident of the state, or a qualified public depository as defined in s. 280.02, as treasurer of Space Florida, who shall have charge of the funds of Space Florida. Such funds shall be disbursed only upon the order of or pursuant to the resolution of the board by warrant, check, authorization, or direct deposit pursuant to s. 215.85, signed or authorized by the treasurer or his or her representative or by such other persons as may be authorized by the board. The board may give the treasurer such other or additional powers and duties as the board may deem

appropriate and shall establish the treasurer's compensation. The board may require the treasurer to give a bond in such amount, on such terms, and with such sureties as may be deemed satisfactory to the board to secure the performance by the treasurer of his or her powers and duties. The board shall audit or have audited the books of the treasurer at least once a year.

(2) The board is authorized to select as depositories in which the funds of the board and of Space Florida shall be deposited any qualified public depository as defined in s. 280.02, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the board may deem just and reasonable. The funds of Space Florida may be kept in or removed from the State Treasury upon written notification from the chair of the board to the Chief Financial Officer.

Section 33. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (2) of section 373.553, Florida Statutes, is reenacted to read:

373.553 Treasurer of the board; payment of funds; depositories.—

(2) The board is authorized to select as depositories in which the funds of the board and of the district shall be deposited in any qualified public depository as defined in s. 280.02, and such deposits shall be secured in the manner

provided in chapter 280.

Section 34. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 631.221, Florida Statutes, is reenacted to read:

631.221 Deposit of moneys collected.—The moneys collected by the department in a proceeding under this chapter shall be deposited in a qualified public depository as defined in s. 280.02, which depository with regards to such funds shall conform to and be bound by all the provisions of chapter 280, or invested with the Chief Financial Officer pursuant to chapter 18. For the purpose of accounting for the assets and transactions of the estate, the receiver shall use such accounting books, records, and systems as the court directs after it hears and considers the recommendations of the receiver.

Section 35. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (c) of subsection (3) of section 723.06115, Florida Statutes, is reenacted to read:

723.06115 Florida Mobile Home Relocation Trust Fund.—

(3) The department shall distribute moneys in the Florida Mobile Home Relocation Trust Fund to the Florida Mobile Home Relocation Corporation in accordance with the following:

(c) Funds transferred from the trust fund to the

corporation shall be transferred electronically and shall be transferred to and maintained in a qualified public depository as defined in s. 280.02 which is specified by the corporation.

Section 36. This act shall take effect July 1, 2024.

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: State Administration & Technology Appropriations Subcommittee
Representative Botana offered the following:

Amendment (with title amendment)

Remove lines 267-271 and insert:

(4)(a) All credit unions may hold public deposits in a total combined amount not to exceed 15 percent of the total qualified public deposits held in this state per the public deposits program data as managed by the Chief Financial Officer.

(b) No credit union may hold public deposit funds of more than 10 percent of their total institution's assets.

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

Remove lines 19-20 and insert:

limiting the total combined amount of public deposits credit unions may hold; limiting the amount of public deposits a credit union may hold;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 613 Mobile Home Park Lot Tenancies
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Stark and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee		Helpling	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

Chapter 723, F.S., the "Florida Mobile Home Act," addresses the unique relationship between a mobile home owner and a mobile home park owner, and applies to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease. The Division of Condominiums, Timeshares, and Mobile Homes (CTMH) under the Department of Business and Professional Regulation (DBPR) has the power and duty to enforce and ensure certain compliance with the Florida Mobile Home Act, which includes running a mediation program and the Florida Mobile Home Relocation Corporation (corporation).

The bill:

- Provides that, after the last meeting to resolve a dispute regarding a rent increase, the mobile home park owner and home owners may immediately enter into an agreement to initiate mediation and select their own mediator.
- Requires home owners to provide the following documents to the park owner upon filing a petition with CTMH:
  - The homeowners' petition for mediation on a form adopted by CTMH rule;
  - The written designation with lot identification for each signature;
  - The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
  - The records that verify the selection of the homeowners' committee.
- Requires CTMH to appoint a qualified mediator to conduct mediation proceedings, if the parties have not selected their own mediator, and notify the parties within 20 days after receipt of a mediation petition.
- Provides that a civil action may not be filed until the dispute has been submitted to mediation.
- Provides that a live-in health care aide must have ingress and egress to and from the mobile home owner's site without additional rent, fee, or any charge whatsoever, except the cost of a background check if one is required.
- Provides that the live-in health care aide or the aide's assistant does not have any rights of tenancy in the mobile home park.
- Increases relocation payments to the mobile home owner from the corporation when the home owner must move due to a change in use of the land.

The bill will likely increase expenditures by the CTMH. *See* Fiscal Analysis and Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation regulates and licenses various businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes (CTMH),
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.[1]

CTMH provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[2] CTMH has limited regulatory authority over the following business entities and individuals:[3]

- 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 (jurisdiction is limited to arbitration of election and recall disputes).

Mobile Home Parks

Chapter 723, F.S., the "Florida Mobile Home Act," addresses the unique relationship between a mobile home owner and a mobile home park owner.[4] The provisions in Ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[5]

CTMH has the power and duty to enforce and ensure compliance with the Florida Mobile Home Act relating to the rental, development, and sale of mobile home parks. However, CTMH does not have the power or duty to enforce mobile home park rules and regulations or to enforce certain provisions related to park maintenance and infrastructure, homeowner code compliance and maintenance, and certain unreasonable lot rental agreements.[6]

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[1] S. 20.165, F.S.
[2] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Mar. 19, 2021).
[3] *Id*.
[4] S. 723.004, F.S.
[5] S. 723.002(1), F.S.
[6] As outlined in ss. 723.022, 723.023, and 723.033, F.S.

CTMH may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., relating to the requirements in the Administrative Procedures Act for the adoption of rules by agencies, to implement and enforce the provisions of ch. 723, F.S, including rules to authorize amendments to an approved prospectus or offering circular and to establish a category of minor violations of ch. 723, F.S., or rules promulgated pursuant thereto.[7] CTMH may also adopt rules for mediation procedures.[8]

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.[9]
- "Mobile home owner," "mobile homeowner," "home owner," or "homeowner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.[10]

Mobile Home Park Rent Increases

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement "in an amount deemed appropriate by the mobile home park owner."[11] The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least a 90-day notice of a lot rental increase.[12]

Upon the sale of a mobile home on a rented lot, the amount of a lot rental increase is to be disclosed and agreed to by the purchaser by executing a rental agreement that sets forth the new lot rental amount.[13] A lot rental amount may not be increased during the term of a rental agreement. However, if the rental agreement is for a term of more than 12 months, the lot rental amount may be increased during the rental term but not more frequently than annually. Pass-through charges[14] may also be increased during the term of the rental agreement.[15]

Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.[16] However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.[17]

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in the lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. [18] The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner must make the names and addresses available upon request.[19]

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[7] *See* ss. 723.006(7), (8), (9), and (10), F.S.
[8] S. 723.038, F.S.
[9] S. 723.003(12), F.S.
[10] S. 723.003(11), F.S.
[11] S. 723.059(4), F.S.
[12] S. 723.037(1), F.S.
[13] S. 723.031(5), F.S.
[14] S. 723.003(17), F.S, defines the term "pass-through charge" to mean "the mobile home owner's proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities."
[15] S. 723.031(5)(b), F.S.
[16] S. 723.031(5), F.S.
[17] S. 723.031(5)(c), F.S.
[18] S. 723.037(1), F.S.
[19] *Id.*

A committee of homeowners and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase. The homeowners' committee may consist of no more than five people, who are mobile homeowners in the park and who are designated by a majority of the owners or by the board of directors of the homeowners' association if formed as provided under s. 723.075, F.S.[20] At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.[21]

Dispute Resolution

If the meeting regarding a rent increase does not resolve the issue, then additional meetings may be requested. Section 723.037(4), F.S., provides that, if subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition CTMH to initiate mediation if a majority of the affected have designated, in writing, that:[22]

- The rental increase is unreasonable;
- The rental increase has made the lot rental amount unreasonable;
- The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or
- The change in the rules and regulations is unreasonable.

Within 30 days of the last scheduled meeting, a park owner may also petition CTMH for mediation of the dispute.[23]

If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase.[24] The court may refer the action to nonbinding arbitration pursuant to s. 44.103, F.S.

Section 723.038, F.S., provides that, upon receipt of the petition from either party, CTMH must appoint a qualified mediator to conduct mediation proceedings unless the parties timely notify CTMH in writing that they have selected a mediator.

The person appointed by CTMH to serve as mediator must be a qualified mediator from a list of circuit court mediators in each judicial circuit and who has met training and educational requirements established by the Supreme Court. If such mediators are not available, CTMH may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium.[25]

Within 20 days of receiving a petition to mediate a dispute, CTMH must notify the parties that a mediator has been appointed by FTMH. The parties may accept the mediator appointed by CTMH or, within 30 days, select a mediator to mediate the dispute.[26]

The parties may agree to select their own mediator to be governed by the rules of procedure established by CTMH. The parties may agree to waive mediation, or the petitioning party may withdraw

[20] S. 723.037(4)(a), F.S.
[21] S. 723.037(4)(b), F.S.
[22] S. 723.037(5)(a), F.S.
[23] S. 723.037(5)(b), F.S.
[24] Ss. 723.038 and 723.0381, F.S.
[25] S. 1004.59, F.S., establishes the Florida Conflict Resolution Consortium at Florida State University "to reduce the public and private costs of litigation; resolve public disputes, including those related to growth management issues, more quickly and effectively; and improve intergovernmental communications, cooperation, and consensus building." *See* Florida Conflict Resolution Consortium at https://consensus.fsu.edu/index.html (last visited Jan. 23, 2024).
[26] S. 723.038(4), F.S.

the petition prior to mediation. Upon the conclusion of the mediation, the mediator must notify CTMH that the mediation has been concluded.[27]

The resolution of a dispute arising from a mediation may not be deemed to be final agency action. However, either party may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The circuit court must consider such resolution or agreement made during the mediation to be a contract for the purpose of providing a remedy to the complaining party.[28]

If mediation does not resolve the dispute, either party may file an action in the circuit court.[29]

Mobile Home Relocation

In 2001, the Legislature created the Florida Mobile Home Relocation Corporation (corporation) in s. 723.0611, F.S., to provide for the collection and payment of relocation expenses for mobile home owners displaced by a change in land use for a mobile home park. [30] Specifically, s. 723.0612, F.S., provides for relocation expenses to be paid from the corporation to the mobile home owner from the Florida Mobile Home Relocation Trust Fund (fund).[31]

The amount of the payment is the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or $3,000 for a single-section mobile home or $6,000 for a multi-section mobile home, whichever is less.[32]

In lieu of collecting moving expenses from the corporation, a mobile home owner may elect to abandon the home and collect payment from the corporation in the amount of $1,375 for a single section mobile home and $2,750 for a multi-section mobile home.[33] Upon election of abandonment, the mobile home owner must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home.[34] The mobile home park owner is required to pay the corporation an amount equal to the amount the mobile home owner is entitled to receive from the corporation.[35]

The mobile home park owner is required to pay the corporation an amount equal to the amount the mobile home owner is entitled to receive from the corporation.[36]

The mobile home park owner is not required to make the payments, nor is the mobile home owner entitled to compensation, if: [37]

- The mobile home owner is moved to another space in the park or to another mobile home park at the park owner's expense;
- The mobile home owner notified the mobile home park owner, before the notice of a change in land use, that he or she was vacating the premises;
- A mobile home owner abandons the home in the park; or
- The mobile home owner had an eviction action for nonpayment of lot rental amount filed against him or her prior to the mailing date of the change in the use of land.

[27] S. 723.038(5), F.S.
[28] S. 723.038(6), F.S.
[29] S. 723.0381(1), F.S.
[30] Ch. 2001-227, L.O.F.
[31] Ss. 723.007(2), 723.0612(2) and (7), F.S.
[32] S. 723.0612(1), F.S.
[33] S. 723.0612(7), F.S.
[34] *Id.*
[35] S. 723.0612(7), F.S.
[36] S. 723.0612(7), F.S.
[37] Ss. 723.0612(2) and (7), F.S.

The Mobile Home Relocation Trust Fund has a current balance of $5,671,376.86. Payouts from the fund for the past five fiscal years are as follows:[38]

	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23
Total Paid Out	$68,250	$141,500	$9,875	$4,125	$29,125
Number of Payouts	30	61	4	2	16

Invitees

An invitee[39] of a mobile home owner may enter or leave the home owner's site without the home owner or invitee being required to pay additional rent, a fee, or any charge whatsoever. Any mobile home park rule or regulation is null and void if it provides fees or charges to the contrary to this right of access.[40]

All guests, family members, or invitees of a mobile home owner are required to abide by properly promulgated rules and regulations.

Section 723.051(3), F.S., provides that an "invitee" is a person whose stay at the request of a mobile home owner does not exceed 15 consecutive days or 30 total days per year, unless such person has the permission of the park owner or unless permitted by a properly promulgated rule or regulation. The spouse of a mobile home owner shall not be considered an invitee.

Live-in Aides

The Fair Housing Act requires owners and landlords to make reasonable accommodations if the accommodation may be necessary to ensure that a person with a disability has equal opportunity to use and enjoy the dwelling. An example of a reasonable accommodation is not counting a live-in aide as an additional tenant or guest.[41]

A reasonable accommodation is a change, exception, adaptation or modification to a policy, program or service that allows a person with a disability to use and enjoy a dwelling. The term also applies to public and common use spaces.

In general, a live-in aide is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:[42]

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

Effect of the Bill

The bill provides that, if the home owners file a petition for mediation with CTMH within 30 days of the last meeting to resolve a dispute regarding a rent increase, the mobile home owners must provide to the park owner, by certified mail, return receipt requested, a copy of the following:

- The homeowners' petition for mediation on a form adopted by CTMH rule;
- The written designation with lot identification for each signature;

[38] Email from Chris Kingry, Deputy Legislative Affairs Director, DBPR, RE: Florida Mobile Home Relocation Trust Fund (Jan. 30, 2024),
[39] Black's Law Dictionary (11th ed. 2019) defines the term "invitee" to mean "someone who has an express or implied invitation to enter or use another's premises, such as a business visitor or a member of the public to whom the premises are held open. The occupier has a duty to inspect the premises and to warn the invitee of dangerous conditions."
[40] S. 723.051(1), F.S.
[41] Disability Rights Florida, *Fair Housing Act*, https://disabilityrightsflorida.org/disability-topics/disability_topic_info/fair_housing_act (last visited Jan. 30, 2024).
[42] For example, *see* 24 C.F.R § 5.403

- The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
- The records that verify the selection of the homeowners' committee.

The bill clarifies that a park owner, within 30 days after the last meeting to resolve a dispute regarding a rent increase, may also petition CTMH to initiate mediation of the dispute.

The bill requires that a petition for mediation must be filed with CTMH in all cases for a determination of adequacy and conformance of the petition requirements.

The bill requires CTMH to dismiss a petition for mediation in the event that the park owner and mobile home owners fail to comply with required petition procedures.

The bill allows the park owner, within 10 days after receipt of the petition from the homeowners, to file objections to the petition with CTMH. If a mediator has not been selected, CTMH must assign a mediator within 10 days after receipt of the petition by the park owner.

The bill provides that the mobile home park owner and home owners may immediately enter into an agreement to initiate mediation and select their own mediator.

The bill provides that a mediator selected by the parties:
- Must be a qualified mediator selected from the list of circuit court mediators in each judicial circuit or the list maintained by the Florida Growth Management Conflict Resolution Consortium.
- Has judicial immunity in the same manner and to the same extent as a judge.

The bill clarifies that CTMH is required to appoint a qualified mediator to conduct mediation proceedings and notify the parties within 20 days after receipt of a petition, if the parties have not selected their own mediator.

The bill provides that a civil action may not be initiated unless the dispute has been submitted to mediation.

Related to live-in aides and their assistants, the bill provides that:
- A live-in health care aide or the aide's assistant, as provided for in the federal Fair Housing Act, must have ingress and egress to and from the mobile home owner's site without the mobile home owner, live-in health care aide, aide's assistant, or invitee being required to pay additional rent, a fee, or any charge whatsoever, except that the mobile home owner must pay the cost of a background check for the live-in health care aide or the aide's assistant if one is required.
- The live-in health care aide or the aide's assistant does not have any rights of tenancy in the mobile home park.
- The mobile home owner must provide the name of the live-in health care aide or the aide's assistant to the park owner or park manager and the information required to conduct the background check if one is required.
- The mobile home owner is responsible for removing the live-in health care aide or the aide's assistant and covering the costs associated with such removal.

The bill clarifies the purpose of the Florida Mobile Home Relocation Corporation is to address voluntary closures of mobile home parks due to a change in the use of the land.

The bill increases the relocation payments to the mobile home owner from the corporation:
- If a mobile home owner is required to move due to a change in use of the land, when the fixed payments are less than the actual moving expenses, to:
    - $6,500 for a single-section mobile home, from $3,000.
    - $11,500 for a multisection mobile home, from $6,000.

- If a mobile home owner abandons the mobile home in the mobile home park, to:
  - $3,000 for a single section, from $1,375.
  - $5,000 for a multisection, from $2,750.

The bill allows the moving contractor who moves a mobile homeowner related to relocation to redeem the voucher from the corporation for up to 2 years after the date of issuance.

The bill limits what a park owner must pay to a mobile home owner who chooses abandonment, to $1,375 for a single section, and $2,750 for a multisection, instead of requiring the park owner to match the payment made by the corporation.

The bill requires CTMH to adopt rules to enforce the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 723.037, F.S.; relating to options for mediation.
Section 2: Amends s. 723.038, F.S.; providing requirements and procedures for mediation.
Section 3: Amends s. 723.0381, F.S.; limiting when certain actions may be filed in circuit court.
Section 4: Amends s. 723.051, F.S.; relating to live-in health aides.
Section 5: Amends s. 723.0611, F.S.; clarifying a purpose for the Florida Mobile Home Relocation Corporation.
Section 6: Amends s. 723.0612, F.S.; increasing available payouts amount from the Florida Mobile Home Relocation Corporation.
Section 7: Requires CTMH to adopt rules.
Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will increase expenditures by CTMH for enforcement due to increasing the jurisdiction CTMH has related to mobile home parks. The bill will likely increase expenditures from the fund as certain payments have increased. Current trust fund revenues should support the increase in expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more mobile home owners to have a live-in aide without an additional charge.

D. FISCAL COMMENTS:

The Mobile Home Relocation Trust Fund has a current balance of $5,671,376.86. An accounting of the fund is as follows:[43]

Revenue to the fund for the past five fiscal years:

	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23
Park Owner Fees	$54,638	$134,581	$26,625	$2,750	$16,500
DHSMV Surcharge	$438,631	$378,405	$406,433	$412,814	$401,807
CTMH Surcharge	$282,885	$283,353	$282,390	$294,231	$282,455
Interest	$74,630	$115,712	$67,082	$33,827	$78,673
Total Revenue	$850,784	$912,051	$782,530	$743,622	$779,435

Expenditures from the fund for the past five fiscal years:

	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23
Transferred to corporation	$338,450	$422,000	$357,086	$284,573	$241,592
Service Charge to General Revenue	$65,960	$74,671	$64,334	$56,773	$61,901
Interest Assessment	$3,598	$4,241	$4,655	$4,770	$5,358
Total Expenditures	$408,008	$500,912	$426,075	$346,116	$308,788

Payouts from the fund for the past five fiscal years:

	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23
Total Paid Out	$68,250	$141,500	$9,875	$4,125	$29,125
Number of Payouts	30	61	4	2	16

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires CTMH to adopt rules to enforce the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is unclear if a requirement that DBPR appoint a mediator is within 10 days after the park owner files objections to the home owner's petition, within 10 days after the home owners have filed their petition, or within 10 days after the park owner files a petition.

[43] Email from Chris Kingry, Deputy Legislative Affairs Director, DBPR, RE: Florida Mobile Home Relocation Trust Fund (Jan. 30, 2024),

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes provisions giving DBPR jurisdiction over certain park and owner maintenance and certain unreasonable lot rental agreements.
- Provides that a civil action may not be filed until the dispute has been through mediation.
- Clarifies when the parties may immediately file a petition and select a mediator.
- Requires DBPR to assign a mediator upon receipt of a petition, if one has not already been selected by the parties and notify the parties of a filed petition within 20 days of receiving the petition.
- Provides requirements for what information and documents must be in a petition submitted to DBPR.
- Requires DBPR to dismiss a deficient petition.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to mobile home park lot tenancies; amending s. 723.037, F.S.; requiring that a petition for mediation be filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to determine its adequacy and conformance to certain requirements; requiring mobile home owners to provide, in a specified manner, certain documents to a mobile home park owner; authorizing a mobile home park owner and the mobile home owners, by mutual agreement, to select a mediator; requiring the division to dismiss a petition for mediation under certain circumstances; authorizing a mobile home park owner to file objections to the petition for mediation within a specified timeframe; requiring the division to assign a mediator within a specified timeframe under certain circumstances; amending s. 723.038, F.S.; authorizing the parties to a dispute to agree to immediately select a mediator and initiate mediation proceedings; requiring the division to appoint a qualified mediator and notify the parties within a specified timeframe; conforming a provision to changes made by the act; amending s. 723.0381, F.S.; prohibiting the initiation of a civil action unless the dispute is first

submitted to mediation; amending s. 723.051, F.S.; providing that a live-in health care aide must have ingress and egress to and from a mobile home owner's site without such owner or aide being required to pay additional rent, a fee, or any charge; requiring a mobile home owner to pay the cost of any necessary background check for the live-in health care aide; specifying that a live-in health care aide does not have any rights of tenancy in the mobile home park; requiring a mobile home owner to notify the park owner or park manager of certain information relating to the live-in aide; requiring the mobile home owner to remove the live-in health care aide and cover certain costs associated with such removal if necessary; amending s. 723.0611, F.S.; providing the purpose of the Florida Mobile Home Relocation Corporation; amending s. 723.0612, F.S.; revising the amounts of certain expenses that the corporation is required to pay the mobile home owner under certain circumstances; providing that certain vouchers are redeemable for a specified time period; specifying the amounts that a park owner must pay the corporation under certain circumstances; requiring the division to adopt rules; providing an effective date.

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

Section 1. Paragraphs (b), (c), and (d) of subsection (5) of section 723.037, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, present paragraph (b) of that subsection is amended, and new paragraphs (b), (f), (g), and (h) are added to that subsection, to read:

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.—

(5)

(b) A petition for mediation must be filed with the division in all cases for a determination of adequacy and conformance of the petition with the requirements in paragraph (a). Upon filing the petition with the division, the mobile home owners must provide to the park owner, by certified mail, return receipt requested, a copy of all of the following:

1. The home owners' petition for mediation on a form adopted by the division by rule.

2. The written designation required by this subsection, which must include the lot identification for each signature.

3. The notice or notices of a lot rental increase, reduction in services or utilities, or change in rules and regulations which is being challenged as unreasonable.

4. The records that verify the selection of the homeowners' committee in accordance with subsection (4).

(c) ~~(b)~~ A park owner, within the same time period, may also petition the division to initiate mediation of the dispute pursuant to s. 723.038.

(f) As an alternative to the appointment of a mediator by the division, the park owner and the mobile home owners may, by mutual agreement, select a mediator pursuant to s. 723.038(2) and (4).

(g) The division must dismiss a petition for mediation if the park owner and mobile home owners fail to comply with this subsection.

(h) Within 10 days after receipt of a petition from the mobile home owners, the park owner may file objections to the petition with the division. The division must dismiss any petition that is not timely filed, does not meet the requirements of this subsection, or is otherwise found deficient by the division. If a mediator has not been selected pursuant to paragraph (f), the division must assign a mediator within 10 days after receipt of the petition by the park owner.

The purpose of this subsection is to encourage discussion and evaluation by the parties of the comparable mobile home parks in the competitive market area. The requirements of this subsection are not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions before ~~prior to~~ the

parties proceed ~~proceeding~~ to litigation of any dispute.

Section 2. Subsections (1), (2), (4), and (9) of section 723.038, Florida Statutes, are amended to read:

723.038 Dispute settlement; mediation.—

(1) Either party may petition the division to appoint a mediator and initiate mediation proceedings or the parties may agree to immediately select a mediator and initiate mediation proceedings pursuant to the criteria outlined in subsections (2) and (4).

(2) The division, upon receipt of a petition, shall appoint a qualified mediator to conduct mediation proceedings and notify the parties within 20 days after such appointment, unless the parties timely notify the division in writing that they have selected a mediator. A person appointed by the division or selected by the parties must ~~shall~~ be a qualified mediator from a list of circuit court mediators in each judicial circuit who has met training and educational requirements established by the Supreme Court. If such mediators are not available, the division or the parties may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium. The division shall adopt ~~promulgate~~ rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court. The division shall also establish, by rule, the fee to be charged by a mediator which shall not exceed the

fee authorized by the circuit court.

(4) After the date of the last scheduled meeting held pursuant to s. 723.037(4), the parties to a dispute may agree to immediately select a mediator and initiate mediation proceedings pursuant to this section ~~Upon receiving a petition to mediate a dispute, the division shall, within 20 days, notify the parties that a mediator has been appointed by the division~~. The parties may accept the mediator appointed by the division or, within 30 days, select a mediator to mediate the dispute pursuant to subsection (2). The parties shall each pay a $250 filing fee to the mediator appointed by the division or selected by the parties~~,~~ within 30 days after the division notifies the parties of the appointment of the mediator. The $250 filing fee shall be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used shall be refunded to the parties.

(9) A mediator appointed by the division or selected by the parties pursuant to this section has ~~shall have~~ judicial immunity in the same manner and to the same extent as a judge.

Section 3. Subsection (1) of section 723.0381, Florida Statutes, is amended to read:

723.0381 Civil actions; arbitration.—

(1) A civil action may not be initiated unless the dispute has been submitted to mediation pursuant to s. 723.037(5). After mediation of a dispute pursuant to s. 723.038 has failed to

provide a resolution of the dispute, either party may file an action in the circuit court.

Section 4. Subsection (1) of section 723.051, Florida Statutes, is amended to read:

723.051 Invitees and live-in health care aides; rights and obligations.—

(1) An invitee of a mobile home owner, or a live-in health care aide as provided for in the federal Fair Housing Act, must ~~shall~~ have ingress and egress to and from the mobile home owner's site without the mobile home owner, live-in health care aide, or invitee being required to pay additional rent, a fee, or any charge whatsoever, except that the mobile home owner must pay the cost of a background check for the live-in health care aide if one is required. Any mobile home park rule or regulation providing for fees or charges contrary to the terms of this section is ~~null and~~ void. The live-in health care aide does not have any rights of tenancy in the mobile home park and the mobile home owner must notify the park owner or park manager of the name of the live-in health care aide and provide the information required to have the background check, if one is necessary. The mobile home owner has the responsibility to remove the live-in health care aide should it become necessary and to cover the costs associated with such removal.

Section 5. Paragraph (a) of subsection (1) of section 723.0611, Florida Statutes, is amended to read:

723.0611 Florida Mobile Home Relocation Corporation.—

(1)(a) There is created the Florida Mobile Home Relocation Corporation. The purpose of the corporation is to address the voluntary closure of mobile home parks due to a change in the use of the land. The corporation shall be administered by a board of directors made up of six members, three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state, and three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state. All members of the board of directors, including the chair, shall be appointed to serve for staggered 3-year terms.

Section 6. Paragraph (b) of subsection (1) and subsections (4) and (7) of section 723.0612, Florida Statutes, are amended to read:

723.0612 Change in use; relocation expenses; payments by park owner.—

(1) If a mobile home owner is required to move due to a change in use of the land comprising the mobile home park as set forth in s. 723.061(1)(d) and complies with the requirements of this section, the mobile home owner is entitled to payment from the Florida Mobile Home Relocation Corporation of:

(b) The amount of $6,500 ~~$3,000~~ for a single-section mobile home or $11,500 ~~$6,000~~ for a multisection mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.

(4) The Florida Mobile Home Relocation Corporation must approve payment within 45 days after receipt of the information set forth in subsection (3), or payment is deemed approved. A copy of the approval must be forwarded to the park owner with an invoice for payment. Upon approval, the corporation shall issue a voucher in the amount of the contract price for relocating the mobile home. The moving contractor may redeem the voucher from the corporation following completion of the relocation and upon approval of the relocation by the mobile home owner for up to 2 years after the date of issuance.

(7) In lieu of collecting payment from the Florida Mobile Home Relocation Corporation as set forth in subsection (1), a mobile home owner may abandon the mobile home in the mobile home park and collect $3,000 ~~$1,375~~ for a single section and $5,000 ~~$2,750~~ for a multisection from the corporation as long as the mobile home owner delivers to the park owner the current title to the mobile home duly endorsed by the owner of record and valid releases of all liens shown on the title. If a mobile home owner chooses this option, the park owner must ~~shall~~ make payment to the corporation of $1,375 for a single section and $2,750 for a multisection ~~in an amount equal to the amount the~~

~~mobile home owner is entitled to under this subsection~~. The mobile home owner's application for funds under this subsection requires ~~shall require~~ the submission of a document signed by the park owner stating that the home has been abandoned under this subsection and that the park owner agrees to make payment to the corporation in the amount provided to the home owner under this subsection. However, in the event that the required documents are not submitted with the application, the corporation may consider the facts and circumstances surrounding the abandonment of the home to determine whether the mobile home owner is entitled to payment pursuant to this subsection. The mobile home owner is not entitled to any compensation under this subsection if there is a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her before ~~prior to~~ the mailing date of the notice of change in the use of the mobile home park given pursuant to s. 723.061(1)(d).

Section 7. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall adopt rules to implement and administer this act.

Section 8. This act shall take effect July 1, 2024.

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: State Administration & Technology Appropriations Subcommittee
Representative Stark offered the following:

Amendment (with title amendment)
Remove lines 174-242

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

Remove lines 40-48 and insert:
requiring the division to adopt rules;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1021 Community Associations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Lopez, V. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Larkin	Anstead
2) State Administration & Technology Appropriations Subcommittee		Helpling	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

Related to community association managers (CAMs) and CAM firms, the bill:

- Requires a CAM to return all community association records in its possession within 20 days of termination of services agreement or a written request whichever occurs first.
- Provides conflict of interest disclosure requirements and a process for associations to follow when approving contracts with a CAM or a relative that may present a conflict of interest.

Related to official records, the bill:

- Provides that on January 1, 2026, condominium associations with 25 units or more will be required maintain specified records available for download on the association's website or by an application on a mobile device.
- Requires associations to maintain additional accounting records (e.g., invoices and other documentation that substantiates any receipt or expenditure).
- Provides that a condominium association may satisfy a request for access to records by making the records available for download on the association website or through an application on a mobile device.
- Provides criminal penalties related to the association refusing to release or destroy official records.

The bill:

- Provides criminal penalties for accepting a kickback and for fraudulent voting activities.
- Requires directors to annually complete continuing education on recent changes to the condominium laws and rules.
- Requires a residential condominium association of 10 or more units to meet once each quarter for the purpose of responding to inquiries from members and informing members on the state of condominium.
- Allows the board with regard to the structural integrity reserve study to recommend a temporary pause in the reserve funding or reduced funding in certain circumstances.
- Provides that the jurisdiction of the Division of Condominiums, Timeshares and Mobile Homes after turnover occurs includes investigation of complaints alleging violations of the Condominium Act and other relevant rules or orders.
- Requires the Division to conduct random audits of community associations, give its employees the right to attend board meetings, and require them to refer suspected criminal activity to law enforcement agencies.

The bill has a negative fiscal impact on state government and does not have a fiscal impact on local governments. *See* Fiscal Analysis and Economic Impact Statement.

The bill has an effective date of July 1, 2024, unless otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations – Background

The Florida Division of Condominiums, Timeshares and Mobile Homes (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).

Community Association Managers- Current Situation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR) pursuant to part VIII of ch. 468, F.S. Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers at DBPR.[1]

Section 468.431(2), F.S., defines “community association management” to mean:

> any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for a person who:

- Performs clerical or ministerial functions under the direct supervision and control of a licensed manager, or
- Performs only the maintenance of a community association and does not assist in any of the management services.[2]

To become licensed as a CAM, a license applicant must:

- Submit to a background check to determine good moral character,
- Attend a DBPR-approved in-person training prior to taking the examination, and
- Pass the licensure examination.[3]

CAMs must also complete not more than 10 hours of continuing education hours as approved by the council to renew and maintain their licenses.[4]

[1] S. 468.4315(1), F.S.
[2] S. 468.431(2), F.S.
[3] S. 468.433, F.S.

Section 468.4334, F.S., outlines the professional practice standards for CAMs and CAM firms, including the duty to "discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees."

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including:

- Committing acts of gross misconduct or gross negligence in connection with the profession.
- Contracting, on behalf of an association, with any entity in which the CAM has a financial interest that is not disclosed.
- Violating any provision of chapter 718 (relating to condominiums), chapter 719 (relating to cooperatives), or chapter 720 (relating to homeowners' associations) during the course of performing community association management services pursuant to a contract with a community association.[5]

Community Association Managers- Effect of the Bill

Return of Official Records

The bill provides additional professional practice standards for CAMs and CAM firms. The bill requires CAMs and CAM firms to return all community association official records in its possession within 20 days of termination of a contractual agreement to provide CAM services or a written request for the return of the official records, whichever occurs first.

Failure of a CAM or a CAM firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that such CAM or CAM firm willfully failed to comply. If the CAM or CAM firm fails to timely return the applicable official records to the community association, the CAM or CAM firm will be subjected to:

- suspension of its license under s. 468.436, F.S., and
- a civil penalty of $1,000 per day (up to 10 days) which is assessed beginning on the 21st day after the termination of a contractual agreement receipt of a written request from the association for return of the records.

The bill provides such notice of termination must be sent by:

- Certified mail;
- Return receipt request; or
- In the manner required in the management contract.

The CAM or CAM firm may retain, up to 20 business days, those records necessary to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve such CAM or CAM firm of any further responsibility or liability for the preparation of the statement or report.

Conflicts of Interest

The bill creates a conflict of interest disclosure process for CAMs and CAM firms, including directors, officers, persons with a financial interest in a CAM firm, or a relative[6] of such persons (collectively used as "individual" under this subheading). The bill provides that individuals must disclose to the community association any activity that may reasonably be construed to be a conflict of interest.

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[4] S. 468.4336 and 468.4337, F.S.
[5] S. 468.436(2)(b)5.-7., F.S.
[6] The term "relative" in the bill means a relative within the third degree of consanguinity by blood or by marriage.

If any of the following exist without providing prior notice, there is a presumption that there is a conflict of interest unless proven otherwise:

- An individual enters into a contract for good or services with the association.
- An individual holds an interest in, or receives compensation or anything of value from a business entity that conducts business with the association or proposes to enter a contract or other transaction with the association. The business entities include:
  - A corporation;
  - Limited liability corporation;
  - Partnership;
  - Limited liability partnership; or
  - Other business entity.

Under the bill, if the association receives and considers a bid to provide a good or service, other than a CAM service, from an individual with a financial interest in the community association, the association must also consider at least three bids from other third-party providers of such good or service.

If an individual discloses that he or she engages in an activity that is a conflict of interest as described above:

- Such activity must be listed on all contracts;
- Transactional documents related to the proposed activity must be attached to the meeting agenda of the next board meeting; and
- The disclosures of a possible conflict of interest must be entered into the written minutes of the meeting.

The bill provides that a contract or other transaction with a possible conflict of interest must be approved by an affirmative vote of two-thirds of all other directors present.

Moreover, the bill provides that the contract or other transaction with a possible conflict of interest must be disclosed to the members at the next regular or special meeting. The bill allows any of the members to bring such contract or other transaction to a vote and allows such contract or other transaction to be canceled by a majority vote of the present members. If such contract is canceled, the association:

- would only be liable for the reasonable value of the goods and services provided up to the time of cancellation, and
- would not be liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.

The bill provides a procedure for terminating a contract if a conflict of interest was not properly disclosed. The bill provides that a contract is voidable and terminates upon the association filing a written notice of the termination of the contract with its board of directors and the notice must contain the consent of at least 20 percent of the voting interests of the association if:

- an association enters a contract with an individual or the individual has an interest in an activity that is a possible conflict of interest, and
- such activity has not been properly disclosed as a conflict of interest or potential conflict of interest.

The bill revises the disciplinary grounds for CAMs and CAM firms to provide a disciplinary ground on the basis of a CAM or CAM firm's failure to disclose a conflict of interest as required by s. 468.4335, F.S.

The bill makes conforming changes.

Condominiums and Cooperatives Background

Condominiums

A condominium is a form of real property ownership created under ch. 718, F.S., the "Condominium Act." Persons own condominium units along with an undivided right of access to the condominium's common elements.[7] A condominium is created by recording a declaration of condominium, which governs the relationship between condominium unit owners and the condominium association, in the public records of the county where the condominium is located.[8] All unit owners are members of the condominium association, and the association is responsible for common elements operation and maintenance.[9] The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration," which is responsible for the association's administration.[10]

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S., the "Cooperative Act," in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.[11] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums, and the laws regulating cooperatives are largely identical to those regulating condominiums.

Fiduciary Relationship

Board members and officers of a condominium or cooperative association have a fiduciary relationship with the unit owners in their condominium or cooperative. This fiduciary relationship requires board members and officers to act in good faith and in the best interests of the unit owners. Under the "business judgment rule," the board must act within the scope of its authority, in a reasonable manner, and must perform its duties with the care and responsibility that an ordinarily prudent person would exercise under similar circumstances.[12]

Board members and officers can be the subject of a cause of action for a breach of their fiduciary duty. However, a person bringing such action must prove that the board member or officer had a fiduciary duty that was breached that caused damages and rose to the level of criminal activity, fraud, self-dealing, unjust enrichment, or other improper personal benefit.[13]

To determine if a board member or officer breached his or her fiduciary duty, Florida courts look to see if the board member or officer violated the business judgment rule by determining if the association had the contractual or statutory authority to perform the relevant act and if the decision was reasonable. The business judgment rule generally will protect association board members and officers, as long those board members or officers act within the scope of their authority and in a reasonable manner.[14]

It is a breach of a board member or officer's fiduciary duty if an association fails to complete a milestone inspection or structural integrity reserve study.

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[7] S. 718.103(11), F.S.
[8] S. 718.104(2), F.S.
[9] S. 718.103(2), F.S.
[10] S. 718.103(4), F.S.
[11] S. 719.103(2), (26), F.S.
[12] S. 718.111(1), F.S.
[13] Harris B. Katz, *Condo column: Can board members be sued and how can an association remove a director?*, TC Palm (Oct. 17, 2019) https://www.tcpalm.com/story/news/local/florida/2019/10/17/can-condo-board-members-sued-and-how-can-association-remove-director/3907749002/ (last visited Jan. 29, 2024).
[14] *Id.*; *Hollywood Towers Condominium Association v. Hampton*, 40 So. 3d 784, 787 (Fla. 4th DCA 2010).

Condominium Associations

Official Records - Current Situation

Florida law specifies certain official records that condominium associations must permanently maintain from the inception of the association. These records include:[15]

- A copy of the plans, permits, warranties, and other items provided by the developer.
- A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
- A photocopy of the recorded bylaws of the association and each amendment to the bylaws.
- A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.
- A copy of the current rules of the association.
- A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.
- 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 e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is provided.
- All current insurance policies of the association and condominiums operated by the association.
- 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.
- Bills of sale or transfer for all property owned by the association.

Generally, other official records must be maintained for at least 7 years. These records include:

- Accounting records for the association and separate accounting records for each condominium that the association operates.
- 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.
- All rental records if the association is acting as agent for the rental of condominium units.
- A copy of the current question and answer sheet as described in s. 718.504, F.S.
- A copy of the milestone inspection and turnover inspection reports and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.
- Bids for materials, equipment, or services.
- All affirmative acknowledgments made pursuant to s. 718.121(4)(c), F.S.
- All other written records of the association which are related to the operation of the association.

An association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.[16]

Unit owners may request to inspect and make copies of an association's official records. An association must make the records available for inspection within 10 business days of receiving a written request. Failure to provide an owner or renter the requested records within 10 business days of receiving a request creates a rebuttable presumption that the association willfully failed to provide the records. An owner who is denied access to the records is entitled to damages and costs.[17]

[15] See s. 718.111(12), F.S.
[16] S. 718.111(12)(b)-(c), F.S.
[17] *Id.*

Any person who knowingly or intentionally defaces or destroys accounting records that were required to be maintained for a certain period of time, or who knowingly or intentionally fails to create or maintain accounting records with the intent of causing harm to the association or one or more of its members, is subject to a civil penalty.[18]

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or in an electronic format viewable on a computer screen.[19] Additionally, condominium associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.[20]

However, the following records are not available for inspection by owners:[21]

- Records protected by the lawyer-client privilege;
- Information obtained by an association in connection with the transfer of a unit or parcel;
- Personnel records of association or management company employees;
- Unit owner medical records;
- Personnel identifying information such as social security numbers, driver license numbers, and credit card numbers;
- Electronic security measures that are used to safeguard data; and
- The software and operating system used by the association which allow the manipulation of data.

If a unit owner presents the Division with evidence that the association has failed or has refused to respond to two official records requests, the Division must issue a subpoena requiring the production of the requested records where the records are located.[22]

Official Records – Effect of the Bill

The bill allows an association to fulfill its obligation to let people copy and inspect official records if:

- The requested records are posted on the website or are available for download through an application on a mobile device, and
- The association directs all persons authorized to request access to the official records.

The bill provides that on January 1, 2026, a condominium association with **25 or more units**, instead of 150 or more units, is required to post digital copies of specified documents on its website or make such documents available through an application that can be downloaded on a mobile device.

Under the bill, **a copy of all building permits issued for ongoing or planned construction** is considered an official record which must be maintained for at least 7 years.

The bill clarifies that the e-mail addresses and facsimile numbers are only accessible to unit owners if consent to receive notice by electronic transmission is provided.

The bill provides that accounting records include:

- All invoices;
- Transaction receipts; or
- Deposit slips that substantiate any receipt or expenditure of funds by the association.

[18] S. 718.111(12)(c)2., F.S.
[19] *Id.*
[20] Ss. 718.111(12)(b), and (g), F.S.
[21] S. 718.111(12)(c), F.S.
[22] S. 718.501(1)(d)7., F.S.

The bill requires that the official records must be maintained in an organized manner that makes the inspection of the records easier for the unit owner. The bill provides that in the event that the records are lost, destroyed, or otherwise unavailable, the obligation to maintain official records includes a good faith obligation to obtain and recreate those records to the fullest extent possible.

Under the bill, the association must provide a checklist of the available official records for copying and inspecting and the records that are not available when a person provides a written request to inspect records. This checklist must be maintained for 7 years. An association delivering a checklist and affidavit creates a rebuttable presumption that the association has complied.

The bill provides criminal penalties for the association refusing to release or destroy official records. These include:

- A second-degree misdemeanor for any director or member of the board or association to knowingly, willfully, and "repeatedly" [23] violate any specified requirements relating to inspection and copying of official records of an association, he or she will be deemed removed from office and a vacancy declared.
- A **first-degree misdemeanor**, a civil penalty, and he or she will be **deemed removed from office and a vacancy declared**, for a person who:
    - knowingly or intentionally defaces or destroys accounting records that were required to be maintained for a certain period of time, or
    - who knowingly or intentionally fails to create or maintain accounting records with the intent of causing harm to the association or one or more of its members.
- A third-degree felony for willfully and knowingly refusing to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, and he or she will be deemed removed from office and a vacancy declared.

The bill makes conforming changes.

The bill requires the Division to provide the official records to the unit owner at **no charge** when the association has failed to or refused to respond to a unit owner's record requests.

Association Meetings- Current Situation

Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. 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. 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.[24]

Association Meetings- Effect of the Bill

Under the bill, the board of a residential condominium association of more than 10 units, the board must meet at least four times each year for the purpose of responding to inquiries from members and informing members on the state of the condominium, including:

- The status of construction or repair projects;
- The status of the association's revenue and expenditures during the fiscal year; or
- Other issues affecting the association.

[23] In the bill, "repeatedly" means two or more violations within a 12-month period.
[24] S. 718.112(2)(c), F.S.

The bill provides that if an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice of the meeting, and made available for inspection and copying upon a written request from a unit owner, or made available on the association's website or through an application that can be downloaded on a mobile device.

Powers and Duties of Officers and Directors- Current Situation

Breaches of a Fiduciary Duty and Prohibited Acts

Officers and directors of a condominium association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty. "An officer [or director] may be liable to the association members for breaches of trust, fraud, negligence,[25] and he or she may be subject to removal from office and other civil penalties imposed by the Division of Florida Condominiums, Timeshares, and Mobile Homes for a willful and knowing violation of Condominium Act or a rule of the Division.[26]"[27]

An officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breaches or fails to perform his or her duties. The breach of, or failure to perform, such duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
- Recklessness[28] or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value or a kickback for which consideration has not been provided for the benefit of such person or immediate family members from any person providing or proposing to provide goods or services to the association.[29]

Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.

Moreover, any person who knowingly or intentionally defaces or destroys accounting records that are required 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.[30]

Criminal Penalties

A directors and officers are subject to criminal penalties for the following:

- A third-degree felony for forgery of a ballot envelope or voting certificate used in a condominium association election; and[31]

[25] S. 718.111(1)(d), F.S.
[26] *Id*.
[27] Peter M. Dunbar, The Condominium Concept, Pineapple Press (2022), p. 94.
[28] Section 617.0834(2)(a), F.S. defines "recklessness" as the acting, or omission to act, in conscious disregard of a risk:

- Known, or so obvious that it should have been known, to the officer or director; and
  Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

[29] S. 718.111(1)(a), F.S.
[30] S. 718.111(12)(c)2., F.S., *see also*, s. 718.501(1), F.S.
[31] S. 718.111(1)(d), F.S.

- Theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, F.S.

Removal from Office

A director or officer charged with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt, the director or officer will be reinstated for the remainder of his or her term of office, if applicable. [32]

Directors or officers charged with forgery of a ballot envelope or voting certificate, theft or embezzlement of association funds, and destruction of or refusal to allow inspection or copying of association records must be removed from office, and the vacancy[33] must be filled until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if applicable.

Debit Card Usage

An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.[34] Use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud.[35]

Officers and Directors- Effect of the Bill

Criminal Penalties

In addition to current requirements, the bill provides that an association officer, director, or CAM that accepts a kickback:
- Commits a third-degree felony, and
- Is deemed removed from office and a vacancy declared.

The bill provides that each of the following actions relating to condominium association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:
- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

[32] S. 718.112(2)(q), F.S.
[33] Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. *See* s. 718.112(2)(d)2., F.S.
[34] S. 718.111(15)(a), F.S.
[35] S. 718.111(15)(b), F.S.

- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

In addition, the bill provides that the following actions relating to condominium association elections are fraudulent voting activities and constitute a misdemeanor of the first degree:
- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment. This does not apply to a licensed attorney giving legal advice to a client.

Removal from Office

The bill expands the criminal offenses for which an officer or director charged by information or indictment must be removed from office to include:
- Forgery of a ballot envelope or voting certificate used in a condominium association election punishable as a felony crime as provided in s. 831.01, F.S.; and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime which is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.

Under the bill, if a criminal charge is pending against an officer or director, he or she may not have access to the official records of any association, except pursuant to a court order.

Debit Card Usage

The bill provides that a person using a debit card that is issued to the association or billed the association for any expense that is not a lawful obligation of the association:
- Commits **theft under s. 812.014, F.S**, instead of being prosecuted as credit card fraud, and
- Shall be deemed removed from office and a vacancy declared.

The bill defines “lawful obligation of the association” as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

Director Education- Current Situation

Newly elected or appointed directors of the board of a residential condominium association are required to complete an educational curriculum or written certification. Within 90 days after being elected or appointed, a newly elected or appointed director for a condominium must certify that he or she:[36]

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.[37] The curriculum must be administered by a condominium education provider approved by the Division.[38] A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board. The association is required to retain the educational certificates of the directors for 5 years.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.[39] If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.[40] The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.[41]

Director Education- Effect of the Bill

The bill provides that:

- An existing director and a newly elected or an appointed director is required to submit both the writing certification and a certificate of completing the educational curriculum.
- Such educational curriculum may also be administered by the Division.
- Requires 4 hours of instruction for the initial education and the renewal of the education certificate. Such instruction to include milestone inspections, structural integrity reserve studies, recordkeeping, financial literacy and transparency, levying fines, and notice and meeting requirements.
- A director of a residential condominium that was elected or appointed before July 1, 2024 must comply with the written certification and educational certificate requirement by June 2025.
- The written certification **and** educational certificate are valid **for 7 years after the date of issuance** and does not have to be resubmitted as long as the director serves on the board without interruption during a **7-year period.**
- A director who is appointed by the developer may satisfy the educational certificate requirement for any subsequent appointment to a board by a developer within 7 years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or appointment to a board in another association within that 7-year period.
- After the certificates are submitted, directors are required to annually submit to the secretary of the association a certificate of having satisfactorily completed a one-hour of continuing education

[36] S. 718.112(2)(d)4.b., F.S.
[37] The Division's Internet site provides a listing of approved educational providers for the certification of board members. *See* Department of Business and Professional Regulation, *Condominium & Cooperatives – Education, available at*: http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/education/ (last visited Jan. 30, 2024).
[38] S. 718.112(2)(d)4.b., F.S.
[39] *Id.*
[40] *Id.*
[41] *Id.*

administered by the Division, or Division-approved condominium education provider, relating to any recent changes.
- The association is required to retain the educational certificates of the directors for **7 years**, instead of 5 years.

Conflicts of Interest for Directors and Officers- Current Situation

An officer or director of an association, and their relatives, must disclose to the board any activity that may be construed as a conflict of interest. A rebuttable presumption of a conflict of interest exists if, without prior notice:[42]

- Any director, officer, or relative[43] of a director or officer enters into a contract for goods or services with the association; or
- Any director, officer, or relative holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract with the association.

Timeshare condominiums are exempted from this provision.[44]

If a director, officer, or relative of a director or officer proposes to engage in an activity that is a conflict of interest, the proposed activity must be listed on the meeting agenda and all contracts and transactional documents for the proposed activity must attached to the meeting agenda. The board must provide all these documents to the unit owners as well. The interested director or officer may attend the meeting at which the contract is considered and may make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the room. Any director or officer who has an interest in the contract must recuse himself or herself from the vote.[45] Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present.[46]

If the board rejects the proposed contract, the director, officer, or relative must notify the board in writing of his or her intent not to pursue the contract further or the director or officer must withdraw from office. If the board finds that a director or officer has not notified it of his or her intent to pursue the contract further, the officer or director is deemed removed from office, and the vacancy must be filled according to general law.[47]

Any contract entered into between any director, officer, or relative that is not properly noticed before consideration by the board is voidable. The contract is terminated upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.[48]

Conflicts of Interest for Directors and Officers- Effect of the Bill

The bill provides that the attendance of a director or an officer with a possible conflict of interest at the meeting of the board counts for purposes of quorum for the meeting. However, the vote on such matters containing a possible conflict of interest must occur in his or her absence on the proposed activity.

[42] S. 718.3027(1), F.S.
[43] "Relative" means in s. 718.3027, F.S. a relative within the third degree of consanguinity by blood or marriage.
[44] S. 718.3027(5), F.S.
[45] S. 718.3027(4), F.S.
[46] S. 718.3027(2), F.S.
[47] S. 718.3027(3), F.S.
[48] S. 718.3027(5), F.S.

Condominium Fines and Suspensions- Current Situation

Condominium associations may levy fines against or suspend the right of an owner, occupant, or an owner or occupant's guest, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.[49]

A board may not impose a fine or suspension without giving at least 14 days' written notice of the fine or suspension and the opportunity for a hearing. The hearing must be held before a committee of unit or parcel owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.[50]

If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.[51]

An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. The suspension ends when the full payment of all past due obligations currently due the association are paid.[52]

Condominium Fines and Suspensions- Effect of the Bill

The bill provides that at least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of any fee, or monetary obligation.

Structural Integrity Reserve Study and Reserves – Current Situation

A reserve study is a budget-planning tool for community associations. Generally, a reserve study consists of the following two parts: physical analysis and financial analysis.[53]

In Florida law, "structural integrity reserve study" (SIRS) means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A SIRS may be performed by any person qualified to perform such study. However, the visual inspection portion of the SIRS must be performed by a:[54]

- Licensed engineer,
- Licensed architect, or
- person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts (CAIAPRA).

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[49] S. 718.303(3) F.S.
[50] S. 718.303(3)(b), F.S.
[51] *Id*.
[52] S. 718.303(4), F.S.
[53] Cedar Management Group, *HOA Reserve Study: Why Does Your Community Need It?*, https://cedarmanagementgroup.com/hoa-reserve-study-community/#what (last visited Jab. 29, 2024); Kevin Leonard and Robert Nordlund, Understanding Reserves: A guide to your association's reserve fund & reserve study, 26-29 (1st ed. 2021); Community Associations Institute, *National Reserve Study Standards*, https://www.reservestudy.com/wp-content/uploads/2019/01/NRSS-998-CAI-version-updated-2016.pdf (last visited Jan. 29, 2024).
[54] S. 718.112(2)(g)2., F.S.

At a minimum, a SIRS must:[55]

- Identify each item of the condominium property being visually inspected,
- State the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and
- Provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item.

The SIRS may recommend for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined or with an estimated remaining useful life of greater than 25 years:[56]

- That reserves do not need to be maintained, or
- A deferred maintenance expense amount for such item.

A condominium or cooperative must have a SIRS completed at least every 10 years after the condominium's or cooperative's creation for each building on the condominium or cooperative property that is three stories or higher in height which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building (SIRS items):[57]

- Roof.
- Structure, including load-bearing walls and other primary structural members and primary structural systems.
- Fireproofing and fire protection systems.
- Plumbing.
- Electrical systems.
- Waterproofing and exterior painting.
- Windows and exterior doors.
- Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed above as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

The SIRS requirements do not apply to:[58]

- Buildings less than three stories in height;
- Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground;
- Any portion or component of a building that has not been submitted to the condominium form of ownership; or
- Any portion or component of a building that is maintained by a party other than the association.

Condominium or cooperative associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a SIRS completed by December 31, 2024, for each building on the condominium or cooperative property that is three stories or higher in height. However, an association that is required to complete a milestone inspection on or before December 31, 2026, may complete the SIRS simultaneously with the milestone inspection. In no event may the SIRS be completed after December 31, 2026.[59]

If a condominium or cooperative association willfully and knowingly fails to complete a SIRS, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners.[60]

[55] S. 718.112(2)(g)3., F.S.
[56] *Id*.
[57] S. 718.112(2)(g)1., F.S.
[58] S. 718.112(2)(g)4., F.S.
[59] S. 718.112(2)(g)6., F.S.
[60] S. 718.112(2)(g)8., F.S.

Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report for each building on the condominium or cooperative property that is three stories or higher in height.[61]

Reserves

Every condominium and cooperative association must have a budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the association. The budget is adopted for a 12-month period reflecting an association's fiscal year, and it must provide a detailed listing of the estimated revenues and expenses that the association reasonably projects for the coming fiscal year. The annual budget is made up of two parts, the part covering the regular operations of the association and the part covering the cost for capital expenses and deferred maintenance (reserves).[62]

Reserves are funds that are set aside for capital expenses and deferred maintenance. Reserves provide funds for major capital repairs or replacements that are needed intermittently such as replacing a roof. The reserves are designed to ensure that an association will have the funds when the repairs are needed and will not have to do a large special assessment.[63]

The amount of funds that must be placed in reserve is determined by the condominium or cooperative association's most recent structural integrity reserve study. If the amount to be reserved for an item is not in the association's most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, then the association may use the traditional formula or alternative formula to determine the amount of funds to reserve.

Current law also requires associations to have and fund reserve accounts for roof replacement, building painting, pavement resurfacing, and any item for which the deferred maintenance expense or replacement cost is greater than $10,000.[64] There are two methods of calculating these reserves.

The first is the traditional formula, and the second is the alternative formula. The traditional formula takes into account the estimated deferred maintenance or capital expenditure amount, estimated fund balance, and number of years remaining until deferred maintenance or a capital expenditure is needed.[65]

The alternative formula allows associations to maintain a pooled account for multiple reserve assets that are similar or related. For example, an association responsible for managing two swimming pools may create a pool reserve account for both pools instead of a reserve account for each pool. The formula for a pooled account must provide for an annual contribution that will ensure the balance on hand in the account is equal to or greater than the annual projected outflows from the account.[66] However, pooled reserves are not permitted for SIRS items listed in the statute as being required in the SIRS are permitted to be pooled.

Waiver of Reserves

For a budget adopted on or after December 1, 2024, a unit-owner controlled association that must obtain a structural integrity reserve study may not waive collecting reserves or collect less reserve funds than required for items that are required to be inspected in a SIRS for an association building that is three stories or higher in height. In addition, unit-owner controlled associations may not use such reserve funds for purposes other than their intended purpose. Associations operating a

[61] S. 718.112(2)(g)5., F.S.
[62] S. 718.112(2)(f), F.S.
[63] S. 718.112(2)(f), F.S.
[64] *Id.*
[65] *Id.*; Rules 61B-22.005(3), and 61B-76.005(1), F.A.C.
[66] Rules 61B-22.005(1), (3), and 61B-76.005(1), (3), F.A.C.

multicondominium to provide no reserves or less reserves than required by the SIRS if such multicondominium uses an alternative funding method[67] approved by the Division.
For other reserve items, associations may waive funding reserves for capital expenditures and deferred maintenance or provide funds that are less than the required amount by a majority of the voting interests present at a properly called meeting. The waiver of reserves by the membership is only for the current year, and a separate vote must be taken each year to waive the reserves or fund less than the required amount.[68] Associations may also vote to use reserve funds for purposes other than their intended purpose, such as using funds from the roof reserve account for painting buildings, by a majority of the voting interests present at a properly called meeting.[69]

Structural Integrity Reserve Study and Reserves – Effect of the Bill

Structural Integrity Reserve Study (Condominiums and Cooperatives)

The bill provides that the association is required within 45 days after the receipt of a SIRS to:

- Distribute a copy of the SIRS to each unit owner; or
- Deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request.

The bill provides the manner in which the copy or the notice may be distributed. Distribution of a copy of the study or notice must be made by:

- United States mail or personal delivery to the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements or,
- By electronic transmission to the e-mail address or facsimile number on file.

The bill requires that the SIRS be included in the turnover inspection report that is delivered to the association once the developer turns over control of the association.

Reserves

The bill provides that:

- The board, upon the approval of a majority of its members, may pause its contributions to its reserves or reduce reserve funding if the local building official[70] determines that the entire condominium building is uninhabitable due to a natural emergency until the local building official determines that such building is habitable.[71]
- Any reserve account funds held by the association may be expended to make such building and structures habitable, pursuant to the board determination.
- The association must immediately resume contributing to its reserves once the building official determines that the building is habitable.

[67] "Alternative funding method" is defined as "a method approved by the Division for funding the capital expenditures and deferred maintenance obligations for a multicondominium association operating at least 25 condominiums which may reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget.
[68] S. 718.112(2)(f), F.S.; Rule 61B-22.005(8), F.A.C.
[69] S. 718.112(2)(f), F.S.
[70] See definition of building official in s. 468.603(2), F.S.
[71] "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. S. 252.34(8), F.S.

Financial Reporting- Current Situation

Condominium associations are required to complete an annual financial report of the previous year's financial activities and provide the report to unit owners. To comply with financial reporting requirements, associations must:[72]

- Complete an annual financial report for the previous fiscal year within 90 days after the end of the fiscal year, calendar year, or annually on a date provided in the bylaws;
- Provide unit or parcel owners the financial report or notice that the report is available upon request without charge within 21 days after the final financial report is completed by the condominium or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws; and
- Prepare financial statements according to generally accepted accounting principles and in a manner dictated by the total revenue of the association, specifically:
    - An association having total annual revenues between $150,000 and $300,000 must prepare compiled financial statements;
    - An association having total annual revenues between $300,000 and $500,000 must prepare reviewed financial statements;
    - An association having total revenues more than $500,000 must prepare audited financial statements; and
    - An association with total annual revenue of less than $150,000 must prepare a report of cash receipts and expenditures.

If a unit owner does not receive the financial report, he or she may contact the Division to report an association's failure to provide a copy of the financial report within the required time. If the Division determines that the association failed to provide the financial report in a timely manner, the Division requires the association to provide the financial report to the unit owner and the Division within 5 business days. If the association fails to comply with the Division's request, the association is prohibited from waiving the financial annual financial reporting requirements for the fiscal year in which the unit owner's request is made and the following fiscal year.

An association may vote to waive the annual financial reporting requirements and prepare a report of cash receipts and expenditures by approval of a majority of voting interests. 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.

Financial Reporting- Effect of the Bill

The bill prohibits an association from waiving the annual financial reporting requirements and preparing a report of cash receipts and expenditures by approval of a majority of voting interests for consecutive fiscal years.

Hurricane Protection- Current Situation

Each board of administration of a residential condominium required to adopt specifications for each building within each condominium operated by the association which include:[73]

- Color;
- Style; and
- Other factors deemed relevant to the board.

All specifications adopted by the board must comply with the applicable building code. The board may, subject to the bidding process for contracts for goods and services and the approval of the of a majority of the voting interests of the residential condominium, install hurricane shutters, impact glass, code-

[72] S. 718.111(13), F.S.
[73] S. 718.113(5), F.S.

complaint windows, or doors, or other types of code-complaint hurricane protection that comply or exceed the applicable building code.[74]

A condominium association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.[75]

The board is authorized to operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed without the permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or and association property.[76] The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are not a material alteration to the common elements or association property.[77]

Notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane protection by a unit owner conforming to the specifications adopted by the board.[78]

The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board constitutes a common expense and shall be collected by the association if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium.[79]

Further, a unit owner who has previously installed code-compliant shutters, impact glass, windows, or doors, must receive a credit when code-compliant shutters, impact glass, windows, or doors are installed.[80] A unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code, must receive a credit when the impact glass or code-compliant windows or doors are installed. A unit owner who has installed other types of code-compliant hurricane protection that comply with the currently applicable building code is entitled to receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit must be equal to the pro rata portion of the assessed installation cost assigned to each unit.

Hurricane Protection- Effect of the Bill

The bill defines “hurricane protection” as hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

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[74] S. 718.113(5)(a), F.S.
[75] S. 718.113(5)(b), F.S.
[76] S. 718.113(5)(c), F.S.
[77] Section 718.110, F.S., provides the procedure for amending the declaration of condominium. It provides that, “unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment.”
[78] S. 718.113(5)(d), F.S.
[79] S. 718.115(1)(e), F.S.
[80] S. 718.115(1)(e), F.S.

The bill clarifies the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections exterior doors, windows, and glass apertures.

The bill requires the declarations of residential condominiums and mixed-use condominiums to describe the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections. The bill provides that the hurricane protection provisions apply to all residential and **mixed-use condominiums** in Florida, regardless of when the condominium is created pursuant to the declaration.

The bill provides that the installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with the hurricane protection requirements is not considered a material alteration or substantial addition to the common elements or association property.

A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The certificate must:

- Be recorded in the public records of the county where the condominium is located.
- Include the recording data identifying the declaration of the condominium and must be executed in the form required for the execution of a deed.

Once the certificate is recorded, the board must mail or hand-deliver a copy of the recorded certificate to the unit owners at the owners' address as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. The board's failure to record the certificate or to send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners.

The bill provides that if hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install the **same type of** hurricane protection **or require that unit owners install the same type of hurricane protection unless the unit owners installed hurricane protection has reached the end of its useful life or it is necessary to prevent damage to the common elements or the unit**.

The bill allows the board to require that unit owners adhere to an existing unified building scheme regarding the external appearance of the condominium.

Regarding a unit owner's responsibility for the costs of installation or removal of hurricane protection, the bill provides that the unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection if:

- The unit owner installed the hurricane protection and
- Its removal is necessary for the maintenance, repair, or replacement of the condominium property or association property for which the association is responsible.

If such removal or installation is completed by the association, the association may not charge that cost to the unit owner. If such installation of removal is completed by the unit owner, the association must reimburse the unit owner for the cost or apply the cost as a credit toward future assessments.

Under the bill, the board must determine if the removal or reinstallation of hurricane protection is the responsibility of the unit owner, including costs, and if such removal or reinstallation is completed by the association, then the costs incurred by the association may be charged to the unit owner. If the association charges a unit owner for the removal or installation of hurricane protection, such charges are enforceable as an assessment and may be collected as such.

The bill deletes the requirement that the expense of installation, replacement, operation, repair, and maintenance of hurricane protection by the board constitutes a common expense and must be collected as a common expense if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium.

The bill deletes the requirement that a unit owner who previously installed hurricane shutters that comply with the current applicable building codes receive a credit when the shutters are installed. The bill provides that a unit owner who has previously installed such items must receive a credit when the impact glass or code-compliant windows or doors are installed.

The bill provides, notwithstanding the limitation in s. 718.116(9), F.S., and regardless of what the declaration states about the responsibility of hurricane protection, an owner **of a unit in which** hurricane protection that **complies** with the current applicable building code **has been installed is excused from any assessment levied by the association** or will receive a credit **if** the same type of hurricane protection is installed **by the association**.

Credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds.

The bill adds that the credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection and that expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

Prohibition against SLAPP Suits- Current Situation

Generally, "strategic lawsuits against public participation" (SLAPP) are legal actions brought against individuals for speaking out on issues that are important to the public in an effort to silence or discourage such individuals from speaking out. In the association context, a SLAPP suit may be related to an association member's exercise of their rights of free speech and assembly, which may be based on their appearance and presentation before a governmental entity on matters related to the condominium association.[81]

Florida has adopted anti-SLAPP laws[82] in the association context which prohibit governmental entities, business organizations, and individuals from filing or causing to be filed:

- Any lawsuit,
- Cause of action,
- Claim,
- Cross-claim, or counterclaim against a condominium unit owner without merit, and
- Solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.[83]

Current law does not specifically prohibit condominium associations from engaging in SLAPP suits, instead the prohibition generally applies to governmental entities, business organizations, and individuals.

[81] S. 718.1224(1), F.S.
[82] Florida also has general anti-SLAPP laws that prohibit suits for exercising their right to free speech and assembly. S. 768.295, F.S.
[83] S. 718.1224, F.S.

The unit owners sued by a governmental entity, business organization, or individual have a right to an expeditious resolution of such an action, including the right to petition for a motion to dismiss or for a summary judgment. The court may award the unit owner actual damages for a violation of this prohibition and may also award treble damages. However, the court must state a basis for an award of treble damages. The court is further required to award the prevailing party reasonable attorney's fees and costs. Governmental entities, business organizations, individuals, and condominium associations[84] are barred from expending funds in prosecuting a SLAPP suit against a unit owner.

Prohibition against SLAPP Suits and Other Prohibited Actions- Effect of the Bill

The bill clarifies that a condominium association cannot engage in SLAAP suits.

The bill specifically prohibits condominium associations from:

- Retaliating against a unit owner, by imposing or threatening:
  - A fine,
  - An increase in a unit's assessments,
  - To bring or bringing an action for possession, or
  - other civil action, including a defamation, libel, slander, or tortious interference action.
- Spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

The bill allows the unit owner to present evidence of retaliatory conduct as a defense in any action brought against him or her for possession. The bill provides that a unit owner may use the defense of retaliatory conduct if the unit owner acted in good faith and not for any improper purposes. The bill provides that an improper purpose includes:

- Harassment;
- Cause unnecessary delay or for frivolous purpose; or
- Needless increase in the cost of litigation.

The bill provides examples of conduct for which a condominium association, an officer, a director, or an agent of an association are prohibited from retaliating include, but are not limited to, situations in which:

- The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;
- The unit owner has organized, encouraged, or participated in a unit owners' organization;
- The unit owner submitted information or filed a complaint alleging criminal violations or violations of the Condominium Act or rules of the Division, with:
  - The Division;
  - Office of the Condominium Ombudsman;
  - A law enforcement agency;
  - A state attorney;
  - The Attorney General; or
  - Any other governmental agency.
- The unit owner has exercised his or her rights under the Condominium Act;
- The unit owner has complained to the association or any of the association's representatives for the failure to comply with the Condominium Act or Corporations Not For Profit Act; or
- The unit owner has made public statements critical of the operation or management of the association.

In addition, the bill prohibits associations from expending association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on such retaliatory conduct.

[84] S. 718.1224(4), F.S.

The Division's Duties and Authority – Current Situation

For condominium associations, the Division has jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee. Once a developer has turned over control of the condominium to the association, the Division only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records, and the procedural completion of structural reserve studies.[85]

If a person believes there is a violation of the Condominium Act, he or she may file a complaint with the Division. If the complaint is within the Division's jurisdiction, the Division assigns an investigator to the complaint. For purposes of any investigation, the Division director or any officer or employee designated by the Division director may:[86]

- Administer oaths or affirmations,
- Subpoena witnesses and compel their attendance,
- Take evidence, and
- Require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

After investigating the complaint, if the Division has reasonable cause to believe that a violation occurred, it may initiate an enforcement proceeding in its own name as follows:[87]

- Enter into a voluntary consent proceeding with the person who violated the Condominium Act where he or she consents to stopping the violation.
- Issue a cease and desist order.
- File an administrative complaint against the person.
- File an enforcement action in circuit court to seek declaratory or injunctive relief on behalf of the unit owners.
- Remove an individual from his or her position as an officer or board member of a condominium or cooperative.
- Impose civil penalties in the amount of up to $5,000 per violation.

In order to enforce the Condominium Act, the Division may conduct investigations, take sworn statements, receive evidence, and subpoena individuals and documentation. If the Division believes a person has destroyed or altered association documents or impaired the availability of association documents during an investigation, the Division must refer it to local law enforcement.[88]

Annual Report

The Division is required to submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report by September 30 following the end of the fiscal year that includes:[89]

- The number of training programs provided for condominium association board members and unit owners;
- The number of complaints received by type;
- The number and percent of complaints acknowledged in writing within 30 days;
- The number and percent of investigations acted upon within 90 days;[90]
- The number of investigations exceeding the 90-day requirement;

[85] S. 718.501(1), F.S.
[86] S. 718.501(1)(c), F.S.
[87] S. 718.501(1)(d), (m), F.S.
[88] S. 718.501(1)(c), F.S.
[89] S. 718.501(1)(s), F.S.
[90] In accordance with s. 718.501(1)(m), F.S.

- An evaluation of the Division's core business processes; and
- Make recommendations for improvements, including statutory changes.

Alternative Dispute Resolution

There is an alternative dispute resolution process for certain disputes between unit owners and condominium or cooperative associations. Before the institution of court litigation, a party to certain disputes must either petition the Division for nonbinding arbitration or initiate pre-suit mediation.[91] Alternative dispute resolution offers a more efficient, cost-effective option to court litigation, but alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.[92]

Alternative dispute resolution is required for any disagreements between two or more parties that involves:[93]

- The authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements;[94]
- The board of directors' failure to:
    - Properly conduct elections;
    - Give adequate notice of meetings or other actions;
    - Properly conduct meetings;
    - Provide access to association books and records; and
- A plan of termination.

The Division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve: [95]

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for pre-suit mediation and must be arbitrated by the Division or filed directly with a court of competent jurisdiction.[96]

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,[97] or if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days after the arbitration decision is rendered.[98]

The filing fee for a petition to the Division to initiate nonbinding arbitration or pre-suit mediation is $50.[99] The Division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

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[91] S. 718.1255, F.S.
[92] S. 718.1255(3)(b), F.S.
[93] S. 718.1255(1)(a), F.S.
[94] *Id.*
[95] *Id.*
[96] S. 718.1255(5), F.S.
[97] S. 718.1255(4)(a), F.S.
[98] S. 718.1255(4)(k), F.S.
[99] S. 718.1255(4)(a), F.S.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center.[100]

The mediation of disputes in condominium and cooperative associations is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowners' association disputes. An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.[101]

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.[102]

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.[103]

The Division's Duties and Authority – Effect of the Bill

The bill expands the Division's jurisdiction after turnover occurs to include investigation of complaints alleging violations of the Condominium Act and other relevant rules or orders.

The bill requires the Division to refer to local law enforcement authorities any person whom the Division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.

The bill provides that the Division director, any officer or employee of the Division, the condominium ombudsman, or employee of the Office of the Condominium Ombudsman,[104] may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association for the purpose of performing the duties of the Division or the Office of the Ombudsman.

The bill requires the Division to routinely conduct random audits of condominium associations to determine compliance with the website or application requirements for official records under s. 718.111(12)(g), F.S.

[100] S. 718.1255(2), F.S.
[101] *Id.*
[102] S. 720.311(2)(b), F.S.
[103] S. 718.112(2)(k), F.S.
[104] Ss. 718.5011-718.5014, F.S

The bill requires the Division submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, a review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the provision.

The Office of the Condominium Ombudsman- Current Situation

The Office of the Condominium Ombudsman was established to be a neutral resource for unit owners, board members, condominium associations, and others. The ombudsman is authorized to prepare and issue reports and recommendation to the Governor, DBPR, the Division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the Division.[105] The Ombudsman is an attorney appointed by the Governor who is charged with certain duties, including but not limited to:

- Preparing and issuing reports and recommendations to the Governor, the Department, the Division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division;
- Acting as a liaison between the Division, unit owners, boards of directors, board members, community association managers, and other affected parties;
- Monitoring and reviewing procedures and disputes concerning condominium elections or meetings, including enforcement when the Ombudsman believes election misconduct has occurred;
- Making recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers;
- Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with the statutes, Division rules, and the condominium documents governing the association;
- Encouraging and facilitating voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy; and
- Assisting with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the Division to resolve.[106]

The Office of the Condominium Ombudsman- Effect of the Bill

The bill provides that:

- The Secretary of the Division, instead of the Governor, shall appoint the ombudsman; and
- The ombudsman does not have to be an attorney.

B. SECTION DIRECTORY:

Section 1: Amends s. 468.4334, F.S., relating to professional practice standards.
Section 2: Creates s. 468.4335, F.S., relating to conflicts of interest.
Section 3: Amends s. 468.436, F.S., relating to disciplinary proceedings.
Section 4: Amends s. 718.103, F.S., relating to definitions.
Section 5: Amends s. 718.104, F.S., relating to the hurricane protection.
Section 6: Amends s. 718.111, F.S., relating to the association.
Section 7: Amends s. 718.111, F.S., relating to the association, effective January 1, 2026.
Section 8: Amends s. 718.112, F.S., relating to bylaws.
Section 9: Amends s. 718.113, F.S., relating to hurricane protection.
Section 10: Amends s. 718.115, F.S., relating to common expenses and common surplus.

[105] S. 718.5012(3), F.S.
[106] S. 718.5012, F.S.

Section 11: Amends s. 718.121, F.S., relating to liens.
Section 12: Amends s. 718.1224, F.S., relating to SLAPP suits.
Section 13: Amends s. 718.301, F.S., relating to transfer of association control.
Section 14: Amends s. 718.3027, F.S., relating to conflicts of interest.
Section 15: Amends s. 718.303, F.S., relating to obligations of owners and occupants.
Section 16: Amends s. 718.501, F.S., relating to authority and duties of the Division.
Section 17: Amends s. 718.5011, F.S., relating to the appointment of the ombudsman.
Section 18: Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.
Section 19: Amends s. 719.301, F.S., relating to transfer of association control.
Section 20: Provides that the Division is required to submit a report.
Section 21: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The fiscal impact as estimated by DBPR to implement the bill is a total of $16,406,947 ($14,739,016 recurring and $1,667,931 nonrecurring) and an additional 114.00 FTE as follows:[107]

   - Office of the General Counsel: 16.00 FTE with 1,075,074 of salary rate and $1,777,097 of budget authority ($120,406 nonrecurring).
   - Division of Regulation: 4.00 FTE with 166,000 of salary rate and $373,696 of budget authority ($80,229 nonrecurring).
   - Condominiums, Timeshares, and Mobile Homes: 94.00 FTE with 4,412,968 of salary rate, $14,256,154 of budget authority ($1,467,296 nonrecurring).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   The condominium association may have to employ additional staff to make certain records available on a website or mobile device application, as well as carrying out other provisions in the bill.

D. FISCAL COMMENTS:

   None.

[107] Florida Department of Business and Professional Regulation, Agency Analysis of 2024 Senate Bill 1178, p. 17 (Jan. 30, 2024).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Division may create a Division-approved education curriculum. The Division may have to generate rules regarding additional duties and enforcement provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that community association managers and firms may retain records for up to 20 days after their contract is terminated in order to complete an ending financial statement or report.
- Provides that maintenance of official records includes a **good faith** obligation to recover records as may be reasonably possible in the event records are lost, destroyed, or otherwise unavailable.
- Provides that a condominium association may satisfy a request for access to records by making the records available for download on the association website or **through an application on a mobile device.**
- Removes the requirement that the checklist made in response to a records request be **accompanied by a sworn affidavit**.
- Provides a **first-degree misdemeanor** for knowingly or intentionally defacing or destroying required accounting records or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members.
- Provides that officers and directors charged with a specified criminal violation are deemed removed from office and a vacancy declared.
- Requires that meetings of the board must be **once each quarter** instead of four times a year.
- Removes the requirement that a special assessment must be recorded in the public record.
- Changes the retention period for a director's educational certificate to **7 years**, instead of 5 years.
- Revises educational curriculum to:
    - Require 4 hours of instruction for the initial education and the renewal of the education certificate.
    - Requires such instruction to include milestone inspections, structural integrity reserve studies, recordkeeping, financial literacy and transparency, levying fines, and notice and meeting requirements.
    - Require a director to annually complete **one hour** of continuing education regarding the recent changes in the past year.
- Clarifies that a board may stop contributing to the reserves if there is a determination that the building is uninhabitable due to a natural emergency.
- Requires reserve contributions to immediately resume when the building is determined to be habitable.
- Removes provisions related to allowing the association to use a line of credit.
- Clarifies jurisdiction of the Division after turnover occurs includes investigation of complaints alleging violations of the Condominium Act and other relevant rules or orders.

- Provides that the Secretary, instead of the Governor, must appoint the ombudsman and that the ombudsman does not have to be an attorney.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to community associations; amending s. 468.4334, F.S.; requiring community association managers and community association management firms to return official records of an association within a specified time after termination of a contract; requiring notices of termination of certain contractual agreements to be sent in a specified manner; authorizing community association managers and community association management firms to retain, for a specified timeframe, records necessary to complete an ending financial statement or report; relieving community association managers and community association management firms from certain responsibilities and liability under certain circumstances; providing a rebuttable presumption regarding noncompliance; providing penalties for the failure to timely return official records; creating s. 468.4335, F.S.; requiring community association managers and community association management firms to disclose certain conflicts of interest to the association's board; providing a rebuttable presumption as to the existence of a conflict; requiring an association to solicit and consider multiple bids for goods or services under certain

circumstances; providing requirements for an association to approve any activity that is a conflict of interest; authorizing certain contracts to be canceled, subject to certain requirements; specifying liability and nonliability of the association upon cancellation of such a contract; authorizing an association to cancel a contract if certain conflicts were not disclosed; specifying liability and nonliability of the association upon cancellation of a contract; defining the term "relative"; reenacting and amending s. 468.436, F.S.; revising the list of grounds for which the Department of Business and Professional Regulation may take disciplinary actions against community association managers or community association firms; amending s. 718.103, F.S.; defining the term "hurricane protection"; amending s. 718.104, F.S.; requiring declarations to specify the entity responsible for the installation, maintenance, repair, or replacement of hurricane protection; amending s. 718.111, F.S.; providing criminal penalties for any officer, director, or manager of an association who unlawfully solicits, offers to accept, or accepts any thing or service of value or kickback; requiring such officers, directors, or managers to be removed from office and a vacancy declared; revising the list of

records that constitute the official records of an association; revising maintenance requirements for official records; revising requirements regarding requests to inspect or copy association records; requiring an association to provide a checklist in response to certain records requests; providing a rebuttable presumption and criminal penalties; requiring certain persons to be removed from office and a vacancy declared under certain circumstances; defining the term "repeatedly"; requiring copies of certain building permits be posted on an association's website or application; modifying the method of delivery of certain financial reports to unit owners; revising circumstances under which an association may prepare certain reports; revising criminal penalties for persons who unlawfully use a debit card issued in the name of an association; requiring certain persons to be removed from office and a vacancy declared under certain circumstances; defining the term "lawful obligation of the association"; revising the threshold for associations that must post certain documents on its website or through an application; amending s. 718.112, F.S.; requiring the boards of certain associations to meet at least once every quarter; revising requirements regarding notice of such

meetings; requiring a director to complete an educational requirement within a specified time period before or after election or appointment to the board; providing requirements for the educational curriculum; providing transitional provisions; requiring a director to complete a certain amount of continuing education each year relating to changes in the law; requiring the secretary of the association to maintain certain information for inspection for a specified number of years; authorizing members of an association to pause the contribution to reserves or reduce reserves under certain circumstances and for a limited time; authorizing the board to expend reserve account funds to make the condominium building and structures habitable; requiring an association to distribute or deliver copies of a structural integrity reserve study to unit owners within a specified timeframe; specifying the manner of distribution or delivery; revising the circumstances under which a director or an officer must be removed from office after being charged by information or indictment of certain crimes; prohibiting such officers and directors with pending criminal charges from accessing the official records of any association; providing an exception; providing criminal penalties for certain fraudulent

voting activities relating to association elections; amending s. 718.113, F.S.; providing applicability; specifying that certain actions are not material alterations or substantial additions; authorizing the boards of residential and mixed-use condominiums to install or require unit owners to install hurricane protection; requiring a vote of the unit owners for the installation of hurricane protection; requiring that such vote be attested to in a certificate and recorded in certain public records; requiring the board to provide, in various manners, to the unit owners a copy of the recorded certificate; providing that the validity or enforceability of a vote is not affected if the board fails to take certain actions; providing that a vote of the unit owners is not required under certain circumstances; prohibiting installation of the same type of hurricane protection previously installed; providing exceptions; prohibiting the boards of residential and mixed-use condominiums from refusing to approve certain hurricane protections; authorizing the board to require owners to adhere to certain guidelines regarding the external appearance of a condominium; revising responsibility for the cost of the removal or reinstallation of hurricane protection, including

exterior windows, doors, or apertures; prohibiting the association from charging certain expenses to unit owners; requiring reimbursement or a credit toward future assessments to the unit owner in certain circumstances; authorizing the association to collect certain charges and specifying that such charges are enforceable as assessments under certain circumstances; amending s. 718.115, F.S.; specifying when the cost of installation of hurricane protection is not a common expense; authorizing certain expenses to be enforceable as assessments; requiring certain unit owners to be excused from certain assessments or to receive a credit for hurricane protection that has been installed; providing credit applicability under certain circumstances; providing for the amount of credit that a unit owner must receive; specifying that certain expenses are common expenses; amending s. 718.121, F.S.; conforming a cross-reference; amending s. 718.1224, F.S.; revising legislative findings and intent; revising the definition of the term "governmental entity"; prohibiting an association from filing strategic lawsuits, taking certain actions against unit owners, and expending funds to support certain actions; amending s. 718.301, F.S.; requiring developers to deliver a structural integrity reserve

report to an association upon relinquishing control of the association; amending s. 718.3027, F.S.; revising requirements regarding attendance at a board meeting in the event of a conflict of interest; modifying circumstances under which a contract may be voided; amending s. 718.303, F.S.; requiring an association to provide certain notice to a unit owner by a specified time before an election; amending s. 718.501, F.S.; revising circumstances under which the Division of Florida Condominiums, Timeshares, and Mobile Homes has jurisdiction to investigate and enforce certain matters; requiring that the division provide official records, without charge, to a unit owner denied access; requiring the division to provide an educational curriculum free of charge and issue a certificate to directors of a board of administration; requiring that the division refer suspected criminal acts to the appropriate law enforcement authority; authorizing certain division officials to attend association meetings; requiring that the division conduct random audits of associations for specified purposes; requiring an association's annual fee be filed concurrently with the annual certification; specifying requirements for the annual certification; amending s. 718.5011, F.S.; providing that the

secretary of the Department of Business and Professional Regulation, rather than the Governor, appoints the condominium ombudsman; amending s. 719.106, F.S.; requiring an association to distribute or deliver copies of a structural integrity reserve study to unit owners within a specified timeframe; specifying the manner of distribution or delivery; amending s. 719.301, F.S.; requiring developers to deliver a structural integrity reserve study to a cooperative association upon relinquishing control of association property; requiring the division to conduct a review of statutory requirements regarding posting of official records on a condominium association's website or application; requiring the division to submit its findings, including any recommendations, to the Governor and the Legislature by a specified date; providing effective dates.

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

Section 1. Subsection (3) is added to section 468.4334, Florida Statutes, to read:

468.4334 Professional practice standards; liability.—

(3) A community association manager or a community association management firm shall return all community

association official records within its possession to the community association within 20 business days after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request for return of the official records, whichever occurs first. A notice of termination of a contractual agreement to provide community association management services must be sent by certified mail, return receipt requested, or in the manner required under such contractual agreement. The community association manager or community association management firm may retain, for up to 20 business days, those records necessary to complete an ending financial statement or report. If an association fails to provide access to or retention of the accounting records to prepare an ending financial statement or report, the community association manager or community association management firm is relieved from any further responsibility or liability relating to the preparation of such ending financial statement or report. Failure of a community association manager or a community association management firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that the community association manager or community association management firm willfully failed to comply with this subsection. A community association manager or a community association management firm that fails to timely return

community association records is subject to suspension of its license under s. 468.436, and a civil penalty of $1,000 per day for up to 10 business days, assessed beginning on the 21st business day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the association for return of the records, whichever occurs first.

Section 2. Section 468.4335, Florida Statutes, is created to read:

468.4335 Conflicts of interest.—

(1) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, must disclose to the board of a community association any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:

(a) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, enters into a contract for goods or services with the association.

(b) A community association manager or a community association management firm, including directors, officers, and

persons with a financial interest in a community association management firm, or a relative of such persons, holds an interest in or receives compensation or any thing of value from a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If the association receives and considers a bid to provide a good or service, other than community association management services, from a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, the association must also solicit and consider at least three bids from other third-party providers of such good or service.

(3) If a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, proposes to engage in an activity that is a conflict of interest as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda of the next board of administration meeting. The disclosures of a possible conflict of interest must be entered into the written

minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction must be disclosed to the members.

(4) If the board finds that a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, has violated this section, the association may cancel its community association management contract with the community association manager or the community association management firm. If the contract is canceled, the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.

(5) If an association enters into a contract with a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, which is a party to or has an interest in an activity that is a possible conflict of interest as described in subsection (1) and such activity has not been properly disclosed as a conflict of interest or potential

conflict of interest as required by this section, the contract is voidable and terminates upon the association filing a written notice terminating the contract with its board of directors which contains the consent of at least 20 percent of the voting interests of the association.

(6) As used in this section, the term "relative" means a relative within the third degree of consanguinity by blood or marriage.

Section 3. Paragraph (b) of subsection (2) of section 468.436, Florida Statutes, is amended, and subsection (4) of that section is reenacted, to read:

468.436 Disciplinary proceedings.—

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(b)1. Violation of ~~any provision of~~ this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any

entity in which the licensee has a financial interest that is not disclosed.

7. Failing to disclose any conflict of interest as required by s. 468.4335.

8.~~7.~~ Violating ~~any provision of~~ chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. 468.431(1).

(4) When the department finds any community association manager or firm guilty of any of the grounds set forth in subsection (2), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.

(f) Restriction of the authorized scope of practice by the community association manager.

Section 4. Subsections (19) through (32) of section 718.103, Florida Statutes, are renumbered as subsections (20) through (33), respectively, and a new subsection (19) is added

to that section, to read:

718.103 Definitions.—As used in this chapter, the term:

(19) "Hurricane protection" means hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

Section 5. Paragraph (p) is added to subsection (4) of section 718.104, Florida Statutes, to read:

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(4) The declaration must contain or provide for the following matters:

(p) For both residential condominiums and mixed-use condominiums, a statement that specifies whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

Section 6. Paragraph (a) of subsection (1) and subsections (12), (13), and (15) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the

association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, is subject to a civil penalty pursuant to s. 718.501(1)(d), and must be removed from office and a vacancy declared ~~and, if applicable, a criminal penalty as provided in paragraph (d)~~. However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more

than one condominium.

(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 under 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.

7. 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 e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. ~~The e-mail addresses and facsimile numbers are not accessible to unit~~

~~owners if consent to receive notice by electronic transmission is not provided~~ In accordance with sub-subparagraph (c)5.e., the e-mail addresses and facsimile numbers are only accessible to unit owners if consent to receive notice by electronic transmission is provided ~~(c)3.e~~. However, the association is not liable for an inadvertent disclosure of the e-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. 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. All invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association.

c.~~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.

d.~~c.~~ All audits, reviews, accounting statements, structural integrity reserve studies, and financial reports of the association or condominium. Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.

e.~~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 at least 1 year after receipt of the bid.

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. A copy of the inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.

16. Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. A copy of all building permits issued for ongoing or planned construction.

19.~~18.~~ 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 specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The official records must be maintained in an organized manner that facilitates inspection of the records by a unit owner. In the event that the official records are lost, destroyed, or otherwise unavailable, the

obligation to maintain the official records includes a good faith obligation to obtain and re-create those records to the fullest extent possible. 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 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 and paragraph (c) 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 as provided under paragraph (g) 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 in compliance with this chapter unless the association has an affirmative duty not to disclose such information under this chapter.

(c)1.a. ~~(c)1.~~ The official records of the association are open to inspection by any association member and any person authorized by an association member as a 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 and of the person authorized by the association member as a representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not require a member to demonstrate any purpose or state any reason for the inspection. 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. If the requested records are posted on an association's website, or are available for download through an application on a mobile device, the association may fulfill its obligations under this

paragraph by directing to the website or the application all persons authorized to request access.

b. In response to a written request to inspect records, the association must simultaneously provide to the requestor a checklist of all records made available for inspection and copying. The checklist must also identify any of the association's official records that were not made available to the requestor. An association must maintain a checklist provided under this sub-subparagraph for 7 years. An association delivering a checklist pursuant to this sub-subparagraph creates a rebuttable presumption that the association has complied with this paragraph.

2. A director or member of the board or association or a community association manager who knowingly, willfully, and repeatedly violates subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must be removed from office and a vacancy declared. For purposes of this subparagraph, the term "repeatedly" means two or more violations within a 12-month period.

3.~~2.~~ 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, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), and must be removed from office and a vacancy declared.

4. A person who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must be removed from office and a vacancy declared.

5.~~3.~~ 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:

a. 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.

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

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

d. Medical records of unit owners.

e. 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 sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit 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 sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-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.

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

g. 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.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

(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.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web

portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after

bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a

separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the

information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

(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 deliver ~~mail~~ to each unit owner by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements ~~at the address last furnished to the association by the unit owner, or hand deliver to each unit owner~~, a copy of the most recent financial report, and ~~or~~ a notice that a copy of the most recent financial

report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after 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. 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. An association may not prepare a financial report pursuant to this paragraph for consecutive fiscal years~~, 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.

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver him or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in

which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

(15) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) A person who uses ~~Use of~~ a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft under s. 812.014 and must be removed from office and a vacancy declared. For the purposes of this paragraph, the term "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget ~~may be prosecuted as credit card fraud pursuant to s. 817.61~~.

Section 7. Effective January 1, 2026, paragraph (g) of subsection (12) of section 718.111, Florida Statutes, as amended by this act, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(g)1. ~~By January 1, 2019,~~ An association managing a

condominium with 25 ~~150~~ or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other

document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself

sufficient to invalidate any action or decision of the association's board or its committees.

Section 8. Paragraphs (c), (d), (f), (g), and (q) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (r) is added to that subsection, 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.*—In a residential condominium association of more than 10 units, the board of administration shall meet once each quarter for the purpose of responding to inquiries from members and informing members on the state of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association. 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. 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. ~~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 cost and description of the purposes for such assessments.~~

2. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property at which ~~where~~ all notices of board meetings must be posted. If there is no condominium property at which ~~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 in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website at which ~~where~~ the notice is posted, to unit owners whose e-mail addresses are included in the association's official records.

3. 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 cost and description of the purposes for such assessments. If an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice and be made available for inspection and copying upon a written request from a unit owner or made available on the association's website or through an application that can be downloaded on a mobile device.

4.~~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.

5.~~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.

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as

described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include

timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they 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. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial 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. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property at which ~~where~~ all notices of unit owner meetings must

be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, 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 posted physically on the 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 in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website at which ~~where~~ the

notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This

subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the

information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. A director of a ~~Within 90 days after being elected or appointed to the~~ board of an association of a residential condominium~~, each newly elected or appointed director~~ shall:

(I) Certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and

that he or she will faithfully discharge his or her fiduciary responsibility to the association's members.

(II) Submit to the secretary of the association ~~In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit~~ a certificate of having satisfactorily completed the educational curriculum administered by the division or a division-approved condominium education provider. The educational curriculum must be at least 4 hours long and include instruction on milestone inspections, structural integrity reserve studies, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements ~~within 1 year before or 90 days after the date of election or appointment~~.

Each newly elected or appointed director must submit to the secretary of the association the written certification and educational certificate within 1 year before being elected or appointed or 90 days after the date of election or appointment. A director of an association of a residential condominium who was elected or appointed before July 1, 2024, must comply with the written certification and educational certificate requirements in this sub-subparagraph by June 30, 2025. The written certification and ~~or~~ educational certificate is valid for 7 years after the date of issuance and does not have to be

resubmitted as long as the director serves on the board without interruption during the 7-year period. A director who is appointed by the developer may satisfy the educational certificate requirement in sub-sub-subparagraph (II) for any subsequent appointment to a board by a developer within 7 years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or appointment to a board in another association within that 7-year period. One year after submission of the most recent written certification and educational certificate, and annually thereafter, a director of an association of a residential condominium must submit to the secretary of the association a certificate of having satisfactorily completed at least 1 hour of continuing education administered by the division, or a division-approved condominium education provider, relating to any recent changes to this chapter and the related administrative rules during the past year. A director of an association of a residential condominium who fails to timely file the written certification and ~~or~~ educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification and ~~or~~ educational certificate for inspection by the members for 7 ~~5~~ years after a director's election or the

duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification and ~~or~~ educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration; unit owner meetings, except unit owner meetings called to recall board members under paragraph (l); and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt

of mass e-mails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (l) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies,

or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must adopt a separate budget of common expenses for each condominium the association operates

and must adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other 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 the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g) for which the association is responsible pursuant to the declaration of condominium, and the reserve amount for such items must be based on the findings and recommendations of the association's most

recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, to provide no reserves or less reserves than required by this subsection. For a budget adopted on or after December 31, 2024, the members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g), except that members of an association operating a multicondominium may determine to provide no reserves or less reserves than required by this subsection if an alternative funding method has been approved by the division. If the local building official, as defined in s. 468.603, determines that the entire condominium building is uninhabitable due to a natural

emergency, as defined in s. 252.34, the board, upon the approval of a majority of its members, may pause the contribution to its reserves or reduce reserve funding until the local building official determines that the condominium building is habitable. Any reserve account funds held by the association may be expended, pursuant to the board's determination, to make the condominium building and its structures habitable. Upon the determination by the local building official that the condominium building is habitable, the association must immediately resume contributing funds to its reserves.

b. Before turnover of control of an association by a developer to unit owners other than a developer under s. 718.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. 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 of all the total voting interests of the association. Before turnover of

control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for any other purpose other than the replacement or deferred maintenance costs of the components listed in paragraph (g).

4. The only voting interests that are 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 units subject to assessment to fund the reserves in question. 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 UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Structural integrity reserve study.*—

1. A residential condominium association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the condominium property that is three stories or higher in height, as determined by the Florida Building Code, which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the condominium property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of

the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a deferred maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the condominium form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 718.301(4)(p) and (q) for each building on the condominium property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection in accordance with s. 553.899 on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of

this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery to the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

(q) *Director or officer offenses.*—

1. A director or an officer charged by information or indictment with any of the following crimes must be removed from office:

a. Forgery, as provided in s. 831.01, of a ballot envelope or voting certificate used in a condominium association election.

b. Theft, as provided in s. 812.014, or embezzlement involving the association's funds or property.

c. Destruction of, or the refusal to allow inspection or copying of, an official record of a condominium association which is accessible to unit owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.

d. Obstruction of justice under chapter 843.

2. The board shall fill the vacancy in accordance with paragraph (2)(d) ~~a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law~~ until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if

any.

(r) *Fraudulent voting activities relating to association elections; penalties.*—

1. A person who engages in the following acts of fraudulent voting activity relating to association elections commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

b. Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

c. Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

d. Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

e. Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This sub-

subparagraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

f. Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

2. Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.

b. Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.

c. Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment. This sub-subparagraph does not apply to a licensed attorney giving legal advice to a client.

Section 9. Subsection (5) 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.—

(5) To protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, this subsection applies to all residential and mixed-use condominiums in the state, regardless of when the condominium is created pursuant to the declaration of condominium. Each board of administration of a residential condominium or mixed-use condominium must ~~shall~~ adopt hurricane protection ~~shutter~~ specifications for each building within each condominium operated by the association which may ~~shall~~ include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code. The installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with this subsection is not considered a material alteration or substantial addition to the common elements or association property within the meaning of this section.

(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium or mixed-use condominium, install or require that unit owners install hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection

that complies ~~comply~~ with or exceeds ~~exceed~~ the applicable building code. A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county in which the condominium is located. Once the certificate is recorded, the board must mail or hand deliver a copy of the recorded certificate to the unit owners at the owners' addresses, as reflected in the records of the association. The board may provide to unit owners who previously consented to receive notice by electronic transmission a copy of the recorded certificate by electronic transmission. The failure to record the certificate or send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners. ~~However,~~ A vote of the unit owners under this paragraph is not required if the installation, maintenance, repair, and replacement of the hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection, or any exterior windows, doors, or other apertures protected by the hurricane protection, is ~~are~~ the responsibility of the association pursuant to the declaration of condominium as originally recorded or as amended, or if the unit owners are required to install hurricane protection pursuant to the declaration of condominium as

originally recorded or as amended. If hurricane protection ~~or laminated glass or window film architecturally designed to function as hurricane protection~~ that complies with or exceeds the current applicable building code has been previously installed, the board may not install the same type of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection or require that unit owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit ~~except upon approval by a majority vote of the voting interests~~.

~~(b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.~~

(b) ~~(c)~~ The board may operate ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~

hurricane protection ~~installed pursuant to this subsection~~ without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or ~~and~~ association property. ~~The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.~~

(c) ~~(d)~~ Notwithstanding any other provision in the residential condominium or mixed-use condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by a unit owner which conforms ~~conforming~~ to the specifications adopted by the board. However, a board may require the unit owner to adhere to an existing unified building scheme regarding the external appearance of the condominium.

(d) A unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection, including exterior windows, doors, or other apertures, if its removal is necessary for the maintenance, repair, or replacement of other condominium property or association property for which the

association is responsible. The board shall determine if the removal or reinstallation of hurricane protection must be completed by the unit owner or the association. If such removal or reinstallation is completed by the association, the costs incurred by the association may not be charged to the unit owner. If such removal or reinstallation is completed by the unit owner, the association must reimburse the unit owner for the cost of the removal or reinstallation or the association must apply a credit toward future assessments in the amount of the unit owner's cost to remove or reinstall the hurricane protection.

(e) If the removal or reinstallation of hurricane protection, including exterior windows, doors, or other apertures, is the responsibility of the unit owner and the association completes such removal or reinstallation and then charges the unit owner for such removal or reinstallation, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

Section 10. Paragraph (e) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.—

(1)

(e)1. Except as provided in s. 718.113(5)(d), ~~The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or~~

~~doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. However,~~ if the installation of ~~maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection is ~~are~~ the responsibility of the unit owners pursuant to the declaration of condominium or a vote of the unit owners under s. 718.113(5), the cost of the installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by the association is not a common expense and must ~~shall~~ be charged individually to the unit owners based on the cost of installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection appurtenant to the unit. The costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

2. Notwithstanding s. 718.116(9), and regardless of whether ~~or not~~ the declaration requires the association or unit

owners to install, maintain, repair, or replace ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection, the ~~a unit~~ owner of a unit in which ~~who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant~~ hurricane protection that complies ~~comply~~ with the current applicable building code has been installed is excused from any assessment levied by the association or shall receive a credit if ~~when~~ the same type of ~~other code-compliant~~ hurricane protection is installed by the association. A credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection~~, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit~~. However, such unit owner remains responsible for the pro rata share of expenses for ~~hurricane~~

~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection. Expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

Section 11. Paragraph (a) of subsection (4) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s. 718.111(12)(a)11.c. ~~s. 718.111(12)(a)11.b.~~, the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

Section 12. Section 718.1224, Florida Statutes, is amended to read:

718.1224 Prohibition against SLAPP suits; other prohibited actions.—

(1) It is the intent of the Legislature to protect the

right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before their condominium association and the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or "SLAPP suits," as they are typically referred to, have occurred when association members are sued by condominium associations, individuals, business entities, or governmental entities arising out of a condominium unit owner's appearance and presentation before the board of the condominium association or a governmental entity on matters related to the condominium association. However, it is the public policy of this state that condominium associations, governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in their condominium association and in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by condominium associations, governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners,

~~and~~ ensure the continuation of representative government in this state, and ensure unit owner participation in condominium associations. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government; law enforcement agencies; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A condominium association, governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the condominium association or the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) It is unlawful for a condominium association to fine, discriminatorily increase a unit owner's assessments, discriminatorily decrease services to a unit owner, or bring or threaten to bring an action for possession or other civil

action, including a defamation, libel, slander, or tortious interference action, based on conduct described in this subsection. In order for the unit owner to raise the defense of retaliatory conduct, the unit owner must have acted in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which a condominium association, an officer, a director, or an agent of an association may not retaliate include, but are not limited to, situations in which:

(a) The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;

(b) The unit owner has organized, encouraged, or participated in a unit owners' organization;

(c) The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;

(d) The unit owner has exercised his or her rights under this chapter;

(e) The unit owner has complained to the association or

any of the association's representatives for the failure to comply with this chapter or chapter 617; or

(f) The unit owner has made public statements critical of the operation or management of the association.

(4) Evidence of retaliatory conduct may be raised by the unit owner as a defense in any action brought against him or her for possession.

(5)~~(3)~~ A condominium unit owner sued by a condominium association, governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the condominium association's, governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The condominium association, governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the condominium association's, governmental entity's, business organization's, or individual's response. The

court may award the condominium unit owner sued by the condominium association, governmental entity, business organization, or individual actual damages arising from the condominium association's, governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing condominium unit owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(6) ~~(4)~~ Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit owner.

(7) Condominium associations may not expend association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in subsection (3).

Section 13. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the

association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 14. Subsections (4) and (5) of section 718.3027, Florida Statutes, are amended to read:

718.3027 Conflicts of interest.—

(4) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, and any ~~or the~~ relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote. The attendance of a director or an officer with a possible conflict of interest at the meeting of the board is sufficient to constitute a quorum for the meeting and the vote in his or her absence on the proposed activity.

(5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section or

s. 617.0832 ~~s. 718.111(12)(g)~~ is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

Section 15. Subsection (5) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. At least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the

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

Section 16. Subsections (1) and (2) of section 718.501, Florida Statutes, are amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate

complaints alleging violations of this chapter or any rule or order hereunder ~~related only to financial issues, elections, and the maintenance of and unit owner access to association records under s. 718.111(12), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g)~~.

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee

designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may

be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to pay any restitution determined by the division to be owed, plus

any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the

court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed

on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, upon the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares,

and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county in which ~~where~~ the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records at the location in which ~~where~~ the records are kept pursuant to s. 718.112. Upon receipt of the records, the division must provide to the unit

owner who was denied access to such records the produced official records without charge.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as

amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. The division shall provide to directors of the board of administration at no charge the educational curriculum required under s. 718.112(2)(d) and issue a certificate of satisfactory completion, including when the required educational curriculum is provided by a division-approved condominium education provider.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of

such mediators to any association, unit owner, or other participant in alternative dispute resolution proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not

prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation. The division shall refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or when the

division has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.

(o) The division director or any officer or employee of the division and the condominium ombudsman or any employee of the Office of the Condominium Ombudsman may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, which is open to members of the association for the purpose of performing the duties of the division or the Office of the Condominium Ombudsman under this chapter.

(p) ~~(o)~~ The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(q) ~~(p)~~ The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(r) ~~(q)~~ The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(s) ~~(r)~~ In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter

120.

(t) The division shall routinely conduct random audits of condominium associations to determine compliance with the website or application requirements for official records under s. 718.111(12)(g).

(u) ~~(s)~~ The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(2)(a) Each condominium association that ~~which~~ operates more than two units shall pay to the division an annual fee in the amount of $4 for each residential unit in condominiums operated by the association. The annual fee shall be filed together with the annual certification described in paragraph

(c). If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

(c) On the certification form provided by the division, the directors of the association shall certify that each director of the association has completed the written certification and educational certificate requirements in s. 718.112(2)(d)4.b.

Section 17. Subsection (2) of section 718.5011, Florida Statutes, is amended to read:

718.5011 Ombudsman; appointment; administration.—

(2) The secretary of the Department of Business and Professional Regulation ~~Governor~~ shall appoint the ombudsman. The ombudsman ~~must be an attorney admitted to practice before the Florida Supreme Court and~~ shall serve at the pleasure of the Governor. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's

office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

Section 18. Paragraph (k) of subsection (1) of section 719.106, Florida Statutes, is amended 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:

(k) *Structural integrity reserve study.*—

1. A residential cooperative association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height, as determined by the Florida Building Code, that includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other

primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the cooperative property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the cooperative property being visually inspected, state the estimated remaining useful life and the

estimated replacement cost or deferred maintenance expense of each item of the cooperative property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of cooperative property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a deferred maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have

a turnover inspection report in compliance with s. 719.301(4)(p) and (q) for each building on the cooperative property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before December 31, 2026, in accordance with s. 553.899 may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 719.104(9).

9. Within 45 days after receiving the structural integrity

reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

Section 19. Paragraph (p) of subsection (4) of section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the

association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 20. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall complete a review of the website or application requirements for official records under s. 718.111(12)(g), Florida Statutes, and make recommendations

regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the statute. The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees with jurisdiction over chapter 718, Florida Statutes, the findings of its review by February 1, 2025.

Section 21. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

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: State Administration & Technology Appropriations Subcommittee
Representative Lopez, V. offered the following:

Amendment

Remove lines 2149-2155 and insert:

turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues related to or concerning ss. 718.111(4),(13),(14) and (15) and 718.112(2)(e),(f), and(i);~~,~~ elections related to or concerning ss. 718.112(2)(b),(d),(l) and (r), 718.128, and 718.1265(1)(a); ~~and~~ the maintenance of and unit owner access to association records related to or concerning ~~under~~ s. 718.111(12)~~,~~; the procedural aspects of meetings related to or concerning s. 718.112(2)(b)-(d); disclosure of conflicts of interest related

to or concerning ss. 718.111(1)(a) and (3)(f), 718.112(2)(p) and (q), and 718.3027; ~~and~~ the procedural completion of structural integrity reserve studies related to or concerning ~~under~~ s. 718.112(2)(g); and any written inquiries by unit owners to the association related to these matters.

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: State Administration & Technology Appropriations Subcommittee
Representative Lopez, V. offered the following:

Amendment (with title amendment)

Between lines 2658 and 2659, insert:

Section 21: For the 2024-2025 fiscal year, the sums of $6,122,390 in recurring and $1,293,879 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Business and Professional Regulation, and 65 full-time equivalent positions with associated salary rate of 3,180,319 is authorized, for the purpose of implementing the provisions related to this act.

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

Remove line 192 and insert:
by a specified date; providing appropriations; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1029 My Safe Florida Condominium Pilot Program
SPONSOR(S): Insurance & Banking Subcommittee, Lopez, V., Hunschofsky and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee		Perez	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

The My Safe Florida Home (MSFH) Program was created in 2006 within the Department of Financial Services (DFS) to perform mitigation inspections of site-built, single-family, residential properties (inspections), and mitigation grants (grants) to eligible applicants to make their homes less vulnerable to hurricane damage. The MSFH Program received $250 million in appropriations for the Fiscal Year 2006-2007, but was not funded again until 2022. Since then, the Legislature has provided approximately $433 million in subsequent additional funding to the MSFH Program.

Mitigation inspections are limited to homesteaded properties. Funds may be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage and grant funds may be used to pay for such opening protection mitigation if warranted. The value of the mitigation grant-eligible homes is currently $700,000. While initially limited to homes within the wind-borne debris region, the MSFH Program is currently a statewide program.

The bill establishes within DFS the My Safe Florida Condominium Pilot Program (MSFCP Program), with the intent that the Program provide licensed inspectors to perform inspections for and grants to eligible associations, as funding allows. Under the MSFCP Program, DFS must provide fiscal accountability, contract management, and strategic leadership for the MSFCP Program, consistent with the bill's provisions. The MSFCP Program must be implemented pursuant to appropriations, and is subject to annual legislative appropriations thereafter.

Essentially, the bill provides to condominium associations a program similar to that of the MSFH Program in regards to requirements for participation, hurricane mitigation inspectors and inspections, eligibility for mitigation grants, contract management by DFS, and required annual reports.

The bill has no impact on state or local government revenues and expenditures. The implementation of the MSFCP Program is subject to funding in the General Appropriations Act (GAA). The bill may have a positive direct economic impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS) with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections) and grants to eligible applicants, subject to funding availability.[1] The purpose of the MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[2] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[3] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[4]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine:

- What mitigation measures were needed;
- What insurance premium discounts might have been available; and
- What improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[5]

The mitigation inspections had to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[6]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[7] DFS entered contracts with wind certification entities to provide mitigation inspections. In order to be eligible for the contracts, the entities had to use hurricane mitigation inspectors who, at a minimum:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed professional architects; or
- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[8]

[1] S. 215.5586, F.S.
[2] *Id.*
[3] S. 215.5586(3), F.S.
[4] S. 215.5586(7), F.S.
[5] S. 215.5586(1)(a), F.S.
[6] *Id.*
[7] S. 215.55186(6), F.S.
[8] S. 215.5586(1)(b), F.S.

Mitigation Grants

The purpose of the mitigation grants component of the MSFH Program was to retrofit single-family homes to make them less vulnerable to hurricane damage.[9] To be eligible for a grant, the following criteria must have been met:

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the home must have been made before March 1, 2002.[10]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[11] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[12] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[13]

Grants could be used on previously-inspected existing structures or on rebuilds.[14] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Upgrading exterior doors, including garage doors.
- Bracing gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Installing secondary water barrier for roofs.[15]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[16]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[17] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[18] DFS requested that Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on May 14, 2009 (report).[19] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[20] RMS indicated that the predicted

[9] S. 215.5586(2), F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[15] S. 215.5586(2)(e), F.S.
[16] S. 215.5586(10), F.S.
[17] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5036 (last visited Jan. 26, 2024).
[18] *Id.*
[19] *Id.*
[20] *Id.*

reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[21] While the MSFH Program was never repealed from law, additional funding was not provided until May 2022.

2022 Renewal of the MSFH Program

During the 2022D Special Session, the Legislature passed a property insurance bill (SB 2-D), in which it renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from General Revenue (GR) to DFS for the Program for the 2022-2023 fiscal year. The funds appropriated were allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

SB 2-D reappropriated any unexpended balance of funds from the appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. SB 2-D gave DFS the authority to adopt emergency rules to implement the MSFH Program.

SB 2-D made additional modifications to the MSFH Program. It required that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changed the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000, or less, qualify for the program.

SB 2-D required that homes that receive mitigation grants have undergone home mitigation inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. The homeowner must also match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhanced the reporting requirements for DFS under the MSFH Program by requiring that the report include the following received by homeowners from insurers as a result of the mitigation funded by the program:

- The average annual amount of insurance premium discounts; and
- The total annual amount of insurance premium discounts.

2022 MSFH Program Implementation

Following the passage of SB 2-D, DFS procured a vendor to administer the MSFH Program, qualified inspectors to conduct mitigation inspections, and qualified contractors who agreed to provide mitigation repairs and retrofitting under the grant portion of the Program.[22] DFS compiled a list of approved vendors that homeowners participating in the MSFH Program may choose for inspections and mitigation work.[23]

On November 18, 2022, a web-based application for homeowners to request mitigation inspections and grant funds went live.[24] Between May 26, 2022 and February 28, 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved.[25]

[21] *Id.*
[22] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 881, p. 1 (Mar. 1, 2023).
[23] *Id.*
[24] *Id.*
[25] *Id.*

Inspectors completing mitigation inspections under the MSFH Program must complete the Uniform Mitigation Verification Inspection Form (Inspection Form), as revised by the Office of Insurance Regulation on January 12, 2023.[26] The mitigation inspection report provided to the homeowner includes the completed Inspection Form, as well as the information already required by statute,[27] including:

- A summary of the results of the mitigation inspection identifying recommended improvements a homeowner may undertake;
- A range of cost estimates regarding the recommended improvements; and
- Estimated property insurance premium discounts based on the mitigation measures the homeowner has completed.[28]

2023 Developments to the MSFH Program

Following the significant interest in the program in 2022 and early 2023, the Legislature made additional changes to the statutory framework for the MSFH Program during the 2023 Regular Session. These changes included changes to the inspection and grant eligibility requirements, and program management changes.

Single-family home eligibility for mitigation inspections was limited only to homesteaded properties.[29] Funds from the MSFH Program may now be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage.[30] If an inspection determines that opening protection mitigation would decrease such risk, grant funds from the MSFH Program may be used to pay for the mitigation.[31] The value of the mitigation grant-eligible homes was also increased from $500,000 to $700,000.[32]

The designation of a specific portion of the grant funds for low-income recipients was removed, but increases the overall grant award for low-income recipients from $5,000 to $10,000.[33] The program's geographic eligibility area was broadened to include otherwise in eligible homes outside the wind-borne debris region, in effect making it a statewide program.

Among the project management changes implemented, home inspectors must be licensed, in addition to certified.[34] This requirement conforms with other statutory chapters that address home inspectors.

Funding for the MSFH Program

As of December 2023, the Legislature has appropriated a total of $433 million for the MSFH Program since May 2022.[35] In addition to the $150 million appropriated during the 2022D Special Session, this includes $100 million in grant funding appropriated during the 2023 Regular Session and an additional $176 million in grant funding appropriated during the 2023C Special Session.[36]

Results of the MSFH Program

Between November 2022, and December 2023, the MSFH Program has provided more than 94,000

[26] *Id.*
[27] S. 215.5586(1)(a), F.S.
[28] Department of Financial Services, *supra* note 22, at 2.
[29] The homestead requirement was already in place for the grant portion of the MSFH Program under s. 215.5586(2), F.S., prior to the 2023 Regular Session.
[30] S. 215.5586(1)(a), F.S.
[31] S. 215.5586(2)(f), F.S.
[32] S. 215.5586(2)(e)2., F.S.
[33] S. 215.5586(2)(h), F.S.
[34] S. 215.5586, F.S.
[35] Department of Financial Services, *2023 Annual Report of My Safe Florida Home*, p. 1.
[36] *Id.* at p. 6. The mitigation grant funding is by far the largest component of the MSFH Program.

homeowners with hurricane mitigation inspections and approved more than 23,000 grant applications.[37] Over 73 percent of those homeowners who have completed participation in the grant component of the MSFH Program have seen their homeowners insurance premiums drop or stabilize, and many are paying premiums at or below the state average.[38] According to DFS, upon applying to the MSFH Program, the average premium of the applicants was 55.1 percent higher than the average Florida homeowner's premium.[39] Based upon the decrease in premium following participation, DFS has concluded that the MSFH Program participation is comprised of higher-than-average risk homeowners, which is consistent with the goal of helping those with homes at greatest risk.[40]

Condominiums

While the current MSFH Program provides for the inspections of, and some mitigation projects to, townhouses, Florida law does not currently provide a program for condominium owners similar to the MSFH Program.

Effect of the Bill

The bill establishes within DFS the My Safe Florida Condominium Pilot Program (MSFCP Program), with the intent that the Program provide licensed inspectors to perform inspections for and grants to eligible associations, as funding allows. Under the MSFCP Program, DFS must provide fiscal accountability, contract management, and strategic leadership for the MSFCP Program, consistent with the bill's provisions.

The MSFCP Program must be implemented pursuant to appropriations, and is subject to annual legislative appropriations thereafter. The bill provides that its provisions do not create an entitlement for associations or unit owner or obligate the state in any way to fund the inspection or retrofitting of condominiums in Florida.

Essentially, the bill provides to condominium owners a program similar to that of the MSFH Program.

Definitions

The bill creates definitions for the following terms:

- "Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.[41]
- "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members and is located in the service area.
- "Board of administration" means the board of directors or other representative body which is responsible for administration of the association.[42]
- "Condominium" means that form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.[43]

[37] *Id.* at p. 1. Because the grant portion of the MSFH Program is fulfilled based on reimbursement to homeowners after proof of completion of mitigation projects, the money to fulfill these grants has been reserved, but not all of it has been paid to the homeowners yet.
[38] *Id.*
[39] *Id.* at p. 2.
[40] *Id.*
[41] *See* s. 718.103(3), F.S.
[42] *See* s. 718.103(5), F.S.
[43] *See* s. 718.103(12), F.S.

- "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium and are located in the service area.
- "Property" means association property and condominium property, as applicable, located in the service area.
- "Rebuild" means property under construction to replace a structure that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority.
- "Service area" means the area of the state 15 miles inward of the coastline.[44]
- "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in an association's declaration.[45]
- "Unit owner" means a record owner of legal title to a condominium parcel.[46]

Participation

The bill provides that, to apply for an inspection or grant for association property or condominium property, an association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in the pilot program.

Additionally, to apply for a grant which improves one or more units within a condominium, an association must receive both of the following:
- Approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in a mitigation inspection.
- A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

The votes required by this section of the bill may take place at the annual budget meeting of the association or at a unit owner meeting called for the purpose of taking such vote. However, before a vote of the unit owners can be taken, the association must provide to the unit owners a clear disclosure of the MSFCP Program on form created by DFS. The bill further provides that:
- The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association;
- The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the MSFCP Program must be maintained as part of the official records of the association;
- Within 14 days after an affirmative vote to participate in the MSFCP Program, the association must provide written notice in the same manner as required under s. 718.112(2)(d), F.S.,[47] to all unit owners of the decision to participation in the MSFCP Program.

The bill provides that a unit owner may participate in the MSFCP Program through a mitigation grant awarded to the association, but a unit owner may not participate individually in the MSFCP Program.

Hurricane Mitigation Inspectors

Licensed inspectors under the MSFCP Program are to provide inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a

[44] S. 376.031, F.S., defines coastline as the line of mean low water along the portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters, as determined under the Convention on Territorial Seas and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606.
[45] *See* s. 718.103(29), F.S.
[46] *See* s. 718.103(30), F.S.
[47] Section 718.112(2)(d), F.S., are Florida's laws relating to unit owner meetings of condominium associations.

property's vulnerability to hurricane damage.

The bill requires DFS to contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by DFS as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet all of the following requirements:

- Use hurricane mitigation inspectors who are licensed or certified as a:
  - Building inspector,
  - General, building, or residential contractor,
  - A professional engineer,
  - A professional architect, or
  - A home inspector who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam;
- Use hurricane mitigation inspectors who have undergone drug testing and a background screening;[48] and
- Provide a quality assurance program including a reinspection component.

Hurricane Mitigation Inspections

The bill provides that the inspections provided to an association under the MSFCP Program must, at a minimum, include all of the following:

- An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Information regarding estimated insurance premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains. Additionally, an association may apply for an deceive an inspection without also applying for a grant.

Mitigation Grants

Financial grants under the MSFCP Program may be used to encourage associations to retrofit the property the association operates and maintains in order to make such property less vulnerable to hurricane damage. The bill provides that an application for a mitigation grant must:

- Contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains;
- Include a notarized statement from the president of the board of administration containing the name and license number of the contractor the association intends to use for the mitigation project; and
- Include a notarized statement from the president of the board of administration which commits to DFS that the association will complete the mitigation improvements.[49]

[48] The bill provides that DFS may conduct criminal record checks of inspectors used by wind certification entities. Under the bill, inspectors must submit a set of fingerprints to DFS for state and national criminal history checks and must pay a fingerprint processing fee. The fingerprints must be sent by DFS to the Florida Department of Law Enforcement (FDLE) and forwarded to the Federal Bureau of Investigation for processing. The results must be returned to DFS for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other DFS-approved entity. The bill includes the FDLE preferred language regarding fingerprinting.

[49] If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner who is required to provide approval for a grant under the other applicable provision of the bill.

An association may select its own contractor for the mitigation project, provided such contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project. DFS must electronically verify that the contractor's state license number is accurate and up to date before approving a grant application.

An association awarded a grant must complete the entire mitigation project to receive the final grant award and must agree to make the property available for a final inspection once the mitigation project is finished to ensure the mitigation improvements are completed in a matter consistent with the intent of the MSFCP Program and meet or exceed the applicable Florida Building Code requirements.

Construction must be completed and the association must submit a request to DFS for a final inspection, or request an extension of time, within 1 year after receiving grant approval. If the association fails to comply with these provisions, the application is deemed abandoned and the grant money reverts back to DFS.

All grants must be matched on the basis of $1 provided by the association for $2 provided by the state, up to a maximum contribution as provided in the General Appropriations Act. When recommended by a hurricane mitigation inspection report, grants for eligible associations may be used for the following improvements:

- Opening protection.
- Exterior doors, including garage doors.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Secondary water barrier for roof.

On the other hand, the association may not use a mitigation grant to install the same type of improvements that were previously installed or pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received. However, grants may be used for a previously inspected existing structure on the property or for a rebuild.

If improvements to protect the property which complied with the current applicable building code at the time have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

- Comply with or exceed the applicable building code in effect at the time the association applied for the grant.
- Provide more hurricane protection than the improvements that the association previously installed.

The bill requires DFS to develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the internet or other electronic means to collect information and determine eligibility.

Contract Management

The bill allows DFS to contract with third parties for grants management, inspection services, contractor services, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the MSFCP Program and are not subject to administrative cost limits. DFS must contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and must ensure the highest accountability for use of state funds, consistent with the bill’s provisions.

Further, the bill requires DFS to implement a quality assurance and reinspection program that

determines whether initial inspections and mitigation improvements are completed in a manner consistent with the intent of the MSFCP Program. DFS may use a valid random sampling in order to perform the quality assurance portion of the MSFCP Program.

Reports

By February 1 of each year, DFS must submit a report to the President of the Senate and the Speaker of the House of Representatives on the activities of the MSFCP Program and the use of state funds. The report must include all of the following information:

- The number of inspections requested;
- The number of inspections performed;
- The number of grant applications received;
- The number of grants approved and the monetary value of each grant;
- The estimated average annual amount of insurance premium discounts each association received and the total estimated annual amount of insurance premium discounts received by all associations participating in the MSFCP Program; and
- The estimated average annual amount of insurance premium discounts each unit owner received as a result of the improvements to the building or structure.

B. SECTION DIRECTORY:

Section 1. Creates s. 215.5587, F.S., relating to My Safe Florida Condominium Pilot Program.

Section 2. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that homes that participate in the MSFCP Program receive mitigation credits or premium discounts under their property insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFCP Program may have a positive direct economic impact on homeowners. Hurricane mitigation inspectors and contractors may also see an increase in activity.

D. FISCAL COMMENTS:

The bill has no direct impact on state government expenditures. Instead, the bill establishes that the MSFCP Program will be implemented subject to funding in the General Appropriations Act (GAA). Currently HB 5001 appropriates $25 million for grants, $1.4 million for administrative costs, and $600,000 for inspections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize DFS to adopt rules to administer the MSFCP Program. However, rulemaking authority should be considered to align this program with the rulemaking authority for the MSFH Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See Rule-making Authority.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Defined a “service area” for the program that is the area of the state 15 miles inward of the coastline; making the pilot project statewide in this coastal zone.
- Clarified the fingerprinting requirement to comport with a recommendation by FDLE.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to the My Safe Florida Condominium Pilot Program; creating s. 215.5587, F.S.; establishing the My Safe Florida Condominium Pilot Program within the Department of Financial Services; providing legislative intent; providing definitions; providing requirements for associations and unit owners to participate in the pilot program; providing voting requirements; requiring the department to contract with specified entities for certain inspections; providing requirements for such entities; authorizing the department to conduct criminal record checks of certain inspectors; requiring inspectors to submit a full set of fingerprints to the department or other authorized entities; providing requirements for state and federal fingerprint processing; providing requirements for hurricane mitigation inspectors and inspections; requiring applications for inspections and grants to include specified statements; authorizing an association to receive an inspection without applying for a mitigation grant; providing mitigation grants for a specified purpose; providing requirements for an association receiving a mitigation grant; authorizing an association to select is own contractor if such contractor meets certain

requirements; requiring the department to electronically verify a contractor's state license; requiring construction to be completed and the association to submit a request for a final inspection within a specified time period; requiring mitigation grants to be matched by the association; providing a maximum state contribution based on the General Appropriations Act; providing requirements for mitigation projects; providing how mitigation grants may be used; requiring the department to develop a specified process to ensure efficiency; authorizing the department to contract for certain services; providing requirements for such contracts; requiring the department to implement a quality assurance and reinspection program; requiring the department to submit to the Legislature an annual report with specified information; providing an effective date.

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

Section 1. Section 215.5587, Florida Statutes, is created to read:

215.5587 My Safe Florida Condominium Pilot Program.—There is established within the Department of Financial Services the My Safe Florida Condominium Pilot Program to be implemented

pursuant to appropriations. The department shall provide fiscal accountability, contract management, and strategic leadership for the pilot program, consistent with this section. This section does not create an entitlement for associations or unit owners or obligate the state in any way to fund the inspection or retrofitting of condominiums in the state. Implementation of this pilot program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Condominium Pilot Program provide licensed inspectors to perform inspections for and grants to eligible associations as funding allows.

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

(a) "Association" has the same meaning as in s. 718.103.

(b) "Association property" means property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, an association for the use and benefit of its members and is located in the service area.

(c) "Board of administration" has the same meaning as in s. 718.103.

(d) "Condominium" has the same meaning as in s. 718.103.

(e) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium and are

located in the service area.

(f) "Department" means the Department of Financial Services.

(g) "Property" means association property and condominium property, as applicable, located in the service area.

(h) "Rebuild" means property under construction to replace a structure that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority.

(i) "Service area" means the area of the state which is 15 miles inward of a coastline, as that term is defined in s. 376.031.

(j) "Unit" has the same meaning as in s. 718.103.

(k) "Unit owner" has the same meaning as in s. 718.103.

(2) PARTICIPATION.—

(a) In order to apply for an inspection under subsection (4) or a grant under subsection (5) for association property or condominium property, an association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in the pilot program.

(b) In order to apply for a grant under subsection (5) which improves one or more units within a condominium, an association must receive both of the following:

1. Approval by a majority vote of the board of administration or a majority vote of the total voting interests

of the association to participate in a mitigation inspection.

2. A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

(c) A unit owner may participate in the pilot program through a mitigation grant awarded to the association but may not participate individually in the pilot program.

(d) The votes required under this subsection may take place at the annual budget meeting of the association or at a unit owner meeting called for the purpose of taking such vote. Before a vote of the unit owners may be taken, the association must provide to the unit owners a clear disclosure of the pilot program on a form created by the department. The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association. The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the pilot program must be maintained as part of the official records of the association. Within 14 days after an affirmative vote to participate in the pilot program, the association must provide written notice in the same manner as required under s. 718.112(2)(d) to all unit owners of the decision to participate in the pilot program.

(3) HURRICANE MITIGATION INSPECTORS.—

(a) Licensed inspectors are to provide inspections of the

property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage.

(b) The department shall contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet all of the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who have undergone drug testing and a background screening. The department may

conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency authorized under s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e). The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity.

3. Provide a quality assurance program including a reinspection component.

(4) HURRICANE MITIGATION INSPECTIONS.—

(a) The inspections provided to an association under this section must, at a minimum, include all of the following:

1. An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Information regarding estimated insurance premium

discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(b) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains.

(c) An association may apply for and receive an inspection without also applying for a grant under subsection (5).

(5) MITIGATION GRANTS.—Financial grants may be used to encourage associations to retrofit the property the association operates and maintains in order to make such property less vulnerable to hurricane damage.

(a) An application for a mitigation grant must:

1. Contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains.

2. Include a notarized statement from the president of the board of administration containing the name and license number of the contractor the association intends to use for the mitigation project.

3. Include a notarized statement from the president of the

board of administration which commits to the department that the association will complete the mitigation improvements. If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner who is required to provide approval for a grant under paragraph (2)(b).

(b) An association may select its own contractor for the mitigation project as long as such contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project. The department must electronically verify that the contractor's state license number is accurate and up to date before approving a grant application.

(c) An association awarded a grant must complete the entire mitigation project in order to receive the final grant award and must agree to make the property available for a final inspection once the mitigation project is finished to ensure the mitigation improvements are completed in a matter consistent with the intent of the pilot program and meet or exceed the applicable Florida Building Code requirements. Construction must be completed and the association must submit a request to the department for a final inspection, or request an extension of time, within 1 year after receiving grant approval. If the association fails to comply with this paragraph, the application is deemed abandoned and the grant money reverts back to the

department.

(d) All grants must be matched on the basis of $1 provided by the association for $2 provided by the state up to a maximum contribution as provided in the General Appropriations Act.

(e) When recommended by a hurricane mitigation inspection report, grants for eligible associations may be used for the following improvements:

1. Opening protection.

2. Exterior doors, including garage doors.

3. Reinforcing roof-to-wall connections.

4. Improving the strength of roof-deck attachments.

5. Secondary water barrier for roof.

(f) Grants may be used for a previously inspected existing structure on the property or for a rebuild.

(g)1. If improvements to protect the property which complied with the current applicable building code at the time have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

a. Comply with or exceed the applicable building code in effect at the time the association applied for the grant.

b. Provide more hurricane protection than the improvements that the association previously installed.

2. The association may not use a mitigation grant to:

a. Install the same type of improvements that were

previously installed; or

b. Pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received.

(h) The department shall develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

(6) CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for grants management, inspection services, contractor services, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the pilot program and are not subject to administrative cost limits. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections and mitigation improvements are completed in a manner consistent with the intent of the pilot program. The department may use a

valid random sampling in order to perform the quality assurance portion of the pilot program.

(7) REPORTS.—By February 1 of each year, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives on the activities of the pilot program and the use of state funds. The report must include all of the following information:

(a) The number of inspections requested.

(b) The number of inspections performed.

(c) The number of grant applications received.

(d) The number of grants approved and the monetary value of each grant.

(e) The estimated average annual amount of insurance premium discounts each association received and the total estimated annual amount of insurance premium discounts received by all associations participating in the pilot program.

(f) The estimated average annual amount of insurance premium discounts each unit owner received as a result of the improvements to the building or structure.

Section 2. This act shall take effect July 1, 2024.

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: State Administration & Technology Appropriations Subcommittee
Representative Lopez, V. offered the following:

Amendment (with title amendment)

Remove lines 227-229 and insert:

(d) Grant projects shall be funded as follows:

1. All grants must be matched on the basis of $1 provided by the association for $2 provided by the state.

2. For roof-related projects, the grant contribution shall be $11 per square foot times the square feet of the replacement roof, not to exceed $1,000 per unit, with a maximum grant contribution of 50 percent of the project.

3. For opening protection-related projects, the grant

contribution shall be a maximum of $750 per replacement window or door, not to exceed $1,500 per unit, with a maximum grant contribution of 50 percent of the project.

4. An association may receive grant funds for both roof-related and opening protection-related projects, but the maximum overall grant contribution may not exceed $175,000 per association.

5. The department may not accept grant applications or maintain a waiting list after the cumulative value of the grants awarded have fully obligated the appropriation, unless the Legislature provides expressed authority to implement such actions.

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

Remove lines 32-33 and insert:

maximum state contribution; providing requirements for

HB 1217

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1217 Florida Homeowners' Construction Recovery Fund
SPONSOR(S): Daniels
TIED BILLS: **IDEN./SIM. BILLS:** SB 414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Herrera	Anstead
2) State Administration & Technology Appropriations Subcommittee		Helpling	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Homeowners' Construction Recovery Fund (recovery fund) is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors. Homeowners file claims with the Department of Business and Professional Regulation (DBPR), which assesses completeness and eligibility before presenting them to the Construction Industry Licensing Board for review (CILB).

Contractors are required to notify customers of their rights under the recovery fund, with contracts for residential property work mandated to include a written statement detailing consumer rights under the fund, except for contracts under $2,500 in labor and materials. The recovery fund provides compensation to eligible claimants, limited to the judgment, award, or $25,000, whichever is less, based on actual damages suffered and subject to maximum per-claim and lifetime aggregate limits specified for Division I and Division II contracts. Regarding fiscal appropriations and license suspension, pending claims are carried over to the next fiscal year if the annual appropriation is depleted, and excess funds are distributed according to relevant statutes. Upon disbursement from the recovery fund to settle claims, a licensee's license is automatically suspended until full repayment plus interest is made.

The bill increases maximum claim amounts and total lifetime aggregate limits for claims made against contractors from the recovery fund over the next four fiscal years, up to Fiscal Year 2027-2028. For Division I licensees, such as general contractors, building contractors, and residential contractors, the maximum per-claim amount rises incrementally from $50,000 to $250,000, with corresponding increases in lifetime aggregate limits. For Division II licensees, such as roofing contractors, plumbing contractors, and solar contractors, the maximum amount per claim is set to increase from the current $15,000. This increase will occur gradually over the next four fiscal years, starting from $25,000 for Fiscal Year 2024-2025 and reaching $65,000 for Fiscal Year 2027-2028. Additionally, the bill aims to raise the lifetime aggregate limits for each Division II licensee for contracts entered into after July 1, 2016. These aggregate limits will start at $250,000 for Fiscal Year 2024-2025 and reach $550,000 for Fiscal Year 2027-2028.

The bill may have an indeterminate fiscal impact on the private sector and state government expenditures. The bill has no fiscal impact on local governments. *See* Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation, through 11 divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.[1]

Construction Contractors

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[2]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[3]

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.

“Registered contractors” are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[4]

Florida Homeowners’ Construction Recovery Fund

The Florida Homeowners’ Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors. Claims are filed with the

[1] S. 20.165, F.S.
[2] S. 489.107, F.S.
[3] S. 489.105, F.S.
[4] S. 489.103, F.S.

DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review.[5]

Current law requires all local governments to assess and collect a 1 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[6]

Current law also requires all local governments to assess and collect a separate 1.5 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.[7]

Local government are permitted to retain 10 percent of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.[8]

Duty of Contractor to give Notice of Fund

A contractor must provide notice to a customer of rights under the recovery fund.[9] Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed $2,500, and must be substantially in the form required by statute.[10]

Payment Limitations and Maximum Amounts from the Recovery Fund

Payment from the recovery fund, provides that an eligible claimant may be paid an amount equal to the judgment, award, or restitution order or $25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant, and subject to the maximum per-claim amount and a total lifetime per-licensee maximum.[11]

The maximum amounts payable for recovery fund claims and the total lifetime aggregate limits are set forth in s. 489.143, F.S,[12] as follows:

- Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, recovery fund claims are limited to a $50,000 maximum payment for each Division I claim, with a total lifetime aggregate limit of $500,000 for each Division I licensee.
- Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), recovery fund claims are limited to a $15,000 maximum payment for each Division II claim, with a total lifetime aggregate limit of $150,000 for each Division II licensee.

Claims awarded to a claimant by the CILB are paid in the order that they are filed, up to the lifetime aggregate limits for each transaction and licensee, and to the limits of amounts appropriated to pay

[5] S. 489.1401(2), F.S.
[6] S. 553.721, F.S.
[7] S. 468.631, F.S.
[8] Ss. 468.631, and 553.721, F.S.
[9] S. 489.1425, F.S
[10] *Id*.
[11] S. 489.143(2), F.S.
[12] For recovery fund claims for contracts entered into before July 1, 2004, *see* s. 489.143(6), F.S.

claims against the recovery fund.[13] Payments may not exceed the total claim limits or lifetime aggregate limits.[14]

Fiscal Appropriation and License Suspension

Current law states that if the annual appropriation is depleted while claims are pending, those pending claims will be carried over to the next fiscal year.[15] Any excess funds will be disbursed according to s. 468.631, F.S., which pertains to the Building Code Administrators and Inspectors Fund.

Upon disbursement of any funds from the recovery fund to settle a claim or satisfy a judgment, award, or restitution order against a licensee, the licensee's license is automatically suspended without further administrative action.[16] This suspension takes effect on the date of payment from the recovery fund. Reinstatement of the license is contingent upon the licensee repaying the full amount received from the recovery fund, along with accrued interest.[17]

Effect of the bill

The bill increases the maximum amounts payable to claimants for claims that may be made against contractors from the recovery fund for each of the next four fiscal years (through Fiscal Year 2027-2028), and to substantially increase the total lifetime aggregate limit for claim payments made against a single contractor for those same fiscal years.

For claims against general contractors, building contractors, and residential contractors (Division I licensees), contracts entered into after July 1, 2004, the maximum per-claim amount increases from $50,000 in current law, as follows:

- $75,000 for Fiscal Year 2024-2025;
- $125,000 for Fiscal Year 2025-2026;
- $175,000 for Fiscal Year 2026-2027; and
- $250,000 for Fiscal Year 2027-2028.

Under the bill, the lifetime aggregate limits for each Division I licensee for Division I contracts entered into after July 1, 2004, are increased from $500,000 in current law, as follows:

- $700,000 for Fiscal Year 2024-2025;
- $800,000 for Fiscal Year 2025-2026;
- $900,000 for Fiscal Year 2026-2027; and
- $1,000,000 for Fiscal Year 2027-2028;

For claims against roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors (Division II licensees), contracts entered into after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), the maximum amount per claim increases from $15,000 in current law, as follows:

- $25,000 for Fiscal Year 2024-2025;
- $35,000 for Fiscal Year 2025-2026;
- $45,000 for Fiscal Year 2026-2027; and
- $65,000 for Fiscal Year 2027-2028.

[13] S. 489.143(7), F.S.
[14] *Id.*
[15] S. 489.143(8), F.S.
[16] S. 489.143(9), F.S
[17] *Id.*

Under the bill, the lifetime aggregate limits for each Division II licensee for Division II contracts entered into after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), are increased from $150,000 in current law, as follows:

- $250,000 for Fiscal Year 2024-2025;
- $350,000 for Fiscal Year 2025-2026;
- $450,000 for Fiscal Year 2026-2027; and
- $550,000 for Fiscal Year 2027-2028;

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 483.143, F.S., relating to payment from the fund.

Section 2: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate fiscal impact on state government expenditures. As a result of increasing the aggregate cap per licensee, as well as the per-claim cap for each contract, the number of Recovery Fund claims awarded, as well as the amounts of claims awarded, will increase.[18]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate impact on the private sector. With the increase in both the aggregate cap per licensee and the per-claim cap for each contract, the likelihood of more claimants receiving compensation from the Recovery Fund, as well as the total compensation amount, is expected to rise.[19]

D. FISCAL COMMENTS:

DBPR currently has an annual recurring appropriation of $4.5 million to pay recovery fund claims. As of July 31, 2023, the Recovery Fund had a balance of $23,235,064.00. Over the fiscal years 20/21, 21/22, and 22/23, the average annual revenue injection into the Recovery Fund through surcharges amounted to $6,188,495.00. However, the average annual sum awarded in claims stood at $2,882,184. Nevertheless, between FY 20/21 and FY 22/23, the annual number of presented and awarded claims more than doubled, reaching 232 claims awarded in FY 22/23, totaling $4,449,552.00.[20]

[18] DBPR, Agency Analysis of 2024 SB 414, p. 4 (Nov. 20, 2023).
[19] Id. at 5.
[20] *Id*. at 6

The proposed elevation of claim caps within the bill could escalate expenditures, leading to a surge in the overall disbursement by the Division to approved claimants. The magnitude of this increase hinges on the frequency and cost of claims, which have exhibited a doubling trend over the last two fiscal years.[21]

These proposed claim cap adjustments could substantially inflate the annual volume of claims, potentially surpassing the annual revenues channeled into the Recovery Fund. This scenario would either deplete the fund's balance or necessitate General Revenue supplementation if revenue adjustments fail to align with the cap increments.[22]

While revenues have averaged $6,118,496 over the past three years, they have exceeded $6,500,000 for the last two years, while the cost of claims in the last fiscal year amounted to $4,462,465. Projecting the proposed increases through the 2027/28 Fiscal Year based on the Fund's starting balance of $23,235,064, the estimates are as follows[23]:

Fiscal Year	Estimated Fund Balance (July 1)	Estimated Revenues	% of Cap Increase from Prior Year for Division I	% of Cap Increase from Prior Year for Division II	Estimated Expenditures after Proposed Cap Increases	**Estimated End Fund Balance (June 30)**
23/24	$23,235,064	$6,014,764	-	-	$ 4,981,181	**$24,268,647**
24/25	$25,235,064	$6,158,696	50%	66.67%	$ 7,617,696	**$22,809,647**
25/26	$24,610,064	$6,238,878	66.67%	40%	$11,424,110	**$17,624,415**
26/27	$20,185,064	$6,339,727	40%	28.57%	$15,177,893	**$8,786,249**
27/28	$12,014,350	$6,167,422	42.86%	44.44%	$21,567,992	**($6,614,320)**

These estimates are based on anticipated increases in claims due to corresponding rises in cap amounts, suggesting a potential deficit in the fund by the 2027/28 Fiscal Year. This estimation assumes consistent revenues and claim volumes annually. However, as aggregate caps increase each year per the Bill's provisions, the Division of Professions has indicated the likelihood of cases remaining open from year to year, as they cannot be closed due to hitting an increased aggregate cap the following year.[24]

Considering these factors, claims may begin to surpass revenues by FY 24-25, eventually leading to a negative cash balance in the Construction Recovery Fund.[25]

The bill proposes annual increases in maximum claim amounts for four years, potentially incentivizing delaying claim filings to maximize potential recovery fund payments. However, claimants must adhere to the statute of limitations, which allows one year after the conclusion of any civil, criminal, or administrative action or arbitration award based on a compensable violation.[26]

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.

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] S. 489.141(1)(f), F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR recommends that the bill clearly indicate that the proposed increases apply exclusively to contracts entered into after a specific date, such as July 1, 2024, and commencing January 1, 2025. This specification would maintain consistency with past practices regarding cap adjustments. Without such specification, there's a risk of interpreting the bill as retroactively augmenting both per-claim and aggregate caps for all Division I claims arising from contracts initiated after July 1, 2004, and all Division II claims stemming from contracts entered into after July 1, 2016. This interpretation could encompass claims that have already been closed due to aggregate caps, as well as pending and settled claims. [27]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[27] DBPR, Agency Analysis of 2024 SB 414, p. 6 (Nov. 20, 2023).

A bill to be entitled

An act relating to the Florida Homeowners' Construction Recovery Fund; amending s. 489.143, F.S.; providing a scheduled increase in the maximum payment amounts that may be made from the recovery fund for Division I and Division II individual and aggregate claims; providing an effective date.

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

Section 1. Subsections (3) and (6) of section 489.143, Florida Statutes, are amended to read:

489.143 Payment from the fund.—

(3)(a) ~~Beginning January 1, 2005,~~ For each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject to the following maximum payment amounts for each Division I claim:

1. For the 2024-2025 fiscal year, $75,000 ~~a $50,000 maximum payment for each Division I claim~~.

2. For the 2025-2026 fiscal year, $125,000.

3. For the 2026-2027 fiscal year, $175,000.

4. For the 2027-2028 fiscal year, $250,000.

(b) ~~Beginning January 1, 2017,~~ For each Division II contract entered into on or after July 1, 2016, payment from the recovery fund is subject to the following maximum payment

amounts for each Division II claim:

1. For the 2024-2025 fiscal year, $25,000 ~~a $15,000 maximum payment for each Division II claim~~.

2. For the 2025-2026 fiscal year, $35,000.

3. For the 2026-2027 fiscal year, $45,000.

4. For the 2027-2028 fiscal year, $65,000.

(6)(a) For contracts entered into before July 1, 2004, payments for claims against any one licensee may not exceed, in the aggregate, $100,000 annually, up to a total aggregate of $250,000. For any claim approved by the board which is in excess of the annual cap, the amount in excess of $100,000 up to the total aggregate cap of $250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual or per claimant limits under law.

(b) ~~Beginning January 1, 2005,~~ For each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of the following amounts ~~$500,000~~ for each Division I licensee:

1. For the 2024-2025 fiscal year, $700,000.

2. For the 2025-2026 fiscal year, $800,000.

3. For the 2026-2027 fiscal year, $900,000.

4. For the 2027-2028 fiscal year, $1 million.

(c) ~~Beginning January 1, 2017,~~ For each Division II contract entered into on or after July 1, 2016, payment from the

recovery fund is subject only to a total aggregate cap of the following amounts ~~$150,000~~ for each Division II licensee:

1. For the 2024-2025 fiscal year, $250,000.

2. For the 2025-2026 fiscal year, $350,000.

3. For the 2026-2027 fiscal year, $450,000.

4. For the 2027-2028 fiscal year, $550,000.

Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1263 My Safe Florida Home Program
SPONSOR(S): Insurance & Banking Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 7028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee		Perez	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

The My Safe Florida Home (MSFH) Program was created in 2006 within the Department of Financial Services (DFS) to perform mitigation inspections of site-built, single-family, residential properties (inspections), and mitigation grants (grants) to eligible applicants to make their homes less vulnerable to hurricane damage. The MSFH Program received $250 million in appropriations for the Fiscal Year 2006-2007, but was not funded again until 2022. Since then, the Legislature has provided approximately $433 million in subsequent additional funding to the MSFH Program.

Mitigation inspections are limited to homesteaded properties. Funds may be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage and grant funds may be used to pay for such opening protection mitigation if warranted. The value of the mitigation grant-eligible homes is currently $700,000. While initially limited to homes within the wind-borne debris region, the MSFH Program is currently a statewide program.

The bill makes additional changes to the MSFH Program. It allows homeowners to submit subsequent mitigation inspection and grant applications for the same home if certain criteria are met. Pursuant to the bill, DFS may request that an applicant provide additional information if the application contains errors or omissions. An application is considered withdrawn if an applicant does not respond to a request for additional information within 60 days.

In order to receive grant funds, homeowners must agree to provide DFS with information from their homeowners' insurers that identifies discounts in premiums have received as a result of improvements made with grant funds. Grant-funded projects must be completed within 1 year after grant approval, subject to a one-time six-month extension, or the grant is deemed abandoned and the grant funds revert to DFS.

The bill eliminates the requirement that DFS maintain a list of participating contractors for the grant portion of the MSFH Program. Participants in the program may choose any properly licensed contractor to perform the improvements and must include the name and state license number of that contractor on their grant applications.

The bill specifies that grant-funded opening protection improvements include exterior doors, garage doors, windows, and skylights. Current law allows DFS to require that improvements be made to all openings, including exterior doors, and garage doors as a condition of reimbursing a homeowner approved for a grant. The bill adds windows and skylights to the list of openings that must be improved in their entirety for a homeowner to be reimbursed.

The bill requires that, for the first 60 days DFS accepts inspection and grant applications following any legislative appropriation, DFS must prioritize the review and approval of applications by low- and moderate-income persons and those applicants who are at least 60 years old.

The bill appropriates $107 million from the General Revenue Fund for the MSFH Program. The bill may have a positive direct economic impact on the private sector. *See* Fiscal Analysis & Economic Impact Statement.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS) with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections) and grants to eligible applicants, subject to funding availability.[1] The purpose of the MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[2] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[3] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[4]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine:

- What mitigation measures were needed;
- What insurance premium discounts might have been available; and
- What improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[5]

The mitigation inspections had to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[6]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[7] DFS entered contracts with wind certification entities to provide mitigation inspections. In order to be eligible for the contracts, the entities had to use hurricane mitigation inspectors who, at a minimum:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed professional architects; or
- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[8]

[1] S. 215.5586, F.S.
[2] *Id.*
[3] S. 215.5586(3), F.S.
[4] S. 215.5586(7), F.S.
[5] S. 215.5586(1)(a), F.S.
[6] *Id.*
[7] S. 215.55186(6), F.S.
[8] S. 215.5586(1)(b), F.S.

Mitigation Grants

The purpose of the mitigation grants component of the MSFH Program was to retrofit single-family homes to make them less vulnerable to hurricane damage.[9] To be eligible for a grant, the following criteria must have been met:

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the home must have been made before March 1, 2002.[10]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[11] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[12] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[13]

Grants could be used on previously-inspected existing structures or on rebuilds.[14] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Upgrading exterior doors, including garage doors.
- Bracing gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Installing secondary water barrier for roofs.[15]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[16]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[17] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[18] DFS requested that Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on May 14, 2009 (report).[19] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[20] RMS indicated that the predicted reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[21]

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[9] S. 215.5586(2), F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[15] S. 215.5586(2)(e), F.S.
[16] S. 215.5586(10), F.S.
[17] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5036 (last visited Jan. 26, 2024).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

While the MSFH Program was never repealed from law, additional funding was not provided until May 2022.

2022 Renewal of the MSFH Program

During the 2022D Special Session, the Legislature passed a property insurance bill (SB 2-D), in which it renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from the General Revenue Fund (GR) to DFS for the Program for the 2022-2023 fiscal year. The funds appropriated were allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

SB 2-D reappropriated any unexpended balance of funds from the appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. SB 2-D gave DFS the authority to adopt emergency rules to implement the MSFH Program.

SB 2-D made additional modifications to the MSFH Program. It required that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changed the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000, or less, qualify for the program.

SB 2-D required that homes that receive mitigation grants have undergone home mitigation inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. The homeowner must also match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhanced the reporting requirements for DFS under the MSFH Program by requiring that the report include the following received by homeowners from insurers as a result of the mitigation funded by the program:

- The average annual amount of insurance premium discounts; and
- The total annual amount of insurance premium discounts.

2022 MSFH Program Implementation

Following the passage of SB 2-D, DFS procured a vendor to administer the MSFH Program, qualified inspectors to conduct mitigation inspections, and qualified contractors who agreed to provide mitigation repairs and retrofitting under the grant portion of the Program.[22] DFS compiled a list of approved vendors that homeowners participating in the MSFH Program may choose for inspections and mitigation work.[23]

On November 18, 2022, a web-based application for homeowners to request mitigation inspections and grant funds went live.[24] Between May 26, 2022 and February 28, 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved.[25]

Inspectors completing mitigation inspections under the MSFH Program must complete the Uniform Mitigation Verification Inspection Form (Inspection Form), as revised by the Office of Insurance

[22] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 881, p. 1 (Mar. 1, 2023).
[23] *Id.*
[24] *Id.*
[25] *Id.*

Regulation on January 12, 2023.[26] The mitigation inspection report provided to the homeowner includes the completed Inspection Form, as well as the information already required by statute,[27] including:

- A summary of the results of the mitigation inspection identifying recommended improvements a homeowner may undertake;
- A range of cost estimates regarding the recommended improvements; and
- Estimated property insurance premium discounts based on the mitigation measures the homeowner has completed.[28]

2023 Developments to the MSFH Program

Following the significant interest in the program in 2022 and early 2023, the Legislature made additional changes to the statutory framework for the MSFH Program during the 2023 Regular Session. These changes included changes to the inspection and grant eligibility requirements, and program management changes.

Single-family home eligibility for mitigation inspections was limited only to homesteaded properties.[29] Funds from the MSFH Program may now be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage.[30] If an inspection determines that opening protection mitigation would decrease such risk, grant funds from the MSFH Program may be used to pay for the mitigation.[31] The value of the mitigation grant-eligible homes was also increased from $500,000 to $700,000.[32]

The designation of a specific portion of the grant funds for low-income recipients was removed, but increases the overall grant award for low-income recipients from $5,000 to $10,000.[33] The program's geographic eligibility area was broadened to include otherwise in eligible homes outside the wind-borne debris region, in effect making it a statewide program.

Among the project management changes implemented, home inspectors must be licensed, in addition to certified.[34] This requirement conforms with other statutory chapters that address home inspectors.

Funding for the MSFH Program

As of December 2023, the Legislature has appropriated a total of $433 million for the MSFH Program since May 2022.[35] In addition to the $150 million appropriated during the 2022D Special Session, this includes $100 million in grant funding appropriated during the 2023 Regular Session and an additional $176 million in grant funding appropriated during the 2023C Special Session.[36]

[26] *Id.*
[27] S. 215.5586(1)(a), F.S.
[28] Department of Financial Services, *supra* note 22, at 2.
[29] The homestead requirement was already in place for the grant portion of the MSFH Program under s. 215.5586(2), F.S., prior to the 2023 Regular Session.
[30] S. 215.5586(1)(a), F.S.
[31] S. 215.5586(2)(f), F.S.
[32] S. 215.5586(2)(e)2., F.S.
[33] S. 215.5586(2)(h), F.S.
[34] S. 215.5586, F.S.
[35] Department of Financial Services, *2023 Annual Report of My Safe Florida Home*, p. 1.
[36] *Id.* at p. 6. The mitigation grant funding is by far the largest component of the MSFH Program.

Results of the MSFH Program

Between November 2022, and December 2023, the MSFH Program has provided more than 94,000 homeowners with hurricane mitigation inspections and approved more than 23,000 grant applications.[37] Over 73 percent of those homeowners who have completed participation in the grant component of the MSFH Program have seen their homeowners insurance premiums drop or stabilize, and many are paying premiums at or below the state average.[38] According to DFS, upon applying to the MSFH Program, the average premium of the applicants was 55.1 percent higher than the average Florida homeowner's premium.[39] Based upon the decrease in premium following participation, DFS has concluded that the MSFH Program participation is comprised of higher-than-average risk homeowners, which is consistent with the goal of helping those with homes at greatest risk.[40]

Effect of the Bill

The bill makes additional changes to improve the operation and effectiveness of the MSFH Program. It allows homeowners to submit subsequent mitigation inspection and grant applications for the same home if the following criteria are met:

- The original application was denied or withdrawn due to errors or omissions in the application;
- The original application was denied or withdrawn because the home did not meet the eligibility criteria at the time of application, and the homeowner reasonably believes the home is now eligible for an inspection or grant; or
- The MSFH Program's eligibility requirements have changed since the date of the original application, and the homeowner reasonably believes the home is now eligible for an inspection or grant.

Pursuant to the bill, DFS may request that an applicant provide additional information if the application contains errors or omissions. DFS may consider an application withdrawn if it does not receive a response to its request for additional information within 60 days of notifying the applicant of errors or omissions.

The bill provides additional criteria for homes to be eligible for mitigation grants. Homeowners must agree to provide DFS with information from their homeowners' insurers that identifies premium discounts received as a result of improvements made with grant funds. Grant-funded projects must be completed within 1 year after grant approval, subject to a one-time six-month extension, or the grant is deemed abandoned and the grant funds revert to DFS.

The bill eliminates the requirement that DFS maintain a list of participating contractors for the grant portion of the MSFH Program. Instead, participants in the program may choose any properly licensed contractor to perform the improvements. A grant application must include a statement from the homeowner which contains the name and state license number of the contractor that the homeowner intends to use for the mitigation work. Before approving the grant, DFS will verify that the contractor's state license number is accurate and up to date.

The bill specifies that opening protection that may be improved with grant funds from the MSFH Program includes exterior doors, garage doors, windows, and skylights. Current law allows DFS to require that improvements be made to all openings, including exterior doors, and garage doors as a condition of reimbursing a homeowner approved for a grant.[41] The bill adds windows and skylights to the list of openings that must be improved in their entirety for a homeowner to be reimbursed.

[37] *Id.* at p. 1. Because the grant portion of the MSFH Program is fulfilled based on reimbursement to homeowners after proof of completion of mitigation projects, the money to fulfill these grants has been reserved, but not all of it has been paid to the homeowners yet.
[38] *Id.*
[39] *Id.* at p. 2.
[40] *Id.*
[41] S. 215.5586(2)(f), F.S.

The bill requires that, for the first 60 days DFS accepts inspection and grant applications following any legislative appropriation, DFS must prioritize the review and approval of applications in the following order:

- Low-income persons who are at least 60 years old;
- All other low-income persons;
- Moderate-income persons who are at least 60 years old;
- All other moderate-income persons;[42] and
- All other applicants.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.5586, F.S., relating to the My Safe Florida Home Program.

Section 2. Provides an appropriation for the MSFH Program of $100 million in grants and $7 million in administrative costs.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appropriates the following nonrecurring funds from the General Revenue Fund to DFS for the MSFH Program:

   - $100 million for mitigation grants; and
   - $7 million for administrative costs related to the mitigation grants.

   It also provides that DFS may not continue to accept grant applications or create a waiting list in anticipation of additional funding unless the Legislature provides express authority to do so.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that homes that participate in the MSFH Program receive mitigation credits or premium discounts under their property insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFH Program will have a positive direct economic impact on homeowners. Hurricane mitigation contractors may also see an increase in project activity.

[42] The relevant definitions of low- and moderate-income persons are found in s. 420.0004, F.S.

D. FISCAL COMMENTS:

While the bill contains appropriations of $100 million for mitigation grants and $7 million for administrative costs related to the implementation of the grants. The House's proposed General Appropriations Act (GAA) for Fiscal Year 2024-2025,[43] includes $200 million for mitigation grants, approximately $17 million for mitigation inspections, and approximately $7 million for administrative costs related to both components of the MSFH Program. Consideration could be given to eliminating the appropriations in either HB 1263 or funding in the GAA.

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:

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking. However, *see* III.A.2., Other Constitutional Issues.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- required a grant applicant to identify the project contractor by name and license number and the program to verify the status of the contractor's license.
- clarified the process for prioritization of low-income grant applicants.
- specified that a grant-funded project must be completed within 1 year, subject to a one-time six-month extension, or the grant is deemed abandoned and the funds revert to DFS.
- made other technical and grammatical changes.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

[43] *See* PCB APC 24-01 (2024).

A bill to be entitled

An act relating to the My Safe Florida Home Program; amending s. 215.5586, F.S.; revising legislative intent; specifying eligibility requirements for hurricane mitigation inspections under the My Safe Florida Home Program; specifying requirements for a hurricane mitigation inspection application; authorizing an applicant to submit a subsequent hurricane mitigation inspection application under certain conditions; authorizing applicants who meet specified requirements to receive a home inspection under the program without being eligible for, or applying for, a grant; specifying eligibility requirements for hurricane mitigation grants; revising application requirements for hurricane mitigation grants; authorizing an applicant to submit a subsequent hurricane mitigation grant application under certain conditions; requiring that a grant application include certain information; deleting and revising provisions relating to the selection of hurricane mitigation inspectors and contractors; deleting the requirement that matching fund grants be made available to certain entities; revising improvements that grants for eligible homes may be used for; deleting the authorization to use grants on

rebuilds; requiring the Department of Financial Services to develop a process that ensures the most efficient means to collect and verify inspection applications; requiring the department to prioritize the review and approval of inspection and grant applications in a specified order; requiring the department to start accepting inspection and grant applications as specified in the act; requiring homeowners to finalize construction and make certain requests within a specified time; providing that an application is deemed abandoned under certain circumstances; authorizing the department to request certain information; providing that an application is considered withdrawn under certain circumstances; revising provisions relating to the development of brochures; requiring the Citizens Property Insurance Corporation to distribute such brochures to specified persons; providing appropriations; providing an effective date.

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

Section 1. Section 215.5586, Florida Statutes, as amended by section 5 of chapter 2023-349, Laws of Florida, is amended to read:

215.5586 My Safe Florida Home Program.—There is established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that, subject to the availability of funds, the My Safe Florida Home Program provide licensed inspectors to perform hurricane mitigation inspections of eligible homes ~~for owners of site-built, single-family, residential properties~~ and grants to fund hurricane mitigation projects on those homes ~~eligible applicants~~. The department shall implement the program in such a manner that the total amount of funding requested by accepted applications, whether for inspections, grants, or other services or assistance, does not exceed the total amount of available funds. If, after applications are processed and approved, funds remain available, the department may accept applications up to the available amount. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation pursuant to ~~that may include~~ the requirements provided in this section. ~~following:~~

(1) HURRICANE MITIGATION INSPECTIONS.—

(a) To be eligible for a hurricane mitigation inspection under the program:

1. A home must be a single-family, detached residential property or a townhouse as defined in s. 481.203;

2. A home must be site-built and owner-occupied; and

3. The homeowner must have been granted a homestead exemption on the home under chapter 196.

(b)1. An application for a hurricane mitigation inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only one inspection application on the home or that the application is allowed under subparagraph 2., and the application must have documents attached which demonstrate that the applicant meets the requirements of paragraph (a).

2. An applicant may submit a subsequent hurricane mitigation inspection application for the same home only if:

a. The original hurricane mitigation inspection application has been denied or withdrawn because of errors or omissions in the application;

b. The original hurricane mitigation inspection application was denied or withdrawn because the home did not meet the eligibility criteria for an inspection at the time of the previous application, and the homeowner reasonably believes the home now is eligible for an inspection; or

c. The program's eligibility requirements for an inspection have changed since the original application date, and the applicant reasonably believes the home is eligible under the new requirements.

(c) An applicant meeting the requirements of paragraph (a) may receive an inspection of a home under the program without being eligible for a grant under subsection (2) or applying for such grant.

(d) Licensed inspectors are to provide home inspections of eligible homes ~~site-built, single-family, residential properties for which a homestead exemption has been granted,~~ to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. An inspector may inspect a townhouse as defined in s. 481.203 to determine if opening protection mitigation as listed in subparagraph (2)(e)1. ~~paragraph (2)(e)~~ would provide improvements to mitigate hurricane damage.

(e) ~~(b)~~ The department ~~of Financial Services~~ shall contract with wind certification entities to provide hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may

take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Information regarding estimated premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(f) ~~(c)~~ To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 and who have completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which training must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who also have

undergone drug testing and a background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints must be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity.

3. Provide a quality assurance program including a reinspection component.

~~(d) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application for that home.~~

~~(e) The owner of a site-built, single-family, residential property or townhouse as defined in s. 481.203, for which a homestead exemption has been granted, may apply for and receive an inspection without also applying for a grant pursuant to subsection (2) and without meeting the requirements of paragraph (2)(a).~~

(2) HURRICANE MITIGATION GRANTS.—Financial grants shall be

used by homeowners to make improvements recommended by an inspection which increase resistance ~~encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable~~ to hurricane damage.

(a) ~~For~~ A homeowner is ~~to be~~ eligible for a hurricane mitigation grant if all of~~,~~ the following criteria are ~~must be~~ met:

1. The home must be eligible for an inspection under subsection (1) ~~The homeowner must have been granted a homestead exemption on the home under chapter 196~~.

2. The home must be a dwelling with an insured value of $700,000 or less. Homeowners who are low-income persons, as defined in s. 420.0004(11), are exempt from this requirement.

3. The home must undergo an acceptable hurricane mitigation inspection as provided in subsection (1).

4. The building permit application for initial construction of the home must have been made before January 1, 2008.

5. The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

6. The homeowner must agree to provide to the department information received from the homeowner's insurer identifying the discounts realized by the homeowner because of the mitigation improvements funded through the program.

(b)1. An application for a grant must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only one grant ~~a single~~ application or that the application is allowed under subparagraph 2., and the application must have ~~attached~~ documents attached demonstrating that the applicant meets the requirements of ~~this~~ paragraph (a).

2. An applicant may submit a subsequent grant application if:

a. The original grant application was denied or withdrawn because the application contained errors or omissions;

b. The original grant application was denied or withdrawn because the home did not meet the eligibility criteria for a grant at the time of the previous application, and the homeowner reasonably believes that the home now is eligible for a grant; or

c. The program's eligibility requirements for a grant have changed since the original application date, and the applicant reasonably believes that he or she is an eligible homeowner under the new requirements.

3. A grant application must include a statement from the homeowner which contains the name and state license number of the contractor that the homeowner acknowledges as the intended contractor for the mitigation work. The program must electronically verify that the contractor's state license number

is accurate and up to date before grant approval.

(c) ~~(b)~~ All grants must be matched on the basis of $1 provided by the applicant for $2 provided by the state up to a maximum state contribution of $10,000 toward the actual cost of the mitigation project, except as provided in paragraph (h).

(d) ~~(c) The program shall create a process in which contractors agree to participate and homeowners select from a list of participating contractors.~~ All hurricane mitigation performed under the program must be based upon the securing of all required local permits and inspections and must be performed by properly licensed contractors. ~~Hurricane mitigation inspectors qualifying for the program may also participate as mitigation contractors as long as the inspectors meet the department's qualifications and certification requirements for mitigation contractors.~~

~~(d) Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family, site-built, owner-occupied, residential property. The department shall liberally construe those requirements in favor of availing the state of the opportunity to leverage funding for the My Safe Florida Home Program with other sources of funding.~~

(e) When recommended by a hurricane mitigation inspection, grants for eligible homes may be used for the following improvements:

1. Opening protection, including exterior doors, garage doors, windows, and skylights.

2. ~~Exterior doors, including garage doors.~~

~~3.~~ Reinforcing roof-to-wall connections.

3.~~4.~~ Improving the strength of roof-deck attachments.

4.~~5.~~ Secondary water resistance barrier for roof.

(f) When recommended by a hurricane mitigation inspection, grants for townhouses, as defined in s. 481.203, may only be used for opening protection.

(g) The department may require that improvements be made to all openings, including exterior doors, ~~and~~ garage doors, windows, and skylights, as a condition of reimbursing a homeowner approved for a grant. The department may adopt, by rule, the maximum grant allowances for any improvement allowable under paragraph (e) or paragraph (f) ~~this paragraph~~.

~~(g) Grants may be used on a previously inspected existing structure or on a rebuild. A rebuild is defined as a site-built, single-family dwelling under construction to replace a home that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority. The homeowner must be a low-income homeowner as defined in paragraph (h), must have had a homestead exemption for that home before the hurricane, and must be intending to rebuild the home as that homeowner's homestead.~~

(h) Low-income homeowners, as defined in s. 420.0004(11),

who otherwise meet the applicable requirements of this subsection ~~paragraphs (a), (c), (e), and (g)~~ are eligible for a grant of up to $10,000 and are not required to provide a matching amount to receive the grant. ~~The program may accept a certification directly from a low-income homeowner that the homeowner meets the requirements of s. 420.0004(11) if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.~~

(i)1. The department shall develop a process that ensures the most efficient means to collect and verify inspection applications and grant applications to determine eligibility. The department ~~and~~ may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

2. The department shall prioritize the review and approval of such inspection applications and grant applications in the following order:

a. First, applications from low-income persons, as defined in s. 420.0004, who are at least 60 years old;

b. Second, applications from all other low-income persons, as defined in s. 420.0004;

c. Third, applications from moderate-income persons, as defined in s. 420.0004, who are at least 60 years old;

d. Fourth, applications from all other moderate-income

persons, as defined in s. 420.0004; and

e. Last, all other applications.

3. The department shall start accepting inspection applications and grant applications no earlier than the effective date of a legislative appropriation funding inspections and grants, as follows:

a. Initially, from applicants prioritized under sub-subparagraph 2.a.;

b. From applicants prioritized under sub-subparagraph 2.b., beginning 15 days after the program initially starts accepting applications;

c. From applicants prioritized under sub-subparagraph 2.c., beginning 30 days after the program initially starts accepting applications;

d. From applicants described in sub-subparagraph 2.d., beginning 45 days after the program initially starts accepting applications; and

e. From all other applicants, beginning 60 days after the program initially starts accepting applications.

4. The program may accept a certification directly from a low-income homeowner or moderate-income homeowner who meets the requirements of s. 420.0004(11) or (12), respectively, if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.

(j) A homeowner who receives a grant shall finalize

construction and request a final inspection, or request an extension for an additional 6 months, within 1 year after grant approval. If a homeowner fails to comply with this paragraph, his or her application is deemed abandoned and the grant money reverts to the department.

(3) REQUESTS FOR INFORMATION.—The department may request that an applicant provide additional information. An application is deemed withdrawn by the applicant if the department does not receive a response to its request for additional information within 60 days after the notification of any apparent error or omission.

(4) EDUCATION, CONSUMER AWARENESS, AND OUTREACH.—

(a) The department may undertake a statewide multimedia public outreach and advertising campaign to inform consumers of the availability and benefits of hurricane inspections and of the safety and financial benefits of residential hurricane damage mitigation. The department may seek out and use local, state, federal, and private funds to support the campaign.

(b) The program may develop brochures for distribution to Citizens Property Insurance Corporation and other licensed entities or nonprofits that work with the department to educate the public on the benefits of the program~~, general contractors, roofing contractors, and real estate brokers and sales associates who are licensed under part I of chapter 475 which provide information on the benefits to homeowners of residential~~

~~hurricane damage mitigation~~. Citizens Property Insurance Corporation must ~~is encouraged to~~ distribute the brochure to policyholders of the corporation each year the program is funded. ~~Contractors are encouraged to distribute the brochures to homeowners at the first meeting with a homeowner who is considering contracting for home or roof repair or contracting for the construction of a new home. Real estate brokers and sales associates are encouraged to distribute the brochure to clients before the purchase of a home.~~ The brochures may be made available electronically.

(5)~~(4)~~ FUNDING.—The department may seek out and leverage local, state, federal, or private funds to enhance the financial resources of the program.

(6)~~(5)~~ RULES.—The department ~~of Financial Services~~ shall adopt rules pursuant to ss. 120.536(1) and 120.54 to govern the program; implement the provisions of this section; including rules governing hurricane mitigation inspections and grants, mitigation contractors, and training of inspectors and contractors; and carry out the duties of the department under this section.

(7)~~(6)~~ HURRICANE MITIGATION INSPECTOR LIST.—The department shall develop and maintain as a public record a current list of hurricane mitigation inspectors authorized to conduct hurricane mitigation inspections pursuant to this section.

(8)~~(7)~~ CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for grants management, inspection services, contractor services for low-income homeowners, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the program and are not subject to administrative cost limits. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections and home improvements are completed in a manner consistent with the intent of the program. The department may use valid random sampling in order to perform the quality assurance portion of the program.

(9) ~~(8)~~ INTENT.—It is the intent of the Legislature that grants made to residential property owners under this section shall be considered disaster-relief assistance within the meaning of s. 139 of the Internal Revenue Code of 1986, as amended.

(10) ~~(9)~~ REPORTS.—The department shall make an annual report on the activities of the program that shall account for the use of state funds and indicate the number of inspections requested, the number of inspections performed, the number of

grant applications received, the number and value of grants approved, and the estimated average annual amount of insurance premium discounts and total estimated annual amount of insurance premium discounts homeowners received from insurers as a result of mitigation funded through the program. The report must be delivered to the President of the Senate and the Speaker of the House of Representatives by February 1 of each year.

Section 2. (1) For the 2024-2025 fiscal year, the sum of $100 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services to provide mitigation grants pursuant to s. 215.5586(2), Florida Statutes, under the My Safe Florida Home Program. The department may not continue to accept applications or to create a waiting list in anticipation of additional funding unless the Legislature provides express authority to implement such actions.

(2) For the 2024-2025 fiscal year, the sum of $7 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services for administrative costs related to implementation of mitigation grants pursuant to s. 215.5586(2), Florida Statutes, under the My Safe Florida Home Program.

Section 3. This act shall take effect July 1, 2024.

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: State Administration & Technology Appropriations Subcommittee
Representative LaMarca offered the following:

Amendment (with title amendment)
Remove lines 408-422

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

Remove line 43 and insert:
persons; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1555 Cybersecurity
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Giallombardo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	15 Y, 0 N, As CS	Bauldree	Keating
2) State Administration & Technology Appropriations Subcommittee		Mullins	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

Over the last decade, cybersecurity has rapidly become a growing concern. Cyberattacks are growing in frequency and severity. Currently, the Department of Management Services (DMS) oversees information technology (IT) governance and security for the executive branch of state government. The Florida Digital Service (FLDS) is housed within DMS and was established in 2020 to replace the Division of State Technology. Through FLDS, DMS implements duties and policies for IT and cybersecurity for state agencies.

The bill:

- Revises the duties of FLDS;
- Provides definitions;
- Provides that the state chief information officer (CIO), in consultation with the Secretary of DMS, must designate a state chief technology officer and specifies the position's responsibilities;
- Requires FLDS to ensure independent project oversight on all state agency IT projects that have a total project cost of $25 million or more (up from $10 million in current law);
- Provides that FLDS no longer must conduct annual assessments of state agencies to determine compliance with IT standards and guidelines developed and published by DMS;
- Requires state agencies to report all ransomware incidents, regardless of severity level, to the FLDS Cybersecurity Operations Center (CSOC) as soon as possible, but no later than 12 hours after a cybersecurity incident and no later than 6 hours after the discovery of a ransomware incident;
- Requires local governments to report any cybersecurity incident determined to be level 3, 4, or 5 to the CSOC rather than the Cybercrime Office and the sheriff who has jurisdiction over the local government;
- Requires CSOC to immediately notify the Cybercrime Office of the Florida Department of Law Enforcement of a reported incident;
- Requires CSOC to immediately notify the state CIO and the state cyber security information officer of a reported incident;
- Authorizes DMS to brief legislative committees on cybersecurity matters in a closed setting;
- Requires that one of the three representatives on the Cybersecurity Advisory Council (CAC) from the critical infrastructure sectors must be from a utility provider and requires that one of the members of the CAC is a representative from a local government; and
- Revises the mission, goals, and responsibilities of the Florida Center for Cybersecurity.

The bill has an indeterminate but likely significant fiscal impact on state expenditures. *See* Fiscal Comments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Over the last decade, cybersecurity has rapidly become a growing concern. Cyberattacks are growing in frequency and severity. Cybercrime was expected to inflict $8 trillion worth of damage globally in 2023.[1] The United States is often a target of cyberattacks, including attacks on critical infrastructure, and has been a target of more significant cyberattacks[2] over the last 14 years than any other country.[3] The Colonial Pipeline is an example of critical infrastructure that was attacked, disrupting what is arguably the nation's most important fuel conduit.[4]

Ransomware is a type of cybersecurity incident where malware[5] that is designed to encrypt files on a device renders the files and the systems that rely on them unusable. In other words, critical information is no longer accessible. During a ransomware attack, malicious actors demand a ransom in exchange for regained access through decryption. If the ransom is not paid, the ransomware actors will often threaten to sell or leak the data or authentication information. Even if the ransom is paid, there is no guarantee that the bad actor will follow through with decryption.

In recent years, ransomware incidents have become increasingly prevalent among the nation's state, local, tribal, and territorial government entities and critical infrastructure organizations.[6] For example, Tallahassee Memorial Hospital was hit by a ransomware attack early in 2023, and the hospital's systems were forced to shut down, impacting many local residents in need of medical care.[7] Likewise, Tampa General Hospital detected a data breach in May of 2023, which may have compromised the data of up to 1.2 million patients.[8]

IT and Cybersecurity Management

The Department of Management Services (DMS) oversees information technology (IT)[9] governance and security for the executive branch in Florida.[10] The Florida Digital Service (FLDS) is housed within

[1] Cybercrime Magazine, *Cybercrime to Cost the World $8 Trillion Annually in 2023*, https://cybersecurityventures.com/cybercrime-to-cost-the-world-8-trillion-annually-in-2023/ (last visited Jan. 23, 2024).
[2] "Significant cyber-attacks" are defined as cyber-attacks on a country's government agencies, defense, and high-tech companies, or economic crimes with losses equating to more than a million dollars. FRA Conferences, *Study: U.S. Largest Target for Significant Cyber-Attacks*, https://www.fraconferences.com/insights-articles/compliance/study-us-largest-target-for-significant-cyber-attacks/#:~:text=The%20United%20States%20has%20been%20on%20the%20receiving,article%20is%20from%20FRA%27s%20sister%20company%2C%20Compliance%20Week (last visited Jan. 23, 2024).
[3] *Id*.
[4] S&P Global, *Pipeline operators must start reporting cyberattacks to government: TSA orders*, https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/electric-power/052721-pipeline-operators-must-start-reporting-cyberattacks-to-government-tsa-orders?utm_campaign=corporatepro&utm_medium=contentdigest&utm_source=esgmay2021 (last visited Jan. 23, 2024).
[5] "Malware" means hardware, firmware, or software that is intentionally included or inserted in a system for a harmful purpose. https://csrc.nist.gov/glossary/term/malware (last visited Jan. 23, 2024).
[6] Cybersecurity and Infrastructure Agency, *Ransomware 101,* https://www.cisa.gov/stopransomware/ransomware-101 (last visited Jan. 23, 2024).
[7] Tallahassee Democrat, *TMH says it has taken 'major step' toward restoration after cybersecurity incident* (Feb. 15, 2023) https://www.tallahassee.com/story/news/local/2023/02/14/tmh-update-hospital-has-taken-major-step-toward-restoration/69904510007/ (last visited Jan. 23, 2023).
[8] Alessandro Mascellino, Infosecurity Magazine, *Tampa General Hospital Data Breach Impacts 1.2 Million Patients* (Jul. 24, 2023), https://www.infosecurity-magazine.com/news/tampa-hospital-data-breach/ (last visited Jan. 24, 2023).
[9] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(19), F.S.
[10] *See* s. 20.22, F.S.

DMS and was established in 2020 to replace the Division of State Technology.[11] FLDS works under DMS to implement policies for IT and cybersecurity for state agencies.[12]
The head of FLDS is appointed by the Secretary of Management Services[13] and serves as the state chief information officer (CIO).[14] The CIO must have at least five years of experience in the development of IT system strategic planning and IT policy and, preferably, have leadership-level experience in the design, development, and deployment of interoperable software and data solutions.[15] FLDS must propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support Florida's cloud first policy.[16]

DMS, through FLDS, has the following powers, duties, and functions:

- Develop IT policy for the management of the state's IT resources;
- Develop an enterprise architecture;
- Establish project management and oversight standards with which state agencies must comply when implementing IT projects;
- Perform project oversight on all state agency IT projects that have a total cost of $10 million or more and that are funded in the General Appropriations Act or any other law; and
- Identify opportunities for standardization and consolidation of IT services that support interoperability, Florida's cloud first policy, and business functions and operations that are common across state agencies.[17]

State Cybersecurity Act

In 2021, the Legislature passed the State Cybersecurity Act,[18] which requires DMS and the heads of the state agencies[19] to meet certain requirements to enhance the cybersecurity[20] of the state agencies. DMS is tasked with completing the following, through FLDS:

- Establishing standards for assessing agency cybersecurity risks;
- Adopting rules to mitigate risk, support a security governance framework, and safeguard agency digital assets, data,[21] information, and IT resources;[22]
- Designating a chief information security officer (CISO);
- Developing and annually updating a statewide cybersecurity strategic plan to address matters such as identification and mitigation of risk, protections against threats, and tactical risk detection for cyber incidents;[23]
- Developing and publishing for use by state agencies a cybersecurity governance framework;
- Assisting the state agencies in complying with the State Cybersecurity Act;
- Annually providing training on cybersecurity for managers and team members;
- Annually reviewing the strategic and operational cybersecurity plans of state agencies;
- Tracking the state agencies' implementation of remediation plans;

[11] Ch. 2020-161, L.O.F.
[12] *See* s. 20.22(2)(b), F.S.
[13] The Secretary of Management Services serves as the head of DMS and is appointed by the Governor, subject to confirmation by the Senate. S. 20.22(1), F.S.
[14] S. 282.0051(2)(a), F.S.
[15] *Id.*
[16] S. 282.0051(1), F.S.
[17] *Id*.
[18] Ch. 2012-234, L.O.F.
[19] For purposes of the State Cybersecurity Act, the term "state agency" includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. S. 282.318(2), F.S.
[20] "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and IT resources. S. 282.0041(8), F.S.
[21] "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted. S. 282.0041(9), F.S.
[22] "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. S. 282.0041(22), F.S.
[23] "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of IT resources, security, policies, or practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur. S. 282.0041(19), F.S.

- Providing cybersecurity training to all state agency technology professionals that develops, assesses, and documents competencies by role and skill level;
- Maintaining a Cybersecurity Operations Center (CSOC) led by the CISO to serve as a clearinghouse for threat information and coordinate with FDLE to support responses to incidents; and
- Leading an Emergency Support Function under the state emergency management plan.[24]

The State Cybersecurity Act requires the head of each state agency to designate an information security manager to administer the state agency's cybersecurity program.[25] The head of the agency has additional tasks in protecting against cybersecurity threats as follows:

- Establish a cybersecurity incident response team with FLDS and the Cybercrime Office in FDLE, which must immediately report all confirmed or suspected incidents to the CISO;
- Annually submit to DMS the state agency's strategic and operational cybersecurity plans;
- Conduct and update a comprehensive risk assessment to determine the security threats;
- Develop and update written internal policies and procedures for reporting cyber incidents;
- Implement safeguards and risk assessment remediation plans to address identified risks;
- Ensure internal audits and evaluations of the agency's cybersecurity program are conducted;
- Ensure that the cybersecurity requirements for the solicitation, contracts, and service-level agreement of IT and IT resources meet or exceed applicable state and federal laws, regulations, and standards for cybersecurity, including the National Institute of Standards and Technology (NIST)[26] cybersecurity framework;
- Provide cybersecurity training to all agency employees within 30 days of employment; and
- Develop a process that is consistent with the rules and guidelines established by FLDS for detecting, reporting, and responding to threats, breaches, or cybersecurity incidents.[27]

Florida Cybersecurity Advisory Council

The Florida Cybersecurity Advisory Council[28] (CAC) within DMS[29] assists state agencies in protecting IT resources from cyber threats and incidents.[30] The CAC must assist FLDS in implementing best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force – a task force created to review and assess the state's cybersecurity infrastructure, governance, and operations.[31] The CAC meets at least quarterly to:

- Review existing state agency cybersecurity policies;
- Assess ongoing risks to state agency IT;
- Recommend a reporting and information sharing system to notify state agencies of new risks;
- Recommend data breach simulation exercises;
- Assist FLDS in developing cybersecurity best practice recommendations; and
- Examine inconsistencies between state and federal law regarding cybersecurity.[32]

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[24] Ch. 2021-234, L.O.F.
[25] S. 282.318(4)(a), F.S.
[26] NIST, otherwise known as the National Institute of Standards and Technology, "is a non-regulatory government agency that develops technology, metrics, and standards to drive innovation and economic competitiveness at U.S.-based organizations in the science and technology industry." Nate Lord, *What is NIST Compliance*, DataInsider (Dec. 1, 2020), https://www.digitalguardian.com/blog/what-nist-compliance (last visited Jan. 23, 2024).
[27] S. 282.318(4), F.S.
[28] The CAC is comprised of: the Lieutenant Governor or his or her designee; the state CIO; the state chief information security officer; the director of the Division of Emergency Management or his or her designee; a representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement; a representative of the Florida Fusion Center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement; the Chief Inspector General; up to two representatives from institutions of higher education located in this state, appointed by the Governor; three representatives from critical infrastructure sectors, one of whom must be from a water treatment facility, appointed by the Governor; four representatives of the private sector with senior level experience in cybersecurity or software engineering from within the finance, energy, health care, and transportation sectors, appointed by the Governor; and two representatives with expertise on emerging technology, with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives. S, 282.319(3), F.S.
[29] S. 282.319(1), F.S.
[30] S. 282.319(2), F.S.
[31] S. 282.319(3), F.S.
[32] S. 282.319(9), F.S.

The CAC must work with NIST and other federal agencies, private sector businesses, and private security experts to identify which local infrastructure sectors, not covered by federal law, are at the greatest risk of cyber-attacks and to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage to the infrastructure could result in catastrophic consequences.[33]

The CAC must also prepare and submit a comprehensive report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes data, trends, analysis, findings, and recommendations for state and local action regarding ransomware incidents that includes:

- Descriptive statistics, including the amount of ransom requested, duration of the incident, and overall monetary cost to taxpayers of the incident;
- A detailed statistical analysis of the circumstances that led to the ransomware incident which does not include the name of the state agency or local government, network information, or system identifying information;
- Statistical analysis of the level of cybersecurity employee training and frequency of data backup for the state agencies or local governments that reported incidents;
- Specific issues identified with current policy, procedure, rule, or statute and recommendations to address those issues; and
- Other recommendations to prevent ransomware incidents.

Cyber Incident Response

The National Cyber Incident Response Plan (NCIRP) was developed according to the direction of Presidential Policy Directive-41,[34] by the U.S. Department of Homeland Security. The NCIRP is part of the broader National Preparedness System and establishes the strategic framework for a whole-of-Nation approach to mitigating, responding to, and recovering from cybersecurity incidents posing risk to critical infrastructure.[35] The NCIRP was developed in coordination with federal, state, local, and private sector entities and is designed to interface with industry best practice standards for cybersecurity, including the NIST Cybersecurity Framework.

The NCIRP adopted a schema for describing the severity of cybersecurity incidents affecting the U.S. The schema establishes a common framework to evaluate and assess cybersecurity incidents to ensure that all departments and agencies have a common view of the severity of a given incident; urgency required for responding to a given incident; seniority level necessary for coordinating response efforts; and level of investment required for response efforts.[36]

The severity level of a cybersecurity incident in accordance with the NCIRP is determined as follows:

- Level 5: An emergency-level incident within the specified jurisdiction if the incident poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local security; or the lives of the country's, state's, or local government's citizens.
- Level 4: A severe-level incident if the incident is likely to result in a significant impact within the affected jurisdiction which affects the public health or safety; national, state, or local security; economic security; or individual civil liberties.
- Level 3: A high-level incident if the incident is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.
- Level 2: A medium-level incident if the incident may impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

[33] S. 282.319(10), F.S.
[34] Annex for PPD-41: *U.S. Cyber Incident Coordination*, available at: https://obamawhitehouse.archives.gov/the-press-office/2016/07/26/annex-presidential-policy-directive-united-states-cyber-incident (last visited Jan. 23, 2024).
[35] Cybersecurity & Infrastructure Security Agency, *Cybersecurity Incident Response*, available at https://www.cisa.gov/topics/cybersecurity-best-practices/organizations-and-cyber-safety/cybersecurity-incident-response#:~:text=%20National%20Cyber%20Incident%20Response%20Plan%20%28NCIRP%29%20The,incidents%20and%20how%20those%20activities%20all%20fit%20together (last visited Jan. 23, 2024).
[36] *Id.*

- Level 1: A low-level incident if the incident is unlikely to impact public health or safety; national, state, or local security; economic security; or public confidence.[37]

State agencies and local governments in Florida, must report all ransomware incidents and any cybersecurity incidents at severity levels 3, 4, and 5 as soon as possible to the CSOC, but no later than 48 hours after discovery of a cybersecurity incident and no later than 12 hours after discovery of a ransomware incident.[38] CSOC must notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible, but no later than 12 hours after receiving the incident report from the state agency or local government.[39] For state agency incidents at severity levels 1 and 2, the agency or local government must report these incidents to CSOC and the Cybercrime Office at FDLE as soon as possible.[40]

The notification must include a high-level description of the incident and the likely effects. An incident report for a cybersecurity or ransomware incident by a state agency or local government must include, at a minimum:

- A summary of the facts surrounding the cybersecurity or ransomware incident;
- The date on which the state agency or local government most recently backed up its data, the physical location of the backup, if the backup was affected, and if the backup was created using cloud computing;
- The types of data compromised by the cybersecurity or ransomware incident;
- The estimated fiscal impact of the cybersecurity or ransomware incident;
- In the case of a ransomware incident, the details of the ransom demanded; and
- If the reporting entity is a local government, a statement requesting or declining assistance from CSOC, FDLE Cybercrime Office, or sheriff.[41]

In addition, CSOC must provide consolidated incident reports to the President of the Senate, Speaker of the House of Representatives, and the CAC on a quarterly basis.[42] The consolidated incident reports to the CAC may not contain any state agency or local government name, network information, or system identifying information, but must contain sufficient relevant information to allow the CAC to fulfill its responsibilities.[43]

State agencies and local governments must submit an after-action report to FLDS within one week of the remediation of a cybersecurity or ransomware incident.[44] The report must summarize the incident, state the resolution, and any insights from the incident.

Florida Center for Cybersecurity

The Florida Center for Cybersecurity (Cyber Florida) is housed within the University of South Florida (USF) and was first established in 2014.[45] The goals of Cyber Florida are to:[46]

- Position Florida as the national leader in cybersecurity and its related workforce through education, research, and community engagement.
- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce.
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training.
- Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives.

[37] S. 282.318(3)(c)9.a, F.S.
[38] S. 282.318(3)(c)9.c, F.S.
[39] S. 282.318(3)(c)9.c.(II), F.S.
[40] S. 282.318(3)(c)(9)(d), F.S.
[41] S. 282.318(3)(c)9.b, F.S.
[42] S. 282.318(3)(c)9.e, F.S.
[43] *Id*.
[44] S. 282.318(4)(k), F.S.
[45] Ch. 2014-56, L.O.F.
[46] S. 1004.444, F.S.

- Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.

Effect of the Bill

Definitions

The bill provides the following definitions:

- "As a service" means the contracting with or outsourcing to a third party of a defined role or function as a means of delivery.
- "Cloud provider" means an entity that provides cloud-computing services.

The bill also defines “enterprise digital data” as information held by a state agency in electronic form that is deemed to be data owned by the state and held for state purposes by the state agency. The bill provides that enterprise digital data that is subject to statutory requirements for particular types of sensitive data or to contractual limitations for data marked as trade secrets or sensitive corporate data held by state agencies shall be treated in accordance with such requirements or limitations. Under the bill, DMS must maintain personnel with appropriate licenses, certifications, or classifications to steward such enterprise digital data, as necessary.

DMS and FLDS Duties

The bill revises the duties of FLDS to include:

- Leading enterprise IT and cybersecurity efforts.
- Safeguarding enterprise digital data.
- Testing, developing, and deploying innovative solutions that securely modernize state government.

The bill provides that the state CIO, in consultation with the Secretary of DMS, must designate a state chief technology officer who is responsible for the following:

- Establishing and maintaining an enterprise architecture framework that ensures IT investments align with the state’s strategic objectives and initiatives.
- Conducting comprehensive evaluations of potential technological solutions and cultivating strategic partnerships, internally with state enterprise agencies and externally with the private sector, to leverage collective expertise, foster collaboration, and advance the state’s technological capabilities.
- Supervising program management of certain enterprise IT initiatives; providing advisory support and oversight for technology-related projects; and continuously identifying and recommending best practices to optimize outcomes of technology projects and enhance the enterprise’s technological efficiency and effectiveness.

Under the bill, all confirmed or suspected incidents or threats to state IT resources must be reported by the state CIO, in consultation with the state CISO, to the Governor.

The bill requires FLDS to ensure project oversight independent of the state agency on all state agency IT projects that have a total project cost of $25 million or more (up from $10 million per current law), and that the projects are performed in compliance with applicable state and federal law. The bill provides that when FLDS ensures performance of its project oversight function for the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, FLDS must report within 30 days after the end of each quarter on any IT projects that FLDS identifies as high-risk.

Under the bill, FLDS no longer must conduct annual assessments of state agencies to determine compliance with all IT standards and guidelines developed and published by DMS. The bill removes a prohibition on FLDS retrieving or disclosing any data without a shared data agreement in place between DMS and the enterprise entity that has primary custodial responsibility of, or data sharing responsibility for, that data. The bill gives FLDS the authority to obtain immediate access to public or

private infrastructure hosting enterprise digital data and to direct, in consultation with the state agency that holds the particular data, measures to assess, monitor, and safeguard such data.

The bill provides that DMS may brief any legislative committee or subcommittee responsible for cybersecurity policy in a meeting or other setting closed by the respective body. Such legislative committee or subcommittee must maintain the confidential and exempt status of records made confidential and exempt under current law. The bill states that a legislator serving on such legislative committee or subcommittee may also attend meetings of the Florida Cybersecurity Advisory Council.

State Agency Incident Reporting and Responsibilities

The bill requires state agencies to report all ransomware incidents, regardless of severity level, to CSOC as soon as possible, but no later than 12 hours after a cybersecurity incident and no later than 6 hours after the discovery of a ransomware incident.

Under the bill, CSOC must immediately notify the Cybercrime Office of FDLE of a reported incident and provide regular reports on the status of the incident, preserve forensic data to support the subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office, upon request, if the state CISO finds that the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions.

Under the bill, the CSOC must also immediately notify the state CIO and the state CISO of a reported incident. The bill requires that the state CISO notify the President of the Senate and the Speaker of the House of Representatives within 24 hours after receiving report of the incident and the notification must be provided in a secure environment. The bill requires that within 30 days after the end of each quarter, CSOC must provide a consolidated incident report to the Governor, Attorney General, the executive director of FDLE, President of the Senate, Speaker of the House of Representatives, and the CAC.

Under the bill, each agency's information security manager must coordinate with the agency's chief information security officer and CSOC and ensure compliance with cybersecurity governance and with the state's enterprise security program and incident response plan.

Florida Cybersecurity Advisory Council (CAC)

The bill requires that one of the three representatives on the CAC from the critical infrastructure sectors must be from a utility provider. The bill removes the requirement that one CAC member must be from a water treatment facility. The bill also adds a requirement that one of the members of the CAC is a representative from a local government.

Local Government Incident Reporting and Responsibilities

The bill removes the requirement that a local government must report any cybersecurity incident determined to be level 3, 4, or 5 to the Cybercrime Office of FDLE and the sheriff who has jurisdiction over the local government. The bill requires a local government to report a cybersecurity incident to CSOC within 12 hours of discovery and to report a ransomware incident within 6 hours after discovery.

Under the bill, after CSOC receives a report of a cybersecurity or ransomware incident, CSOC must immediately notify the Cybercrime Office of FDLE and the sheriff who has jurisdiction over the local government. CSOC must provide these entities with regular reports on the status of the incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office upon the office's request if the state CISO finds that the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions. The bill also requires that CSOC immediately notify the state CISO of the reported incident. The state CISO shall notify the President of the Senate and the Speaker of the House of Representatives no later than 24 hours after receiving report of the incident and must do so in a secure environment.

Under the bill, if CSOC receives a report from a local government of a level 1 or 2 cybersecurity incident, CSOC must immediately notify the Cybercrime Office and the sheriff who has jurisdiction over the local government, and CSOC shall provide regular reports on the status of the incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office upon the office's request if the state CISO finds that the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions.

Florida Center for Cybersecurity (Cyber Florida)

The bill provides that the Florida Center for Cybersecurity may also be referred to as "Cyber Florida." The bill clarifies that Cyber Florida is under the direction of the president of USF or the president's designee. Under the bill, the USF president may assign Cyber Florida to a college of USF if the college has a strong emphasis in cybersecurity, technology, or computer sciences and engineering as determined and approved by USF's board of trustees.

The bill revises Cyber Florida's mission and goals to be:

- Position Florida as the national leader in cybersecurity and its related workforce primarily through advancing and funding education, and research and development initiatives in cybersecurity and related fields, with a secondary emphasis on, and community engagement and cybersecurity awareness;
- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce through education, research, applied science, and engagements and partnerships with the private and military sectors;
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training;
- Seek out research and development agreements and other partnerships with major military installations and affiliated contractors to assist, when possible, in homeland cybersecurity defense initiatives;
- Attract cybersecurity companies and jobs to the state with an emphasis on defense, finance, health care, transportation, and utility sectors; and
- Conduct, fund, and facilitate research and applied science that leads to the creation of new technologies and software packages that have military and civilian applications and which can be transferred for military and homeland defense purposes or for sale or use in the private sector.

The bill provides that if Cyber Florida receives a request for assistance from DMS, FLDS, or another state agency, Cyber Florida is authorized, but may not be compelled by the agency, to conduct, consult on, or otherwise assist any state-funded initiatives related to:

- Cybersecurity training, professional development, and education for state and local government employees, including school districts and the judicial branch.
- Increasing the cybersecurity effectiveness of the state's and local governments' technology platforms and infrastructure, including school districts and the judicial branch.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 110.205, F.S., relating to career service; exemptions.

Section 2: Amends s. 282.0041, F.S., relating to definitions.

Section 3: Amends s. 282.0051, F.S., relating to Department of Management Services; Florida Digital Service; power, duties, and functions.

Section 4: Amends s. 282.00515, F.S., relating to duties of cabinet agencies.

Section 5: Amends s. 282.318, F.S., relating to cybersecurity.

Section 6: Amends s. 282.3185, F.S., relating to local government cybersecurity.

Section 7: Amends s. 282.319, F.S., relating to Florida Cybersecurity Advisory Council.

Section 8: Amends s. 1004.444, F.S., relating to Florida Center for Cybersecurity.

Section 9: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
   None.

D. FISCAL COMMENTS:

The bill has an indeterminate but likely significant fiscal impact on state expenditures. Based on the provisions of the bill, DMS will likely incur the following recurring costs:

1. Additional technical capabilities and staffing to adequately steward enterprise digital data.
2. FTE, infrastructure, and software development tools for the proposed new application development responsibilities to test, develop, and deploy innovative solutions.
3. One FTE for the Chief Technology Officer established in the bill, which may be created through existing vacancies.
4. Systems integration and process automation services necessary to obtain the immediate CSOC cybersecurity incident notifications proposed in the bill.
5. Travel expenses for the additional member established in the bill for the Cybersecurity Advisory Council.
6. FLDS may incur a positive fiscal impact of nine to ten project management FTE that may be reduced due to the change of its responsibility from performing project oversight to only ensuring that agency project oversight is being done.

According to FDLE, state agencies may incur the following costs:[47]

1. Additional workload of reporting all cybersecurity incidents as proposed in the bill.
2. Potentially higher costs that may occur due to contract negotiations necessary to implement the provisions of the bill regarding enterprise digital data.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. Lines 100 to 102 provide a definition for “as a service”. This definition was only used for the original bill language that was removed in an amendment adopted by the Energy, Communications & Cybersecurity Subcommittee on January 25, 2024. The definition no longer applies to the current committee substitute.
2. Lines 103 to 104 provide a definition for “cloud provider”. The bill does not use this term, nor is the term included in current statute.
3. Certain agencies hold data pursuant to federal agreements. The FDLE cites the removal of the DMS’ requirement to enter into a data sharing agreement to access agency data as a possible violation risk of the Health Insurance Portability Accountability Act (HIPAA), FBI Criminal Justice Information Services (CJIS) Security Policy, Family Educational Rights and Privacy Act (FERPA), and other federal law. This may also disrupt agreements to access federal data limited to federal, state, or local law enforcement agencies.[48]

[47] Florida Department of Law Enforcement, Agency Analysis of 2024 House Bill 1555, p. 5 (Jan. 30, 2024).
[48] Florida Department of Law Enforcement, Agency Analysis of 2024 House Bill 1555, p. 5 (Jan. 30, 2024).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Energy, Communications & Cybersecurity Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Remove provisions of the bill that designate certain information security personnel positions as select exempt positions.
- Remove provisions of the bill that require each state agency head to designate a CISO and that specify how an agency's information security manager must interact with the agency CISO.
- Update the mission, goals, and responsibilities of the Florida Center for Cybersecurity ("Cyber Florida") housed within USF and authorize the USF president to assign the Center to an appropriate college within the university, with approval of the board of trustees.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.

A bill to be entitled

An act relating to cybersecurity; amending s. 110.205, F.S.; exempting the state chief technology officer from the career service; amending s. 282.0041, F.S.; providing definitions; amending s. 282.0051, F.S.; revising the purposes for which the Florida Digital Service is established; requiring the Florida Digital Service to ensure that independent project oversight on certain state agency information technology projects is performed in a certain manner; revising the date by which the Department of Management Services, acting through the Florida Digital Service, must provide certain recommendations to the Executive Office of the Governor and the Legislature; removing certain duties of the Florida Digital Service; revising the total project cost of certain projects for which the Florida Digital Service must provide project oversight; specifying the date by which the Florida Digital Service must provide certain reports; requiring the state chief information officer, in consultation with the Secretary of Management Services, to designate a state chief technology officer; providing duties of the state chief technology officer; revising the total project cost of certain projects for which certain procurement actions

must be taken; removing provisions prohibiting the department, acting through the Florida Digital Service, from retrieving or disclosing certain data in certain circumstances; amending s. 282.00515, F.S.; conforming a cross-reference; amending s. 282.318, F.S.; providing that the Florida Digital Service is the lead entity for a certain purpose; requiring the Cybersecurity Operations Center to provide certain notifications; requiring the state chief information officer to make certain reports in consultation with the state chief information security officer; requiring a state agency to report ransomware and cybersecurity incidents within certain time periods; requiring the Cybersecurity Operations Center to immediately notify certain entities of reported incidents and take certain actions; requiring the state chief information security officer to notify the Legislature of certain incidents within a certain period; requiring certain notification to be provided in a secure environment; requiring the Cybersecurity Operations Center to provide a certain report to certain entities by a specified date; requiring the Florida Digital Service to provide cybersecurity briefings to certain legislative committees; authorizing the Florida Digital Service to obtain

certain access to certain infrastructure and direct certain measures; revising the purpose of an agency's information security manager and the date by which he or she must be designated; authorizing the department to brief certain legislative committees in a closed setting on certain records that are confidential and exempt from public records requirements; requiring such legislative committees to maintain the confidential and exempt status of certain records; authorizing certain legislators to attend meetings of the Florida Cybersecurity Advisory Council; amending s. 282.3185, F.S.; requiring a local government to report ransomware and certain cybersecurity incidents to the Cybersecurity Operations Center within certain time periods; requiring the Cybersecurity Operations Center to immediately notify certain entities of certain incidents and take certain actions; requiring certain notification to be provided in a secure environment; amending s. 282.319, F.S.; revising the membership of the Florida Cybersecurity Advisory Council; amending s. 1004.444, F.S.; providing that the Florida Center for Cybersecurity may be referred to in a certain manner; providing that the center is established under the direction of the president of the University of South Florida and may be assigned

within a college that meets certain requirements; revising the mission and goals of the center; authorizing the center to take certain actions relating to certain initiatives; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(e) The state chief information officer, the state chief data officer, the state chief technology officer, and the state chief information security officer. The Department of Management Services shall set the salary and benefits of these positions in accordance with the rules of the Senior Management Service.

Section 2. Subsections (3) through (5), (6) through (16), and (17) through (38) of section 282.0041, Florida Statutes, are renumbered as subsections (4) through (6), (8) through (18), and (20) through (41), respectively, and new subsections (3), (7), and (19) are added to that section to read:

282.0041 Definitions.—As used in this chapter, the term:

(3) "As a service" means the contracting with or

outsourcing to a third party of a defined role or function as a means of delivery.

(7) "Cloud provider" means an entity that provides cloud-computing services.

(19) "Enterprise digital data" means information held by a state agency in electronic form that is deemed to be data owned by the state and held for state purposes by the state agency. Enterprise digital data that is subject to statutory requirements for particular types of sensitive data or to contractual limitations for data marked as trade secrets or sensitive corporate data held by state agencies shall be treated in accordance with such requirements or limitations. The department must maintain personnel with appropriate licenses, certifications, or classifications to steward such enterprise digital data, as necessary. Enterprise digital data must be maintained in accordance with chapter 119. This subsection may not be construed to create or expand an exemption from public records requirements under s. 119.07(1) or s. 24(a), Art. I of the State Constitution.

Section 3. Subsection (6) of section 282.0051, Florida Statutes, is renumbered as subsection (5), subsections (1) and (4) and present subsection (5) are amended, and paragraph (c) is added to subsection (2) of that section, to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service is established ~~has been created~~ within the department to lead enterprise information technology and cybersecurity efforts, to safeguard enterprise digital data, to propose, test, develop, and deploy innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy as specified in s. 282.206. The department, through the Florida Digital Service, shall have the following powers, duties, and functions:

(a) Develop and publish information technology policy for the management of the state's information technology resources.

(b) Develop an enterprise architecture that:

1. Acknowledges the unique needs of the entities within the enterprise in the development and publication of standards and terminologies to facilitate digital interoperability;

2. Supports the cloud-first policy as specified in s. 282.206; and

3. Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

(c) Establish project management and oversight standards with which state agencies must comply when implementing information technology projects. The department, acting through the Florida Digital Service, shall provide training opportunities to state agencies to assist in the adoption of the

project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1. Performance measurements and metrics that objectively reflect the status of an information technology project based on a defined and documented project scope, cost, and schedule.

2. Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an information technology project.

3. Reporting requirements, including requirements designed to alert all defined stakeholders that an information technology project has exceeded acceptable variances defined and documented in a project plan.

4. Content, format, and frequency of project updates.

5. Technical standards to ensure an information technology project complies with the enterprise architecture.

(d) Ensure that independent ~~Perform~~ project oversight on all state agency information technology projects that have total project costs of $25 ~~$10~~ million or more and that are funded in the General Appropriations Act or any other law is performed in compliance with applicable state and federal law. The department, acting through the Florida Digital Service, shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project

that the department identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project.

(e) Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy, as specified in s. 282.206, and business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The department, acting through the Florida Digital Service, shall biennially on January 15 ~~1~~ of each even-numbered year provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) Develop standards for information technology reports and updates, including, but not limited to, operational work

plans, project spend plans, and project status reports, for use by state agencies.

(h) Upon request, assist state agencies in the development of information technology-related legislative budget requests.

~~(i) Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the department and provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.~~

(i)~~(j)~~ Conduct a market analysis not less frequently than every 3 years beginning in 2021 to determine whether the information technology resources within the enterprise are utilized in the most cost-effective and cost-efficient manner, while recognizing that the replacement of certain legacy information technology systems within the enterprise may be cost prohibitive or cost inefficient due to the remaining useful life of those resources; whether the enterprise is complying with the cloud-first policy specified in s. 282.206; and whether the enterprise is utilizing best practices with respect to information technology, information services, and the acquisition of emerging technologies and information services. Each market analysis shall be used to prepare a strategic plan for continued and future information technology and information services for the enterprise, including, but not limited to,

proposed acquisition of new services or technologies and approaches to the implementation of any new services or technologies. Copies of each market analysis and accompanying strategic plan must be submitted to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than December 31 of each year that a market analysis is conducted.

(j) ~~(k)~~ Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(k) ~~(l)~~ In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(l) ~~(m)~~ 1. Notwithstanding any other law, provide project oversight on any information technology project of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $25 ~~$20~~ million or more. Such information technology projects must also comply with the applicable information technology architecture, project

management and oversight, and reporting standards established by the department, acting through the Florida Digital Service.

2. When ensuring performance of ~~performing~~ the project oversight function specified in subparagraph 1., report by the 30th day after the end of each quarter ~~at least quarterly~~ to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project that the department, acting through the Florida Digital Service, identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(m) ~~(n)~~ If an information technology project implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(n) ~~(o)~~ If adherence to standards or policies adopted by or established pursuant to this section causes conflict with federal regulations or requirements imposed on an entity within the enterprise and results in adverse action against an entity or federal funding, work with the entity to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The department, acting through the Florida Digital Service, shall annually by January 15 report such alternative standards to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(o) ~~(p)~~1. Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a. Identification of the information technology product and service categories to be included in state term contracts.

b. Requirements to be included in solicitations for state term contracts.

c. Evaluation criteria for the award of information technology-related state term contracts.

d. The term of each information technology-related state term contract.

e. The maximum number of vendors authorized on each state

term contract.

f. At a minimum, a requirement that any contract for information technology commodities or services meet the National Institute of Standards and Technology Cybersecurity Framework.

g. For an information technology project wherein project oversight is required pursuant to paragraph (d) or paragraph (l) ~~(m)~~, a requirement that independent verification and validation be employed throughout the project life cycle with the primary objective of independent verification and validation being to provide an objective assessment of products and processes throughout the project life cycle. An entity providing independent verification and validation may not have technical, managerial, or financial interest in the project and may not have responsibility for, or participate in, any other aspect of the project.

2. Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3. Answer vendor questions on information technology-related state term contract solicitations.

4. Ensure that the information technology policy established pursuant to subparagraph 1. is included in all solicitations and contracts that are administratively executed by the department.

(p) ~~(q)~~ Recommend potential methods for standardizing data

across state agencies which will promote interoperability and reduce the collection of duplicative data.

(q) ~~(r)~~ Recommend open data technical standards and terminologies for use by the enterprise.

(r) ~~(s)~~ Ensure that enterprise information technology solutions are capable of utilizing an electronic credential and comply with the enterprise architecture standards.

(2)

(c) The state chief information officer, in consultation with the Secretary of Management Services, shall designate a state chief technology officer who shall be responsible for all of the following:

1. Establishing and maintaining an enterprise architecture framework that ensures information technology investments align with the state's strategic objectives and initiatives pursuant to paragraph (1)(b).

2. Conducting comprehensive evaluations of potential technological solutions and cultivating strategic partnerships, internally with state enterprise agencies and externally with the private sector, to leverage collective expertise, foster collaboration, and advance the state's technological capabilities.

3. Supervising program management of enterprise information technology initiatives pursuant to paragraphs (1)(c), (d), and (l); providing advisory support and oversight

for technology-related projects; and continuously identifying and recommending best practices to optimize outcomes of technology projects and enhance the enterprise's technological efficiency and effectiveness.

(4) For information technology projects that have a total project cost of $25 ~~$10~~ million or more:

(a) State agencies must provide the Florida Digital Service with written notice of any planned procurement of an information technology project.

(b) The Florida Digital Service must participate in the development of specifications and recommend modifications to any planned procurement of an information technology project by state agencies so that the procurement complies with the enterprise architecture.

(c) The Florida Digital Service must participate in post-award contract monitoring.

~~(5) The department, acting through the Florida Digital Service, may not retrieve or disclose any data without a shared-data agreement in place between the department and the enterprise entity that has primary custodial responsibility of, or data-sharing responsibility for, that data.~~

Section 4. Subsection (1) of section 282.00515, Florida Statutes, is amended to read:

282.00515 Duties of Cabinet agencies.—

(1) The Department of Legal Affairs, the Department of

Financial Services, and the Department of Agriculture and Consumer Services shall adopt the standards established in s. 282.0051(1)(b), (c), and (q) ~~(r)~~ and (3)(e) or adopt alternative standards based on best practices and industry standards that allow for open data interoperability.

Section 5. Subsection (10) of section 282.318, Florida Statutes, is renumbered as subsection (11), subsection (3) and paragraph (a) of subsection (4) are amended, and a new subsection (10) is added to that section, to read:

282.318 Cybersecurity.—

(3) The ~~department, acting through the~~ Florida Digital Service~~,~~ is the lead entity responsible for leading enterprise information technology and cybersecurity efforts, safeguarding enterprise digital data, establishing standards and processes for assessing state agency cybersecurity risks, and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida Digital Service, shall adopt rules that mitigate risks; safeguard state agency digital assets, data, information, and information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework. The department, acting through the Florida Digital Service, shall also:

(a) Designate an employee of the Florida Digital Service as the state chief information security officer. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The Cybersecurity Operations Center shall immediately notify the state chief information officer and the state chief information security officer ~~shall be notified~~ of all confirmed or suspected incidents or threats of state agency information technology resources. The state chief information officer, in consultation with the state chief information security officer, ~~and~~ must report such incidents or threats to ~~the state chief information officer and~~ the Governor.

(b) Develop, and annually update by February 1, a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber incident.

(c) Develop and publish for use by state agencies a cybersecurity governance framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that

an agency's information technology resources are identified and managed consistent with their relative importance to the agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity incident response teams and describing their responsibilities for responding to cybersecurity incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a

cybersecurity incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity incident reporting process that includes procedures for notifying the department and the Department of Law Enforcement of cybersecurity incidents.

a. The level of severity of the cybersecurity incident is defined by the National Cyber Incident Response Plan of the United States Department of Homeland Security as follows:

(I) Level 5 is an emergency-level incident within the specified jurisdiction that poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local government security; or the lives of the country's, state's, or local government's residents.

(II) Level 4 is a severe-level incident that is likely to result in a significant impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; or civil liberties.

(III) Level 3 is a high-level incident that is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(IV) Level 2 is a medium-level incident that may impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(V) Level 1 is a low-level incident that is unlikely to

impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

b. The cybersecurity incident reporting process must specify the information that must be reported by a state agency following a cybersecurity incident or ransomware incident, which, at a minimum, must include the following:

(I) A summary of the facts surrounding the cybersecurity incident or ransomware incident.

(II) The date on which the state agency most recently backed up its data; the physical location of the backup, if the backup was affected; and if the backup was created using cloud computing.

(III) The types of data compromised by the cybersecurity incident or ransomware incident.

(IV) The estimated fiscal impact of the cybersecurity incident or ransomware incident.

(V) In the case of a ransomware incident, the details of the ransom demanded.

c.(I) A state agency shall report all ransomware incidents and ~~any~~ cybersecurity incidents ~~incident determined by the state agency to be of severity level 3, 4, or 5~~ to the Cybersecurity Operations Center ~~and the Cybercrime Office of the Department of Law Enforcement~~ as soon as possible but no later than 12 ~~48~~ hours after discovery of the cybersecurity incident and no later

than 6 ~~12~~ hours after discovery of the ransomware incident. The report must contain the information required in sub-subparagraph b.

(II) The Cybersecurity Operations Center shall:

(A) Immediately notify the Cybercrime Office of the Department of Law Enforcement of a reported incident and provide to the Cybercrime Office of the Department of Law Enforcement regular reports on the status of the incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office of the Department of Law Enforcement upon the office's request if the state chief information security officer finds that the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions.

(B) Immediately notify the state chief information officer and the state chief information security officer of a reported incident. The state chief information security officer shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 24 ~~12~~ hours after receiving a state agency's incident report. The notification must include a high-level description of the incident and the likely effects and must be provided in a secure environment.

~~d. A state agency shall report a cybersecurity incident~~

~~determined by the state agency to be of severity level 1 or 2 to the Cybersecurity Operations Center and the Cybercrime Office of the Department of Law Enforcement as soon as possible. The report must contain the information required in sub-subparagraph b.~~

d.~~e.~~ The Cybersecurity Operations Center shall provide a consolidated incident report by the 30th day after the end of each quarter ~~on a quarterly basis~~ to the Governor, the Attorney General, the executive director of the Department of Law Enforcement, the President of the Senate, the Speaker of the House of Representatives, and the Florida Cybersecurity Advisory Council. The report provided to the Florida Cybersecurity Advisory Council may not contain the name of any agency, network information, or system identifying information but must contain sufficient relevant information to allow the Florida Cybersecurity Advisory Council to fulfill its responsibilities as required in s. 282.319(9).

10. Incorporating information obtained through detection and response activities into the agency's cybersecurity incident response plans.

11. Developing agency strategic and operational cybersecurity plans required pursuant to this section.

12. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state

agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

13. Establishing procedures for procuring information technology commodities and services that require the commodity or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

14. Submitting after-action reports following a cybersecurity incident or ransomware incident. Such guidelines and processes for submitting after-action reports must be developed and published by December 1, 2022.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on cybersecurity, including cybersecurity threats, trends, and best practices.

(f) Annually review the strategic and operational cybersecurity plans of state agencies.

(g) Annually provide cybersecurity training to all state agency technology professionals and employees with access to highly sensitive information which develops, assesses, and documents competencies by role and skill level. The cybersecurity training curriculum must include training on the

identification of each cybersecurity incident severity level referenced in sub-subparagraph (c)9.a. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(h) Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must be primarily virtual and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center shall serve as a clearinghouse for threat information and coordinate with the Department of Law Enforcement to support state agencies and their response to any confirmed or suspected cybersecurity incident.

(i) Lead an Emergency Support Function, ESF-20 ~~ESF CYBER~~, under the state comprehensive emergency management plan as described in s. 252.35.

(j) Provide cybersecurity briefings to the members of any legislative committee or subcommittee responsible for policy matters relating to cybersecurity.

(k) Have the authority to obtain immediate access to public or private infrastructure hosting enterprise digital data and to direct, in consultation with the state agency that holds the particular enterprise digital data, measures to assess, monitor, and safeguard the enterprise digital data.

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to ensure compliance with cybersecurity governance and with the state's enterprise security program and incident response plan. The information security manager must coordinate with the agency's information security personnel and the Cybersecurity Operations Center to ensure that the unique needs of the agency are met ~~administer the cybersecurity program of the state agency~~. This designation must be provided annually in writing to the department by January 15 ~~1~~. A state agency's information security manager, for purposes of these information security duties, shall report directly to the agency head.

(10) The department may brief any legislative committee or subcommittee responsible for cybersecurity policy in a meeting or other setting closed by the respective body under the rules of such legislative body at which the legislative committee or subcommittee is briefed on records made confidential and exempt under subsections (5) and (6). The legislative committee or subcommittee must maintain the confidential and exempt status of such records. A legislator serving on a legislative committee or subcommittee responsible for cybersecurity policy may also attend meetings of the Florida Cybersecurity Advisory Council, including any portions of such meetings that are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

Section 6. Paragraph (d) of subsection (5) of section 282.3185, Florida Statutes, is redesignated as paragraph (c),

and paragraph (b) and present paragraph (c) of that subsection are amended to read:

282.3185 Local government cybersecurity.—

(5) INCIDENT NOTIFICATION.—

(b)1. A local government shall report all ransomware incidents and any cybersecurity incident determined by the local government to be of severity level 3, 4, or 5 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center~~, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government~~ as soon as possible but no later than 12 ~~48~~ hours after discovery of the cybersecurity incident and no later than 6 ~~12~~ hours after discovery of the ransomware incident. The report must contain the information required in paragraph (a).

2. The Cybersecurity Operations Center shall:

a. Immediately notify the Cybercrime Office of the Department of Law Enforcement and the sheriff who has jurisdiction over the local government of a reported incident and provide to the Cybercrime Office of the Department of Law Enforcement and the sheriff who has jurisdiction over the local government regular reports on the status of the incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office of the Department of Law Enforcement upon the office's request if the state chief information security officer finds

that the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions.

b. Immediately notify the state chief information security officer of a reported incident. The state chief information security officer shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 24 ~~12~~ hours after receiving a local government's incident report. The notification must include a high-level description of the incident and the likely effects and must be provided in a secure environment.

(c) A local government may report a cybersecurity incident determined by the local government to be of severity level 1 or 2 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government. The report shall contain the information required in paragraph (a). The Cybersecurity Operations Center shall immediately notify the Cybercrime Office of the Department of Law Enforcement and the sheriff who has jurisdiction over the local government of a reported incident and provide regular reports on the status of the cybersecurity incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office of the

Department of Law Enforcement upon request if the state chief information security officer finds that the investigation does not impede remediation of the cybersecurity incident and that there is no risk to the public and no risk to critical state functions.

Section 7. Paragraph (j) of subsection (4) of section 282.319, Florida Statutes, is amended, and paragraph (m) is added to that subsection, to read:

282.319 Florida Cybersecurity Advisory Council.—

(4) The council shall be comprised of the following members:

(j) Three representatives from critical infrastructure sectors, one of whom must be from a utility provider ~~water treatment facility~~, appointed by the Governor.

(m) A representative of local government.

Section 8. Section 1004.444, Florida Statutes, is amended to read:

1004.444 Florida Center for Cybersecurity.—

(1) The Florida Center for Cybersecurity, which may also be referred to as "Cyber Florida," is established as a center within the University of South Florida under the direction of the president of the university or the president's designee. The president may assign the center within a college of the university if the college has a strong emphasis in cybersecurity, technology, or computer sciences and engineering

as determined and approved by the university's board of trustees.

(2) The mission and goals of the center are to:

(a) Position Florida as the national leader in cybersecurity and its related workforce primarily through advancing and funding education and~~,~~ research and development initiatives in cybersecurity and related fields, with a secondary emphasis on~~, and~~ community engagement and cybersecurity awareness.

(b) Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce through education, research, applied science, and engagements and partnerships with the private and military sectors.

(c) Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training.

(d) Seek out research and development agreements and other partnerships with major military installations and affiliated contractors to assist, when possible, in homeland cybersecurity defense initiatives.

(e) Attract cybersecurity companies and jobs to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.

(f) Conduct, fund, and facilitate research and applied

science that leads to the creation of new technologies and software packages that have military and civilian applications and which can be transferred for military and homeland defense purposes or for sale or use in the private sector.

(3) Upon receiving a request for assistance from the Department of Management Services, the Florida Digital Service, or another state agency, the center is authorized, but may not be compelled by the agency, to conduct, consult on, or otherwise assist any state-funded initiatives related to:

(a) Cybersecurity training, professional development, and education for state and local government employees, including school districts and the judicial branch.

(b) Increasing the cybersecurity effectiveness of the state's and local governments' technology platforms and infrastructure, including school districts and the judicial branch.

Section 9. This act shall take effect July 1, 2024.

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: State Administration & Technology Appropriations Subcommittee
Representative Giallombardo offered the following:

Amendment

Remove lines 94-691 and insert:

Section 2. Subsections (3) through (5), (6) through (16), and (17) through (38) of section 282.0041, Florida Statutes, are renumbered as subsections (4) through (6), (8) through (18), and (20) through (41), respectively, and new subsections (3), (7), and (19) are added to that section to read:

282.0041 Definitions.—As used in this chapter, the term:

(3) "As a service" means the contracting with or outsourcing to a third party of a defined role or function as a means of delivery.

(7) "Cloud provider" means an entity that provides cloud-computing services.

(8) "Criminal Justice Agency" has the same meaning as defined in 943.045 (11).

(19) "Enterprise digital data" means information held by a state agency in electronic form that is deemed to be data owned by the state and held for state purposes by the state agency. Enterprise digital data must be maintained in accordance with chapter 119. This subsection may not be construed to create, modify, abrogate, or expand an exemption from public records requirements under s. 119.07(1) or s. 24(a), Art. I of the State Constitution.

Section 3. Subsection (6) of section 282.0051, Florida Statutes, is renumbered as subsection (5), subsections (1) and (4) and present subsection (5) are amended, and paragraph (c) is added to subsection (2) of that section, to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service is established ~~has been created~~ within the department to lead enterprise information technology and cybersecurity efforts, to propose and evaluate innovative solutions pursuant to interagency agreements that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the

cloud-first policy as specified in s. 282.206. The department, through the Florida Digital Service, shall have the following powers, duties, and functions:

(a) Develop and publish information technology policy for the management of the state's information technology resources.

(b) Develop an enterprise architecture that:

1. Acknowledges the unique needs of the entities within the enterprise in the development and publication of standards and terminologies to facilitate digital interoperability;

2. Supports the cloud-first policy as specified in s. 282.206; and

3. Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

(c) Establish project management and oversight standards with which state agencies must comply when implementing information technology projects. The department, acting through the Florida Digital Service, shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1. Performance measurements and metrics that objectively reflect the status of an information technology project based on a defined and documented project scope, cost, and schedule.

2. Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an information technology project.

3. Reporting requirements, including requirements designed to alert all defined stakeholders that an information technology project has exceeded acceptable variances defined and documented in a project plan.

4. Content, format, and frequency of project updates.

5. Technical standards to ensure an information technology project complies with the enterprise architecture.

(d) Perform project oversight on all state agency information technology projects that have total project costs of $10 million or more and that are funded in the General Appropriations Act or any other law. The department, acting through the Florida Digital Service, shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project that the department identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project.

(e) Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy, as specified in s. 282.206, and business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The department, acting through the Florida Digital Service, shall biennially on January 15 ~~1~~ of each even-numbered year provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h) Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i) Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the department and

provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(i) ~~(j)~~ Conduct a market analysis not less frequently than every 3 years beginning in 2021 to determine whether the information technology resources within the enterprise are utilized in the most cost-effective and cost-efficient manner, while recognizing that the replacement of certain legacy information technology systems within the enterprise may be cost prohibitive or cost inefficient due to the remaining useful life of those resources; whether the enterprise is complying with the cloud-first policy specified in s. 282.206; and whether the enterprise is utilizing best practices with respect to information technology, information services, and the acquisition of emerging technologies and information services. Each market analysis shall be used to prepare a strategic plan for continued and future information technology and information services for the enterprise, including, but not limited to, proposed acquisition of new services or technologies and approaches to the implementation of any new services or technologies. Copies of each market analysis and accompanying strategic plan must be submitted to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than December 31 of each year that a market analysis is conducted.

(j) ~~(k)~~ Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(k) ~~(l)~~ In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(l) ~~(m)~~1. Notwithstanding any other law, provide project oversight on any information technology project of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $20 million or more. Such information technology projects must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the department, acting through the Florida Digital Service.

2. When performing the project oversight function specified in subparagraph 1., report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project that the department, acting

through the Florida Digital Service, identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(m) ~~(n)~~ If an information technology project implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(n) ~~(o)~~ If adherence to standards or policies adopted by or established pursuant to this section causes conflict with federal regulations or requirements imposed on an entity within the enterprise and results in adverse action against an entity or federal funding, work with the entity to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The department, acting through the Florida Digital Service, shall annually by January

15 report such alternative standards to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(o) ~~(p)~~ 1. Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a. Identification of the information technology product and service categories to be included in state term contracts.

b. Requirements to be included in solicitations for state term contracts.

c. Evaluation criteria for the award of information technology-related state term contracts.

d. The term of each information technology-related state term contract.

e. The maximum number of vendors authorized on each state term contract.

f. At a minimum, a requirement that any contract for information technology commodities or services meet the National Institute of Standards and Technology Cybersecurity Framework.

g. For an information technology project wherein project oversight is required pursuant to paragraph (d) or paragraph (l) ~~(m)~~, a requirement that independent verification and validation be employed throughout the project life cycle with the primary

objective of independent verification and validation being to provide an objective assessment of products and processes throughout the project life cycle. An entity providing independent verification and validation may not have technical, managerial, or financial interest in the project and may not have responsibility for, or participate in, any other aspect of the project.

2. Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3. Answer vendor questions on information technology-related state term contract solicitations.

4. Ensure that the information technology policy established pursuant to subparagraph 1. is included in all solicitations and contracts that are administratively executed by the department.

(p) ~~(q)~~ Recommend potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data.

(q) ~~(r)~~ Recommend open data technical standards and terminologies for use by the enterprise.

(r) ~~(s)~~ Ensure that enterprise information technology solutions are capable of utilizing an electronic credential and comply with the enterprise architecture standards.

(2)

(c) The state chief information officer, in consultation with the Secretary of Management Services, shall designate a state chief technology officer who shall be responsible for all of the following:

1. Establishing and maintaining an enterprise architecture framework that ensures information technology investments align with the state's strategic objectives and initiatives pursuant to paragraph (1)(b).

2. Conducting comprehensive evaluations of potential technological solutions and cultivating strategic partnerships, internally with state enterprise agencies and externally with the private sector, to leverage collective expertise, foster collaboration, and advance the state's technological capabilities.

3. Supervising program management of enterprise information technology initiatives pursuant to paragraphs (1)(c), (d), and (l); providing advisory support and oversight for technology-related projects; and continuously identifying and recommending best practices to optimize outcomes of technology projects and enhance the enterprise's technological efficiency and effectiveness.

(4) For information technology projects that have a total project cost of $10 million or more:

(a) State agencies must provide the Florida Digital Service with written notice of any planned procurement of an information technology project.

(b) The Florida Digital Service must participate in the development of specifications and recommend modifications to any planned procurement of an information technology project by state agencies so that the procurement complies with the enterprise architecture.

(c) The Florida Digital Service must participate in post-award contract monitoring.

(5) The department, acting through the Florida Digital Service, may not retrieve or disclose any data without a shared-data agreement in place between the department and the enterprise entity that has primary custodial responsibility of, or data-sharing responsibility for, that data.

Section 4. Subsection (1) of section 282.00515, Florida Statutes, is amended to read:

282.00515 Duties of Cabinet agencies.—

(1) The Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services shall adopt the standards established in s. 282.0051(1)(b), (c), and <u>(q)</u> ~~(r)~~ and (3)(e) or adopt alternative standards based on best practices and industry standards that allow for open data interoperability.

Section 5. Section 5. Subsection (10) of section 282.318, Florida Statutes, is renumbered as subsection (11), subsection (3) and paragraph (a) of subsection (4) are amended, and a new subsection (10) is added to that section, to read:

282.318 Cybersecurity.—

(3) The ~~department, acting through the~~ Florida Digital Service~~,~~ is the lead entity responsible for leading enterprise information technology and cybersecurity efforts, establishing standards and processes for assessing state agency cybersecurity risks, and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida Digital Service, shall adopt rules that mitigate risks; safeguard state agency digital assets, data, information, and information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework. The department, acting through the Florida Digital Service, shall also:

(a) Designate an employee of the Florida Digital Service as the state chief information security officer. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources. The state chief information

security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The Cybersecurity Operations Center shall immediately notify the state chief information officer and the state chief information security officer ~~shall be notified~~ of all confirmed or suspected incidents or threats of state agency information technology resources. The state chief information officer, in consultation with the state chief information security officer, ~~and~~ must report such incidents or threats to ~~the state chief information officer and~~ the Governor.

(b) Develop, and annually update by February 1, a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber incident.

(c) Develop and publish for use by state agencies a cybersecurity governance framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and managed consistent with their relative importance to the agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities,

constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity incident response teams and describing their responsibilities for responding to cybersecurity incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a cybersecurity incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity incident reporting process that includes procedures for notifying the department and the Department of Law Enforcement of cybersecurity incidents.

a. The level of severity of the cybersecurity incident is defined by the National Cyber Incident Response Plan of the United States Department of Homeland Security as follows:

(I) Level 5 is an emergency-level incident within the specified jurisdiction that poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local government security; or the lives of the country's, state's, or local government's residents.

(II) Level 4 is a severe-level incident that is likely to result in a significant impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; or civil liberties.

(III) Level 3 is a high-level incident that is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(IV) Level 2 is a medium-level incident that may impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(V) Level 1 is a low-level incident that is unlikely to impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

b. The cybersecurity incident reporting process must specify the information that must be reported by a state agency

following a cybersecurity incident or ransomware incident, which, at a minimum, must include the following:

(I) A summary of the facts surrounding the cybersecurity incident or ransomware incident.

(II) The date on which the state agency most recently backed up its data; the physical location of the backup, if the backup was affected; and if the backup was created using cloud computing.

(III) The types of data compromised by the cybersecurity incident or ransomware incident.

(IV) The estimated fiscal impact of the cybersecurity incident or ransomware incident.

(V) In the case of a ransomware incident, the details of the ransom demanded.

c.(I) A state agency shall report all ransomware incidents and ~~any~~ cybersecurity incidents ~~incident determined by the state agency to be of severity level 3, 4, or 5~~ to the Cybersecurity Operations Center ~~and the Cybercrime Office of the Department of Law Enforcement~~ as soon as possible but no later than 12 ~~48~~ hours after discovery of the cybersecurity incident and no later than 6 ~~12~~ hours after discovery of the ransomware incident. The report must contain the information required in sub-subparagraph b.

(II) The Cybersecurity Operations Center shall:

(A) Immediately notify the Cybercrime Office of the

Department of Law Enforcement of a reported incident and provide to the Cybercrime Office of the Department of Law Enforcement regular reports on the status of the incident. The department will preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office of the Department of Law Enforcement upon the office's request as long as the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions.

(B) Immediately notify the state chief information officer and the state chief information security officer of a reported incident. The state chief information security officer shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a state agency's incident report. The notification must include a high-level description of the incident and the likely effects.

~~d. A state agency shall report a cybersecurity incident determined by the state agency to be of severity level 1 or 2 to the Cybersecurity Operations Center and the Cybercrime Office of the Department of Law Enforcement as soon as possible. The report must contain the information required in sub-subparagraph b.~~

d.~~e.~~ The Cybersecurity Operations Center shall provide a consolidated incident report by the 30th day after the end of

each quarter ~~on a quarterly basis~~ to the Governor, the Attorney General, the executive director of the Department of Law Enforcement, the President of the Senate, the Speaker of the House of Representatives, and the Florida Cybersecurity Advisory Council. The report provided to the Florida Cybersecurity Advisory Council may not contain the name of any agency, network information, or system identifying information but must contain sufficient relevant information to allow the Florida Cybersecurity Advisory Council to fulfill its responsibilities as required in s. 282.319(9).

10. Incorporating information obtained through detection and response activities into the agency's cybersecurity incident response plans.

11. Developing agency strategic and operational cybersecurity plans required pursuant to this section.

12. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

13. Establishing procedures for procuring information technology commodities and services that require the commodity or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

14. Submitting after-action reports following a cybersecurity incident or ransomware incident. Such guidelines and processes for submitting after-action reports must be developed and published by December 1, 2022.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on cybersecurity, including cybersecurity threats, trends, and best practices.

(f) Annually review the strategic and operational cybersecurity plans of state agencies.

(g) Annually provide cybersecurity training to all state agency technology professionals and employees with access to highly sensitive information which develops, assesses, and documents competencies by role and skill level. The cybersecurity training curriculum must include training on the identification of each cybersecurity incident severity level referenced in sub-subparagraph (c)9.a. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(h) Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must

be primarily virtual and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center shall serve as a clearinghouse for threat information and coordinate with the Department of Law Enforcement to support state agencies and their response to any confirmed or suspected cybersecurity incident.

(i) Lead an Emergency Support Function, ESF-20 ~~ESF CYBER~~, under the state comprehensive emergency management plan as described in s. 252.35.

(j) During a cyber incident or as otherwise agreed to in writing by the state agency that holds the particular enterprise data, have the authority to obtain immediate and complete access to state agency accounts and instances that hold enterprise digital data and to direct, in consultation with the state agency that holds the particular enterprise digital data, measures to assess, monitor, and protect the security of enterprise digital data. The department is not authorized to view, modify, transfer, or otherwise duplicate enterprise digital data except as required to respond to a cyber incident or as agreed to in writing by the state agency that holds the particular enterprise digital data. All criminal justice entities are exempt from section (j).

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to ensure compliance with cybersecurity governance and with the state's

enterprise security program and incident response plan. The information security manager must coordinate with the agency's information security personnel and the Cybersecurity Operations Center to ensure that the unique needs of the agency are met ~~administer the cybersecurity program of the state agency~~. This designation must be provided annually in writing to the department by January 15 ~~1~~. A state agency's information security manager, for purposes of these information security duties, shall report directly to the agency head.

Section 6. Paragraph (d) of subsection (5) of section 282.3185, Florida Statutes, is redesignated as paragraph (c), and paragraph (b) and present paragraph (c) of that subsection are amended to read:

282.3185 Local government cybersecurity.—

(5) INCIDENT NOTIFICATION.—

(b)1. A local government shall report all ransomware incidents and any cybersecurity incident determined by the local government to be of severity level 3, 4, or 5 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center~~, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government~~ as soon as possible but no later than 12 ~~48~~ hours after discovery of the cybersecurity incident and no later than 6 ~~12~~ hours after discovery of the ransomware incident. The report must contain the information required in paragraph (a).

2. The Cybersecurity Operations Center shall:

a. Immediately notify the Cybercrime Office of the Department of Law Enforcement and provide to the Cybercrime Office of the Department of Law Enforcement and the sheriff who has jurisdiction over the local government regular reports on the status of the incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office of the Department of Law Enforcement upon the office's request. Except that the Department of Law Enforcement will coordinate the response of all incidents in which a law enforcement agency is the subject of the incident and will provide the Cybersecurity Operations Center with updates.

b. Immediately notify the state chief information security officer of a reported incident. The state chief information security officer shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a local government's incident report. The notification must include a high-level description of the incident and the likely effects.

(c) A local government may report a cybersecurity incident determined by the local government to be of severity level 1 or 2 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center, the Cybercrime Office of the Department of

Law Enforcement, and the sheriff who has jurisdiction over the local government. The report shall contain the information required in paragraph (a). The Cybersecurity Operations Center shall immediately notify the Cybercrime Office of the Department of Law Enforcement and the sheriff who has jurisdiction over the local government of a reported incident and provide regular reports on the status of the cybersecurity incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office of the Department of Law Enforcement upon request if the investigation does not impede remediation of the cybersecurity incident and that there is no risk to the public and no risk to critical state functions.